

complaint

This complaint concerns a single premium payment protection insurance (PPI) policy taken out by Mr and Mrs A in relation to a secured loan. Mr and Mrs A say Welcome Financial Services Limited ("Welcome") mis-sold the policy.

background

Mr and Mrs A took out a loan with PPI. Mr and Mrs A complained to Welcome about the sale of the PPI policy. Welcome upheld their complaint and made an offer of redress. It said it would offset the redress against the outstanding arrears on a separate hire purchase agreement held by Mr and Mrs A. Mr and Mrs A did not agree with Welcome's approach, and referred their complaint to this service.

An adjudicator colleague considered Welcome's approach and said it was not in line with our guidance. She said Welcome could not use the compensation from the sale of the PPI policy alongside the secured loan to reduce the arrears on Mr and Mrs A's separate hire purchase agreement, and it should be paid directly to Mr and Mrs A.

Welcome did not accept our assessment; it said the secured loan and the hire purchase agreement held by Mr and Mrs A were the same or a closely related transaction and it could apply its equitable right of set off to use the compensation from the secured loan account to reduce Mr and Mrs A's arrears on the hire purchase account.

As the complaint remains unresolved between both parties, it has been referred to me to make a determination.

my findings

I have included only a brief summary of the complaint above, but I have carefully considered all of the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances.

As Welcome has already agreed to uphold Mr and Mrs A's complaint about the sale of the PPI policy, I have not considered the merits of their complaint about the mis-sale of the PPI policy. I have only considered the merits to the extent they help me decide whether Welcome's offer of redress is fair and reasonable in the circumstances.

I must decide what is fair and reasonable in each case. When I do this, I take into account (although I am not bound by), amongst other things, the relevant law as well as any relevant regulatory rules.

The Financial Services Authority (FSA) (now known as the Financial Conduct Authority) issued guidance for financial businesses handling PPI complaints. This guidance states:

"where the complainant's loan or credit card is in arrears the firm may, if it 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" (DISP App 3.9.1 G)."

A strict reading of the relevant guidance suggests Welcome is entitled to seek to use PPI compensation to reduce arrears on the *associated* loan or credit card balance only where *it has the contractual right to do so*. I accept redress payable for the mis-sale of a PPI policy can (and often should be) set-off against the arrears on the loan associated with the PPI policy being complained about. This principle is consistent with the FSA's guidance set out above and, I suspect, probably informed the framing of that guidance.

In this case, the secured loan taken out by Mr and Mrs A with PPI has been repaid in full. This means there are no arrears outstanding on this loan. So, setting aside whether or not Welcome has a *contractual* right, the relevant guidance suggests Welcome is *not* entitled to use the compensation for the mis-sale of PPI alongside the secured loan to reduce the arrears outstanding on a hire purchase agreement also held in Mr and Mrs A's name, as the hire purchase agreement is not the *associated loan or credit card* referred to in the FSA's guidance.

Welcome says in its response to our adjudicator's view that it can rely on the equitable right of set-off. 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 there is a close connection between the PPI compensation and the outstanding debt that Welcome intends to use. I must also consider whether it would be unjust not to allow Welcome to set-off in this way. *Both* tests must be satisfied for me to conclude Welcome has an equitable right to set-off the PPI compensation against Mr and Mrs A's outstanding arrears.

In consideration of these tests, I am not persuaded there is a *close* connection between the *redress* for the mis-sold PPI policy taken out in connection with Mr and Mrs A's hire purchase agreement and the outstanding *arrears* on their secured loan. The redress for the PPI policy arises from regulatory failings. The arrears on Mr and Mrs A's hire purchase agreement are not the result of regulatory failings and 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 policy for the secured loan to be offset against the arrears on the hire purchase agreement.

So, having carefully considered the available evidence and applying these principles to Mr and Mrs A's case, I am not persuaded it is fair and reasonable for Welcome to use the compensation payable for the PPI policy associated with Mr and Mrs A's secured loan to reduce the outstanding arrears on their hire purchase agreement. I consider the arrears on the hire purchase agreement are not sufficiently closely connected with the compensation for the mis-sale of the PPI policy on the secured loan for the compensation to be offset against the outstanding arrears.

Finally, our adjudicator suggests that Welcome cannot use the redress to offset against the arrears on the separate hire purchase agreement as it has sold the debt to a third party. Welcome has responded to this view by saying that its sale agreements with the third party owner of Mr and Mrs A's debt allow it to recall and repurchase debts under certain circumstances and where it provides the owner with notification to repurchase. It is also free to negotiate the purchase of any debt from the owner as it sees fit.

I have considered this point further and as far as I can see, Welcome is not a party to the debt which remains outstanding. Welcome is not the legal owner of the debt, having sold it to a third party. And, although it said it has the opportunity to repurchase the debt, as far as I know, it has not done so. The current third party owner of the debt has confirmed it still owns the debt. The parties to the debt are the current owner and Mr and Mrs A. So, it is difficult to see how Welcome can argue Mr and Mrs A owe them a debt against which it can set off their PPI compensation, when it does not own the debt.

In conclusion, I am not persuaded the equitable right of set off applies here, for the reasons I have outlined above. In light of this and my findings that Welcome is not the legal owner of the debt, I conclude the redress for the mis-sale of the PPI policy should be paid directly to Mr and Mrs A.

my final decision

I direct Welcome Financial Services Limited to pay redress to Mr and Mrs A directly. I make no further award against Welcome Financial Services Limited.

Mark Richardson
ombudsman