

## **complaint**

Tesco Personal Finance PLC (Tesco) sent part of the compensation for a mis-sold payment protection insurance (PPI) policy to a third party debt collecting agency (DCA). Miss A says Tesco should pay all the compensation directly to her.

## **background**

Miss A took out a loan with Tesco, at the same time she was sold a single premium PPI policy. The premium for the policy was added to the loan and would attract interest.

The loan went into arrears (Tesco says Miss A only made ten repayments) and in October 2007 Tesco sold the debt to a third party DCA.

In June 2011 Miss A complained about the sale of the PPI policy. In December 2011 Tesco wrote to Miss A. In its letter it said it would refund the overpayments Mrs A had made because PPI was added to her loan, plus interest. The total amount offered was £256.04.

But the letter went on to say that because Tesco "*wrote off*" her loan it would make no payment to her.

In March 2012 Tesco wrote to Miss A again. This letter said that Tesco would now be paying the compensation to Miss A and enclosed a cheque for £256.04.

Miss A brought her complaint to this service. Miss A said that although Tesco had refunded the amount she had paid for the PPI up to when she went into arrears, the debt it had sold to the DCA still contained the bulk of the PPI premium, which was added to her loan. Miss A said she should be compensated for this amount too.

Tesco contacted this service in June 2012. Tesco told us it had refunded Miss A the amount she had actually paid for the PPI policy plus interest. Tesco acknowledged that the loan balance it sold to the DCA still contained the remainder of the PPI policy which was £772.50. Tesco said it paid this amount to the DCA in April 2012 and instructed it to reduce Miss A's debt by this amount. Tesco said this effectively removed the PPI from Miss A's debt.

I understand the debt has now been sold on to another DCA. Miss A has told us she is unsure if the £772.50 was actually used to reduce her debt.

An adjudicator from this service wrote to Tesco. The adjudicator upheld Miss A's complaint because Tesco no longer owned the debt when it agreed to settle Miss A's complaint. Therefore it should have paid the compensation directly to Miss A and not to the DCA.

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

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I think the relevant issues to take into account are those set out in the note on our website about our approach to PPI complaints.

Tesco has agreed to uphold Miss A's complaint about the mis-sale of the policy and pay her compensation. So I won't address the issue of how the PPI policy came to be sold to her.

I've decided to uphold Miss A's complaint for the following reason:

The Financial Conduct Authority's rules for assessing PPI complaints state that:

*"Where the complainant's loan or credit card is in arrears the firm may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the firm's offer of redress. The firm should act fairly and reasonably in deciding whether to make such a payment"* (DISP App 3.9.1 G)."

Tesco sold Miss A's loan to the DCA some considerable time before it made the offer. When Tesco sold the debt to the DCA it was a commercial decision and Tesco most likely accepted an agreed price for the debt. This meant that Miss A then owed and paid money to the DCA, not to Tesco, for that debt. It follows that Tesco had no contractual right to use any of the compensation to reduce that debt as it didn't own it.

### **fair compensation**

Tesco should have paid the sum of £772.50 to Miss A in March 2012 along with the remainder of the compensation.

As it didn't do this she should be compensated for the time she has been "out of pocket".

So Tesco should pay Miss A £722.50, plus interest calculated at 8% simple<sup>†</sup> from March 2012 to the time it pays Miss A.

<sup>†</sup> HM Revenue & Customs requires Tesco to take off tax from this interest. Tesco must give Miss A a certificate showing how much tax it's taken off if she asks for one.

Tesco may say that Miss A has now been compensated twice by having her debt with the DCA reduced by £722.50 and by now receiving it direct. However in my view Tesco should have been aware it couldn't use the compensation to reduce the debt on a loan it no longer owned. And I don't think it's fair for Miss A to be disadvantaged because of Tesco's failing in this matter.

However if Tesco wishes to approach the DCA to recover the £772.50 it paid them then it is able to do so. But if this amount is then added back onto Miss A's debt, Tesco must get documentary evidence from the DCA (such as statements) to show Miss A that the original £772.50 it paid the DCA in April 2012 was in fact entirely used to reduce her debt.

### **my final decision**

My final decision is that I uphold Miss A's complaint. Tesco Personal Finance PLC should pay Miss A compensation as set out in this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss A to accept or reject my decision before 2 March 2015.

Steve Thomas  
**ombudsman**