

## **complaint**

Mrs J brought this complaint on behalf of the late Mr J. The complaint is about the mis-sale of a payment protection insurance (PPI) policy Mr J took out with a credit card and how Tesco Personal Finance PLC (Tesco) is using the compensation it offered to settle this complaint.

## **background**

Mrs J, through a representative, complained to Tesco about the sale of a PPI policy associated with Mr J's credit card. The PPI policy was taken out at the same time the card was applied for in December 2000.

Tesco originally did not uphold Mrs J's complaint and so she brought the complaint to this service. After some initial correspondence Tesco agreed to uphold Mrs J's complaint.

In October 2014, Tesco sent a letter to Mrs J setting out the amount of compensation it was offering. In November Mrs J contacted this service saying she had not received the payment.

Tesco said it had used the compensation to set against the outstanding debt on the credit card. Mrs J was not happy with this and asked this service to look into how Tesco had made the compensation payment.

Our adjudicator said what Tesco had done with the compensation was fair in all the circumstances.

Mrs J disagreed with the view of the adjudicator and has asked an ombudsman to look at her 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.

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 Mrs J's case.

Tesco agreed to settle Mrs J's complaints about the mis-sale of the policy on Mr J's credit card, so I will not address the issue of how the PPI came to be sold to Mr J. I am in this decision only looking at the circumstances relating to the payment of the compensation for this credit card account.

Mrs J says that Tesco had "*written off*" the credit card debt after Mr J died. So there is no longer any debt and the compensation should be paid to her as Mr J's beneficiary. She has sent a copy of a letter sent by Tesco in March 2008. This says:

*"...the Bank will no longer pursue the outstanding balance of £8832.12 on the above account which has now been closed ..."*

It is submitted on Mrs J's behalf that this means the debt is written off and so no longer exists. Tesco says the credit card account is closed and it will not pursue the debt. So this means it will not actively seek repayment of the debt, in this case it would have been from Mr J's estate.

Mr J did have the benefit of the credit that was outstanding on the card. So he owed a debt to Tesco. That debt has never been settled in full. I am satisfied there is a debt owed by Mr J to Tesco for what he spent on his credit card account even though the credit card account is no longer open and Tesco agreed not to pursue it.

I have then looked at the way Tesco has paid the compensation for the PPI.

There is in law what is called the *equitable right to set off* which allows people 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 Tesco to set-off in this way. *Both* tests must be satisfied for me to find that Tesco has an equitable right to set-off the PPI compensation against Mr J's outstanding debt on his credit card account.

The PPI sold to Mr J was directly connected to his credit card. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the credit card debt are closely connected. They are both for the same account Mr J had with Tesco.

Having decided there is a close connection I then need to think about whether it would be unjust not to allow Tesco to set off in this way.

I have looked at the offer letter sent to Mrs J in October 2014. Immediately above the chart setting out the amount of compensation it says; "*As the Credit Card is currently in arrears we will apply the payment against the outstanding debt*".

I think this made it clear how Tesco was intending to use the compensation. Mrs J knew there had been a debt on the credit card, she has sent in a copy of the letter in 2008 about this debt. So she would have realised what Tesco was saying in its offer letter.

The amount owed on the credit card was over £8,800.00. The debt Tesco owed for the PPI compensation was just over £2,200.00.

I have not seen any evidence that there are reasons that would make it unfair for Tesco to set its debt for the PPI compensation against the debt Mr J owed to Tesco on the same credit card.

I have also noted the further comments made by Mrs J's representative including asking why the principle of set off was not raised by Tesco earlier. In fact Tesco did raise this when it made its offer. It said it was intending to use the compensation to set off against the arrears. It had not, until shortly before this letter, upheld the complaint about the mis-sale.

Whilst I have taken account of all the other comments made none of them change my decision.

**my final decision**

For the reasons set out, I agree that the way Tesco Personal Finance PLC used the compensation due to Mrs J was fair and reasonable in all the circumstances.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs J to accept or reject my decision before 16 March 2015.

Christine Fraser  
**ombudsman**