

complaint

Mrs B complained she was mis-sold payment protection insurance (PPI) with a number of loans with Marks & Spencer Financial Services Plc (M&S).

background

M&S agreed she had been mis-sold PPI and made an offer in July 2013 of £8,354.55.

In August 2014 M&S confirmed it had used this money to pay against arrears on one of the loans and it also confirmed that this was the only loan with outstanding arrears.

Mrs B believed it couldn't do this since she didn't think M&S owned the debt because it had been sold to a third party - she wanted the money paid direct to her. M&S had also offered £100 for the trouble and upset she'd been caused in bringing her complaint. Mrs B didn't think this was enough and she wanted more money.

Our adjudicator thought what M&S had done was fair. Mrs B didn't agree and wanted an ombudsman to look at 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.

M&S has said the PPI was mis-sold and made an offer. Mrs B hasn't complained about the amount of the offer just the way M&S has paid it. So I won't look at how the policy was sold or whether the amount of the offer was enough, I will just look at how the offer was paid and whether that was fair.

M&S paid the whole amount of the compensation against the debt, which had at one time been bought by a debt management company. Mrs B said it couldn't do this because M&S no longer owned this debt and so the compensation should be paid directly to her.

I have carefully thought about this. I can see that there has been some confusion in the way the debt was bought and sold. I can see from the information on file that M&S sold the debt in March 2013. It has then provided a screenshot to show that it repurchased the debt in August 2013. It then applied the amount of compensation against the outstanding arrears in July 2014.

Mrs B didn't know that the debt had been bought back and so she thought M&S had no right to set off the debt, especially when it was in a management plan. I understand that Mrs B has been confused by the way M&S has handled this. I think M&S could have been clearer on how the compensation would be used and when they had sold and bought back the debt. But the question I need to consider is whether M&S had the right in the first place to set all of the compensation off the debt. So firstly I need to be satisfied that the debt was owned by them. As I have stated above, M&S provided of a screenshot indicating when the debt was repurchased in August 2013. In the absence of different evidence, I think that M&S did own the debt when they set off the arrears.

Secondly, I need to be satisfied that they could do this fairly, for example, if Mrs B had more pressing debts which could be considered a priority then the debt should be applied against

these first. I have listened to what Mrs B has said about her other arrears, I have reviewed these arrears and I acknowledge that they consist of mortgage debt and utility bills. I also note that the mortgage debt is in a payment plan and so whilst these are pressing debts they are manageable and I don't consider them to be a priority, So I don't think Mrs B had more pressing debt at the time the arrears were set off.

Next I need to consider if the compensation was correctly applied against the right debt. We know from M&S that the debt was against the second loan in the chain but that all of the compensation from loans 1 and 2 was applied to this debt. Based on the breakdown of the offer letter £1,424.98 of the compensation was for loan 1 and £6,929.57 of the compensation was for loan 2. Ordinarily we would say that the compensation can only be applied against the arrears on the same account.

I have carefully considered all of the documents in this matter. In particular, I note that Mrs B signed the *Acceptance of Offer* form on 7 July 2013. This form said "*I accept the offer of £8,354.55 in full and final settlement of my complaint against M&S, in respect of loans 1 and 2 which will be used to reduce my outstanding liability to you*". I think this Acceptance of Offer shows that M&S would use all of the compensation (from loan 1 and 2) to pay down the debt which was only on loan 2. By signing and returning this form, Mrs B agreed to the compensation being applied in this way and so I am satisfied that all of the arrears could be used to pay down the debt on loan 2.

I understand Mrs B's views but I am satisfied that M&S could use the entire compensation to pay down the debt on loan 2 and also that it made sense to do this in spite of her overall financial circumstances because none of her other debts were pressing.

At the end of the day, the purpose of the PPI compensation is to put the consumer back in the position they would have been in if they hadn't taken out PPI. By paying off these arrears it means that Mrs B has less debt that she needs to pay (even though she has less money in her pocket). So I think what M&S has done is fair and I won't be telling it to pay the arrears directly to her.

I have also thought about whether M&S should pay Mrs B additional compensation for the way it handled her complaint, such as if its handling of the complaint caused additional trouble and upset. I do think that M&S could have dealt with matters better and communicated its process a bit better with the consumer. I note it has already offered to pay her £100 and I acknowledge that these awards are meant to be a nominal sum and our role is not to punish the business, but I am increasing this sum to £150.

my final decision

For the reasons I have set out above I think the way Marks & Spencer Financial Services paid the compensation is fair but I think it needs to increase the trouble and upset payment by £50 making a total of £150.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 8 February 2016.

Miranda Bates
ombudsman