

complaint

Ms J's complaint is about how Tesco Personal Finance PLC ("Tesco") has used the compensation it offered on her payment protection insurance ("PPI") policy attached to her credit card, to reduce her outstanding debt.

background

Ms J, through a claims management company ("CMC") brought a complaint to this service that she had been mis-sold PPI.

One of our adjudicators looked into the complaint and thought the PPI hadn't been mis-sold. They went on to explain that Tesco were looking into whether Ms J's PPI policy was affected by the level of commission and profit share that Tesco received but didn't disclose – and whether this created an 'unfair relationship'. Meaning Tesco might have to pay back some of the cost of the PPI.

The CMC on Ms J's behalf accepted the adjudicator's findings that the PPI wasn't mis-sold and agreed to wait to see whether there was any compensation due.

Tesco agreed that an unfair relationship had been created. And to put that right Tesco offered to pay back the amount of commission and profit share that was above 50% of the PPI premium.

Tesco worked out the compensation it owed Ms J and wrote to her explaining that her compensation totalled £1,241.05 (after tax). It included an acceptance form for Ms J to sign and it also said that as Ms J's credit card was in arrears it would use the compensation to reduce the outstanding debt.

Ms J had previously been in an individual voluntary arrangement ("IVA"). And the insolvency practitioner has informed this service that it has an interest in the compensation.

Ms J considers that as she had completed her IVA, the debts no longer existed, so the compensation should be paid directly to her.

One of our adjudicators looked at this and didn't uphold Ms J's complaint.

Ms J remained unhappy and asked for an ombudsman to review the case and make a final decision. Because this matter hasn't been resolved, it's been passed to me.

my findings

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

It's been agreed that PPI policy wasn't mis-sold – so I won't be considering the sale of the PPI policy.

And Ms J hasn't complained about the amount of compensation Tesco offered to pay back – so I won't be looking at that.

But to reassure Ms J, from what this service has seen, Tesco has been working out fair offers of compensation. And I've not seen anything to suggest that they have got Ms J's compensation amount wrong.

In this decision, I've only looked at Ms J's complaint that the compensation offered should be paid to her directly.

Within this complaint, there are three parties that have an interest in the compensation.

There is Ms J – who wants it paid directly to her. Tesco, who want to use the compensation to reduce what it considers Ms J owes it. And finally there is the insolvency practitioner of Ms J's IVA – who considers that under the terms of the IVA, the compensation should be paid to the insolvency practitioner to distribute.

Having carefully considered the matter, it is either fair for Tesco to use the compensation to reduce what Ms J owes – or it is fair for Ms J's insolvency practitioner to receive the compensation. But I don't think it would be fair for Ms J to receive the compensation directly.

I know this will come as a disappointment to Ms J, so I would like to take this opportunity to explain why.

the three parties interested in the compensation:

1) Tesco

Tesco say there is an amount outstanding on Ms J's credit card that hasn't been paid back. So Tesco is still out of pocket for this money. It has accepted it owes Ms J money for the PPI compensation, so it owes her a debt. And it is 'setting off' this debt for the PPI compensation against the debt Ms J owed for her spending on the credit card account which still exists.

The PPI sold to Ms J was directly connected to her credit card. So I am satisfied the PPI compensation and the credit card debt are closely connected. They come out of the same account Ms J had with Tesco.

I would also like to add that on a credit card – PPI premiums (including the commission and profit share) are charged to the outstanding balance. So until that balance is repaid, the PPI (including the commission and profit share) hasn't been paid for. So in effect, Tesco, by applying the compensation to what it is owed under the account, is actually placing the credit card account into the position it would have been in had the amount of unfair commission and profit share not been applied to it. It is, in essence, restructuring Ms J's account to show what the outstanding amount would have been or should be if this commission hadn't been included.

But overall, as both parties owe each other money relating to the same account, I can't say Tesco are acting unfairly in not paying Ms J her compensation directly.

2) *Ms J's insolvency practitioner*

However Ms J was also involved in IVA that has now been completed. And Ms J's insolvency practitioner said that it had an interest in any compensation Ms J was possibly due and this was because of the terms of Ms J's IVA.

Unfortunately that is not something I can consider within this decision. Our service is here to resolve disputes between *consumers* and *financial businesses* quickly and informally. I can't look into a dispute between the insolvency practitioner and Tesco about who should be paid the money. That is something that the insolvency practitioner and Tesco need to sort out between themselves. We're not the right place to interpret IVA contract terms, and we don't have the authority to enforce IVAs.

Ordinarily, if an insolvency practitioner thought a business wasn't meeting the terms of an IVA, the insolvency practitioner would take them to court. And I see no reason why that shouldn't be the case here if applicable. The courts would have the in-depth knowledge of insolvency law that would be needed to interpret the IVA. They'd be able to consider the contract and the underlying dispute between the insolvency practitioner and Tesco. And they'd be able to enforce the IVA if needs be.

A court would be better placed to decide whether the terms of Ms J's IVA meant Tesco needed to pay all of the compensation to the insolvency practitioner – and not reduce/clear its own debt first.

But I would clarify for Ms J's benefit, if the compensation was paid to the insolvency practitioner, because of the terms of her IVA, then again the compensation wouldn't be going to her directly.

3) *Ms J.*

Ms J has said that she considers that as she completed her IVA, her debts no longer existed and she should receive the compensation directly.

When Ms J entered into an IVA, the debts she owed weren't legally cancelled or written off, they were frozen. This is important to understand. The debts didn't cease to exist when the IVA was successfully completed.

Ms J entering an IVA and then successfully completing it, meant by law, she couldn't be chased for any debts included in the IVA. But Ms J had a debt with Tesco and that still exists – because it hasn't been paid back in full.

So despite Ms J completing her IVA – doesn't automatically mean that she is entitled to the compensation.

I also note that Ms J had a concern that Tesco by reducing the debt owed, may have meant her IVA isn't recorded accurately in terms of what is owed or what has been paid to it. Ms J should speak to her insolvency practitioner and let her know the amount of compensation that has been used to reduce her arrears. If the insolvency practitioner needs to do or amend anything, then they can.

in summary

So given the above it is fair for Tesco to use the compensation to reduce what Ms J owes, subject to any legal challenge Ms J's insolvency practitioner may pursue against Tesco under the IVA which would need to be determined by a court.

Tesco has shown that Ms J had an outstanding debt, and that debt was greater than the amount of compensation Tesco owed Ms J - so it used the compensation to reduce what was owed.

If the insolvency practitioner disagrees with what Tesco has done, then that is a dispute between Tesco and the insolvency practitioner. But as I've said, I can't comment on it within this decision, as it isn't something that our service can look at.

Overall, I don't think it would be fair for Ms J to receive the compensation directly.

my final decision

For the reasons set out above, I don't uphold Ms J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 19 January 2019.

Matthew Horner
ombudsman