Financial Ombudsman Service

complaint

This complaint concerns the redress that Welcome owe to Miss A following her complaint about the mis-selling of two payment protection insurance policies. Welcome want to use the redress of circa £6,000 from the mis-selling of the policies to offset arrears on Miss A's existing loan account.

background

I issued my provisional decision in this case in March 2013 the main arguments of which are as follows:

The Financial Conduct Authority has issued guidance for firms handling PPI complaints. That 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, then, suggests that Welcome can only use PPI compensation to reduce arrears on the *associated* loan balance and only where *it has the contractual right to do so*. In Miss A's case, the *associated* loans have been repaid in full, so there are no arrears on those loans. So, setting aside whether or not Welcome has a *contractual right*, applying the relevant guidance suggests that they are *not* entitled to use the compensation for the mis-sale of PPI alongside Miss A's loans to reduce the arrears on her most recent loan since that is not the *associated loan or credit card* in this case.

I am also going to consider whether Welcome have a banker's right of set off, or an equitable right of set off in law, which means that they could deduct Miss A's debt to them from any money they owe to her (the PPI compensation).

The equitable right of set off in law allows a person to "set off" closely connected debts. This means that one person (A) can deduct from a debt that they owe another person (B), money which that person (B) owes to them.

In order 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 account to which Welcome would like the compensation transferred. I must also consider whether it would be unjust not to allow Welcome to set off in this way. Both tests need to be satisfied in order for me to conclude that Welcome have an equitable right to set off the PPI compensation against Miss A's current loan.

Miss A's last loan was subsequently settled in July 2007. The arrears that Welcome would like to use the compensation to reduce are outstanding on Miss A's live current loan. Other than the loans being in Miss A's name and being, or having been, provided by Welcome, it seems to me that there can be very little logical connection between the two. This, to my mind, falls well short of a *close* connection between redress for two PPI policies taken out and cancelled several years ago and a current loan that has arrears outstanding today.

So the circumstances seem to me to fail the first test required for me to conclude that Welcome have an equitable right of set off. However, for the sake of completeness, neither have I seen persuasive evidence that it would be unjust for Welcome to pay redress directly to Miss A.

The banker's right of set off to which Welcome refers (and which is reflected in this service's guidance on the right of set off) is a right a bank has to transfer funds from a consumer's account which is in credit to a consumer's account which is in debt – in effect, a similar scenario to that described by the equitable right of set-off. It is sometimes referred to as the right to combine accounts, but it can only be used by a bank when the consumer holds both accounts in question in the same capacity (for example, it could not use its right of set off if the consumer held one account in his sole name and another in joint names), and it can only apply its right when a debt is due and payable.

It does not appear to be in dispute that the loan account which is in arrears is Miss A's own account and not held by her in some other capacity or with someone else. The arrears on Miss A's loan account are due and payable. However, I am still not convinced that the banker's right of set off applies in this situation. I say this because the banker's right of set off refers to a credit in one *account* being transferred to a debt in another *account*. I am not convinced that the compensation for the mis-sale of the PPI policies could be described as an *account* held by Miss A which is in *credit*. Miss A did not lend her money to Welcome to hold for her. It is money that Welcome should never have taken from her in the first place and of which she has been deprived the use. In this case, I am not convinced that the banker's right of set off can be relied upon by Welcome to justify using Miss A's compensation for the mis-sale of PPI policies to reduce her loan arrears.

So overall and on balance, I am not persuaded by Welcome's arguments that they have a banker's right of set off or an equitable right of set off in this case.

I also found that it would be fair and reasonable for Welcome to pay the compensation directly to Miss A because of various debts that she has accrued.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Neither Welcome nor Miss A have submitted any further evidence.

Therefore, in the absence of further evidence to consider, I see no reason to depart from my provisional decision.

my final decision

For the reasons set out above I direct Welcome to recalculate redress for the PPI policies so that it is up to date and to pay any redress to Miss A directly.

I make no further award against Welcome.

Francesca Del Mese
ombudsman