

complaint

Mr C is unhappy that Capital One (Europe) plc has used his payment protection insurance (PPI) refund to reduce his credit card balance instead of paying it directly to him.

background

In 2012, Capital One upheld Mr C's complaint about mis-sold PPI. It worked out that it owed him around £260 compensation to put him back in the position he would've been in if the PPI hadn't been sold with his credit card.

Capital One says it will use the compensation to reduce the outstanding balance on Mr C's account. But Mr C's representative says that Mr C doesn't owe Capital One anything because his individual voluntary arrangement (IVA) has completed.

Our adjudicator thought that Capital One could use the refund to reduce Mr C's balance. And he thought that the £100 Capital One had offered to pay directly to Mr C to acknowledge that it had taken a long time to look into his complaint was fair. Mr C's representative disagreed 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 upheld Mr C's complaint and made him 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.

Mr C's representative explained that Mr C's IVA was in full and final settlement of his debt so he no longer owes Capital One any money. But I don't agree that Mr C's debts were cancelled when he was discharged from his IVA – only that Capital One couldn't chase him to pay any outstanding debt. The debt that he had with Capital One still exists and part of that debt is for PPI premiums that he hasn't paid. So I think it's fair for Capital One to use Mr C's refund to reduce that remaining balance.

I've thought about what Mr C's representative said about a High Court case setting a precedent for PPI refunds to be paid directly to the former debtor. When coming to my decision I have to take into account the law, good industry practice and the evidence – but ultimately I have to decide what is fair and reasonable in the circumstances of the complaint.

The circumstances of the High Court case aren't exactly the same as the situation as I've been asked to decide. In the court case, funds had been paid directly to the former supervisor of an IVA. But Mr C's complaint isn't about anything his former IVA supervisor has done- it's about whether a creditor can use a PPI refund to offset against a debt where part of the debt was caused by the PPI costs.

In this case, Capital One owes Mr C compensation for the PPI that was paid on the credit card. But Mr C's IVA didn't pay back all of his outstanding balance. So looking at everything, I think it's fair for Capital One to use the PPI compensation to reduce this outstanding balance.

Capital One has offered Mr C £100 for the distress and inconvenience they've caused by the way things have been handled. In the circumstances, I think this is fair.

my final decision

For the reasons set out above, I think that Capital One (Europe) plc can use Mr C's PPI compensation to reduce his credit card balance. But Capital One (Europe) plc now needs to pay him £100 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 February 2016.

Claire Marsh
ombudsman