

The complaint

Mr I 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 a payment protection insurance ("PPI") policy taken out alongside a credit card.

What happened

Mr I applied for a credit card online in May 2010 and on his application form indicated he wanted to take out PPI. In 2014 Mr I stopped making payments to the credit card account and the account was suspended with a balance owing by Mr I of £1,462.55.

In 2019 Mr I made a complaint about the PPI to NatWest through a claims management company. In May 2020 NatWest upheld the complaint that the PPI had been mis-sold and offered compensation of £931.10 to settle the complaint.

Mr I accepted the amount offered online but says he was not told the compensation would be set against the debt that remained outstanding on the account. Mr I says he was unaware he had a credit card account with NatWest and that it was in arrears.

NatWest has provided evidence to show the credit card Mr I took out was the account with the PPI attached to it. And NatWest says as there remains an unpaid balance on the account it is fair that it sets the compensation against the debt on the account.

Mr I brought his complaint to this service as he wants NatWest to pay the compensation to him, as he maintains there is no active account or debt on a credit card in his name.

Our adjudicator looked at the complaint and thought it was fair for NatWest to use the compensation to reduce the debt on Mr I's account. Mr I 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 I's complaint that the PPI policy was mis-sold, so in this decision I'm not looking at how the PPI came to be sold. I am considering whether NatWest's offer, and what it has done with the compensation, is 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. This means the business should calculate how much was paid in premiums and interest for the costs of the PPI. And if the consumer was out of pocket for any time, then the business should also pay some compensatory interest.

NatWest has used this approach and worked out that the compensation due, after tax, is £931.10. Mr I 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 is fair, so I won't consider the amount offered further. Mr I's complaint is that NatWest should not use the compensation amount to reduce the debt it says he still owes on the credit card account but should pay the compensation directly to him.

So in this decision I need to decide whether it's fair and reasonable for NatWest to use Mr I's PPI compensation offer, to reduce the debt which remained unpaid after he stopped using the credit card account.

Mr I indicates that he doesn't have a credit card with NatWest and is totally unaware of any debt. Records have been provided to show that Mr I clearly did take out a credit card with NatWest in 2010 and with it he took out the PPI policy, the card account ended 5134. As he has not used the account since stopping payments to it in 2014, he may not recall much about the credit card account.

But the information provided by NatWest shows he did apply for the credit card in 2010 and the payments by direct debit to the card, whilst it was active, were made from the same account Mr I provided information about for the payment of the PPI compensation. The PPI, for which Mr I wants the compensation paying to him, was attached to this credit card account. So if the PPI compensation is due to Mr I as he indicates, then the credit card account to which it was attached was also his account.

The records from NatWest show the last payment made to the credit card account by direct debit from Mr I was in March 2014. At this point, after the March 2014 payment, the balance owing on the account was £1,462.55. As Mr I made no more payments the account was suspended and NatWest records also show that recovery agents were appointed by the bank to try to obtain payment of the debt, but this was not successful. So the account was closed, with an unpaid balance still owing by Mr I of £1,462.55. Therefore NatWest says it has a fair right to set off the compensation due to Mr I against the debt he owes on the credit card 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 NatWest to set-off in this way. Both tests must be satisfied for me to conclude NatWest has an equitable right to set-off the PPI compensation against Mr I's outstanding debt on his credit card account.

The PPI policy that Mr I had, was taken out with credit card ending 5134 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. Therefore there is a clear, direct connection between the PPI compensation NatWest owes Mr I and the outstanding debt on the credit card that Mr I owes to NatWest.

I can see that 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. At that point the consumer would be out of pocket for any costs of the PPI.

In this case, as I've said, Mr I never actually cleared the full balance owing on the account whilst the account was open. So the full cost of the PPI, which is £931.10, would remain as part of the balance outstanding. The calculation undertaken by NatWest for the costs includes the PPI premiums and card rate interest on the premiums until this was suspended.

Having considered all the facts I am satisfied that it is fair that NatWest uses the PPI compensation to set it off against the balance outstanding on the account. In effect this is only removing the PPI that remains in the account balance and was never paid by Mr I in this particular case. If Mr I were to be paid the compensation direct, he would be receiving a refund of amounts that he never actually paid.

I have taken into account all Mr I's comments about not being told that the compensation would be used in this way, to set off against the debt on the credit card account. But the original offer letter and acceptance form sent to Mr I clearly indicated that any arrears Mr I owed to NatWest would be cleared and that any arrears on the credit card balance would be taken into consideration.

Also the online acceptance that Mr I completed required that a box had to be checked (infilled) before the form could be submitted. By checking this box, it confirmed that the declaration and acceptance had been read and Mr I agreed with it. And NatWest records show Mr I submitted the online form on 27 May 2020. So he did confirm at that point that he had read and agreed the declaration and acceptance.

Mr I may not recall the credit card and the debt he owed on it, as he had not had use of the card nor paid anything towards the debt since 2014. But that does not alter the fact that Mr I did default in payments to the credit card account and the debt he left remains unpaid.

In summary I think it should have been clear to Mr I that he was accepting the offer, subject to any arrears being settled first by the compensation. And I am satisfied that NatWest could fairly use the right of set off in this case as the PPI was directly linked to the credit card account and debt that remained on it. So I think what NatWest has done with the compensation is fair.

My final decision

For the reasons set out above I am not upholding Mr I's complaint as I think National Westminster Bank Plc's offer, and what it has done with the compensation, is fair.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 3 June 2021.

Chris Fraser
Ombudsman