



complaint

This complaint concerns a single premium payment protection insurance (PPI) policy taken out by Mr A in relation to a personal loan. Mr A says Welcome Financial Services Limited ("Welcome") mis-sold the policy.

background

Mr A took out a loan with PPI. Mr A complained to Welcome about the sale of the PPI policy. Welcome upheld Mr A's complaint and made an offer of redress. It said it would offset the redress against the outstanding arrears on another loan held by Mr A with Welcome. Mr A did not agree with Welcome's approach, and referred his complaint to this service.

An adjudicator colleague considered Welcome's approach and said it was not in line with our guidance. She said Welcome could not use the compensation from the sale of the PPI policy alongside the first loan to reduce the arrears on Mr A's second loan agreement, and the redress should instead, be paid directly to Mr A.

Welcome did not accept our assessment; it said the first loan and the second loan held by Mr A were the same or a closely related transaction and it could apply its equitable right of set off to use the compensation from the first loan account to reduce Mr A's arrears on the second loan account.

As the complaint remains unresolved between both parties, it has been referred to me to make a determination.

my findings

I have included only a brief summary of the complaint above, but I have carefully considered all of the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances.

As Welcome has already agreed to uphold Mr A's complaint about the sale of the PPI policy, I have not considered the merits of their complaint about the mis-sale of the PPI policy. I have only considered the merits to the extent they help me decide whether Welcome's offer of redress is fair and reasonable in the circumstances.

I must decide what is fair and reasonable in each case. When I do this, I take into account (although I am not bound by), amongst other things, the relevant law as well as any relevant regulatory rules.

The Financial Services Authority (FSA) (now known as the Financial Conduct Authority) issued guidance for financial businesses handling PPI complaints. This guidance states:

"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).

A strict reading of the relevant guidance suggests Welcome is entitled to seek to use PPI compensation to reduce arrears on the *associated* loan or credit card balance only

where *it has the contractual right to do so*. I accept redress payable for the mis-sale of a PPI policy can (and often should be) set-off against the arrears on the loan associated with the PPI policy being complained about. This principle is consistent with the FSA's guidance set out above and, I suspect, probably informed the framing of that guidance.

In this case, the first personal loan taken out by Mr A with PPI has been repaid in full. This means there are no arrears outstanding on this loan. So, setting aside whether or not Welcome has a *contractual* right, the relevant guidance suggests Welcome is *not* entitled to use the compensation for the mis-sale of PPI alongside the first personal loan to reduce the arrears outstanding on a second personal loan also held in Mr A's name, as the second loan is not the *associated loan or credit card* referred to in the FSA's guidance.

Welcome said in its response to our adjudicator's view that it can rely on the equitable right of set-off. The equitable right of set-off in law allows a person to 'set-off' closely connected debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For the equitable right of set-off to apply, I must be satisfied there is a close connection between the PPI compensation and the outstanding debt that Welcome intends to use. I must also consider whether it would be unjust not to allow Welcome to set-off in this way. *Both* tests must be satisfied for me to conclude Welcome has an equitable right to set-off the PPI compensation against Mr A's outstanding arrears.

In consideration of these tests, I am not persuaded there is a *close* connection between the *redress* for the mis-sold PPI policy taken out in connection with Mr A's first personal loan and the outstanding *arrears* on his second loan. The redress for the PPI policy arises from regulatory failings. The arrears on Mr A's second loan are not the result of regulatory failings and flow from entirely different circumstances. Given this, I am not persuaded the redress and the arrears are sufficiently closely connected for it to be fair and reasonable for the redress from the mis-sale of the PPI policy for the first personal loan to be offset against the arrears on the second loan.

So, having carefully considered the available evidence and applying these principles to Mr A's case, I am not persuaded it is fair and reasonable for Welcome to use the compensation payable for the PPI policy associated with Mr A's first loan to reduce the outstanding arrears on his second loan. I consider the arrears on the second loan are not sufficiently closely connected with the compensation for the mis-sale of the PPI policy on the first loan for the compensation to be offset against the outstanding arrears.

Finally, I can see that Welcome is not a party to the debt which remains outstanding. Welcome is not the legal owner of the debt, having sold it to a third party. And, although it said it has the opportunity to repurchase the debt, as far as I know, it has not done so. The current third party owner of the debt has confirmed it still owns the debt. The parties to the debt are the current owner and Mr A. So, it is difficult to see how Welcome can argue Mr A owes them a debt against which it can set off his PPI compensation, when it does not own the debt.

In conclusion, I am not persuaded the equitable right of set off applies here, for the reasons I have outlined above. In light of this and my findings that Welcome is not the legal owner of the debt, I conclude the redress for the mis-sale of the PPI policy should be paid directly to Mr A.

my final decision

I direct Welcome Financial Services Limited to pay redress to Mr A directly. I make no further award against Welcome Financial Services Limited.

Mark Richardson
ombudsman