

## **complaint**

This complaint concerns the redress related to single premium payment protection insurance policies (PPI) associated with two loans from Northern Bank Limited (Northern Bank). Northern Bank wants to set the redress due to Miss J against an outstanding debt on her credit card with Northern Bank. Miss J wants the redress paid directly to her.

## **background**

Miss J took out successive loans with Northern Bank in 2003 and 2004 and at the same time she took out the loans she purchased PPI. In 2009 Miss J settled the loans in full.

Miss J had also taken out a credit card with Northern Bank in 2001.

Miss J complained to Northern Bank in 2012 about the sale of the PPI on her loans. Northern Bank wrote to Miss J in April 2012 stating it upheld her complaint with regard to the loans. It initially offered redress in respect of the last loan but eventually offered a full refund of the costs paid for the PPI on both of the loans. However Northern Bank went on to say that as Miss J had a debt on her credit card account it intended to set the refund of PPI against the credit card debt

Miss J was unhappy with Northern Bank's proposal for the repayment and requested that it pay the refund compensation directly to her. When Northern Bank declined to do this Miss J brought her complaint to this service.

In May 2014 an adjudicator from this service indicated to Northern Bank that its proposal to use the redress to set-off against the credit card would not be fair and reasonable as this account was not linked to the PPI loans. Northern Bank disagreed and requested an ombudsman consider the complaint.

## **my findings**

I have briefly outlined above the background but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances.

Northern Bank has agreed to uphold Miss J's complaints about the mis-sale of the policies in connection with the loans. Therefore I will not address the issue of how the PPI policy came to be sold to Miss J, only those considerations relating to the redress payable to her. Any complaint relating to the credit card and associated PPI has been dealt with separately and I am only considering here the issues relating the refund of PPI sold in connection with Miss J's loans.

The main focus of Miss J's complaint is that she considers the compensation should be paid directly to her and not used to reduce a debt on a totally separate credit card account she had with Northern Bank.

Northern Bank has put forward what is the general law position of the equitable right of set off which allows one party to set off amounts owed where the other party is in debt to it, where those debts are "*closely connected*".

When I decide what is fair and reasonable in each case, I must take into account, amongst other things, the relevant law as well as any relevant regulatory rules, although I am not necessarily bound by them.

The Financial Conduct Authority (FCA) (previously the Financial Services Authority (FSA)) has issued guidance for financial businesses handling PPI complaints. That 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 firm’s offer of redress. The firm should act fairly and reasonable in deciding whether to make such a payment”.* (DISP App 3.9 1 G)

A strict reading of the relevant guidance suggests that Northern Bank can only use PPI compensation to reduce arrears on the *associated* loan and only where *it has the contractual right to do so*. I accept that redress payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That is consistent with the FCA guidance referred to above.

In this complaint the loans taken out by Miss J which had PPI attached to it (the associated loan) was fully repaid in 2009. So there are no arrears on that loan. Northern Bank says it has a contractual right to set off the PPI against the debt owed to it, which may be the case if that debt is the *“associated loan or credit card”*. However the PPI refund due in this complaint is for the loans not the credit card. Applying the relevant guidance suggests that Northern Bank is *not* entitled to use the compensation for the mis-sale of the PPI sold alongside Miss J’s loans to reduce the arrears on her credit card debt as this is not the *“associated loan”* in this case.

Northern Bank is also raising the wider, equitable right of set off. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which Northern Bank would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow Northern Bank to set off in this way. *Both* tests must be satisfied for me to conclude Northern Bank has an equitable right to set-off the PPI compensation against Miss J’s outstanding arrears.

The redress for the PPI policy arises from shortcomings in the way the policy was sold alongside the loans. I have seen no evidence that there is a link between the loans and the credit card debt. It follows I am not persuaded the debt on the credit card is *closely connected* to the compensation for the mis-sale of Miss J’s PPI policies on the loans. The arrears on Miss J’s credit cards arise from different circumstances.

Northern Bank has stated that if it pays the redress it owes to Miss J for the PPI mis-sale on the loans into Miss J’s current account (which is also with Northern Bank) this would put that current account *“in credit”*. It argues that the bankers’ right of set-off then allows it to transfer *“the relevant amount from the account in credit to the account which is in debit.”*

I am not persuaded that Northern Bank has shown there is any close association between the relevant accounts. The only association between the chain of events it is in effect creating is that all the accounts are held in Miss J’s name with Northern Bank. It follows I am not of the view that it is fair and reasonable for Northern Bank to set the redress against the credit card debt in this way.

In summary having considered all the available evidence I am not persuaded that there is a close association between the debt arising from Miss J's arrears on her credit card and the debt Northern Bank owed to her as redress for the mis-sale of the PPI policy on the loans. So I am not persuaded that the equitable right of set-off applies here. I am of the view it is fair and reasonable that the redress should be paid directly to Miss J.

I understand that the offer from Northern Bank was not accepted by Miss J and so the redress has not as yet been paid to her. In these circumstances Northern Bank must recalculate the interest at 8% per year simple† to bring this up to date to the date of settlement.

† I understand Northern Bank is required to deduct basic rate tax from this part of the compensation. Whether Miss J needs to take any further action will depend on her financial circumstances. More information about the tax position can be found on our website.

Miss J should refer back to Northern Bank if she is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

### **my final decision**

For the reasons set out above I uphold this complaint and direct that Northern Bank Limited should pay the redress directly to Miss J.

I make no other award against Northern Bank Limited.

Christine Fraser  
**ombudsman**