

## **complaint**

Mr M complained that a payment protection insurance (PPI) policy sold to him by Capital One (Europe) Plc (Capital One) alongside his credit card had been mis-sold.

## **background**

Mr M complained to Capital One that the PPI he had on his credit card was mis-sold. After he had brought his complaint to this service Capital One agreed to uphold the complaint. But it then used the compensation for the mis-sale to set against the debt Mr M had on the credit card account.

Mr M wasn't happy with what Capital One had done with the compensation. He said that he'd entered an Individual Voluntary Arrangement (IVA) and the credit card debt was included in that IVA. So he thought the compensation should be paid to his insolvency practitioner (IP).

Our adjudicator said what Capital One had done with the compensation was fair. Mr M didn't agree and so the complaint has been passed to me for a decision. Mr M is represented by a third party.

## **my findings**

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

Mr M's representative said that the PPI had been mis-sold because of the commission charged by Capital One that was not disclosed to Mr M.

Capital One has now agreed to uphold Mr M's mis-sale complaint, but it says the PPI was mis-sold for other reasons. It's offered to pay compensation in line with what I would expect for a mis-sold policy. This would put Mr M in the position he'd be in if he'd never taken out the PPI policy. As Mr M made a claim on the PPI policy for £3,292.56 Capital One has deducted this amount from the total compensation which I think is fair.

Capital One worked out Mr M was due compensation of £3,021.51 after the claim was deducted. It then used this amount to set against the debt on the credit card. This credit card debt formed part of an IVA that Mr M had entered into. Capital One indicated once it had offset the compensation against the credit card debit it would notify the IP of a reduction of its debt in the IVA or submit to the IP any remaining compensation after the credit card debt was cleared.

Mr M's representative has indicated he is unhappy with what Capital One has done with the compensation now it has agreed to uphold the complaint. The representative has provided a copy of a letter from Mr M's IP saying they have an interest in the compensation awarded.

I've considered the situation regarding the IVA and the request from Mr M's representative that this service direct the compensation should be paid to the IP.

Mr M's representative says that in light of the case of *Green v Wright* the PPI compensation is an asset of the IVA and should be paid to the IP. However *Green v Wright* was a dispute between an individual and his IP about the continuation of an IVA trust after the IVA was

completed. In the matter before me there is a dispute about the business using its right of set off whilst the IVA is ongoing.

Mr M's IP is not a party to this complaint. An IP has powers under an IVA to take a matter to court if a business is in breach of the terms of an IVA. The appropriate forum for an issue between the IP and the business is a court and this service is not in the position to interpret and apply the terms of an IVA.

Our service is here to resolve disputes between consumers and financial businesses. The complaint was brought to us by Mr M through his representative and Mr M signed the necessary complaint forms. So I am looking at how the complaint between Mr M and Capital One should be fairly settled.

In this complaint before me I don't think Capital One has done anything wrong in using the compensation for the mis-sold PPI to reduce the debt Mr M owed it on the credit card debt, as the PPI was attached to the same credit card account.

If the IP is unhappy with what the business has done in relation to a debt that forms part of the IVA then it has an appropriate course of action open to take that matter to court. In this complaint the IP is not a party and I am looking simply at what is fair between the parties and the debt Mr M owes to Capital One and the compensation debt Capital One owes to Mr M.

I'm satisfied that Capital One has correctly upheld the complaint that PPI was mis-sold and worked out the compensation due in the way I would expect. I also think setting off the debt it owes to Mr M for the PPI compensation, against the debt Mr M owes Capital One on the credit card, is fair and I'm not going to tell Capital One to do anything differently.

### **my final decision**

For the reasons I've set out above I'm satisfied that Capital One (Europe) Plc has offered fair compensation to settle this complaint about a mis-sold PPI policy and also can set off the compensation it owes to Mr M against the debt he owes on the credit card account. So I'm not telling Capital One (Europe) Plc to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 29 May 2018.

Christine Fraser  
**ombudsman**