

## **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 with a loan. Mr A was sold several PPI policies and loans by NatWest. To avoid any confusion this decision is about the PPI policy sold in 2001 alongside loan ending 0998.

NatWest agreed to uphold Mr A's complaint. NatWest wrote to Mr A and set out what it was offering to pay him. It said it would refund the premiums he paid and associated interest which amounted to £52.68. NatWest also said it would pay a further £47.73 (less tax) which was statutory interest calculated at 8% per annum from the date Mr A made each payment.

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

NatWest paid the £52.68 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 the £52.68.

The statutory interest part of the compensation was sent directly to Mr A in the form of a cheque.

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

Our adjudicator upheld Mr A's complaint and asked it 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've only included a summary of the complaint above, but I've carefully considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And in doing so, I've taken into account (though I'm not necessarily bound by) any relevant regulatory rules, the law and good industry practice.

It seems to me there's no disagreement that Mr A shouldn't have been sold the policy. So, what's left for me to consider is 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.

I've carefully read the letter NatWest sent to Mr A in March 2013 with the acceptance form. The letter included several pages and contained details of how the compensation was calculated.

Halfway through the second page is the following paragraph:

*"To accept my offer, all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group."*

I've also read the wording on the acceptance form which states:

*"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."*

The covering letter saying that debts *"with the group"* will be cleared isn't in a prominent part of the letter. 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.

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 account ending 0998 which was closed in 2002 and therefore 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, in as much as he had no access to any funds that were deposited there. I think if Mr A had been given clearer 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 settlement form.

So overall I find that NatWest didn't make it clear to Mr A that it intended to use part of the compensation to reduce the outstanding debt on his current account and then send him the interest portion by cheque.

#### right of set off

NatWest may also consider it has a "right of set off". As I've noted 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). And 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 which has resulted from the mis-sale of a product, I am not persuaded that the "banker's right of set off" applies here.

Returning to the legal position (which seems most relevant to this case), for me to be satisfied that the equitable right of set-off should apply in Mr A's case, I would need to be satisfied that a *close connection* exists between the compensation for the mis-sale of the policy and the arrears on the current account. If I establish there is a close connection I would then need to think about whether it would be unjust not to allow NatWest to set off in this way. So, both tests need to be satisfied in order for me to conclude that NatWest has an equitable right to set-off the PPI compensation (the overpayments Mr A paid because PPI was added to his loan) against the debt on Mr A's current account.

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 A's outstanding debt on his current account.

In consideration of these tests, 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 persuaded 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 ending 0998 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.

#### **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 9 January 2014.

Steve Thomas  
**ombudsman**