

complaint

Mr B is unhappy with how Capital One (Europe) plc ('Capital One') has offered to resolve his complaint about a payment protection insurance ('PPI') attached to a credit card.

background

Mr B took out a credit card in 1998. At the same time he was sold a PPI policy.

Mr B entered into an involuntary arrangement ('IVA') in 2003 and this was completed in 2010.

Mr B later complained that the PPI policy attached to this card had been mis-sold.

Capital One agreed and made him an offer of £2,064.40 (after tax) in 2015.

But Capital One said that after Mr B's IVA completed there was still a debt on his account totalling £2,231.75. So it used Mr B's PPI compensation to reduce that debt. This left a debt of £167.35.

Mr B isn't happy with this and feels that the money should be paid directly to him as he believes the debt no longer exists. He's also cited a court case for this service to consider.

Our adjudicator looked at the complaint and thought what Capital One had done was fair. Mr B disagreed and so the complaint has been passed to me for a final decision.

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 already agreed to settle Mr B's PPI mis-sale complaint. So I won't be looking into how the policy came to be sold, because that isn't in dispute. I will only be looking at whether the approach Capital One has taken to settle his complaint is fair.

When a business agrees to settle a complaint we expect it to, as far as possible, put the consumer back in the position they would be in had they not taken out a PPI policy.

With a PPI policy attached to a credit card this *generally* means a refund of any *overpayments* the consumer makes towards the credit card directly because of the PPI policy (typically premiums charged, card interest on those premiums and any fees/charges directly caused by the PPI) and 8% simple interest, to compensate the consumer for the time they've been without this money.

But in Mr B's case he got into trouble making repayments towards his credit card account and that account formed part of an IVA. Mr B completed his IVA in 2010.

I've seen a copy of how Capital One calculated Mr B's offer which included data on the history of Mr B's card account. Mr B took out his card in 1998. It had a credit limit of £3,000 and straight away Mr B was just under that balance – presumably because he either made a big purchase or a balance transfer from another card account.

Mr B made frequent payments to his credit card until 2003 when he entered into the IVA. At this point Mr B's PPI policy was cancelled and he was charged no more interest on the account. At no point did Mr B ever clear the balance which he started with.

When Mr B entered into an IVA his debt was £3,597.25. Without the PPI, Capital One has calculated that Mr B's debt would've been around £1,640.57. It's important to note that we don't actually know what Mr B's credit card account would've looked like if he hadn't had PPI. But Capital One has made a number of reasonable assumptions to come up with what it might have looked like.

Through the IVA Mr B made infrequent payments towards the credit card debt. When Mr B completed his IVA in 2010 the total credit card debt still outstanding was £2,231.75. At that point, using the same reasonable assumptions I've mentioned above, Capital One has suggested his balance would've been around £275.07 without PPI on his account.

Mr B has said that his IVA completed in 2010 and because of that his debt no longer exists. He has quoted a court case throughout his submissions. I have listened to what Mr B has said but I don't agree with him.

I'm aware of the court case that Mr B has referred to and I don't think it says what he thinks it does. The court case actually does suggest that a debt still exists after an IVA is finished. But in any event I have to look at what is fair and reasonable, whilst taking account of the relevant law, rules and industry guidance.

When his IVA completed his debts weren't legally cancelled or removed. It just means that the creditors who were party to his IVA have agreed to not legally pursue him for the debt. The debt still exists, because it hasn't been paid back.

I don't actually think the fact Mr B was in an IVA or the recent court case is wholly relevant in his complaint. This is because I believe, looking at Capital One's calculation of Mr B's offer, that he was actually never out of pocket because of the PPI. His PPI formed part of his credit card balance, which formed part of his IVA. At no point did Mr B clear or make a large payment towards his credit card balance - so it's unlikely he actually ever paid anything towards the PPI.

I've thought about how I'd expect a business to put things right, by putting Mr B in the financial position he'd be in, as far as possible, as if he'd never had the PPI. If Mr B didn't have PPI he still would've likely had a debt on the credit card account, but it would have been lower. So it's fair that Capital One use his PPI compensation to reduce his outstanding debt to what it likely would be had he not had PPI on the account. Otherwise Capital One would be compensating him for something he's never paid anything towards - which wouldn't be fair.

I've also thought about if Mr B not had PPI, whether his credit card debt would've still formed part of his IVA. As I've mentioned above, it's difficult to know what Mr B's credit card account would've actually looked like without PPI. But Capital One, by removing everything it says Mr B was charged for the PPI, he still would've had a balance of around £1,640.57 at the time he entered into his IVA. At that time Mr B was making less than or around the minimum repayment that Capital One requested. And just before Mr B entered into the IVA he had stopped making repayments. So I don't think the PPI directly caused Mr B's financial issues on his credit card account.

Mr B has also asked me to consider whether I think it would be appropriate to award him extra compensation for the trouble and upset caused to him by Capital One in dealing with his complaint. He says this is due to the amount of calls he has made and letters he sent.

Mr B's complaint has taken a long time to get to this point so I understand his frustration. But as I've discussed above, I think the approach Capital One took to resolve his complaint is fair.

I agree that Capital One, in part, might have caused unnecessary delay for Mr B. I say this because when Mr B initially complained its response to Mr B wasn't very helpful. So I can understand why Mr B queried it. And it was only when Mr B brought his complaint to this service that Capital One gave him a proper answer and tried to handle his concerns when he raised them.

There is always a level of inconvenience when making a complaint and it's likely Capital One did cause Mr B some frustration. But I also think it's likely that even if Capital One had been clearer with Mr B from the outset then he still would've continued his complaint with this service – because he doesn't agree with the approach it's taken. So I don't think Capital One need to compensate him any further for any trouble and upset caused.

my final decision

For the reasons I've mentioned above, I think the approach Capital One (Europe) plc has taken to resolve Mr B's complaint is fair. So I won't be asking it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 March 2018.

Martin Purcell
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