

complaint

Ms D isn't happy with how Tesco Personal Finance Plc ('Tesco') has offered to resolve her complaint about a payment protection insurance ('PPI') policy attached to her loan.

background

In 1999 Ms D took out a loan with Tesco for £15,000 with a term of 60 months. The loan, if it ran to term, would have attracted a further £3,510 in interest. So Ms D's total borrowing for the loan was £18,510.

The loan had PPI attached. And the PPI was paid for upfront by Ms D borrowing more. This type of policy is called a 'single premium' PPI policy.

The PPI cost a further £2,321 and would have cost more with interest over the full term of the loan. The PPI, if it ran to term, would have attracted a further £542.80 in interest. So Ms D's total borrowing for the PPI was £2,863.80.

In total the amount Ms D had to pay back for the loan and the PPI was £21,373.80.

Ms D's combined monthly payment for the loan and PPI was £356.23. So £308.50 was for the loan and the interest the loan attracted. And £47.73 was for the PPI and the interest the PPI attracted.

At some point Ms D got into trouble in making the repayments on the loan and Tesco sold the debt on to a third party. She continued to make some payments (but not full payments) towards the outstanding balance that was owed. But there still remains an outstanding balance that hasn't been fully paid back.

In 2018 Ms D complained that the PPI policy had been mis-sold. Tesco agreed to settle Ms D's complaint. Its offer was to place Ms D in the position she would be in had PPI not been added to the loan. It calculated the compensation to be £3,162.29 (after tax).

It worked out that Ms D had paid £1,869.68 towards the PPI and the interest (of the total £2,863.80). So it offered to pay that back and remove the unpaid PPI (so £994.12) from the outstanding balance.

Tesco also worked out that because Ms D had paid £1,869.68 towards the PPI (and interest) she was owed a further £1,615.76 as compensation for being out of pocket of those funds. This amount was calculated as 8% simple interest on the overpayments Ms D had made. This amount was taxable. After tax this part of the compensation came to £1,292.61.

So, in summary Tesco worked out that it owed Ms D a total of £3,162.29 (£1,869.68 and £1,292.61) in compensation. And it would remove the unpaid PPI (£994.12) from the outstanding balance that was still owed.

But, Ms D still had a debt outstanding with the third party – which was more than the £3,162.29 Tesco owed Ms D.

Tesco, in its letter to Ms D, explained that it intended to use the PPI compensation to reduce the amount Ms D owes for this debt.

Ms D didn't accept the offer. She thinks it is unfair for Tesco to buy the debt back – because Tesco chose to sell the debt on. Ms D thinks the debt with Tesco isn't enforceable as it is 20 years old. Ms D says she only has her pension as income and would like the compensation to be paid directly to her so she can negotiate a settlement in full and final with the third party herself.

Our adjudicator looked at the complaint and thought the offer and approach Tesco intended to take was fair.

As the matter hasn't been resolved it's been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've listened to everything Ms D has said. I understand that Ms D will be disappointed, but I agree that the approach Tesco wants to take to resolve her complaint is fair. I'll explain why.

what has Tesco calculated as compensation – and is it fair?

When I decide, or a business agrees, that a PPI policy has been mis-sold I'd expect it to put the consumer in the position they would have been in had they not taken out the PPI policy, as far as is possible.

Tesco looked at the effect PPI had on Ms D's loan and calculated that it owed her £3,162.29 after tax. And it removed the remaining unpaid PPI from the outstanding balance.

Having looked at Tesco's offer, it is fair and in line with what I'd expect to see.

But because Tesco said there was still an outstanding balance / debt which hadn't been paid back, it wants to buy part of the debt back and use Ms D's PPI compensation to reduce what is owed.

is Tesco's proposal to buy the debt back and reduce what Ms D owes fair?

Tesco sold the debt on to a third party. Tesco had a right to sell the debt to the third party and it also has a right to buy that debt back, or a part of it, which is what it wants to do – to enable it to use the compensation to reduce what is owed under Ms D's loan.

There is in law what is called the *equitable right of set-off* which allows people to 'set-off' closely connected debts. This means that 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 fair for Tesco to set-off in this way. Both tests must be satisfied for me to find that Tesco has an equitable right to set-off the PPI compensation against Ms D's outstanding debt on her loan account.

The PPI sold to Ms D was directly connected to her loan account. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the loan debt are closely connected. They are both related to the same account Ms D had with Tesco.

I've also seen nothing to show Ms D has other priority debts so she needs the compensation to pay those. So, again I think it's fair for Tesco to use the compensation it owes Ms D to reduce the debt she owes for the loan.

I appreciate that Ms D says the loan was taken 20 years ago and she thinks it isn't enforceable. And that she would like to use the compensation to negotiate her own settlement with the third party. But, Ms D had the use of the loan and not all of it has been paid back. So I think it is fair that the compensation is used to reduce what is owed. Tesco's intention to use the PPI compensation to reduce what is owed actually puts the outstanding balance in the position it would be in had Ms D not taken PPI.

The additional compensation that Tesco offered for Ms D being out of pocket means that Ms D's debt is further reduced. And I think that is fair, considering what I said above about what is fair when two parties owe each other a debt.

I know this decision will come as a disappointment to Ms D, and I empathise with her situation. But for the reasons I've given, I think Tesco are acting fairly.

my final decision

As I've discussed above, my final decision is that the amount of compensation Tesco Personal Finance Plc has offered to resolve Ms D's PPI complaint is fair.

And Tesco Personal Finance Plc's intention to use the PPI compensation amount to reduce what Ms D owes is fair.

It is up to Ms D as to whether she wishes to accept Tesco Personal Finance Plc's offer of compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms D to accept or reject my decision before 4 March 2019.

Matthew Horner
ombudsman