

complaint

Mr and Mrs J's complaint is about the compensation Santander UK Plc (Santander) offered to settle their complaint about a payment protection insurance (PPI) policy taken out with a loan.

background

Mr and Mrs J complained in 2011 to Santander about the sale of a PPI policy associated with their loan. The loan and policy were taken out in December 2006. Mr and Mrs J were unable to continue payments to the loan in 2010 and the loan went into arrears.

Santander wrote to Mr and Mrs J in May 2011 and said it was willing to settle their complaint. Santander said in the offer letter that it would use the compensation to reduce the outstanding debt on the loan.

Mr and Mrs J say they spoke to Santander and had understood that if they accepted the offer, although less than the debt outstanding, the loan would be fully settled. Mr and Mrs J say they signed and returned the acceptance in November 2011.

Santander says it never received the acceptance of offer. So the compensation was never set against the loan debt. The debt was passed to third party debt collectors to seek repayment of the full amount outstanding.

Santander has said if Mr and Mrs J accept its offer this will be partial settlement of the debt and although Santander will not pursue the outstanding amount after partial settlement, it will show on Mr and Mrs J's credit file as only partially settled.

Mr and Mrs J are not happy with this. They say Santander told them the payment of the compensation to the debt would be accepted as full and final settlement. They want Santander to agree to this and amend their credit file to reflect this. Mr and Mrs J also say that the amount Santander have calculated as still owing on the debt is wrong.

Our adjudicator has looked at the case and said the approach of Santander is fair. Mr and Mrs J disagree and have asked that an ombudsman considers their complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Santander has agreed to settle Mr and Mrs J's complaint about the mis-sale of the policy. So I will not address the issue of how the PPI came to be sold to Mr and Mrs J. I am in this decision only looking at the circumstances relating to the payment of the compensation for the PPI sold with the loan.

working out the amount of compensation due to Mr and Mrs J.

In its original offer letter Santander set out how much compensation it said was due. It said the amount due was £4,019.14 which would be used to reduce the debt on the loan.

I am not satisfied this calculation was totally correct. From the figures I have seen, at this time Santander doesn't seem to have taken into account two payments Mr and Mrs J made to the account in January and March 2011.

Santander provided updated calculations in December 2014. These show the cost of the policy to Mr and Mrs J was £2,591.86 and the 8% simple interest on this to December 2014 was £1,259.19. Santander then took the full cost of the PPI over the term of the loan, £3,564.00, deducted the rebate of £74.12 and to this added the 8% simple interest, giving a total offer of compensation of £4,749.07. By including the full amount of the premium rather than the amount Mr and Mrs J had actually paid, Santander have removed from the loan debt all the PPI costs.

Mr and Mrs J do not agree the amount outstanding on their loan is correct. They have submitted some calculations of their own. I have looked at these carefully. Mr and Mrs J say they made 42 monthly payments to the loan and then three additional payments. Having checked the account statements, it seems to me that they only made 38 repayments plus the three additional amounts. So I don't think that Mr and Mrs J's calculations are correct.

Using the correct number of payments, that is 38, in the method used by Mr and Mrs J, the difference in the amount outstanding on the loan is just over £2,000.00 not just over £700.00 as Mr and Mrs J have said.

So I am satisfied that the calculations in the offer made by Santander in December 2014 are fair, to work out how much compensation is due to Mr and Mrs J and so show how much of the debt would be unpaid.

how the compensation is to be used

Mr and Mrs J do not object to the compensation being used to reduce their debt, but they want the amount of compensation to be taken as full and final settlement of the debt and their credit record cleared. Mr and Mrs J say they were told in phone calls with Santander in 2011 and 2012 that the compensation would settle the debt in full.

Santander says this was not the case. It says it was willing to accept the compensation as partial settlement and not seek to recover the remaining amount. But this position of partial settlement would be shown on their credit record.

Santander has provided their records showing notes made of a number of calls and I have listened to a recording of a call in 2012 that Mr J has referred to. The records and the call I have heard reflect that Santander explained it would use the compensation as partial payment of the debt and not pursue the remaining amount. It was also noted and said in the call that this would show on Mr and Mrs J's credit record as only a partial settlement. I have not seen anything, or heard in the call, that shows Santander said the compensation would be accepted in full and final settlement of the debt.

Mr and Mrs J say they sent in the acceptance of the offer in November 2011. Santander says it never received it. The notes and the phone call from Santander show that Mr J said they had returned the acceptance and that they were accepting the offer. In the phone call in 2012 Mr J says they had sent in the acceptance of the offer in November 2011.

I have not seen anything sent to Mr and Mrs J to show the up to date position by Santander following the telephone calls Mr J made to them. Nor that a copy of the acceptance form was

sent again to Mr and Mrs J, with an explanation it would need to be returned for the compensation to be actioned and set against the debt.

Mr and Mrs J seem to have been confused and say they did not understand why the full debt of £5,560.11 was being chased. They thought, having returned the acceptance in 2011, that the compensation had been set against the debt and so they did not have to pay anything more.

Santander confirmed in 2013 the full debt had been passed to a third party debt collection agency. In November 2013 Santander said in correspondence with this service it would put collection of the debt on hold pending the outcome of the complaint.

I think the way Santander was intending to use the compensation was fair. It was right it could set against the debt Mr and Mrs J owed the amount it owed to them for compensation. I am also satisfied that Santander did not say the compensation would be in full and final settlement of the debt. I think Mr and Mrs J were confused about this.

trouble and upset caused to Mr and Mrs J.

I don't think it was made totally clear to Mr and Mrs J that they needed to continue making payments towards the debt after the offer was originally made in 2011. The call in 2012 suggested the partial settlement meant the rest of the debt may not be pursued. Santander doesn't seem to have taken action to obtain the signed agreement to the offer back from Mr and Mrs J so the compensation could be set against the debt.

Yet the debt was sent to a third party recovery agent. I have also seen correspondence in January 2015 from Santander's recovery agents which says "*our client has advised that they have not received confirmation regarding your PPI dispute*". Santander had agreed in 2013 that any recovery would be put on hold. This complaint was with this service and Santander knew this. So I don't understand why active recovery, of the full amount of the debt, was at this point being pursued.

I think the correspondence and chasing by the recovery agent in this matter was an unnecessary upset for Mr and Mrs J. They had brought their complaint to this service and during the course of the investigation it was agreed no action would be taken on collection at this time.

summary

Mr and Mrs J were not originally made an accurate offer in 2011 as the amount did not include all the payments made towards the cost of the PPI.

However, the calculation and offer made by Santander in December 2014 seems to me to have been correct and fair. This offer should be updated for the 8% simple interest to be calculated to the date of settlement.

I also think it is fair that Santander should set the amount of compensation against the debt Mr and Mrs J owe to them for the loan.

Mr and Mrs J have not repaid the loan in full so this is a partial settlement of the debt. Mr and Mrs J's credit record will reflect this position.

I think that Mr and Mrs J have been given unnecessary trouble and upset by the way Santander has dealt with their complaint by errors and failure to follow up Mr and Mrs J's telephone notification of acceptance. I don't think the correspondence from the third party recovery agents of Santander was reasonable when the complaint was on-going and this has caused unnecessary upset.

So I am awarding £250.00 for the trouble and upset caused to Mr and Mrs J.

my final decision

For the reasons set out I agree that the way Santander UK PLC have calculated the compensation due to Mr and Mrs J in its offer of December 2014 is correct. I also agree that it is fair this compensation is used to reduce the debt Mr and Mrs J owe to Santander UK Plc and this is accepted as partial settlement, as Santander indicated.

In addition I award £250.00 for the trouble and upset caused to Mr and Mrs J by the way Santander UK Plc dealt with this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs J to accept or reject my decision before 18 March 2015.

Christine Fraser
ombudsman