

Complaint

Mr C is complaining that Capital One (Europe) plc ("Capital One") has used the compensation it offered for the mis-selling of a payment protection insurance ("PPI") policy attached to his credit card, to reduce his outstanding debt with it.

background

In 2015, following Mr C bringing a complaint to this service about a mis-sale of PPI, Capital One offered him £577.30 (after tax). It used the compensation to reduce Mr C's outstanding debt on the credit card.

Mr C says he was previously in an individual voluntary arrangement ("IVA") but it had been completed. He said he had a letter from the IVA practitioner to say they no longer had any interest.

Mr C's also said that other businesses have paid him PPI compensation directly and doesn't think it's fair for Capital One to offset the redress due with his outstanding debt. He considers the compensation owed should be paid to him directly.

One of our adjudicators looked at the complaint and concluded that Capital One had acted fairly.

Mr C remained unhappy and the complaint remained unresolved. So the case has been passed to me to make 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 agreed it mis-sold the PPI policy to Mr C, so I don't have to look at how it was sold. And Mr C hasn't complained about the amount Capital One has offered in compensation, so I haven't looked into this.

In this decision, I've only considered whether Capital One was being fair when it used the compensation it offered to reduce Mr C's outstanding debt.

Having done so, I think Capital One did act fairly. I know Mr C will be disappointed with my decision so I'd like to explain how I've reached the conclusion that I have.

Mr C considers that as the IVA has been completed and that the IVA practitioner didn't have any interest, then the compensation should be paid to him directly. When Mr C entered into an IVA, the debts he owed weren't legally cancelled or written off. Rather, they were frozen, and this is important to understand. So the debts didn't cease to exist when the IVA was successfully completed.

Mr C entering into an IVA and then successfully completing it, meant by law, he couldn't be chased for the debt. But the debt Mr C has with Capital One does still exist because it hasn't been paid back.

Capital One is still out of pocket for this money - it isn't pursuing Mr C for the debt. But it has accepted it owes Mr C money for the PPI compensation, so it owes him a debt. What it is doing is 'setting off' the PPI compensation against the debt Mr C owed for his spending on the credit card account that still exists.

There is in law, what is called the *equitable right to set off*, which allows people to 'set off' *closely connected* debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be fair for Capital One to set-off in this way. Both tests must be satisfied for me to find that Capital One has an equitable right to set-off the PPI compensation against Mr C's outstanding debt on his credit card account.

The PPI sold to Mr C was directly connected to his credit card. By using the right of set-off I have outlined above, I'm satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account Mr C had with Capital One.

And despite Mr C completing his IVA, both parties owe each other money relating to the same account. So it seems fair that one amount should be set against the other.

I empathise with Mr C's position. Clearly, he thought he didn't owe anything after completing the IVA. But unfortunately this isn't the case. I can appreciate how frustrating it is that another business has paid him compensation direct while another doesn't.

Had the IVA practitioner had an interest then Mr C's compensation would have been paid to the practitioner. And if they didn't hold an interest then Capital One could've used it to reduce the debt as they have done. Mr C would only receive anything, if there were some left over. Which in Mr C's case there wasn't.

my final decision

For the reasons set out above, I don't uphold Mr C's complaint. I think it was fair for Capital One (Europe) plc to use the compensation it owed Mr C to reduce his outstanding debt.

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

Catherine Langley
ombudsman