Financial Ombudsman Service

complaint

Mr D's complaint is about the sale of three single premium payment protection insurance (PPI) policies. These were sold alongside three loans in a chain, each loan refinancing the previous one.

Mr D says National Westminster Bank Plc (Nat West) mis-sold the PPI policies to him.

Nat West agreed to pay Mr D compensation for the sale of these policies, but it used part of the compensation to reduce arrears on the final loan in the chain and on a current account Mr D held with Nat West.

Mr D wants the compensation paid directly to him.

background

The three loans were sold between July 2004 and June 2008.

Each loan was cleared and refinanced by the following loan. Loan ending 3613 was the final loan in the chain and had fallen into arrears by the time Mr D complained about the sale of the policies.

In June 2012 Nat West agreed to settle Mr D's complaint and sent three separate letters to Mr D making offers to pay compensation for each of the PPI policies. It dealt with the compensation on each sale separately.

Nat West agreed to refund to Mr D the amount he had paid in premiums for the PPI policies together with interest he paid because of the premiums. It also agreed to pay Mr D interest calculated at 8% simple from the time he made the payments to the time it paid him the compensation. This was to compensate him for the time he was out of pocket. In the June 2012 letters Nat West stated the amount that would be repaid in total, including 8% simple interest.

Mr D signed the settlement forms attached to the offer letters.

Nat West wrote to Mr D again in November 2012, again with a letter for each loan and PPI, saying the payments had been made. These letters said that if the loan account was in arrears the payment would be firstly applied against that outstanding debt, but the 8% simple interest had been paid direct to him. These letters gave slightly different amounts as the total compensation.

For the first two loans, Nat West actually used the refund of premiums and associated interest to reduce the arrears on Mr D's current account. For the refund on the final loan in the chain, which was in arrears, Nat West set the refund against those arrears.

Mr D then received a further cheque which Nat West has said was the balance of the refund paid after the debt on the current account was cleared.

Mr D was unhappy with how Nat West had used the compensation and also that Nat West had not made clear what it was going to do. He was confused with all the different amounts put forward in the letters and then the amounts of the cheques paid to him. Also he was unhappy with the way Nat West had dealt with his complaint, including sending the three letters in November for the different loans all addressed to him using different initials, two of which were incorrect.

In October 2013 an adjudicator from this service wrote to Nat West. In her letter she explained why she was partially upholding Mr D's complaint.

The adjudicator explained that only the compensation for the PPI policy sold with the last loan ending 3613 could be used to reduce the arrears on this loan. This was because the PPI policy and the loan were closely associated because it was sold to protect the loan.

But the adjudicator said that *all the remaining compensation* from this PPI policy and *all the compensation* from the other two PPI policies should have been paid directly to Mr D. This was because the other policies were sold to protect different loans, which had both been cleared. And the current account arrears were not related to the PPI compensation. The adjudicator also recommended Nat West pay £100.00 for the distress and inconvenience caused to Mr D in the way Nat West had dealt with his complaint.

Nat West disagreed with the adjudicator's findings and asked for an ombudsman to review the complaint.

my findings

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

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr D's case.

Nat West has agreed to pay compensation for the sale of all three policies so I won't address the issue of how the PPI policies came to be sold. I've only looked at whether it was fair and reasonable for Nat West to use some of the compensation to offset the arrears against the final loan and the current account.

Nat West has also acknowledged it did not when doing its original calculations take into account the PPI carried forward into the new loans. It has now reviewed its calculation process and in this case recently provided updated calculations.

Taking everything into account I am partially upholding Mr D's complaint.

right of set-off

Nat West has said it has a "right of set off". When deciding a case, 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 to 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). It can only apply the "*banker's right of set off*" when a debt is due and payable. PPI redress is not an

"*account*", but rather an amount of compensation which has resulted from the mis-sale of a product. So I don't think that the "banker's right of set off" applies here.

Returning to the legal position (which seems most relevant to this case), for me to be satisfied that the equitable right of set-off should apply in Mr D's case, I would need to be satisfied that a *close connection* exists between the compensation for the mis-sale of the policies and the arrears on the current account. If I establish there is a close connection I would then need to think about whether it would be unfair not to allow Nat West to set off in this way. So, both tests need to be satisfied in order for me to conclude that Nat West has an equitable right to set-off the PPI compensation (the overpayments Mr D paid because PPI was added to his loans) against the debt on Mr D's current account.

Having considered these tests, I'm not persuaded there is a *close* connection between the *compensation* for the mis-sold PPI policies taken out in connection with Mr D's loans and the outstanding *debt* on his current account. The compensation for all the PPI policies arises from shortcomings in the way the policies were sold. The arrears on Mr D's current account flow from entirely different circumstances.

Given this, I am not satisfied it is fair and reasonable for the compensation from the mis-sale of any of the PPI to be off set against the debt on Mr D's current account as these are not sufficiently closely connected.

<u>*the compensation for the first two loans*</u>

Nat West told Mr D in June 2012 the amounts it had worked out that should be paid to him as compensation. Mr D accepted their offer as he believed he would be paid the amount set out in the offer.

In November Nat West wrote to Mr D saying how much had been paid to him. At this time the figures were slightly different. Nat West has now explained to this service it had updated the 8% simple interest to the date it made the payment, so this is why there was a slight change in the figures. But it did not explain this to Mr D in its correspondence. Mr D received cheques for the 8% interest which did not match any figures he had already been told.

Although Nat West sent directly to Mr D cheques for the 8% simple interest it used the premiums and interest refunded for the PPI as part of the first two loans, to reduce a debt Mr D had on his current account.

As I have already explained I do not consider there is a close connection to allow Nat West to do this, so this refund should have been paid directly to Mr D.

I have also noted that the letters sent to Mr D in November 2012 explaining how the payments had been made actually said:

"Please note that if your loan account was in arrears this payment will firstly have been applied against the outstanding debt with any remaining payment being paid directly. This excludes the 8% compensatory interest that was paid to you regardless of any arrears. … If you are currently with our Credit Management Services (CMS) then your payment will have been made directly to CMS and they will use the amount to reduce your outstanding debt"
This wording, which was the same in all the letters sent in November 2012, refers to the *"loan account"* being in arrears and so using the payment against this. When talking about passing payment to the CMS in this letter it suggests again the compensation payment will be used against "*your"* outstanding debt.

Mr D had settled each of these two loans, by borrowing on the next loan. So he didn't owe any arrears or debt on these two loans. He did not understand from the letters sent by Nat West what it had done.

Nat West had been unable to provide copies of the acceptance forms Mr D signed, I have only been provided with the first page of the offer letter sent in June 2012 for each PPI sale.

I am aware of the standard wording used in such offer letters by Nat West and that reference is only made to settlement of debts with "*the Group*" in the second page of such letters. I have seen nothing to show me that Nat West made it clear it was going to use the redress for the first two loans against Mr D's current account debt. Also the letters sent in November 2012, supposedly explaining how the payments were used, refer only to the loans which would suggest to Mr D any set off would be only against each loan account. No reference is ever made to his current account debt.

Mr D's current account was being managed by Nat West's credit management services. So it seems likely to me that Mr D would have regarded this account as being closed to him, in as much as he had no access to any funds that were deposited there. I think if Mr D had been given clearer information so he understood part of the compensation would be used to reduce the current account debt, he would not have signed the settlement form.

So overall I find that Nat West didn't make it clear to Mr D it intended to use part of the compensation to settle the outstanding debt on his current account and send him the 8% interest portion by cheques. Then later send a further cheque for the amount left over after clearing the current account debt.

It seems to me Nat West's actions in dealing with Mr D's complaint and processing his refund for the first two loans was very confusing for Mr D. It did not make clear what it was going to do or explain how it had reached any of the amounts actually sent to Mr D by cheque.

offsetting against the final loan ending 3613

The Financial Services Authority (now known as the Financial Conduct Authority) issued guidance for financial businesses handling PPI complaints. This guidance states:

"*Where the complainant's loan or credit card is in arrears, the firm may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the firms offer of redress. The firm should act fairly and reasonably in deciding whether to make such a payment" (DISP App 3.9.1 G)."*

I think it is fair for Nat West to use the compensation for the premiums and the interest from the third PPI policy on loan 3613 to reduce the arrears on the loan it was sold to protect. I say this because in my view the loan in arrears was directly linked with the policy. This PPI policy was taken out to cover repayments on this particular loan.

Also I have also not seen any evidence that would suggest it would be unfair for Nat West to use the refund in this way for this particular loan.

summary

I don't find it fair and reasonable for Nat West to use *any* of the compensation from the PPI policies it sold against the outstanding debt on Mr D's current account.

I do think it's fair and reasonable for Nat West to have used the compensation from the final PPI policy only, 3613, to pay the arrears on the final loan.

recalculations of compensation for all loans

Nat West has recently provided updated calculations for these loans to take into account any PPI that was carried forward from each loan into the next one. The figures Nat West has worked out for each PPI is for the second and third loans different, but has included amounts for residual PPI in later loans.

Nat West new calculations seem to have been made to June 2012, the original date of the offer. In its original offer the total offered to Mr D for all three loans was £4,014.12 including the 8% interest amounts for each loan. Its new calculations show this as £5,255.24.

The refund for the PPI on the third loan originally was said to be £890.26 and this was applied to the debt on account. The new calculations show the refund for the PPI on this loan should now be £2,831.17, but I understand this includes an amount to adjust the loan (and debt) going forward so all PPI is removed.

Nat West can rightly use the refund for the PPI amounts Mr D paid on this third loan to set off against the debt. If there is now any credit balance after the PPI has been set against the loan, this should be refunded directly to Mr D. Nat West should also update the 8% simple interest per year† for the new amount to what will now be the date of settlement. It can deduct from its 8% calculations the amount it already paid Mr D for this in 2012.

Aside from using the PPI refund to clear the arrears on Mr D's third loan, Nat West should have paid *all* the remaining compensation directly to him.

On the first two loans a total of £2,213.53 was applied to Mr D's current account arrears and there was a credit balance of £1,596.72. This amount was paid by cheque to Mr D in July 2012. This shows the amount of arrears on Mr D's current account was £616.81. This amount Nat West should have paid directly to Mr D.

I have noted that the new calculations for the first two loans result in a slightly lower amount of PPI due to Mr D and that he has already been paid the credit balance. But in the circumstances of this case I think Nat West should honour the higher amount it originally offered to Mr D.

Therefore Nat West should pay Mr D the sum of £616.81 plus 8% interest a year† for the period from June 2012 to the date it makes the payment.

† HM Revenue & Customs requires Nat West to take off tax from this interest. Nat West must give Mr D a certificate showing how much tax it's taken off if he asks for one.

trouble and upset

The adjudicator in this case recommended Nat West pay Mr D £100.00 for the distress and inconvenience caused by the way it dealt with his complaint. Nat West responded to this saying it understood this was purely for addressing correspondence incorrectly to Mr D and did not agree an award for this was appropriate.

I am of the opinion that the incorrectly addressed correspondence was only one error in the way Nat West dealt with this complaint.

Nat West also failed to clearly inform Mr D how it was paying the refunds of the compensation; it did not include any consideration of the cost of the PPI being carried forward from one loan to another; its calculations were incorrect; it did not explain why the amounts Mr D had accepted in the offer letter were different to the amounts actually paid to him. This was all in addition to the wrongly addressed correspondence.

I believe Nat West has caused a lot of upset to Mr D in the way it has dealt with his complaint and I am awarding £250.00 for this trouble and upset.

my final decision

My final decision is that I partly uphold Mr D's complaint.

National Westminster Bank Plc should pay Mr D directly the sum of £616.81 plus interest as set out within this decision. Also if any credit remains after setting off the PPI refund against the third loan this should be paid to Mr D plus 8% simple interest.

National Westminster Bank should also pay Mr D £250 for the trouble and upset he experienced due to the bank's handling of his complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D to accept or reject my decision before 2 April 2015.

Christine Fraser
ombudsman