

## **complaint**

Mr D is unhappy that Capital One (Europe) plc used his payment protection insurance (PPI) refund towards his credit card account.

## **background**

Mr D took out a credit card with PPI. When Mr D fell behind on the repayments, he came to an agreement with Capital One to settle the account. And Capital One agreed not to pursue Mr D for the rest of the money.

In 2015, Capital One upheld Mr D's complaint about mis-sold PPI. It worked out that he was due compensation to put him back into the position he would've been in if the PPI hadn't been sold. Capital One used this refund to reduce the outstanding account balance.

Mr D said that this wasn't fair. He said he wasn't in arrears on this account because it was closed. He added that if a debt did exist, it should've been written off as Capital One had made no attempt to recover any balance.

Our adjudicator looked at what Capital One had done and thought that it was fair. Mr D disagreed with the adjudicator so the complaint has been passed to me.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Capital One has upheld Mr D's PPI complaint and made an offer. He's not saying that the amount offered is wrong, so all I've got to decide is whether or not it's fair for Capital One to use the refund towards his credit card account.

We'd usually say a business can use a consumer's compensation to reduce their arrears if the PPI policy was sold alongside the account now in arrears. Put simply: Mr D owes Capital One some money and Capital One owes Mr D some money. And the debts are both connected to the same credit card account.

I understand that Mr D thought that paying Capital One an amount to settle the account meant that he no longer owed them any money. But the debt that Mr D had with Capital One still existed, even though Capital One had accepted less than Mr D owed. When Capital One agreed to accept the partial settlement, it didn't cancel the debt; it just agreed not to ask Mr D to repay what was left. Also some of that debt Mr D owed for the credit card may include some of the costs of the PPI that Mr D has never actually repaid. So I think it's fair for Capital One to use Mr D's PPI refund to reduce these arrears.

I've thought about what Mr D said about the account being closed and what he's said about any amount outstanding being written off by now under the laws that apply to debt.

But the letter Mr D has provided from Capital One talks about what would be recorded on his credit file for six years after his account defaulted. And the Limitation Act 1980 sets out time limits for starting court actions. A lender has twelve years from the date of a formal demand for repayment to start court proceedings for the recovery of a debt. So even if a lender was out of time to bring a claim, this would only mean that they couldn't take court proceedings to recover the debt. It wouldn't invalidate any outstanding balance.

I appreciate that Mr D is going to be very disappointed with my decision, especially as he's told us that he's incurred costs from his claims management company. But having looked at everything, I think Mr D's debt still exists. It's still an amount that he owes Capital One. So even though Capital One hasn't chased Mr D for this money, it can use the PPI compensation to reduce how much it is owed.

**my final decision**

For the reasons set out above, I think what Capital One (Europe) plc has done is fair so it doesn't need to do anything more to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 May 2016.

Claire Marsh  
**ombudsman**