complaint

Miss D complained to this service as she was unhappy with the way National Westminster Bank Plc (NatWest) repaid compensation for two mis-sold payment protection insurance (PPI) policies. NatWest used part of the compensation to set against a debt on a closed current account Miss D had with the bank. Miss D wants all the redress paid directly to her.

background

Miss D complained to NatWest about the sale of two PPI policies bought in 2006 alongside two loans she took out with the bank. In March 2013 NatWest wrote to Miss D offering compensation on each of the PPI policies to settle her complaint.

NatWest worked out the amount Miss D had paid in premiums and interest for the PPI and paid this into a current account that Miss D had with the bank. The current account had a debt on it and Miss D was unable to access the account. After the compensation was paid into the current account NatWest closed it. NatWest paid directly to Miss D the 8% interest calculated to compensate her for being out of pocket of the money paid for the PPI.

Miss D was unhappy with NatWest's payment to the now closed current account. She asked that NatWest pay all the compensation directly to her. When NatWest refused to do this Miss D brought her complaint to this service.

An adjudicator from this service said NatWest's' payment of compensation to the current account was not in line with the approach of the ombudsman service and was not fair and reasonable. NatWest disagreed and requested an ombudsman consider the complaint.

my findings

I have briefly set out above the background but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

NatWest agreed to pay Miss D compensation to settle her complaint about the mis-sale of the policies. So I shall not address the issue of how the PPI policies came to be sold to Miss D. I am in this decision only considering how the compensation should be paid to Miss D.

Miss D's believes all the compensation should be paid directly to her and not used to reduce a debt on a totally different account she used to have with NatWest. She says she paid in full the loans which the PPI was bought to protect, so owed no money to NatWest connected with these loans.

NatWest says Miss D's compensation "*was paid in relation to her consolidated loans and this was paid back to the current account from which the monthly payments to the PPI and loans were taken when the loans were active This is the loan service current account as can be seen in the attached pages As such we paid the redress back to an account that is related to the loan accounts."*

NatWest has put forward what is the general law position of the equitable right of set off which allows one party to set off amounts owed to another party, where the other party is in debt to it, and where those debts are "*closely connected*".

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

The Financial Conduct Authority has issued guidance for financial businesses handling PPI complaints. That guidance states:-

“where the complainant’s loan or credit card is in arrears the firm may, it if 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 reasonable in deciding whether to make such a payment”.

A strict reading of the relevant guidance suggests that NatWest can only use PPI compensation to reduce arrears on the *associated* loan and only where *it has the contractual right to do so.*

In this complaint the two loans taken out by Miss D (the associated loans) have been settled in full, so there are no arrears on those loans. Setting aside whether or not NatWest has a *contractual right*, applying the relevant guidance suggests that NatWest is not entitled to use the compensation for the mis-sale of the PPI sold alongside Miss D’s loans to reduce the outstanding balance on a debt on her current account as this is not the “*associated loan”* in this case.

However NatWest is also raising the wider, equitable right of set off, which I need to consider. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which NatWest would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow NatWest to set off in this way.

I accept that compensation payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That is consistent with the FCA guidance referred to above.

But it is another matter to say that a debt occurring on a current account, although an account used in part to make the payment of the loan repayments, can be considered as *closely c*onnected with the debt arising (e.g. the requirement to pay compensation) from the mis-sale of a PPI policy.

I have seen no evidence to show that Miss D’s current account was used in any way other than as a normal current account when it was open. Miss D made many payments from this account, not only the payments to pay the loans.

The compensation for the PPI policies arises from shortcomings in the way the policies were sold with the loans. As the current account was not set up *exclusively* to make the payments on Miss D’s loans, I am not persuaded the debt on the current account is *closely connected* to the compensation for the mis-sale of her two PPI policies.

I have also considered the offer letters and acceptance forms sent to Miss D at the time NatWest made its offers.

The offer letter says, *"Please note that any payment of an offer made will take into account any arrears on the account or any previous claims. The remaining balance, if any, will then be payable to you in accordance with your instructions on the acceptance form."*

The declaration and acceptance that Miss D was asked to sign said *"…if I am subject to alternative Trustee arrangements such as an Individual Voluntary Arrangement, Trust Deed, Bankruptcy or Sequestration any payment RBSG make will be made to an existing account with RBSG. Any payments due under the terms of the arrangement will then be managed by the Group's Insolvency Team.*

I/We understand the money will be paid to my account (if an RBS Group customer) or by cheque (if not a RBS Group customer)."

NatWest has confirmed that Miss D had no arrears on the loan accounts associated with the PPI. In my opinion the wording in the covering letter and acceptance form does not specifically say that any part of the compensation would be used to clear the debt on Miss D's current account. Miss D did not have access to the current account when the PPI compensation was paid into the account so she was unable to receive this compensation. I note NatWest paid the 8% compensatory interest by cheque direct to Miss D.

I consider the current account debt not to be so closely associated with the PPI "*deb*t" NatWest owed to Miss D that the principal of set off should be used in this situation. It follows I do not need to make a firm finding on if it would be fair and just for NatWest to use the redress for set off in view of Miss D's circumstances.

summary

I am not persuaded that there is a close association between the debt that arose from Miss D's current account and the debt NatWest owed to her for the mis-sale of two PPI policies on two separate loan accounts. I am also not persuaded that under the terms of the offer it made, NatWest should have paid the redress to a closed current account.

Taking account of all the facts in this complaint, I am of the view it is fair and reasonable that all the redress should be paid directly to Miss D and I uphold Miss D's complaint.

fair compensation

Miss D has repaid both loans in full so there are no outstanding arrears on the loans directly associated with the sale of the PPI.

Miss D should as far as possible be placed back in the position she would have been in had the PPI policy not been sold. I understand that in January 2014 NatWest paid the compensation due to her into the current account to pay towards the debt on that account. It also sent a cheque to Miss D for the 8% interest it had calculated due at that time.

I direct that NatWest should pay to Miss D, by cheque, the amounts calculated for the compensation on both the PPI policies. NatWest must also recalculate the interest at 8% per year simple† to bring this up to date and pay Miss D the difference between the new 8% total and that amount already calculated and paid directly to Miss D. The difference in these amounts should be paid directly to Miss D.

† I understand NatWest is required to deduct basic rate tax from this part of the compensation. Whether Miss D needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website.

Miss D should refer back to NatWest if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons set out above, I uphold Miss D's complaint and direct that the full redress for both PPI policies be paid directly to her. National Westminster Bank Plc must recalculate the redress and pay Miss D fair compensation directly to her as set out above.

I make no other award against National Westminster Bank Plc.

Christine Fraser
ombudsman