

complaint

Miss T complains about the way that Santander UK Plc dealt with her personal loan account during an extended period of ill-health and financial difficulty. She also complains that the bank proposes to use the payment protection insurance ("PPI") refund it has offered to her to offset the balance outstanding on her loan account.

background

Miss T says her loan is in arrears because Santander didn't respond to the repayment plan she offered in 2010. She says if she had been allowed to repay as she had offered, the loan would have been paid off by now. Santander did not respond to the many letters and telephone calls she made between 2010 and 2013. In 2013 it passed the loan to a debt management company. Miss T wants the loan to be written off.

Miss T further complains that Santander has agreed the PPI it sold her was not appropriate and has offered compensation. The compensation was for 5 loans she'd taken since 2002 which all included PPI. Santander intends to deduct the amount she received for a successful claim under the 2007 policy, and pay the remaining amount into her loan account. Miss T wants that compensation to be paid to her so that she can use the money as she wishes.

Santander has agreed it was wrong to delay making arrangements with Miss T to repay her loan. It apologised and sent her cheques totalling £90 and made a payment of £244.99 into the loan account.

The adjudicator agreed that Santander had not responded properly between 2010 and 2013. She said Miss T had been trying to put in place a reduced repayment arrangement, but the bank had not made this easy for her.

The adjudicator thought the compensation that had been paid was too low and asked Santander to increase it. The bank agreed and offered to pay Miss T, directly, an additional £180 for the frustration it had caused. The adjudicator thought this was fair. She didn't recommend that the loan should be written off. She said Miss T had had the benefit of the loan money, and could have made repayments to Santander.

The compensation for the PPI was intended to put Miss T in the position she would have been in if this had not been wrongly sold to her. The adjudicator was satisfied that it was fair to repay that money into the loan account it had come from.

Miss T did not agree. She said that as Santander has accepted it was wrong, it should pay adequate compensation. She also said because Santander had made a mistake when it sold her the PPI, it should not be allowed to dictate how the compensation is used.

my provisional decision

I reached different findings from the adjudicator. So I issued a provisional decision. This gave both parties the chance to comment before I issued this final decision. In my provisional decision I said:

Santander's debt recovery action

- Between 2009 and 2010, Miss T was involved in discussions with her PPI insurers because of her ill health and the financial difficulties this caused her. I agreed that Santander had acted properly at this time, by placing her loan account on hold. This was to allow Miss T to establish both her insurance position and whether she would be well enough to return to work.
- In 2010 Santander defaulted her account. No repayments had been made for a year and Miss T had kept the bank informed about her up to date position. I thought the bank hadn't made a mistake in applying this default. I agreed with the adjudicator that this should have allowed a longer term repayment plan to be put in place.
- Between the registering of the default and 2013, Miss T made lots of calls and wrote many letters to Santander, asking it to put in place a reduced repayment plan. She was not given an answer about what was happening to her account and was repeatedly told it was awaiting a manager's decision. I agree that the bank was wrong to do this. Santander had not explained why it waited three years before passing the account to a debt management agency in 2013.
- This delay meant that Miss T was not able to set up a long term repayment plan. But I did not agree that this meant she was prevented from paying off the loan. During this period the bank did offer a way for her to make individual repayments.
- I was not satisfied that if Miss T had been allowed to set up a long term repayment plan in 2010 this loan would have been repaid. I'd looked at the documents she'd given us. I found it unlikely Miss T would have been able to afford anything more than a nominal payment. I did not consider that such payments would have been enough to have paid off the loan.
- I provisionally agreed with the adjudicator that it would not be fair for the loan to be written off as Miss T has had the benefit of the funds. I was satisfied the additional offer by Santander of £180 to be paid to Miss T fairly compensates her for the frustration and upset this delay has caused. This is in addition to the £90 in cheques she has had and the £244.99 already paid towards the loan.

the PPI refund

- Miss T had taken 5 loans with Santander (including its predecessor bank). It said those loans included PPI premiums. I understood that all but the 2007 loan account (ending 3664) had been repaid. The 2007 loan was closed in 2010 when it was defaulted, but there's still a debt outstanding on that loan.
- I didn't agree with Santander that it was entitled to "set off" the PPI refund for all 5 loans against the arrears on the 2007 loan.
- We take into account the law in our considerations. In this case, the relevant law is the *equitable right to set off* which allows people to "set-off" *closely connected* debts. This means that one person (A) can deduct from a debt that they owe another person (B), money which that person (B) owes to them.

- This is different from the “banker’s right of set off” which is the right a bank has to transfer funds from a consumer’s account which is in credit to a consumer’s account which is in debt. The “banker’s right of set off” can only be used by a bank where the consumer holds both accounts in question in the same capacity (for example, it couldn’t use its right of set-off if the consumer held one account in their sole name, and another in joint names). And it can only apply the “banker’s right of set off” when a debt is due and payable. As PPI redress is not an “account”, but rather an amount of compensation which has resulted from the mis-sale of a product, I was not persuaded that the “banker’s right of set off” applied here.
- Returning to the legal position (which seemed most relevant to this case), for me to be satisfied that the equitable right of set-off should apply in Miss T’s case, I would need to be satisfied that a *close connection* existed between the compensation for the mis-sale of the policies and the arrears on the loan account. If I established there was a close connection I would then need to think about whether it would be unjust not to allow Santander to set off in this way. So, both tests needed to be satisfied in order for me to conclude that Santander had an equitable right to set-off the PPI compensation (the overpayments Miss T paid because PPI was added to her loans) against the debt on Miss T’s 2007 loan account.
- For the equitable 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 unjust not to allow Santander to set-off in this way. *Both* tests must be satisfied for me to conclude Santander has an equitable right to set-off the PPI compensation against Miss T’s outstanding debt on her 2007 loan account.
- In consideration of these tests, I was persuaded there was a *close connection* between the *compensation* for the mis-sold PPI policy taken out with Miss T’s 2007 loan and the outstanding *debt* on her 2007 loan account ending 3664.
- The compensation for the 2007 PPI policy arose from shortcomings in the way the policy was sold. The arrears on Miss T’s 2007 loan account included the PPI premium (£4,132.78) and interest on the PPI premium (£800.18). But she had had the benefit of the claim (£4,587.17) under that policy. So I provisionally found that Santander could set off the 2007 PPI premium refund and statutory interest on that (less the amount of the successful claim under the 2007 PPI policy) against the arrears on the 2007 loan.
- But I found the compensation for the PPI mis-sold with the remaining 4 loans should be paid directly to Miss T. I said this because I was not persuaded the compensation and the 2007 loan account debt were sufficiently closely connected for it to be fair and reasonable for the compensation from the mis-sale of the other 4 PPI policies to be offset against the debt on Miss T’s 2007 loan account.

summary

- I didn’t find it fair and reasonable for Santander to use any of the compensation from the PPI policies it sold with the 4 other loans against the outstanding debt on the 2007 loan account ending 3664.
- Therefore my provisional decision was that Santander should recalculate the amount due to Miss T for the PPI policies it mis-sold on the 4 loan accounts ending 3608,

7288, 4435 and 7146. It should bring this amount up to date with interest at 8% per annum. And it should pay this amount to Miss T directly by cheque.

- I said Santander was able to use the compensation for the PPI sold with the 2007 loan (less the amount Miss T received for that claim) in reduction of the arrears on the 2007 loan account ending 3664.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. And in doing so, I've taken into account (though I'm not necessarily bound by) any relevant regulatory rules, the law and good industry practice.

Miss T responded to say she accepted my provisional decision. Santander said it had received my decision. It hasn't made any further comments. Having reviewed the complaint again, I can't see any reason to depart from my provisional conclusions. I confirm them here. Santander should give Miss T details of the final amount when it makes payment to her.

my final decision

My decision is that I uphold this complaint in part. I order Santander UK Plc to:

- pay Miss T directly by cheque £180 compensation (in addition to the £90 cheques it has already sent her and the reduction in her loan account balance of £244.99); and
- recalculate the PPI compensation for the 4 other loans (that is all the loans except 3664), as set out in the summary above, and to pay it to Miss T.

I understand Santander is required to deduct basic rate tax from the interest element of its payment. Whether Miss T 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 T should refer back to Santander if she is unsure of the approach it has taken and both parties should contact HMRC if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss T to accept or reject my decision before 23 April 2015.

Amanda Maycock
ombudsman