

complaint

This complaint is made by Mr J about a payment protection insurance (PPI) policy he says Lloyds Bank PLC ("Lloyds") mis-sold to him and the compensation Lloyds has offered to pay to him in relation to the policy.

background

In July 2011 Lloyds made an offer to settle Mr J's complaint regarding the mis-sale of the PPI. Lloyds indicated it would set the refund of compensation against the debt which remained outstanding on the loan.

Mr J had taken out the loan and PPI and fell behind in his repayments. Lloyds sold the debt to a third party. Lloyds paid the compensation to the third party to set off against the debt that remained outstanding on the loan.

Mr J was not happy with Lloyds approach to refund the compensation. Mr J said he had made an arrangement with the third party debt agency to pay a reduced amount on the debt and this had not been taken into account. Mr J said he should receive the compensation direct. Lloyds disagreed and Mr J brought his complaint to this service.

In August 2013 an adjudicator indicated to Lloyds that as the debt had been sold to a third party Mr J had no debt with Lloyds. So as there was no debt with Lloyds it was not fair and reasonable to use the principle of set off. The adjudicator recommended that the compensation should be paid directly to Mr J.

Lloyds did not agree with the adjudicator's recommendation so the matter has been passed to an ombudsman for determination.

my findings

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

Lloyds has agreed to settle Mr J's complaint about the mis-sale of the policy. Therefore I will not address the issue of how the PPI policy came to be sold to Mr J.

The main focus of Mr J's complaint is that he considers the way Lloyds has allocated the compensation is unfair. The whole of the compensation was paid to a third party in August 2011.

One of the main issues in this complaint is when Lloyds sold the debt to the third party.

Lloyds made its offer of settlement to Mr J on 18 July 2011. In an email to this service on 30 July 2013 Lloyds stated that the debt was passed to an external party on 15 November 2012. So this would suggest that the debt was still with Lloyds at the time of the offer.

However Mr J has provided copies of correspondence from the third party to whom the debt was sold dated 2 May 2011 and 25 July 2011. These indicate that the debt had been transferred to the third party and they were seeking payment and to possibly make an arrangement to pay a reduced sum to clear the debt. A further letter dated 23 August 2011

indicates that the debt had been reduced by the amount of compensation offered by Lloyds to Mr J for the mis-sale of the PPI.

Copies of this correspondence were sent to Lloyds who said it would further investigate. In response to this and to the adjudicators view Lloyds said: *"As [Mr J's] loan has been passed to [third party] with a balance of £[XXXX.XX] at the time the redress was offered, the process at the time of redress would be to reduce the balance of the customer debt. Therefore the redress was issued to [third party] reducing [Mr J's] outstanding balance"*.

Taking all these factors into account it seems to me that the debt was sold to the third party before the offer in July 2011. Lloyds then paid to the third party the redress due for the mis-sale to reduce the debt which was then owed to the third party.

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)."

Applying this guidance to the facts of Mr J's case, I need to consider is whether Lloyds has the contractual rights required with this loan.

When Lloyds sold the debt to a third party that was a commercial decision and Lloyds accepted an agreed price for the debt. This meant that Mr J owed the money to the third party, not to Lloyds, for that debt. Lloyds has passed all its rights, including any right to receive payment of the outstanding balance, to the third party. So Lloyds has no outstanding debt owed to it by Mr J in relation to this loan.

It would be our approach in such circumstances to calculate the compensation to the point that the debt was sold, in addition to the amounts actually paid, and pay *all* parts of the compensation to the consumer.

Lloyds did not write off this debt, so it is not seeking to set any amount not paid at the time by Mr J as part of that debt against its losses. Mr J has an arrangement with a third party to repay that debt due *to the third party*.

In this case Lloyds does not have the required contractual rights in relation to the loan.

Lloyds has also stated that Mr J signed the acceptance of their offer. That offer stated the loan was closed with the remaining balance being handled by the "Consumer Debt Recovery depart of the bank" and that the refund would be sent to that department to use as payment to reduce the outstanding debt.

If the debt had remained with the internal debt recovery department of the bank that would have allowed the bank to rightly set off the compensation against the debt still owed to the bank. The evidence I have seen does not suggest this was the case as I have already indicated.

I have not seen anything to persuade me that it is fair and reasonable for Lloyds to use the PPI redress it owes to Mr J to off-set against arrears on a debt of which Lloyds is not the legal owner.

I am therefore persuaded it is fair and reasonable that Mr J should be refunded direct all the refund of the PPI.

Lloyds must recalculate the interest at 8% per year simple† to bring this up to date to the date of settlement to compensate Mr J for the full period he has been out of pocket.

† I understand Lloyds is required to deduct basic rate tax from this part of the compensation. Whether Mr J needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr J should refer back to Lloyds if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons set out above I uphold this complaint and direct Lloyds Bank PLC to pay all the compensation related to the PPI directly to Mr J as set out above.

I make no further award against Lloyds Bank PLC.

Christine Fraser
ombudsman