

complaint

Mr F is complaining that Capital One (Europe) plc ('Capital One') mis-sold him a payment protection insurance ('PPI') policy. He's unhappy that it's used the compensation to reduce a debt he says he doesn't have.

background

Mr F took out a PPI policy alongside a credit card. In 2007 Mr F got into financial difficulties and entered into an individual voluntary arrangement ('IVA'). He was discharged from the IVA the following year.

In 2013 Mr F complained to Capital One that it had mis-sold him the PPI policy. Capital One said that Mr F only paid a small part of the credit card balance back when he went into the IVA. So it said that it didn't owe him any compensation because it's lost out more under the IVA. Mr F didn't agree so asked this Service to step in.

Capital One then agreed that it had mis-sold the PPI policy. And it offered Mr F £721.17 in compensation. But it said that he still owed money on the credit card. So it used the compensation to reduce the outstanding debt.

Mr F didn't think this was fair. He said that he was discharged from the IVA in 2008, so he had paid off the debt. So he didn't agree that he owe Capital One any more money. And he says Capital One needs to pay the money to him directly.

Our adjudicator thought that, while Mr F was discharged from the debt, he still owed Capital One money – Capital One just couldn't pursue him for it. And she thought it was fair for Capital One to use the compensation to reduce this debt. Mr F didn't agree. So the complaint's been passed to me to review.

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 F. In this decision, I've looked at whether I think Capital One can use the compensation it's offered to reduce a debt that was on the credit card. I think it can and I'd like to explain why.

is the amount Capital One has offered in compensation fair?

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

Capital One has worked out that it charged Mr F £326.09 in PPI premiums. It also says it charged him £135.76 in interest on these premiums. And it's refunded both of these to his credit card. It's also paid an additional £324.14 (less tax of £64.82) to the credit card as 8% simple interest per year to compensate him for being out of pocket. I think the amount it's offered is fair. And Mr F hasn't said the amount it's offered is unfair.

can Capital One use the compensation to reduce a debt it says he owes?

Capital One says that Mr F still owed it £1,265.57 after he was discharged from the IVA. And it says it had a contractual right to use the compensation it's offered to reduce this debt. Mr F says that he was discharged from the IVA, so the debt was satisfied. And he says that under the terms of the IVA he didn't owe any of his creditors any more money after he was discharged. So he says that Capital One needs to pay the compensation to him directly.

I've taken into account Mr F's comments, but I don't agree. Under the terms of the IVA, Capital One agreed to accept a proportion of the outstanding debt to get some of it back. And in return for this, it agreed to not pursue him for the rest. But the debt doesn't get written off and still exists. So he still owed Capital One money, but Capital One couldn't ask him to repay it. So, Capital One owed Mr F compensation, but Mr F owed it more for the debt. So it seems fair to me that Capital One can just offset one against the other.

As I said above, to compensate Mr F for mis-selling PPI, Capital One needed to put Mr F in the position he would've been had he not taken out PPI. Had he not done so, he wouldn't have owed as Capital One as much money when he entered into the IVA. So reducing the outstanding debt does put Mr F back in the position he would've been in had he not taken out PPI.

So I think Mr F did still owe Capital One money on his credit card. And it was fair for Capital One to use the compensation for the PPI charged to this card to reduce this debt.

my final decision

For the reasons I've set out above, I think the amount that Capital One (Europe) plc has offered Mr F in compensation for mis-selling PPI was fair. And I think it was fair for it to use the compensation to reduce what he still owed on the credit card.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 17 October 2016.

Guy Mitchell
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