

## **complaint**

Mrs A's complaint is about how National Westminster Bank Plc (Nat West) used the compensation it offered for her complaint about a mis-sold payment protection insurance (PPI) policy. Mrs A wants Nat West to pay all the compensation directly to her.

## **background**

Mrs A complained to Nat West about the sale of a PPI policy taken out with a loan. The policy was paid for by a single amount that was added to the loan.

Nat West wrote to Mrs A in July 2012 saying it was willing to settle her complaint as "*a gesture of goodwill and without admission of liability*". The letter sent to her set out how much had been paid for the PPI and how much was added as 8% simple interest as compensation for being out of pocket.

Mrs A returned to Nat West a signed acceptance form and in August received a cheque, but only for the amount of 8% simple interest. She wrote to Nat West to ask why she had not received the full amount she had signed to accept. Nat West responded saying as her loan was in arrears it had used the amount she had paid for the PPI to reduce the arrears.

Mrs A was unhappy as she said she was not in arrears on this loan and wanted the full amount of compensation that had been offered and which she had agreed to accept.

Our adjudicator agreed with Mrs A and said Nat West should pay all the compensation directly to Mrs A.

Nat West disagreed and asked an ombudsman to consider the 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.

Nat West has agreed to settle Mrs A's complaints about the mis-sale of the policy as a gesture of goodwill. So I will not address the issue of how the PPI policy came to be sold to Mrs A.

Having taken everything into account I am upholding Mrs A's complaint.

In its response to the adjudicator's findings Nat West has told us:

*"The Bank maintains and defends its "right of set off" in cases of indebtedness. We do not accept your or the customer's assertion that because the premium refund relates to loans and the refund was made to a different account, that it cannot be used to reduce the current account arrears. As the servicing account for the loans, the current account debt is in part due to the original loan and both are inextricably linked by this close association."*

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 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 unjust not to allow Nat West to set-off in this way. *Both* tests must be satisfied for me to find that Nat West has an equitable right to set-off the PPI compensation against Mrs A's outstanding debt on her current account.

I have seen no evidence that Mrs A's current account was used in any way other than as a normal current account when it was open. Mrs A made many payments from this account, not only the payments to pay this loan.

The compensation for the PPI policy arises from shortcomings in the way the policy was sold with the loan. As the current account was not set up *exclusively* to make the payments on Mrs A's loan, I am not satisfied the debt on the current account is *closely connected* to the compensation for the complaint related to this PPI policy. So it follows, I do not find it to be fair and reasonable for the compensation for the PPI policy to be used against the debt on Mrs A's current account.

I also do not consider that Nat West clearly informed Mrs A of its intention to exercise its right of set-off in the offer it made to her.

I have carefully read the letter Nat West sent to Mrs A with the acceptance form. This letter included several pages and contains details of how the compensation had been calculated. On page two it says:

*"To accept my offer, all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group."*

The wording on the acceptance form that Mrs A actually signed says:

*"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my NatWest current account or by cheque if no account remains open."*

The covering letter saying that debts *"with the group"* will be cleared is not in a particularly prominent part of the letter. It does not specifically mention or make clear that any part of the compensation would be used to set against the debt on Mrs A's current account.

I think Mrs A would be more likely to carefully read the statement on the actual acceptance form, which was just above where she signed. Mrs A's current account was closed and in arrears, so it would seem likely she would consider the money would be paid to her, in full, by cheque.

Taking account of all the information provided to me I am not satisfied Nat West made it clear in its offer letter how it was intending to use the compensation for the PPI sold to Mrs A with loans. I am also not satisfied that there is a close connection between the compensation and the arrears on Mrs A's current account. Mrs A says she had paid off this loan in full and Nat West has confirmed there were no arrears or debt associated with this loan. So all compensation due for the PPI bought with the loan should be paid to Mrs A direct.

*fair compensation*

Nat West should pay directly to Mrs A the cost of the PPI on this loan which it set against her current account debt. Nat West also needs to update its calculation of 8% simple interest to the date of final settlement for the amount Mrs A has not as yet received.

I have also taken account of the letter sent by Nat West to Mrs A when she wrote to ask why she had not received the full amount of compensation as stated in the offer letter and that she had accepted. In its response Nat West said:

*"As the loan in your complaint was active and in arrears, and following The Royal Bank of Scotland Group policy, we used your offer to pay off part of the arrears on the account. Please note that the term "in arrears" in this context means behind on the scheduled payments".*

This statement was incorrect. Nat West has indicated to this service that the loan in this case had no arrears and that no debt had been written off or sold connected with this particular loan. So Nat West did not use the offer to pay off arrears on this loan as it told Mrs A. Nat West has also confirmed it actually made the refund of the cost of the PPI to Mrs A's current account, not to arrears on the account as stated in the letter.

I do not know why Nat West said this and telling Mrs A she was in arrears on this loan clearly caused her some upset. So I am awarding Mrs A an additional amount of £100.00 for the upset caused by Nat West in the way it dealt with her complaint.

#### **my final decision**

For the reasons set out I direct Royal Bank of Scotland PLC to recalculate Mrs A's compensation as outlined and pay this as I have indicated.

In addition Nat West should pay to Mrs A an additional £100.00 for the upset caused in the way it handled her complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 20 March 2015.

Christine Fraser  
**ombudsman**