

complaint

Mr B complained he was mis-sold payment protection insurance (PPI) on a credit card with Capital One (Europe) plc (Capital One) in 2001.

background

Capital One agreed that Mr B had been mis-sold PPI and it made him an offer in September 2015.

Mr B had been under an individual voluntary arrangement (IVA) which ended in February 2008. Mr B's IVA practitioners have confirmed they have no interest in the complaint.

Capital One used Mr B's compensation to reduce outstanding arrears on the credit card, that it says were still owed to them. Mr B has disagreed with this. He says that the money should've been paid to him, both the IVA practitioners have said this and he also pointed out recent case law which he said supported his view.

Mr B also said that he tried to make a claim on the PPI policy with Capital One which was unsuccessful. He says that this contributed to him having to go into an IVA in the first place.

Our adjudicator thought the way Capital One applied the arrears was fair. Mr B didn't agree and has asked for an ombudsman to review this.

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 agreed the PPI was mis-sold to Mr B so I don't need to look at how the PPI came to be sold. Mr B also hasn't complained about the amount of the offer so I won't look in detail at the calculation other than to say it is fair and in line with what we expect.

Mr B has complained that the compensation was set off against existing arrears owed to Capital One on the credit card. He believed that the compensation should either be paid directly to him because he has been fully discharged from the IVA, or to his Insolvency Practitioner for distribution to other creditors. Mr B has also pointed to case law which supports that payments of PPI compensation can be made to an individual if an IVA has ended.

Capital One didn't agree and said all of the compensation could be used to apply against arrears.

I have carefully thought about this and considered all of the documentation and relevant case law.

The recent decision of the High Court Mr B refers to is called – Green v Wright [2015] EWHC 993 (Ch).

It could be argued that following the above case, as Mr B was subject to an IVA, which was completed by the time the compensation was offered, Mr B should be found to have been

released from all debts which were the subject of the agreement. And that Capital One should pay the compensation it owed as a result of the mis-sale of PPI directly to Mr B.

I have looked carefully at the case. In the Green V Wright case the dispute was between the IVA supervisor and the claimant – and not with the business paying compensation. There was no argument in that case that the business which had upheld a mis-sale complaint and offered compensation to the claimant, shouldn't be allowed to use the funds to reduce any debts that they were directly owed on an account which formed part of the IVA. And so I don't think this case directly applies to Mr B's circumstances.

I agree that the debt Mr B owed to Capital One on his credit card made up part of the overall debts under his IVA. I also agree that part of the debt would have included PPI premiums that hadn't been paid.

I don't accept that when the IVA ended the debts were cancelled, but I do accept that they could no longer be pursued by the businesses the debts were owed to (including Capital One). So I am satisfied that the debt owed to Capital One still existed when the IVA ended, and some of that debt would've been made up of PPI premiums which were never paid.

I can see that Mr B had PPI on his credit card account before he entered his IVA – and so if he hadn't been sold the PPI in the first place I accept that the amount he would have owed to Capital One would have been smaller at that time. But, given the value of the PPI only makes up a small proportion of the debt owed by Mr B when he entered the IVA I don't accept that if he hadn't been sold PPI he would have been able to avoid using an IVA altogether.

I have also considered Mr B's comments about the failed claim with Capital One. He's said that the fact he couldn't make a claim under the policy contributed to him needing to enter into an IVA. I have looked at the debts that made up the IVA. I can see that from taking out the card with Capital One his debts escalated and took the form of consolidation loans, secured loans, additional credit cards etc. I don't accept that the inability to make a successful claim would have resulted in the IVA not being needed, since the Capital One debt was a small portion of the overall debts owed by Mr B.

Capital One is required to put Mr B back in the same position as if he hadn't been sold PPI. I am persuaded, on the evidence, that had Mr B not been sold PPI he would have still entered into an IVA – but that this would have been with a smaller debt. By using the compensation to reduce the debt, Capital One and Mr B are now in the position where Mr B owes a smaller debt to Capital One. And so I think this has had the effect of putting Mr B more or less into the position he would have been in had he not been mis-sold the PPI. So I am satisfied that they have acted fairly.

my final decision

For the reasons I have set out above, I think the offer made by Capital One (Europe) Plc is fair and I think it can use the compensation to pay off debts outstanding to it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 March 2016.

Miranda Bates
ombudsman