complaint

Miss B's complaint is about the sale of three single premium payment protection insurance (PPI) policies sold in conjunction with three loans.

National Westminster Bank Plc (Nat West) has upheld Miss B's complaint and made her offers it says are calculated in accordance with this service's guidelines. Miss B is unhappy that Nat West used some of the compensation to clear arrears on a loan and her current account. Miss B wants the redress for the mis-sold policies paid directly to her.

I understand that Miss B also took out five other loans. Both parties agree that these loans did not have PPI sold with them and therefore I have not considered these as part of this decision.

background

In May 1996 Miss B took out a loan and at the same time was sold a single premium PPI policy. This loan ran until May 1999, the last four digits of the loan account were 5805.

In November 1999 Miss B took out a loan and was again sold a single premium PPI policy. This loan ran until April 2002, the last four digits of this loan were 4226.

In April 2002 Miss B took out a further loan. This loan was partly used to refinance the previous loan ending 4226. Miss B was sold another single premium PPI policy. The last four digits of this loan were 3377. Nat West has told us the loan currently has arrears.

In 2012 Miss B complained to Nat West about the sale of the PPI policies. Nat West sent three separate letters to Miss B in March 2012 setting out the offers it was making Miss B in respect of the three policies. Miss B signed the acceptance forms and returned them to NatWest.

Nat West used part of the redress for the PPI policy sold in connection with loan ending 3377 to reduce the arrears on that loan. Nat West also paid the redress from loans 5805 and 4226 into Miss B's current account. This account was also in arrears and was being managed by Nat West's "Credit Management Services". The redress cleared the arrears and brought the current account into credit to the amount of £1,122.02. This amount was then sent to Miss B in the form of a cheque.

Unhappy that Nat West had not paid the redress directly to her Miss B brought her complaint to this service.

In December 2013 an adjudicator from this service wrote to Nat West. In her letter the adjudicator explained her findings which were:

That Nat West had acted fairly when using part of the redress from loan ending 3377 to reduce the arrears on that loan.

That Nat West had not acted fairly when using the redress from loans ending 5805 and 4226 to clear the arrears on Miss B's current account.

I note that loans ending 3377 and 4226 were successive – that is loan 3377 was partly used to refinance loan 4226. Therefore loan 3377 was likely to be a higher amount because a residual amount of the PPI premium from loan 4226 would have been carried forward into it. Nat West should have taken this into account when calculating the redress due to Miss B. Yet it appears Nat West calculated the redress on these loans separately. Our adjudicator asked Nat West to clarify the approach it had used but to date has not received a response to this.

Nat West disagreed with the adjudicator's findings and has asked that an ombudsman review 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. In doing so I have taken into account any relevant regulatory rules, the law and good industry practice. It seems to me that the relevant considerations in this case are materially the same as those set out in the section of our website explaining how we deal with PPI complaints.

As Nat West has agreed to offer compensation in line with this service's guidelines I do not need to consider the merits of how the policies were sold to Miss B within this decision. The main issue outstanding is whether Nat West acted fairly in the way it used the redress to reduce the arrears on Miss B's loan and current account.

<u>loan ending 3377</u>

Nat West's letter to Miss B set out the amount of redress it had calculated was due to Miss B for the mis-sold PPI policy. The letter broke down the compensation into two main parts:

A refund of the PPI premiums paid together with associated interest, this amount came to £4,597.32.

Statutory interest calculated at 8% simple to compensate Miss B for the time she had been "out of pocket", this amount equalled £1,879.27.

The settlement form signed by Miss B stated:

"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. I am aware that it is possible for the account to remain in arrears if the offer is not sufficient to clear the full amount owing on the account."

I note that Nat West used the refund of premiums totalling £4,597.32 to reduce the arrears on Miss B's loan and sent the £1,879.27 interest portion of the redress to Miss B in the form of a cheque.

I consider this to be a fair approach as I note that Miss B had arrears in excess of £10,000 on loan 3377. In addition Miss B had signed the settlement form agreeing that Nat West could use the refund for this purpose.

loans 5805 and 4226

These loans were closed at the time Nat West paid Miss B the compensation. Loan 5805 ended in May 1999 and loan 4226 was refinanced by loan 3377 in April 2002, therefore there were no arrears on these loans.

I have carefully read the covering letters that were sent to Miss B in March 2012 together with the settlement forms for loans ending 5805 and 4226. The letters set out how Nat West had calculated the total compensation which was £1,486.47 for 5805 and £2,176.92 for 4226. The letters then went on to say the following:

"If your account is in arrears when the payment is made we will first apply your refund against the outstanding debt. Any amount left over will be paid directly to you. If you have made a successful claim, the amount you received will be deducted from our offer. If you made an unsuccessful claim we will pay this sum to you if it is greater than the above."

The covering letters stated clearly that the amounts would be paid directly to Miss B as both these loans no longer existed and had no outstanding debt. I cannot see any mention in the covering letters that Nat West intended to use the compensation to clear the outstanding debt Miss B had on her current account.

I have also read the accompanying settlement forms that Miss B signed. These contain the following statement which I note is slightly different to the wording on the settlement form for loan ending 3377.

"My refund will first be applied against any outstanding debt on my loan account, with any remaining amount being paid to my current account if I am an RBS/Natwest customer or by cheque if not."

This statement again does not mention that the compensation would be used to clear the outstanding debt on the current account, it only mentions any outstanding debt on the loan accounts which there were not.

Overall I find that Nat West did not make it clear to Miss B that it intended to use the compensation to clear the outstanding debt on her current account and then send her the balance by cheque. Miss B has told us she did not expect this to happen as she considered the current account to be closed as she had not had access to it for some time. In any event if Miss B had been given sufficiently clear information to allow her to appreciate this is what would happen I find it unlikely she would have signed the settlement forms.

In its response to the adjudicator's findings Nat West has said, *"Also our right of set off as exercised in this case gives us the right to off set all debts owed to us by the customer".* I note that Nat West did not inform Miss B of its intention to exercise this right in the offer it made to her.

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 the equitable 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 conclude Nat West has an equitable right to set-off the PPI compensation against Miss B's outstanding debt on her current account.

In consideration of these tests, I am not persuaded there is a *close* connection between the *redress* for the mis-sold PPI policies taken out in connection with Miss B's loans and the outstanding *arrears* on her current account. The redress for the PPI policies arises from shortcomings in the way the policies were sold. The arrears on Miss B's current account flow from entirely different circumstances. Given this, I am not persuaded the redress and the arrears are sufficiently closely connected for it to be fair and reasonable for the redress from the mis-sale of the PPI policies to be offset against the arrears on Miss B's current account.

<u>summary</u>

Overall I am satisfied that it is fair and reasonable for Nat West to use the redress from the PPI policy sold with loan ending 3377 to reduce the arrears on that loan. However it will need to recalculate the redress factoring in the fact that loan 3377 refinanced loan 4226. If this results in additional compensation being due to Miss B then Nat West should use that additional compensation to reduce the arrears on loan 3377 further.

I do not find it fair and reasonable for Nat West to "set off" the redress from the PPI policies sold with loans ending 5805 and 4226 against the outstanding debt on Miss B's current account.

Therefore Nat West should recalculate the redress for these two policies, bringing it up to date with interest calculated at 8% simple per annum and pay Miss B the difference between the new total and the sum of £1,122.02 which Miss B has already received. The difference should be paid to Miss B directly by cheque.

my final decision

My final decision is that I uphold Miss B's complaint that she should have received the redress from the PPI policies sold with loans ending 5805 and 4226 directly. National Westminster Bank Plc should not have used the redress to reduce the arrears on Miss B's current account. National Westminster Bank Plc should recalculate the redress and pay Miss B fair compensation as set out above.

I find that National Westminster Bank Plc acted fairly and reasonably when it used the redress from the PPI policy sold with loan ending 3377 to reduce the arrears on that loan.

I order National Westminster Bank Plc to recalculate the redress to take account of the fact that loan 3377 refinanced loan 4226 and would therefore have contained some residual PPI premium from loan 4226.

I make no other award against National Westminster Bank Plc.

Steve Thomas
ombudsman