

complaint

Mrs A's complaint is about how National Westminster Bank Plc (Nat West) used the compensation it offered for her complaint about two mis-sold payment protection insurance (PPI) policies. Mrs A wants Nat West to pay all the compensation directly to her.

background

Mrs A complained to Nat West about the sale of two PPI policies. The two policies were taken out with loans, each policy paid for by a single amount that was added to each of the loans. The second loan, ending 8024, refinanced the first loan ending 4071. The two loans were part of a chain of five loans. PPI was bought only with the first two loans.

Nat West wrote to Mrs A saying it was willing to settle her complaints as *"a gesture of goodwill and without admission of liability"*. Two separate offer letters were sent, one for each loan and PPI policy, one in April 2012 and the other in August 2012.

Mrs A was confused about the amounts she was told she was going to receive. She was sent cheques but these were for less than the amounts in the offer letters.

Nat West says it paid by cheque to Mrs A the amount of 8% simple interest, related to both policies, which was to compensate her for being out of pocket. But the rest of the compensation it had offered for both policies was paid into Mrs A's current account. Her current account was closed and had arrears on it. Nat West says it paid the money it owed Mrs A towards arrears she owed them on this account

Mrs A wants to be paid direct the full amount of compensation for the PPI policies.

Our adjudicator said Nat West should have paid all the compensation for both loans directly to Mrs A.

Nat West disagreed with the view of the adjudicator and asked an ombudsman to consider the complaint.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Nat West has agreed to settle Mrs A's complaints about the mis-sale of the policies as a gesture of goodwill. So I will not address the issue of how the PPI policies came to be sold to Mrs A.

There is also reference to a sixth, standalone loan that Mrs A took out which had PPI sold with it. I am not in this decision dealing with this matter, this is being considered as a separate complaint.

In its response to the adjudicator's findings Nat West has told us:

"The Bank maintains and defends its "right of set off" in cases of indebtedness. We do not accept your or the customer's assertion that because the premium refund relates to loans and the refund was made to a different account, that it cannot be used to reduce the current account arrears. As the servicing

account for the loans, the current account debt is in part due to the original loan and both are inextricably linked by this close association. We have not attempted to offset debts across different brands or even across different products and consider the current account to be linked to the original loan that the premium relates to."

The equitable right of set-off in law allows a person to 'set-off' closely connected debts. This means 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 unjust not to allow Nat West to set-off in this way. *Both* tests must be satisfied for me to find that Nat West has an equitable right to set-off the PPI compensation against Mrs A's outstanding debt on her current account.

I have seen no evidence that Mrs A's current account was used in any way other than as a normal current account when it was open. Mrs A made many payments from this account, not only the payments to pay these loans.

The compensation for the PPI policies arises from shortcomings in the way the policies were sold with the loans. As the current account was not set up *exclusively* to make the payments on Mrs A's loans, I am not satisfied the debt on the current account is *closely connected* to the compensation for the complaint related to the PPI policies. So it follows, I do not find it to be fair and reasonable for the compensation for these PPI policies to be used against the debt on Mrs A's current account.

I also do not consider that Nat West clearly informed Mrs A of its intention to exercise its right of set-off in the offer it made to her.

I have carefully read the letters Nat West sent to Mrs A with the acceptance forms. These letters are both in a standard format, although the wording is slightly different in each as it was some months between the two offers being sent. Both included several pages and contain details of how the compensation was calculated. Both letters say:

"To accept my offer, all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group."

The wording on the acceptance forms are slightly different. For loan 8024 it says:

"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my NatWest current account or by cheque if no account remains open."

And for 4071 it says:

"I understand the money will be applied to my current account if possible, otherwise it will be paid to me by cheque."

In both, the covering letter saying that debts *"with the group"* will be cleared is not in a particularly prominent part of the letter. It does not specifically mention or make clear that any part of the compensation would be used to set against the debt on Mrs A's current account.

I think Mrs A would be more likely to carefully read the statement on the actual acceptance forms, which was just above where she signed. Mrs A's current account was closed and in arrears, so it would seem likely in both cases she would consider the money would be paid to her, in full, by cheque.

Taking account of all the information provided to me I am not satisfied Nat West made it clear in its offer letter how it was intending to use the compensation for the PPI sold to Mrs A with loans. I am also not satisfied that there is a close connection between the compensation and the arrears on Mrs A's current account. Mrs A had paid off both these loans in full by refinancing them with later loans. So Mrs A had no arrears on these loans. So all compensation due for the PPI bought with the loans should be paid to her direct.

fair compensation

Nat West in its correspondence to this service said that its calculations did not include refunding any of the PPI that was carried forward into the later loans. It had calculated its offers for the first and second loan separately. It had not taken account of any PPI carried into the refinancing loans.

Nat West did indicate it would recalculate the compensation for the PPI to take this into account out has also more recently said it would again use any additional amount of refund to reduce the debt Mrs A owes the bank. As I have already outlined, I don't agree Nat West can set off the compensation in this case, for either PPI policy, against the current account debt.

So Nat West needs to recalculate the compensation that was due to Mrs A to take account of any PPI carried forward to future loans. It should pay directly to Mrs A a full refund of all the PPI amounts she paid, both from the recalculation and what it originally set against the current account debt.

Nat West also needs to update its calculation of 8% simple interest to the date of settlement for the amounts Mrs A has not as yet received. It can deduct from this the amounts it paid by cheque already to Mrs A for the 8% simple interest.

my final decision

For the reasons set out I direct Royal Bank of Scotland PLC to recalculate Mrs A's compensation as outlined and pay this as I have indicated.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 20 March 2015.

Christine Fraser
ombudsman