complaint

Mr P's complaint is that National Westminster Bank Plc ("NatWest") mis-sold him payment protection insurance ("PPI") with a credit card and that NatWest has used the compensation to reduce the outstanding balance.

background

NatWest upheld Mr P's complaint and made him an offer which was worked out following the same way we would tell NatWest to put things right. Mr P is unhappy that NatWest has used the compensation to reduce arrears on his credit card. He wants NatWest to pay him all of the compensation.

One of our investigators looked at NatWest's offer and thought it was fair. Mr P's representatives responded to say that they don't think the credit agreement is enforceable because the policy was mis-sold – so they still think the compensation should be paid to Mr P.

The complaint has been passed to me to reach a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

NatWest has upheld Mr P's complaint. So I don't need to look into how the policy was sold, but I do need to consider whether NatWest's offer is fair.

I think the offer is fair and I'd like to explain why.

We expect a business who mis-sold PPI with a credit card to put matters right by putting the consumer in the position they would be in now if they'd taken out the card without PPI. On a credit card account, that means removing the effect of the PPI premiums and any interest that was applied to those premiums from the balance of the account. If the customer has been out of pocket at any time during that period then the business also needs to add 8% simple interest per year.

The records sent to us from NatWest show that the last payment that was paid to the account was in January 2013 – after this Mr P stopped making any payments to his credit card. At this time he owed approximately £3,800 to NatWest for what he'd spent on the credit card.

Mr P says the debt was sold on to a third party. But NatWest has provided statements to show that it still held the debt when the complaint was made. NatWest worked out what Mr P had paid for the PPI on his credit card. This showed NatWest owed Mr P approximately £800 in compensation. I think the way NatWest has worked out the costs and compensation is fair and what I'd have told it to do if I'd upheld Mr P's complaint about the PPI being mis-sold.

This means NatWest owes this amount to Mr P in compensation. So this is a debt owed to him, by NatWest, connected to his NatWest credit card. But Mr P also owed NatWest money for what he'd spent and never repaid on the credit card. Mr P has only complained about the

PPI on his credit card, not the rest of the balance. As both parties owed each other money related to the same credit card account it seems fair that one amount should be set against the other. As Mr P owes NatWest more than the amount he is owed in PPI compensation he isn't due to receive any money.

I know Mr P doesn't think it's fair that the compensation can be offset against his debt. 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'm not necessarily bound by them.

There is also in law what is known as an equitable right of set off which allows one party to set off amounts owed where the other party is in debt to it, and where those debts are "*closely connected*".

The Financial Conduct Authority has also issued guidance for financial businesses handling PPI complaints. That guidance says:-

"where the complainant's loan or credit card is in arrears the firm may, it if 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 reasonably in deciding whether to make such a payment".

I've taken account of everything Mr P has said. I've also reviewed the offer letter which NatWest sent to Mr P offering compensation for his PPI and the acceptance form which Mr P signed. I don't think that the offer letter and acceptance form were as clear as they could have been, but they both said that the compensation might be set off against arrears.

I'm satisfied that Mr P had a debt with NatWest – and this was on the same account which was the cause of the debt for the PPI compensation that NatWest owed Mr P. So I'm satisfied the debts are closely connected, so it would be fair to offset them against each other.

Mr P's representatives have argued that by offering compensation NatWest has admitted the mis-selling of PPI. And this made the credit agreement unfair under section 140A of Consumer Credit Act 1974 (CCA). So it doesn't think NatWest is entitled to enforce the credit agreement (or the outstanding debt linked to it) – and any compensation should to be paid directly to Mr P.

I've considered this point but I don't agree that NatWest needs to do anything different. I'm deciding what is, in my opinion, fair and reasonable in the circumstances. And as I explained above, to do this, I take into account (amongst other things) the relevant law. Section 140A of the CCA relates to unfair relationships between creditors and debtors. However, even if there is an unfair relationship under section 140A, the credit agreement is not unenforceable in the way which Mr P's representatives suggest. Instead, section 140B of the CCA gives the court wide powers to make whatever order it thinks just if there is an unfair relationship, including powers to require the creditor to repay sums to the debtor; to require the creditor to do or not do something in connection to the agreement; to reduce or write off the debt; and to alter the terms of the agreement. The courts have said that any remedy under section 140B should be proportionate to the nature and degree of unfairness which the court has found. The remedy in any unfair relationships case will therefore depend on the facts of the case.

There may be circumstances where a court might think that NatWest needed to do more to remedy an unfair relationship, but in all the circumstances of Mr P's case, it remains that I think NatWest's approach to allocating compensation payments is fair.

Taking account of the law, relevant regulation and guidance I think what NatWest has done in setting off the amounts owed by both parties to each other is fair and reasonable. It follows that I don't think NatWest needs to pay any compensation directly to Mr P.

my final decision

I don't uphold Mr P's complaint and I make no award over and above what National Westminster Bank Plc has already offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 11 September 2017.

Daniel Little
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