complaint

Mr A's complaint is about the way National Westminster Bank Plc (NatWest) paid him compensation for a mis-sold payment protection insurance (PPI) policy.

background

Mr A complained to NatWest about a single premium PPI policy sold alongside a loan. NatWest agreed to uphold Mr A's complaint and wrote to him setting out what it was offering to pay him. NatWest said it would refund to Mr A what he had paid in premiums and associated interest (redress). NatWest also said it would pay statutory interest compensation to Mr A for being out of pocket. This was calculated at 8% simple per annum from the date Mr A made each payment to the date it was paid to him.

Mr A signed an acceptance form and returned it to NatWest.

NatWest paid the 8% statutory interest compensation amount by cheque direct to Mr A. But the redress part of the compensation was paid into Mr A's current account which was in arrears and being managed by NatWest's credit management services. This meant Mr A didn't have access to this redress amount.

Mr A complained that NatWest had used part of his compensation to reduce the arrears on his current account.

Our adjudicator upheld Mr A's complaint and asked NatWest to pay all the compensation directly to Mr A. The main reason for this was that Mr A's current account arrears were not linked to the PPI compensation.

NatWest disagreed with the adjudicator's findings and asked for an ombudsman to review the complaint.

my findings

I have carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing this, I have taken into account any relevant regulatory rules, the law and good industry practice.

It seems to me there's no disagreement that Mr A should not have been sold the PPI policy. So, I am only considering whether it's fair and reasonable for NatWest to use part of the compensation to reduce the outstanding balance on Mr A's current account debt.

In all the circumstances I am upholding Mr A's complaint.

NatWest has said this service should not consider Mr A's complaint as he signed the acceptance form in full and final settlement. I do not agree that this particular complaint should be dismissed because Mr A signed the acceptance to accept the amount offered to him. This complaint is about how that payment has been used. I am not satisfied that NatWest made it clear to Mr A how it was going to use the payment before he accepted the offer. I say this for the reasons I set out below.

I've looked at the covering letter NatWest sent to Mr A in September 2012 with the acceptance form. This was quite a long letter and did say that debts *"with the group"* will be cleared. But this isn't in a prominent part of the letter and it doesn't specifically mention or make clear that part of the compensation would be used to set against the debt on Mr A's current account.

I have also read the wording on the acceptance form which says:

"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my NatWest current account, or by cheque if no account remains open."

In my view Mr A would be more likely to carefully read the statement on the actual acceptance form. This statement only mentions that the redress would be used to *clear "any arrears on my account".* In my view this refers only to arrears on Mr A's loan, which I understand, had been paid off in full and had no arrears.

The statement doesn't specifically draw Mr A's attention to NatWest's intention to use some of the compensation to reduce the outstanding debt on his current account.

In addition, I note that Mr A's current account was in fact being managed by NatWest's credit management services. So it seems likely to me that Mr A would have regarded this account as being closed to him, as he had no access to any funds that were deposited there. I think if Mr A had been given sufficiently clear information to allow him to understand that part of the compensation would be used to reduce the current account debt, he would not have signed the acceptance form.

I find that NatWest didn't make it sufficiently clear to Mr A that it intended to use the redress part of the compensation to reduce the outstanding debt on his current account and then send him a cheque only for the compensatory interest portion.

<u>right of set off</u>

NatWest has also in response to the adjudicator said it has a "right of set off". As I said earlier, we take into account the law in our considerations. In this case, the relevant law is the *equitable right to set off* which allows people 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.

This is different to the "banker's right of set off" which is the right a bank has to transfer funds from a consumer's account which is in credit to a consumer's account which is in debt. The "banker's right of set off" can only be used by a bank where the consumer holds both accounts in question in the same capacity (for example, it couldn't use its right of set-off if the consumer held one account in their sole name, and another in joint names). Also it can only apply the "banker's right of set off" when a debt is due and payable. As PPI redress is not an "account", but rather an amount of compensation resulting from the mis-sale of a product, I am not satisfied that the "banker's right of set off" applies here.

For me to be satisfied the equitable right of set-off should apply in Mr A's case, 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 A's outstanding debt on his current account.

I am not persuaded there is a *close* connection between the *compensation* for the mis-sold PPI policy taken out in connection with Mr A's loan and the outstanding *debt* on his current account. The compensation for the PPI policy arises from shortcomings in the way the policy was sold. The arrears on Mr A's current account flow from entirely different circumstances. Given this, I am not satisfied the compensation and the current account debt are sufficiently closely connected for it to be fair and reasonable for the compensation from the mis-sale of the PPI policy to be offset against the debt on Mr A's current account.

summary

I don't find it fair and reasonable for NatWest to use any of the compensation from the PPI policy sold with the loan against the outstanding debt on Mr A's current account.

Therefore NatWest should recalculate the compensation for this policy, bringing it up to date with interest calculated at 8% simple per annum and pay Mr A the difference between the new total and what Mr A has already received. The difference should be paid to Mr A directly by cheque.

If for any reason the recalculation results in a lower amount of compensation being identified, then NatWest should honour the original compensation amount offered to Mr A and pay this directly to him.

my final decision

My final decision is that I uphold Mr A's complaint and order National Westminster Bank Plc to recalculate the compensation and pay it directly to Mr A.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 29 January 2015.

Christine Fraser
ombudsman