

## **complaint**

Mr and Mrs A are complaining that Nationwide Building Society ("Nationwide") has used the Payment Protection Insurance ("PPI") commission compensation it offered them on a loan to reduce their outstanding debt on that loan.

## **background**

In 2013, Mr and Mrs A complained to Nationwide about a number of PPI policies they thought they had been mis-sold. Nationwide responded to Mr and Mrs A in 2013 saying it didn't think it had mis-sold the PPI policies.

In 2017, Mr and Mrs A contacted Nationwide in regards to the non-disclosure of the level of commission Nationwide received when it sold the PPI policies.

Nationwide reviewed Mr and Mrs A's concerns and in 2018, it offered Mr and Mrs A compensation of £986.93 (after tax) for the level of commission it received that was over 50% for the PPI policy attached to loan ending 1591. And Nationwide used the compensation to reduce Mr A's outstanding debt on the loan account.

Mr and Mrs A think it's unfair for Nationwide to use the compensation to reduce the debt on the loan account and feel the compensation should be paid to them directly.

Unhappy, Mr and Mrs A brought their complaint to our service. While the complaint was with our service, Mr and Mrs A enquired as to whether the sale of all their PPI policies could be looked at again.

We told Mr and Mrs A that because Nationwide issued their response to Mr and Mrs A back in 2013 they were out of time and we couldn't look at whether the policies were mis-sold. And this was because Mr and Mrs A had six months to refer their complaint to our service from the date they received Nationwide's response back in 2013.

Our adjudicator then looked at whether it was fair for Nationwide to use the commission compensation it offered on loan ending 1591 to reduce the outstanding debt on that loan. Having done so, they thought it was fair for Nationwide to do so.

Mr and Mrs A 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.

Firstly, I agree with the adjudicator, I can't look at whether the PPI policy was mis-sold on loan ending 1591 – and that is because Mr and Mrs A didn't bring the complaint to our service in time.

So in this decision I will only be looking at whether it was fair for Nationwide to use the PPI commission compensation it offered Mr and Mrs A in 2018 for loan ending 1591 against the outstanding debt on that loan.

Having done so, I think Nationwide has acted fairly. I know this will come as a disappointment to Mr and Mrs A, so I would like to take this opportunity to explain why.

Nationwide has evidenced that Mr and Mrs A's loan account has an outstanding balance that has not been paid back. Nationwide has said that the debt was written off. This doesn't mean the debt doesn't exist. It does exist, it just means that Nationwide aren't legally pursuing Mr and Mrs A for the debt.

Until this amount has been paid back Nationwide is still out of pocket for this money.

Nationwide has accepted it owes Mr and Mrs A money for the PPI commission compensation, so it owes them a debt. And it is 'setting off' this debt for the PPI commission compensation against the debt Mr and Mrs A still owe on the loan account.

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 fair for Nationwide to set-off in this way. Both tests must be satisfied for me to find that Nationwide has an equitable right to set-off the PPI commission compensation against Mr and Mrs A's outstanding debt on the loan account.

The PPI sold to Mr and Mrs A which included an amount of commission (which Nationwide are offering to refund the difference that is above 50% to Mr and Mrs A) was directly connected to the loan. Using the right of set-off I have outlined above, I am satisfied the PPI commission compensation and the loan debt are closely connected. They are both for the same account Mr and Mrs A had with Nationwide.

And I haven't seen anything else to suggest that the compensation should be paid to Mr and Mrs A directly.

Broadly summarised, both parties owed each other money relating to the same account. So it seems fair that one amount should be set against the other.

**my final decision**

For the reasons set out above, I don't uphold Mr and Mrs A's complaint. I think it was fair for Nationwide Building Society to use the PPI commission compensation it owed Mr and Mrs A on loan ending 1591 to reduce their outstanding debt on that loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs A to accept or reject my decision before 1 September 2018.

Matthew Horner  
**ombudsman**