

FACTSHEET



PPI CLAIMS – HOW THEY ARE TREATED IN AN IVA

A consumer may approach you with questions regarding PPI claims. This may be because they believe that they have been mis-sold a policy, or because their IVA Supervisor, or Insolvency Practitioner (IP) has told them that they may have some money due from a PPI claim, which will need to be paid into their IVA.

If the consumer believes that they may be entitled to claim PPI compensation from a creditor then they should be advised to contact their IP and tell them. However, if they are already in an IVA, it is very likely that their IP will have already looked at any potential claims which they may have.

This factsheet deals with the treatment of PPI mis-selling claims of a consumer who is or has been the subject of an IVA. It is also relevant to other mis-selling claims which may include amongst other things:

- Hidden commission charges
- Pre-packaged bank account fees
- Unfair charges
- Unfair interest rates
- Loan mis-selling

ASSET OR WINDFALL (AFTER ACQUIRED ASSET)?

The first thing to bear in mind is that a PPI claim is an asset regardless of whether or not the consumer is aware of its existence. This is because it is something of value they are entitled to at the beginning of the IVA - such as their car or house - which can be sold in order to pay the debts.

On the other hand, a windfall is something that they were not legally entitled to at the beginning of the IVA, but rather a benefit which was given, won or earned at a later date. Examples of a windfall might be a lottery win, an inheritance or a gift.

The distinction is important as assets and windfalls are treated differently in an IVA.

Generally if an asset is included in the IVA then - unless the proposal says differently - the full value of that asset must be paid into it. However, a consumer can usually keep a windfall if the value is less than £500.00, though this does not necessarily mean that they can keep the first £500 of a windfall received over that amount.



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WHAT DO THE PROPOSALS SAY?

How the PPI claim is treated will depend on the terms of the arrangement as agreed by the consumer and the creditors when the IVA was originally approved. This can be found in the IVA proposal and supporting paperwork.

Some IVA terms contain an **all assets clause**, which simply put means that all of the consumer's assets are promised to the arrangement for the benefit of creditors unless specifically excluded e.g. the consumer's car.

Other IVA terms contain a **defined assets clause**, which means that only specific assets will be pledged to creditors; e.g. monthly contributions and a proportion of equity in the consumer's house.

It would be unusual however if any IVA entered into since 2012 did not contain some sort of specific provision in the proposal for the treatment of PPI and other claims.

The consumer must hold all IVA assets on trust for the benefit of arrangement until they have been realised.

So, in essence, the consumer is looking after those assets for the arrangement creditors and must help the IP to realise their value, according to the terms of the arrangement.

HOW ARE THE PPI CLAIMS MADE AND IDENTIFIED?

Most IPs have a working relationship with a claims management company who they would employ to review the consumer's loans, past and present, and make the necessary enquiries with the loan companies as to whether or not any potential claims exist.

It is important that the consumer co-operates with the claims management company by providing them with letters of authority and any additional information they may require, though much of this will have already been given to them by their IP. Failure to assist with reasonable requests for information may be a breach of the arrangement which may ultimately result in its failure. However, it is important to note that any work required by the consumer is normally minimal.

The consumer may also instruct their own claims management company though care should be taken with this (see additional information below on how a claims management company is paid). The consumer should keep their IP fully updated with the progress of any claims.

Of course, it is also possible for the consumer to make the claims themselves see

<https://www.fca.org.uk/ppi/how-to-complain>

Any money received however will have to be paid into the IVA and the only way the consumer will benefit from their efforts is if enough money is received to pay off 100% of the debt as well as the costs of the IVA. This could mean that the IVA ends early and the consumer can keep any money that remains.

Again the consumer should keep their IP fully updated with the progress of any claims if they chose to manage them by themselves. Where the PPI receipts are significant, e.g. when compared to the total amount of the IVA debt, there is always the possibility of asking the IP to call a variation meeting and ask the creditors if they would agree to an early completion of the IVA based on what has been paid in to date.



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STATUTORY INTEREST?

It is important to note that some successful PPI claims may contain an element of statutory interest on the money which the consumer has been wrongly charged. This will be classed as taxable income. In some instances a deduction for the tax payable is made by the creditor, in others it is not. Where tax is payable, the consumer should ensure that their IP will allow them sufficient funds to cover any liability.

FREQUENTLY ASKED QUESTIONS

The PPI claim received was for a debt which was not included in my IVA as it had been paid off before the IVA started. Do I still have to pay the claim in?

Yes. It is irrelevant which debt the claim relates to, the claim is still an asset of the arrangement.

My IVA proposal says that windfall assets only need to be paid into the arrangement whilst it is open. The IVA has now completed so why do I still have to pay the money in?

The PPI claim is not a windfall as the consumer had a legal right to make the claim prior to entering the IVA even if they did not know it at the time.

They will try and take away my inheritance next – this will never end.

This will not happen. An inheritance is a windfall as it is not something the consumer was legally entitled to prior to their entering the IVA. The same can be said of any other type of gift or a lottery win.

I would have been better off going bankrupt.

That may be the case but it is not relevant to the PPI claim. The rights to the PPI claim would have passed to the consumer's trustee in bankruptcy who would then realise the money for the benefit of the bankruptcy creditors.

This is not fair. The fact that I would have to pay my PPI claim monies into the IVA was not explained to me.

It is highly likely that prior to entering into the IVA, the IP did not know that the potential for these claims existed. The consumer cannot blame the IP for not telling them about something which they did not know about themselves.

Will the payments to my IVA reduce once I have paid in my PPI Claims?

No. The consumer's obligation to continue to pay the full agreed contributions remains regardless of the PPI claim. Creditors are entitled to receive no more and no less than the consumer's best offer, which means that the IVA will continue until such time that the consumer has paid enough money into the arrangement to cover 100% of the debt and the fees and expenses of the arrangement.

I have received a PPI claim but I have spent it. The claims management company are now pursuing me for their fees.

These monies should have been paid into the arrangement on receipt and it is likely that the consumer is now in breach of its terms. It is very important that the consumer contacts their IP as soon as possible and explain the situation.

The IP will not want to fail the IVA but rather will want to work with the consumer to come up with an offer to the creditors to compensate them for the missing monies and help meet the claims management company charges.



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My IVA has completed. Can I try and make a claim for PPI on my own account?

The consumer can, but should ensure that they have received their completion certificate first. This should clearly set out whether or not the arrangement trust has ended. The consumer should also ask their IP to provide them with a letter of non-interest in any successful claims.

If such a letter is not provided and the trust has not been terminated by the completion of the arrangement then the consumer should be prepared to surrender any successful claims to their former IP

My IVA completed early following an offer made in full and final settlement. Do I still have to surrender any PPI claims received?

This will really depend on the terms of the variation and whether or not the arrangement trust was brought to an end by the variation.

However advice has been given to say that, if the words "full and final settlement" were used in the variation proposal when describing any offer, it would be reasonable for the consumer to believe that their obligations under the IVA have been concluded and that the trust had been terminated. Care should be taken however to ensure that there is nothing within the variation proposal, or other correspondence with the IP, which might suggest the opposite.

ADDITIONAL INFORMATION

It is important to note that so How is the claims management company paid?

It is normal for claims management companies to charge for their services as a percentage of any successful claim. This can be anywhere between 25% and 40% of the claim plus VAT.

Any charges made by the claims management company will normally be paid by the IP from the claim receipts and the consumer should not expect to have to find the money themselves.

Where the consumer has employed their own claims management company, it is important to ensure that any fees payable to the claims management company are paid before the net amount is paid into the arrangement.

It is also important to bear in mind that in some instances a creditor, whilst making an offer of payment under a PPI claim, may choose to exercise their right to use the money to reduce the amount owed to themselves. Where the consumer has used their own claims management company they may therefore find themselves owing monies to the company for the successful claim but no funds with which to pay them.

What happens after the IVA has finished?

This will very much depend on the terms of the Arrangement.

Following recent Court decision, it was held that Mr Wright's IP was allowed to collect PPI claims after the IVA had ended, even though he had not consented to this before his completion certificate was issued.



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The deciding factor in this case was that the proposal contained no specific provision for the trust, under which the arrangement assets were held by the IP, to end.

So it is entirely possible that the effects of the IVA may continue after the consumer has received their completion certificate. It is important to note that where no provision has been made for the IVA trust to end, the IP would have no power to waive their obligation to collect the PPI monies for creditors unless a variation meeting had been held to relieve that obligation prior to the completion of the IVA.

