

The complaint

The estate of the late Mr T has complained about the way in which Barclays Bank UK PLC resolved the mis-sale of a payment protection insurance (PPI) policy. Mr H has been representing the estate.

What happened

Mr T was in an Individual Voluntary Arrangement (IVA). His insolvency practitioner (IP) lodged a complaint on his behalf about the sale of PPI.

In the meantime, Mr T unfortunately passed away.

Barclays agreed the PPI had been mis-sold. The IP confirmed they had an interest in the PPI compensation, so Barclays paid it to the IP.

The estate of Mr T complained. Its representatives said the IVA had since been finished, so they felt the IP were not entitled to the money. They also complained about the way Barclays had handled the complaint.

Our adjudicator looked into things independently and didn't uphold the complaint. They explained that the IP were eligible complainants and were entitled to the refund even after the IVA had closed, as it related to money owed before the IVA.

Mr T's estate disagreed with the adjudicator's opinion, so the complaint's been passed to me to decide.

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.

I do appreciate where the estate's representatives are coming from. When Mr T's IVA finished, his debts were written off. I can understand why one might think that meant he didn't owe anything anymore.

But even after insolvencies like IVAs or bankruptcy, the debts don't cease to exist – they're still there. It just means that the lenders can't take certain action against Mr T (or his estate) to recover those debts anymore, such as court action.

The insolvency effectively draws a line under what happened. So Mr T's assets from before the IVA get used to pay off as much of his debt as possible, in order that his assets from after the IVA don't have to get used.

This PPI compensation relates to a policy from before the IVA started. At the point the IVA began, Barclays owed Mr T money for mis-selling this PPI – even if neither side had realised it yet until the mis-sale complaint was concluded. And so because the PPI compensation originates from *before* the IVA, it forms an asset which can be used to help pay the debts in the IVA. And this can still be done after the IVA has finished – the debts still exist, and the IP were still able to declare an interest in the refund and ask for it to be paid to them to help clear those debts.

Here, the IP confirmed to Barclays that they had an interest in this compensation. So Barclays acted correctly by paying it to the IP.

Mr H raised a concern that this meant Mr T's estate would effectively never be released from the IVA. But I hope I can reassure him that, per the above, the IP could only claim assets that originate from before the IVA, to pay debts which originate from before the IVA – not after. So it does draw a line under what happened.

Mr H felt that Barclays had acted as “judge and jury” in deciding where to pay the refund. But the fact is that Barclays were supposed to pay the IP once the IP confirmed they had an interest. At that point, it wasn't really Barclays' decision to make, it was really the IP's.

Mr H also felt that Barclays had done this in order to benefit from their own mis-selling. But as above, Barclays only did what they were supposed to do – and what we'd expect them to do – by paying the IP. The IP would usually then spread the funds across *all* the creditors in the IVA, not just Barclays. And in any case, if Mr T owed money to Barclays at the same time as Barclays owed money to him – whether for a mis-sale or otherwise – then I'd normally consider it both fair and pragmatic to use one debt to reduce the other. Again: these debts did not cease to exist, and setting off debts is a very normal practice.

I understand that the estate's representatives may be unhappy with the way things work more generally. For example, they felt that banks should have provisions for bad debts. I should explain that we're not the regulator – that's the Financial Conduct Authority (FCA for short) – and I cannot change the way things work across the board, so I'm not best placed to comment on points about how the system as a whole should or shouldn't be. I can only consider what happened in this individual complaint, based on the law and regulations in place at the time. And I've found that Barclays paid the right party.

I also understand that the estate's representatives may be unhappy with things that the IP did, such as in accepting a sum to finish the IVA while the PPI complaint was outstanding, and in declaring an interest in the PPI refund. But in this complaint about Barclays, I can only make findings on what Barclays did. And more generally, we don't have jurisdiction over insolvency practitioners – that's the remit of the Insolvency Service. The estate may be able to make a separate complaint about the IP directly.

Lastly, I appreciate that the estate's representatives are unhappy with the way Barclays handled the complaint. I'm afraid I'm only able to consider complaints about “regulated activities” – such as selling insurance. But handling complaints is not an activity we cover in and of itself. So I can't consider those points here. Further, in a complaint brought by Mr T's estate, I would've only been able to award compensation for losses to Mr T and his estate – but not to the representatives. So I would not have been able to award any compensation for any trouble or upset the representatives faced in dealing with the complaint in any case.

With that said, it may be helpful to explain that the time it took Barclays to deal with this complaint was substantially affected by the huge number of cases that needed dealing with following the PPI deadline, coupled with a heavily-disruptive global pandemic.

So while I know this will disappoint the estate's representatives, and while it is not my intention to disappoint them, I find that Barclays acted correctly in paying the IP.

My final decision

For the reasons I've explained, I don't uphold this complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 4 January 2023.

Adam Charles
Ombudsman