

## **complaint**

Mr K has complained about the compensation he's been offered by Tesco Personal Finance PLC ('Tesco') for the payment protection insurance ('PPI') policy that was sold to him on his credit card account.

## **background**

Mr K was sold a PPI policy on his credit card account.

He complained to Tesco in 2014 that the policy had been mis-sold. Tesco sent him a final response letter at the time which didn't uphold his complaint.

Later in 2018 Tesco wrote out to Mr K to make him an offer of compensation for undisclosed commission and profit share – more than 50% of the premium – which it says it should have told Mr K about on the credit card. And because it didn't, that was unfair. So it calculated that it owed Mr K £1,593.12 (after tax).

But in the letter Tesco said that Mr K was in arrears on his credit card account. Tesco didn't legally own the debt at the time as it had sold it on to a third party. But it said it wanted to buy a portion of the debt back so it can use this compensation to reduce what Mr K still owes due to his credit card account.

Mr K disputed the calculation of the offer. He said he felt he was owed more.

Our adjudicator looked at the complaint and thought the approach Tesco had taken in its calculation was fair. She also said she thought it was fair for Tesco to buy some of the debt back to reduce the overall outstanding balance.

Mr K didn't agree and asked for the complaint to be seen by an ombudsman.

## **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've also thought about the laws, relevant regulations and guidance.

Mr K first complained to Tesco about the mis-sale of his PPI policy in 2014. Tesco didn't uphold the complaint and in its letter it gave him six months to bring his complaint to this service - which he didn't until 2018. Mr K hasn't said why he didn't come to this service earlier, so I can't look at Mr K's mis-sale complaint, because he's brought his complaint to this service out of time.

So this decision will only be commenting on the offer that Tesco made Mr K in 2018. The financial regulator, the Financial Conduct Authority ('FCA') issued guidance to business on what they should do in cases where they received a high level of commission and profit share (more than 50% of the PPI premium).

Tesco has accepted that it should have told Mr K about that and because it didn't that was unfair. To put that right Tesco has basically offered to pay back the amount of commission and profit share that was above 50% of the PPI premiums charged – and I think that offer is fair in this case.

I understand Mr K thought he should be paid more and he believes Tesco received more commission than it said it did. But he hasn't been able to provide any evidence to support his position – and I wouldn't have expected him to be able to. But having considered the evidence I do have, and in the absence of any other evidence to make me think otherwise, I'm satisfied that Tesco's calculation of Mr K's offer is fair.

At some point Mr K got into trouble making his credit card repayments. And Tesco sold his credit card debt on to a third party. Tesco said that Mr K still had an outstanding balance with that third party. So it wanted to buy back some of that debt and use Mr K's compensation to reduce what he still owes to the account.

Tesco had a right to sell the debt to a third party and it also has a right to buy that debt back. How much of the debt is sold or bought back I don't think has relevance in this case. That is a commercial decision which has been made by Tesco. Ultimately, there is still a debt because of Mr K's credit card account which Mr K hasn't paid back.

I've seen evidence from Tesco which shows it has bought back some of the debt and as a result Mr K's overall credit card account debt has been reduced by £1,593.12.

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 Tesco to set-off in this way. Both tests must be satisfied for me to find that Tesco has an equitable right to set-off the PPI compensation against Mr K's outstanding debt on his credit card account.

The PPI sold to Mr K was directly connected to his credit card account. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the credit card debt are closely connected. They are both related to the same account Mr K had with Tesco.

I've also seen nothing to show Mr K has priority debts so he needs the compensation to pay those. So, again I think it's fair for Tesco to use the compensation it owes Mr K to reduce his credit card account debt which he owes it.

**my final decision**

For the reasons I've discussed above my final decision is that the approach Tesco Personal Finance PLC has taken in calculating Mr K's offer is fair.

I also agree that it's fair for Tesco Personal Finance PLC to buy back some of the debt it sold on and use Mr K's compensation to reduce this outstanding debt on his credit card account. It is my understanding it has already done this. So I don't direct it to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 September 2018.

Martin Purcell  
**ombudsman**