

complaint

Mr K is complaining that National Westminster Bank Plc ('NatWest') mis-sold him two payment protection insurance ('PPI') policies. He's unhappy that it's used the compensation it offered to reduce an outstanding debt.

background

In Mr K took out two loans through NatWest – the first in 2001 ('loan 1') and the second in 2002 ('loan 2'). He took out PPI policies alongside each loan. In 2003, Mr K took out another loan which paid off loans 1 and 2. He took out two further loans after that, each refinancing the other. But he didn't take out a PPI policy on the last three loans. Mr K was made bankrupt in 2010. And the last loan was included in the bankruptcy.

In 2013, Mr K complained that NatWest had mis-sold the PPI policies. NatWest agreed and offered him £1,397.46 in compensation for loan 1 and £4,420.86 for loan 2. It offered to refund everything that Mr K paid for both policies (including interest charged). And it offered to pay 8% simple interest per year for any time he was out of pocket. But it said that Mr K still owed it money on the last loan after he became bankrupt in 2010. And it used the compensation to reduce what he still owed.

Mr K was unhappy that NatWest wanted to use the compensation to reduce the debt. He says that it told him it would send him a cheque for the compensation. And he says that NatWest never said that it would use the compensation to reduce a debt he owed. He also says that he was discharged from his bankruptcy in September 2013. So, given NatWest offered him compensation after then, he doesn't think what it's doing is fair. He thinks it's unfair that NatWest can benefit from the compensation when it was the one that mis-sold the policies. NatWest maintained that it could do so, so Mr K asked this Service to step in.

NatWest later agreed that it could've better explained how it would compensate Mr K. And it offered him £50 in compensation. But it still thought it could reduce the debt with the compensation offered. Mr K didn't think this offer was fair, given the trouble and upset it had caused him throughout.

Our adjudicator thought NatWest's offer was fair. And he also thought it was fair for NatWest to use the compensation to reduce the debt. Mr K didn't agree 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.

NatWest has accepted that it mis-sold the PPI policies. So I haven't looked at how the policies were sold to Mr K. But NatWest wants to use the amount it's offering in compensation to reduce an outstanding debt it says Mr K still has. In this decision, I've looked at whether I think it's fair for NatWest to do so in this case. I think it is and I'd like to explain why.

is the amount NatWest has offered in compensation for mis-selling PPI fair?

In a situation like this, I'd expect NatWest to put Mr K in the position he'd be in if he hadn't taken out the PPI policies. I'd expect NatWest to work out the difference between what Mr K actually paid each month and what he would've paid if he hadn't taken out PPI with any of his loans. NatWest then needs to add 8% simple interest per year on the extra paid from when he paid it to when it works out compensation.

I've looked at how NatWest has worked out compensation on both loans and I think it's done this in the way I'd expect it to. And Mr K isn't saying that the amount offered is wrong. So I now need to think about whether NatWest can use it to reduce the debt it says he still owes.

can NatWest use the compensation to reduce the amount it says he still owes?

Mr K says that, given he was discharged from his bankruptcy, NatWest can't pursue him for any debt he had in 2010. He thinks that his debts were dissolved once he was discharged. So he doesn't think that NatWest can use the compensation to reduce the debt, because he doesn't think the debt exists anymore. He also thinks it's unfair that NatWest can benefit from the compensation when it was the one who mis-sold the policies.

I've taken into account Mr K's comments, but I don't agree. When Mr K entered into bankruptcy, the debts he owed weren't cancelled. And they weren't cancelled when he was discharged – but by law he couldn't be chased for the debts. The debts he had with NatWest still exist and Mr K still owed NatWest £28,559.21 when the bankruptcy was discharged.

When a consumer enters into formal insolvency arrangements, as Mr K did here, all their outstanding debts are added up to work out what they owe and all the money they have is added up to work out what they can afford to pay. A business then gets part of what it's owed and it then can't chase a consumer for what's left.

I accept that the loans with PPI were paid off before Mr K entered into the bankruptcy. But I still think it can use the compensation to reduce the debts. While NatWest first offered compensation in 2013, it effectively owed him this money once it mis-sold the policy. So it owed him this compensation in 2010 when he first entered into the bankruptcy. So what NatWest has done is to put Mr K in the position as if the compensation was available in 2010 or as if he'd never been sold PPI. I think that's fair.

If Mr K hadn't taken PPI with these loans he would've paid less for them. He might've used this money saved to save more or borrow less. But if he'd saved it up (or been paid compensation earlier), when he entered into the bankruptcy, this would've been used to reduce all of his debts – including what he owed to NatWest. So, given this, I think it's fair for NatWest to use all of the compensation against his debts now.

has NatWest offered a fair amount in compensation for the trouble and upset it caused?

Mr K is unhappy that NatWest didn't tell him that it was going to use the compensation to reduce the debt and he was expecting to receive the money directly. NatWest has agreed that it could've explained it better. I've looked at the letters where NatWest offered compensation. And I agree that NatWest could've explained this better. While it explained that it would apply the compensation to the bankruptcy account, it doesn't make it clear that this applies even if Mr K had been discharged from bankruptcy, as he had. So I can understand why Mr K would've expected to receive the compensation directly to him.

I think that this has caused Mr K some trouble and upset. In addition to expecting to receive the compensation directly, I can see that Mr K contacted NatWest a number of times in December 2013 and January 2014 to find out when he would receive the compensation. And I don't think he would've had to do this if NatWest explained how it would compensate him more clearly.

I also think that NatWest has caused undue delays through its handling of this complaint. And I think that this has caused him further trouble and upset. NatWest has offered him £50 in compensation. And I understand it's already paid this to him. But I think £150 is fairer, given the trouble and upset it's caused Mr K in this case. So I think it should pay him a further £100.

my final decision

For the reasons I've set out above, I think the amount National Westminster Bank Plc has offered in compensation for mis-selling him PPI is fair. It can use this money to reduce the amount he still owed National Westminster Bank Plc once he was discharged from his bankruptcy.

I think National Westminster Bank Plc should pay Mr K £150 in compensation for the trouble and upset it caused him. I understand it has already paid him £50. But, it should pay this to him directly if it hasn't done so. And I direct it to pay him a further £100 in compensation. It should pay this to him directly too.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 July 2016.

Guy Mitchell
ombudsman