

complaint

Mr M is unhappy with how Capital One (Europe) plc (Capital One) has used the compensation it offered to refund any excess commission he paid related to a payment protection insurance (PPI) policy.

background

Mr M had a credit card with Capital One and alongside this he had a PPI policy to protect his repayments. In 2013 Capital One sent Mr M a response to his complaint that the PPI was mis-sold and it didn't agree this to be the case.

However following a Supreme Court case, Capital One was required to consider if any excess commission had been paid by Mr M as part of the PPI premiums charged to his account.

In November 2018 Capital One wrote to Mr M to say that it had worked out he should get compensation of £428.93 (after tax) for the excess commission included in his PPI premiums. The letter said the commission amount would first be set off against any balance outstanding on the credit card to which the PPI related. As Capital One said the debt still on his credit card account was more than the compensation due to him there was nothing to pay directly to Mr M.

Mr M says this is unfair as he had been in an IVA which ended in 2012 and so he now owed nothing for his credit card debt. So he thought he should get the compensation paid directly to him. He has also referred to the issue that the PPI was mis-sold.

Our adjudicator said we couldn't look at any issues about whether the PPI was mis-sold and what Capital One had paid and done with the compensation for the excess commission was fair.

Mr M didn't agree and asked for an ombudsman to look at his complaint.

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 did not bring any issues to us in 2013 about what Capital One had said about the PPI not being mis-sold. So I cannot now review or consider any issues about a mis-sale of the PPI as these were not raised within the required timescales after the decision by Capital One.

As it is therefore deemed the PPI was not mis-sold Capital was required to consider if any excess commission had been paid by Mr M when the PPI was active on his account and the commission was part of the premiums he was paying. In this decision I am only looking at if what Capital One has done with the compensation it says is due for this excess commission is fair.

Capital One worked out any commission amount that was over 50% of the premium paid for the PPI and also added any required interest on this when making its offer. This is what I

would expect it to do. The issue Mr M is unhappy with is how Capital One has used the compensation offered.

Mr M had defaulted on repaying the balance on his credit card and the PPI had been cancelled in November 2006. In November 2006 Mr M had also entered an individual voluntary arrangement (IVA) which ended in 2012.

Capital One has used the compensation due for the excess commission to reduce the debt that still remained on the credit card account. Mr M says this shouldn't happen as his IVA had ended and closed in 2012, with all his debts being deemed settled.

When Mr M's IVA came to an end the creditors who had debts as part of that arrangement, including Capital One, had to accept an amount less than the amount Mr M had actually owed for his debts. So Capital One had received some of the amount Mr M had owed when he defaulted on paying his credit card. But there was still an amount that wasn't paid by him of over £1,400.00.

When the IVA ended and Capital One had received a partial payment to "settle" the debt it meant that it could no longer take any proactive action against Mr M to recover the debt. But that didn't mean the money he had borrowed from Capital One when using his credit card had been fully cleared. The debt still existed on the account.

When businesses work out compensation in relation to PPI on credit cards it is generally deemed that the PPI is the last thing paid off. This is to the benefit of the consumers as it means when working out the compensation the consumer gets compound interest on any PPI that is part of the balance on the credit card, rather than 8% simple interest for being out of pocket.

Here part of what remained as a debt on the credit card account after the IVA ended is likely to have been for the costs of the PPI. The PPI was paid until 6 November 2006, just before Mr M entered the IVA on 13 November 2006. So Mr M wouldn't have paid all the PPI costs charged to the account, and so also wouldn't have paid the commission part of the premiums. And if Capital One paid him the commission direct, Mr M would be getting money for something he may never have paid.

I know Mr M has stated Capital One illegally mis-sold him the PPI. But Capital One didn't uphold his complaint the PPI was mis-sold and that has never been a finding for this particular policy. Capital One is now only refunding a proportion of the commission that was included as part of the premiums, as it is required to do so following the Supreme Court case and the new rules of the Financial Conduct Authority.

Overall I think what Capital One has done with the compensation for the excess commission is fair. It has set this against the credit card debt, part of which would have included some, if not all, of this commission. And the PPI was directly related to the credit card account which had the debt.

I understand Mr M feels having been in an IVA which has now ended and that IVA included the debt for this credit card, it's not fair to say the debt still exists. But legally that is the case, the only difference being that no action can be taken to recover any amount of the remaining debt after the end of the IVA. Here Capital One is using a debt it owes Mr M to set against a debt which is still on the credit card account. So it's fair to set one debt against the other and reduce the credit card account balance by the amount of the compensation.

my final decision

For the reasons I have set out I think what Capital One (Europe) plc has done with the compensation due to Mr M is fair and I'm not telling it to do anything differently.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 June 2019.

Christine Fraser
ombudsman