

complaint

Mr W is complaining that Capital One (Europe) plc ('Capital One') mis-sold him a payment protection insurance ('PPI') policy.

background

Mr W took out a PPI policy alongside a credit card in 1998. In 2000 Mr W missed four monthly repayments on his credit card. So, under the terms of the policy, the PPI was cancelled. Mr W continued to find it difficult to meet his monthly repayments. In October 2003 he had a balance of £2,521.50 on his credit card. He agreed to pay Capital One £1,891.13 onto the credit card. And in return Capital One agreed not to pursue him for the remaining £630.37.

In 2013, Mr W complained to Capital One that it had mis-sold him PPI. It offered him £164.01, but said that it wanted to use this money to reduce what he still owed on the credit card. Mr W is unhappy with the amount that Capital One was offering in compensation. He's also unhappy that it wants to use the money to reduce a debt. He says that he doesn't owe Capital One any more money. And he says that, even if he did still owe it money, Capital One can't pursue him for the debt because it's more than six years old. Capital One says that he still owes it money so it can use the compensation to reduce the debt. So Mr W asked this Service to step in.

Capital One later increased the amount it was offering in compensation to £326.93. But it said that it still wants to use this to reduce the outstanding debt. The adjudicator thought Capital One's latest offer was fair. And she thought that Capital One could use the compensation to reduce the debt. Mr W didn't agree and asked for an ombudsman to review the 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.

Capital One has accepted that it mis-sold the PPI. So I haven't looked at how the policy was sold to Mr W. In this decision, I've looked at whether I think Capital One's compensation offer is fair and whether it can use the compensation to reduce the debt.

is the compensation offer fair?

In a situation like this, I'd expect the bank to put someone in the position they would've been in if they hadn't taken out PPI. To do this, Capital One needs to refund all the premiums Mr W paid and the interest he was charged for PPI on his credit card. Capital One then needs to pay 8% simple interest per year for any time he was out of pocket.

Capital One has given me a breakdown of how it worked out its offer. And I think it's fair. It's shown that Mr W was charged £263.60 in premiums for his PPI policy. And he was charged £54.09 in interest. It's offering to refund all this plus 8% simple interest per year as compensation for any time he was out of pocket.

I note Mr W wants Capital One to pay him interest at 8% simple per year from the date Capital One added the PPI to his credit card. But I don't think that's fair. While Capital One

had added the PPI premiums and interest to the credit card account, Mr W didn't pay for them until he cleared his credit card balance. And Mr W only paid off his credit card in full once in October 1998. After this there was always an outstanding balance on his credit card, even after the PPI premiums and interest were taken off. So the payments that Mr W had made up to this point paid off what he'd spent on the credit card only. So I don't think he was out of pocket during that time.

I think Capital One has done as I'd expect it to when it calculated how much it owed Mr W. It refunded the PPI premiums it'd charged him, and the interest it charged him on those premiums. It's also added 8% simple interest per year for any time Mr W has been out of pocket.

can Capital one use the compensation to reduce the debt

The balance on Mr W's credit card steadily increased until 2001 when he got into difficulties. Eventually, he entered into an agreement with Capital One to repay *part* of the debt to Capital One and, in return, Capital One agreed to not pursue him for the rest of the debt.

Mr W says that, due to the agreement he had with Capital One, he doesn't owe it any more money. And he says that, even if he did still Capital One money, Capital One can't pursue him for the debt because it's more than six years old. I agree with Mr W that the agreement he entered into with Capital One means it can't pursue him for the debt anymore. But it doesn't mean that the debt was written off. Capital One has shown that the debt still exists. And Mr W does still owe Capital One this money; it's just that Capital One said it wouldn't pursue him for it.

I'd expect Capital One to put Mr W in the position he'd be in if the PPI hadn't been sold to him. If PPI hadn't been sold to Mr W, I still think he'd have got into financial difficulties. And I think he'd have still ended up owing Capital One a debt, just a smaller one. And that's the position Capital One has returned Mr W to.

So Capital One owed Mr W compensation for mis-selling him PPI and Mr W owed Capital One a larger amount. It seems fair to me that Capital One has just offset one against the other.

I've thought about what Mr W has said about six years having passed. But ultimately, if Capital One was to pay the compensation direct to Mr W, he'd be receiving compensation which consisted partly of PPI premiums which he never actually paid, and that doesn't seem fair to me.

my final decision

For the reasons I've set out above, I think the amount that Capital One (Europe) plc is now offering in compensation for mis-selling PPI is fair. And I think it can use the compensation to reduce what he still owes on the credit card. Capital One (Europe) plc should also update the offer before it uses the compensation to reduce the debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 May 2016.

Guy Mitchell
ombudsman