

## **complaint**

Mrs S is unhappy with how Santander UK Plc ('Santander') has offered to resolve her complaint about a payment protection insurance ('PPI') policy attached to a loan.

## **background**

Mrs S took out a loan for £22,000. At the same time she was sold a single premium PPI policy. This meant that Mrs S borrowed an extra amount for the PPI that was added to her principal borrowing. Mrs S paid for the PPI much like the principal loan in monthly instalments. The PPI, like the loan, had interest charged.

At some point Mrs S got into financial trouble and defaulted on her loan. Santander took her to court and obtained a 'final charging order' securing the debt against her property.

Mrs S complained that she had been mis-sold the PPI policy. Santander agreed and calculated, in 2017, that it owed her £3,611.17 (after tax). But it said because there was still an outstanding amount that Mrs S owed Santander following that court judgment that it wanted to use the PPI compensation to reduce that debt.

Mrs S is unhappy with the offer. She thinks that Santander haven't calculated the offer right and is still including the full amount she borrowed for the PPI in the debt she owes. She also wanted to negotiate a full and final settlement payment with Santander against the debt.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Santander has agreed to uphold Mrs S's PPI complaint. So in this decision I won't be looking at how the policy came to be sold – because that's not in dispute. I will only be looking at whether the offer made to resolve the complaint is fair.

When a business agrees to settle a PPI complaint I would expect it to, as far as is possible, put the consumer in the position they'd be in had they not taken out the PPI policy.

### *what happened when Mrs S defaulted on her loan*

Santander has provided a copy of what looks like a loan statement which lists the transactions on the account. This includes what the initial borrowing was, payments made, charges made to the account and what happened around the time Santander 'wrote off' the loan. It has also provided an internal screen shot to show when the loan was 'written off' with a balance of £23,919.63. I want to explain how Santander got to that figure using these documents.

Mrs S took out a loan for £22,000. At the same time she borrowed an extra £5,010.39 for the PPI which was added to her principal borrowing. So in total, she borrowed £27,010.39. The interest Mrs S would be charged over the course of the loan was also added to the loan up front (£3,914.24 for the principal borrowing and £891.45 for the PPI). Meaning she had to repay, in total, £31,816.08.

Mrs S made some monthly payments towards the loan. This totalled £3,655.12. She was also charged £75 in charges. Meaning that when Santander looked at 'writing off' her loan the balance left to pay on the loan was £28,235.96.

When a loan account with a single premium PPI policy is closed early or the PPI policy is cancelled, it's common for there to be a 'rebate' - for *some* of that borrowed money for the PPI premium - to the consumer or the loan account. That's because the loan finished before its full term and so there was a portion of the amount she borrowed for the PPI up front that she wouldn't have been able to use. The rebate wouldn't be proportionate to what she had left to pay – but she would have received *some* of this amount back.

In this case, when Mrs S defaulted on her loan her PPI policy would have been cancelled. So Santander refunded to her loan account some of the PPI premium Mrs S borrowed upfront. This is common when a single premium PPI policy is attached to a loan and it is cancelled before the full term of the loan.

The loan statement shows that Mrs S received a rebate for the PPI and the interest that was borrowed up front with the loan. But as I've said above, that rebate was applied straight to the outstanding loan balance of £28,235.96.

There were rebates of £2,627.21 for the PPI premium Mrs S borrowed, £448.38 for the interest borrowed up front for the PPI borrowing and £1,968.74 for the interest borrowed up front for the principal loan. So Mrs S was rebated a total of £5,044.33. So her outstanding balance was then reduced to £23,191.63.

Mrs S was charged a couple of solicitor's fees and a court issue fee (presumably for the pre-court action Santander took) and this was added to the 'written off' loan balance to total £23,919.63.

I understand that the amount Mrs S owes Santander now is more than that. But that is likely to be due to extra court costs following Santander obtaining the 'final charging order' through the County Court. It isn't because, as Mrs S thinks, Santander included the full amount she initially borrowed for the PPI.

*what Santander has calculated it owes Mrs S.*

With a single premium PPI policy I'd expect a business to refund any payments a consumer made towards the PPI loan, any interest charged directly because of that PPI loan and 8% simple interest – to compensate the consumer for the time they've been out of pocket. A business can also take into account any rebates a consumer has received previously.

I've had a look at the approach Santander has taken and I think it's followed the approach I'd expect it to take. It has looked at what Mrs S borrowed for the PPI in total (including the interest) and has taken into account the rebate she received towards the loan account in 2007. It has also worked out what Mrs S paid towards the PPI premium and the interest when making her monthly repayments to work out how much she is owed in 8% simple interest – because when she made those monthly repayments she was 'out of pocket' for that money.

She isn't entitled to 8% simple interest on everything she's owed, because as I mentioned above, her rebate wouldn't have been a proportionate rebate – so there would still be some of the PPI premium in the 'written off' loan balance. And she's never been out of pocket for this amount – because it's still to be paid back.

Santander has also refunded the £75 Mrs S was charged and added 8% simple interest on those charges. It didn't have to do this because these charges don't seem to be directly charged because of the PPI.

Santander's letter to Mrs S in 2017 says it owes her £3,611.17 – after it calculated the above. But Santander has said it intends to use this compensation to reduce the outstanding balance on the loan debt. It is my understanding that it hasn't done this yet as it is waiting for Mrs S to accept the offer.

*is it fair for Santander to offset Mrs S's PPI compensation against the debt*

Mrs S defaulted on her loan and she still owes Santander an amount for the money she borrowed. Santander is still out of pocket for this money. It has accepted that it owes Mrs S money for the PPI compensation, so it owes her a debt too. And it is 'setting off' that debt for the PPI compensation against the debt Mrs S owes it for the defaulted loan.

There is in law what is called the *equitable right of set-off* which allows people to 'set off' closely connected debts. This means that one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this 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 fair for Santander to set-off in this way. *Both* tests must be satisfied for me to find that Santander has an equitable right to set-off the PPI compensation against Mrs S's outstanding debt on her loan account.

The PPI sold to Mrs S was directly connected to her loan account. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the loan debt are closely connected. They are both related to the same account Mrs S had with Santander.

As I've mentioned, both these debts related to the same account and I've also seen nothing to show Mrs S has other pressing issues or priority debts which might mean she'd need the compensation to pay those. So, again I think it's fair for Santander to use the compensation it owes Mrs S to reduce her credit card account debt.

I understand Mrs S wanted to make Santander an offer in full and final settlement of this matter as a whole. But for the reasons I've given above I'm satisfied that Santander has calculated what it owes Mrs S for the PPI compensation fairly. And I also think it's fair for Santander to use the compensation to reduce the outstanding arrears.

The remaining debt is a legal matter between Mrs S and Santander. I can't comment on the circumstances around Santander 'writing off' her loan or the total amount Mrs S owes Santander as this has already been decided by a court. My decision is only looking at whether the approach Santander wants to take to resolve Mrs S's PPI mis-sale complaint is fair. And I think it is.

**my final decision**

For the reasons discussed above, my final decision is that the approach Santander UK Plc wants to take to resolve Mrs S's complaint is fair.

If the compensation has not already been used to reduce Mrs S's arrears, Santander UK Plc should calculate Mrs S's offer up to date and apply it to her arrears. It should then update Mrs S with the reduced debt figure that is outstanding on her loan in this matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 1 December 2018.

Martin Purcell  
**ombudsman**