

The complaint

Mr M has complained about the way Santander UK PLC (“Santander”) has used the compensation it offered to settle his complaint about the mis-sale of a payment protection insurance (“PPI”) policy taken out with a credit card.

What happened

Mr M opened a credit card account with Santander in May 2003 and at the same time he took out a PPI policy. Mr M has now complained that the PPI was mis-sold.

Santander agreed to uphold the complaint the PPI was mis-sold and wrote to Mr M offering £4,458.64, after tax, to settle his complaint. Mr M signed the acceptance form and returned it to Santander.

However, Santander only paid to him £2,061.86, using £2,396.78 of the total compensation to clear the debt it said was still owing on the credit card account.

Mr M brought his complaint to this service as he says Santander had agreed the account was settled in 2015, so he believes there was no debt owing on the account and he should receive the full amount of compensation.

Our adjudicator looked at the complaint and said what Santander had done was fair. Mr M 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.

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

When a business has mis-sold PPI, to put things right, it must, as far as possible, put the consumer in the position they would’ve been in if they hadn’t taken out the PPI. So it calculates how much was paid in premiums and interest for the costs of the PPI and if the consumer was out of pocket, then the business should also pay some compensatory interest.

Santander has used this approach and worked out that the compensation due, after tax, was £4,458.64. This is made up of premiums charged to the card of £2,602.02 and interest caused on the account because of those premiums of £1,471.98. In addition, Santander has worked out compensatory interest of £480.80 before tax is also due to Mr M. Mr M hasn’t raised any issues about the amount of total compensation offered. Also the approach taken by Santander appears to be what I would expect and is fair, so I won’t consider the total amount offered any further.

Mr M's major concern is that Santander should not use any of the compensation amount to reduce the debt it says he still owes on the credit card account, but it should pay the full amount of compensation directly to him.

So in this decision I need to decide whether it's fair and reasonable for Santander to use some of Mr M's PPI compensation amount, to reduce any debt which remained unpaid after the credit card account was closed.

I have looked in detail at the records provided about the account. These show Mr M made regular payments to the account until March 2009. He then paid low or no payments over a few months. It then seems he entered a payment plan and agreed with Santander he would make small payments to try to reduce the balance. The PPI was at this time cancelled, and no further interest was charged on the account.

Mr M made small, fairly regular payments until 2015. It seems Mr M then agreed with Santander, through a third party, to make a lump sum payment of £1,632.34 on the basis this would be a short settlement of the remaining outstanding balance on the account, which was at the time was £4,056.93. I can see from the records of the account that the amount of £1,632.34 was paid to the account in August 2015 and in September 2015 a payment of £27.81 was also paid to the account. This left an amount of £2,396.78 unpaid on the credit card account. But Mr M was not chased for this payment as Santander had agreed to accept the lump sum payment to short settle the account.

When considering any complaint, I need to take into account the relevant law and in this case that includes what is called the equitable right to set off. This allows people and businesses to "set-off" closely connected debts. This means that one person (A) can deduct from a debt that they owe another person (B), money which that person (B) owes to them.

For the equitable 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 unjust not to allow Santander to set-off in this way. Both tests must be satisfied for me to conclude Santander has an equitable right to set-off the PPI compensation against Mr M's outstanding debt on his credit card account.

The PPI policy that Mr M had, was taken out with his credit card and all the costs of the PPI were charged to this account and formed part of the balance. The PPI policy was only associated with this credit card, so there is a clear, direct connection between the PPI compensation Santander owes Mr M and the outstanding debt on the credit card that Mr M owes to Santander.

During the time the credit card account was active, the balance on the account was never cleared. When PPI is charged to an account, and later found to be mis-sold, it is deemed the PPI costs are the last item cleared from the balance, so the premium and interest caused by it, remains in the balance until the balance is paid off in full. At that point the consumer would be out of pocket for any costs of the PPI that had been part of the balance as the balance, including all PPI costs have been paid.

In this case, as I've said, Mr M never actually cleared the full balance owing on the account. So the costs of the PPI, would have remained as part of the balance outstanding. That is because the premiums were charged to the account and the card rate interest on the premiums, was also added to the balance and so was also in the balance of the account.

As there was a balance unpaid on this account, it would be fair to remove the cost of the mis-sold PPI from the balance of the account – and that is in effect what Santander has

done here. The full cost of the PPI as calculated by Santander was £4,074.00 and if this is removed from the balance on the account, it would bring the account into credit. So Mr M is then owed the credit amount and as he was out of pocket for this amount of the costs of the PPI compensatory interest is calculated.

So Santander has set off the debt for the compensation against the debt on the credit card account, and so removed the PPI from the credit card account. And this left an amount of £2,061.86, in effect a credit on the account, and this what Santander has paid to Mr M.

In this complaint if Santander paid Mr M the full amount of the compensation for the PPI then it would be paying to him some of the costs of PPI that he never actually paid – that is the costs that remained in the balance of the credit card account when it was in debt.

Having considered all the facts, I am satisfied that it is fair that Santander uses the PPI compensation to set it off against the balance that remained outstanding on the account. In effect this is only removing the PPI that was in the account balance and was never paid by Mr M in this particular case.

Although Mr M did make a lump sum payment to short settle the account, there was an amount that remained the Mr M had never paid. But he was never chased for this and in fact no interest was charged to the card account from 2009, which also means he didn't pay interest on some of his borrowings for spend on the card for his own use. When he paid the lump sum in 2015, without the PPI on the account it would have gone into credit, so Santander has also paid him compensatory interest for the time the account would have been in credit without PPI.

I have also noted that when Mr M signed to accept the compensation, the acceptance form stated, *"Please note that this amount [£4,458.64] may be used to repay any outstanding arrears on your account before the remaining balance, if any, is paid to you."* So I think Santander made it clear that the account debt would be settled before any of the compensation was paid to Mr M.

Overall, I cannot see that Santander has done anything wrong in the way it dealt with this mis-sale complaint and the compensation due. It follows that I think what Santander has done with the compensation, and what it has paid to Mr M, is fair.

My final decision

For the reasons set out above I think Santander UK Plc's offer and what it has done with the compensation is fair and I am not upholding this complaint that any additional amount is due to be paid to Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 June 2021.

Chris Fraser
Ombudsman