

The complaint

Mr E has complained about the way National Westminster Bank PLC (“NatWest”) has used the compensation it offered to settle his complaint about the mis-sale of payment protection insurance (“PPI”) policies associated with some loans that he took out.

What happened

Mr E had four loans which had three PPI policies associated with them. When he complained the PPI was mis-sold, NatWest upheld his complaint and offered to pay compensation.

Mr E signed and returned the acceptance forms for the compensation offered but then did not receive the payment. Mr E chased for the payment and was eventually told the payment had been set off against a debt Mr E owed the bank.

Mr E had entered into an Individual Voluntary Arrangement (IVA) as he wasn’t able to pay all of his debts when they fell due. Mr E was discharged from the IVA in 2011, so he couldn’t then be chased by his creditors for the debts he had listed when he entered into the IVA. This included the money he owed to NatWest.

NatWest said after the IVA ended Mr E still owed it over £35,000 when he was discharged from his IVA. So it had used the PPI compensation to reduce the amount it said Mr E still owed for his debts to the bank.

Mr E says that he should have the PPI compensation paid directly to him. He says, as his IVA has ended, his debts have been settled and he doesn’t owe NatWest anything. He says other businesses have paid compensation directly to him and he believes NatWest should do the same.

During the course of this complaint NatWest has acknowledged there were delays in responding to Mr E and offered and paid £50 to Mr E as compensation for this.

Our adjudicator looked at the complaint and thought it was fair for NatWest to use the compensation to reduce Mr E’s debt and that the £50 was also fair as compensation for the delays. But Mr E didn’t agree and asked for an ombudsman to look at his complaint.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

NatWest has agreed to uphold Mr E’s complaint that the PPI policies were mis-sold and offered compensation to Mr E. So in this decision I’m not looking at how the PPI came to be sold, but considering whether NatWest’s offer is fair and if what NatWest had done with the compensation is also fair.

I'd expect that when a business has mis-sold PPI, it puts things right by putting the consumer, as far as possible, in the position they would've been in if they hadn't taken out the PPI. I'd expect a business to calculate how much was paid in premiums and interest for the costs of the PPI and if the consumer was out of pocket as they'd repaid some or all of the costs of the PPI, then the business should also pay some compensatory interest.

In this case Mr E took out a chain of three loans, and the first and the last loans both had PPI policies taken out alongside them. The second loan in the middle of the chain did not have a PPI policy associated with the loan, but as this second loan refinanced the first loan, some of the costs of the PPI taken out with the first loan were included in loan two on the refinancing. Also, some of this carried forward PPI cost then transferred into the third loan when that refinanced the second loan.

In addition, Mr E had a totally separate fourth loan that was running at the same time as loans two and three and which also had PPI taken out with it.

When calculating how much Mr E paid for all the PPI policies he had, NatWest has taken into account the amount of PPI that formed part of each loan and how much Mr E paid for the PPI costs over the chain of three loans and also for the separate fourth loan.

I have seen the calculations NatWest did and am satisfied its approach is in line with the requirements to work out that the total compensation due for the three mis-sold PPI policies taking account of all four loans. After tax is deducted the total compensation calculated by NatWest as due, was a total of £14,264.48. This includes all the PPI costs and some compensatory interest.

Mr E hasn't raised any issues about the amount of compensation offered, and the approach taken by NatWest appears to be what I would expect and fair, so I won't consider the amount offered further. Mr E's complaint is that NatWest should not use the compensation amount to reduce the debt it says he still owes after the end of his IVA.

So in this decision I need to decide whether it's fair and reasonable for NatWest to use Mr E's PPI compensation offer, to reduce the amount of debt which remained after his IVA had ended.

When considering what is, in my opinion, fair and reasonable, I'm required to take into account any relevant law and regulations. In recent years there have been a number of court cases looking at what happens to PPI compensation after bankruptcies and insolvencies have been discharged. In the complaint I am considering, I am aware of and have taken into account the relevant law and cases. But in addition, I must apply an over-arching test of what's fair and reasonable in the particular circumstances of each complaint.

Each case has to be considered on its own facts and evidence. And so what happened in other cases, including in complaints Mr E has referred to with other businesses, are not precedents for this complaint, as all cases are considered on their own circumstances.

Mr E has said that his debts to NatWest, were part of his IVA and when this ended in September 2011 NatWest accepted his debts were settled in full. The information available indicates that when Mr E's IVA ended there was still a substantial debt that he had never fully paid back to NatWest for his loans.

When Mr E entered into his IVA, the debts he owed weren't cancelled. His debts were consolidated and any assets available at the time were used by the Insolvency Practitioner (IP) to clear some of the amounts owing. But the assets available did not pay off the full amount of the debts owed.

Also, after the IVA ended in 2011, the debts were not cancelled – but by law Mr E couldn't be chased for the debts that were part of the IVA. So the debt Mr E had with NatWest still existed but NatWest could never actively take action to recover any of the debt that was never repaid.

But here NatWest hasn't actively taken any action against Mr E to recover the debt. Mr E made the PPI complaint to NatWest and it has used the PPI compensation that it owed to him for the mis-sold PPI, to set off against a debt that is dormant, but that Mr E never repaid in full to the business. The PPI compensation is for PPI on loans that were consolidated and formed part of the IVA debt but that remain unpaid after the IVA ended. So it is fair in these circumstances to set one debt against the other.

Mr E has indicated that he was paid directly the compensation for PPI mis-sold on financial products by other lenders. But as I've already indicated, this it isn't relevant to this complaint about NatWest. Each PPI policy and complaint has to be considered on its own facts.

Having considered all the facts, I think it's fair for NatWest to use the PPI compensation to reduce the amount Mr E borrowed and didn't repay. Just because Mr E entered into an IVA and couldn't be legally pursued for the debt when that IVA ended, doesn't mean the debt was settled. I think it would be unfair to tell NatWest to pay Mr E compensation when he doesn't now have to repay the money which he borrowed and had the use of but never paid back. So I am satisfied that what NatWest has done with the compensation is fair.

I've also considered the delays that occurred when Mr E contacted NatWest for information and also in relation to other correspondence that he sent. NatWest has acknowledged there were some unnecessary delays in getting back to Mr E and has offered and paid £50 for any trouble and upset this may have caused.

I think that is reasonable in all the circumstances so I am not directing any additional compensation for trouble and upset should be paid.

My final decision

For the reasons set out above I think National Westminster Bank Plc's offer and what it has done with the compensation is fair. I am also satisfied that the £50 paid to Mr E for any trouble and upset caused is fair and so I am not directing any further compensation is due.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 June 2021.

Chris Fraser
Ombudsman