

complaint

Miss F complains that Barclays Bank Plc wrongly applied part of an award for mis-sold PPI to repayment of a defaulted loan. She says she was not aware of the debt and it is statute barred. She asks for the PPI award to be refunded to her.

background

Miss F borrowed about £10,000 from Barclays in 2002 and used the proceeds to repay an existing loan. The loan fell into arrears and in 2003 Barclays issued default notices to Miss F at the address on its files. The loan was passed to recoveries in 2004 with a balance of about £10,500. In 2012, the outstanding balance of the loan was nearly £6,000.

Miss F made a claim for mis-sold PPI. Barclays applied part of the award for mis-sold PPI to the loan balance, reducing it to about £1,300. Miss F says Barclays should not have applied the PPI award to reducing the loan balance because:

- It told her in 2004 and several times since the loan balance had been cleared.
- It had not contacted her for more than six years, so it was statute barred under the Limitation Act from pursuing her for the debt.
- It told her the debt was time barred and advised her to get independent legal advice.
- The defaulted loan does not appear on her credit files.
- Barclays should have offered her a repayment plan for the outstanding debt in 2003.
- She expected to receive the full PPI award and is experiencing financial difficulties as a result of not receiving it.

The adjudicator did not recommend that the complaint should be upheld. He said:

- He was satisfied that Miss F's loan had an outstanding balance. He said while Barclays might not be able to bring a legal action to recover the debt, it was still entitled to offset any money it owed Miss F against the outstanding loan balance.
- The PPI premiums were originally paid by adding their cost to the loan and remained part of the outstanding balance. So, as Miss F had not actually paid the premiums, he did not consider it would be fair and reasonable to ask Barclays to pay the PPI award to her.
- While there were no records of Miss F's discussions with Barclays he was not persuaded the information Miss F says she was given had caused her detriment.
- As Miss F had not made a complaint to Barclays about it not offering her a repayment plan, he could not consider the issue.

Miss F did not agree. She said she thought her ex-husband had repaid the loan. She said she did everything she could to establish whether any debt was outstanding. As Barclays had told her no debt was outstanding, she expected to receive the PPI award in full.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

did Miss F still owe a debt to Barclays?

Miss F does not dispute that she entered into the loan agreement. However, she believes Barclays is not entitled to collect the debt because it is time barred and the bank gave her assurances no debt was owed.

Under the Limitation Act 1980, *“an action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued”*. In other words, Barclays was not able to take court action more than six years after Miss F’s account defaulted. However, this does not mean the debt ceased to exist or that it was not due and payable.

I consider it likely Barclays did not contact Miss F about the loan for some years as it did not have her contact details. While Miss F says she did everything she could to establish whether the loan had been repaid, there are no records of her enquiries.

It seems likely the loan did not appear when Miss F checked her files with the credit reference agencies due to the amount of time passed since the default was recorded.

While Miss F says Barclays assured her no debt was owed, the evidence does not support this. In the circumstances, I am satisfied that the debt still existed and remained due and payable.

did Barclays act reasonably in using part of the PPI award to reduce Miss F’s debt?

Miss F does not dispute the amount of the PPI award – only that it should have been paid direct to her and not used to reduce her debt.

There might be circumstances when we decide that a business should pay all of the compensation to a consumer. For example, when they are able to demonstrate to us that they have arrears on other debts that are more serious or pose a greater threat to them than the debt to which the PPI is attached. Although Miss F says she needs the money to pay other bills, she has not suggested she has other debts that would make it appropriate for all of the compensation to be paid to her.

So, while I appreciate Miss F would prefer it if the whole award was paid direct to her, I am not persuaded Barclays acted unreasonably in using part of the award to reduce the debt owed to it. Barclays had reserved the right to do so when it sent default notices to Miss F. Like the adjudicator, I consider it reasonable to take into account that the PPI premiums were added to the loan balance rather than paid by Miss F.

I consider that using part of the PPI award to reduce Miss F’s outstanding debt is in line with our approach in these circumstances. I am not persuaded there are any circumstances here which would make a different approach fair and reasonable.

my final decision

My decision is that I do not uphold this complaint.

Ruth Stevenson
ombudsman