

## **complaint**

Mr A is unhappy with how National Westminster Bank Plc (“NatWest”) resolved his complaint about the mis-sale of a payment protection insurance (“PPI”) policy.

## **background**

I issued my provisional decision on 28 June 2018. A copy of my provisional decision is attached and forms part of this final decision.

My provisional decision sets out the background to this complaint. It explained why I thought I was able to consider and answer Mr A’s complaint about NatWest. And after considering Mr A’s complaint, why I thought it was fair for NatWest to use Mr A’s PPI compensation to reduce what Mr A owed it.

Both parties have confirmed receiving my provisional decision. NatWest has confirmed that it has nothing further to add. But it reiterated that it would be happy to consider any evidence Mr A sends it about the other priority debt he has and that Mr A wants to use the compensation for.

Mr A, through his representatives, has explained again why Mr A feels the compensation should be paid to him. And they have provided a letter sent to Mr A from a private individual who is seeking payment from Mr A from some private borrowing that Mr A took.

## **my findings**

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

Having done so, I see no reason to depart from my provisional findings. So I now confirm those findings.

In response to my provisional decision Mr A has provided a letter from the private individual that he borrowed money from and who is now chasing him for the outstanding amount.

But the letter is stating that Mr A should pay the outstanding amount owed otherwise the private individual will look to start court proceedings. As it stands currently – I can’t see that this debt is more pressing than the debt Mr A owes NatWest. So I still think it is fair that NatWest uses the compensation it owes Mr A to reduce the debt Mr A owes it.

Overall, Mr A hasn’t been able to provide NatWest with anything substantial or formal about the other priority debt he has with the private individual. So I can’t say that NatWest is acting unfairly in using the compensation it owes Mr A to reduce the debt Mr A owes it.

## **my final decision**

For the reasons given above, after considering Mr A’s complaint about National Westminster Bank Plc, I think it was fair for National Westminster Bank Plc to use Mr A’s PPI compensation to reduce what Mr A owed it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 August 2018.

Matthew Horner  
**ombudsman**

## **Copy of Provisional Decision**

### **complaint**

Mr A is unhappy with how National Westminster Bank Plc ("NatWest") resolved his complaint about the mis-sale of a payment protection insurance ("PPI") policy.

### **background**

Mr A through a representative complained to NatWest about a PPI policy sold alongside a credit card. NatWest upheld the complaint and offered compensation.

Mr A accepted the offer as a full and final settlement to his complaint. He signed and returned the acceptance form in March 2018. On the acceptance form that Mr A signed, it stated that the compensation offer will take into account any arrears Mr A had on his credit card.

As Mr A had arrears, NatWest used the PPI compensation amount to reduce what Mr A owed.

Mr A felt this was unfair. Mr A, through his representative, considered that there had been no activity in regards to the outstanding debt since 2008. So the debt was statute barred under The Limitation Act 1980 and Mr A felt the compensation should be paid to him directly.

Mr A also felt the compensation should be paid to him as he had multiple health problems and other priority bills to pay.

Our adjudicator looked at the complaint and thought we should dismiss the complaint and not deal with it any further because Mr A had accepted NatWest's offer as a full and final settlement of the complaint.

Despite our adjudicator considering this complaint as one that we should not continue to look into, he also tried to answer Mr A's concerns around The Limitation Act 1980. He explained that The Limitation Act 1980 set out the timescales within which action may be taken by a lender to pursue a debt. So while NatWest may not legally be able to pursue Mr A for the outstanding balance, the debt still existed and it was fair for NatWest to use the compensation to reduce the amount Mr A owed.

And finally our adjudicator considered that NatWest were aware of Mr A's health problems and priority bills. And as NatWest were willing to consider any evidence of priority bills that Mr A could provide – this was fair. So he suggested Mr A should continue to liaise with NatWest and provide any evidence for it to consider.

As Mr A disagreed the complaint has been passed to me.

### **my provisional findings**

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

Our adjudicator considered that this complaint was one that we shouldn't continue to look at – because Mr A had accepted NatWest's offer as a full and final settlement of the complaint.

Having looked at the acceptance form I agree that Mr A signed in full and final settlement of his complaint. But I also have to look at how clearly NatWest explained what it was going to do with the compensation.

Having done so, I don't think NatWest made it wholly clear to Mr A what it was specifically going to do with Mr A's compensation.

The signed acceptance form states:

*“...I understand that the offer will take into consideration any arrears on my credit card balance. The remaining balance, if any, will then be paid to me by cheque. I am aware that it is possible for the credit card account to remain in arrears if the offer is not sufficient to clear the full amount owing on my credit card.”*

Mr A thought that he didn't have any arrears because he considered the debt was statute barred under The Limitation Act 1980. So when he signed the acceptance form, he thought that the compensation was going to get paid to him.

Then, after Mr A signed to accept the offer, NatWest informed him that it would be using the compensation to reduce his outstanding credit card balance.

If NatWest had made it clear to Mr A at the start that he had an outstanding debt, what that outstanding debt was and that the compensation would be offset against that debt – then Mr A could have queried this before signing to accept the offer.

In this case, I don't think it would be fair to dismiss Mr A's complaint because he signed to accept the compensation amount in full and final settlement of his complaint, when I don't think it was made wholly clear what NatWest specifically intended to do with his compensation. And I'm not satisfied that had Mr A fully understood the offer that it would have been his intention to accept it.

So I think I can consider this complaint and would like to provide Mr A with an answer rather than dismiss his complaint.

In regards to Mr A's concerns that the debt he held with NatWest was statute barred under The Limitation Act 1980 I agree with our adjudicator and for the same reason.

The Limitation Act 1980 sets out that timescales with which a lender can pursue a debt. So while NatWest may no longer be able to legally pursue Mr A for the debt he owes it – the debt Mr A has with NatWest hasn't ceased to exist.

NatWest is still out of pocket for this money. And it isn't pursuing Mr A for the debt. It has accepted it owes Mr A money for the PPI compensation, so it owes him a debt. And it is 'setting off' this debt for the PPI compensation against the debt Mr A owed for his spending on the credit card account which still exists.

There is in law what is called the *equitable right of set-off* which allows people to 'set-off' closely connected debts. This means that one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For this right of set-off to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be fair for NatWest to set-off in this way. Both tests must be satisfied for me to find that NatWest has an equitable right to set-off the PPI compensation against Mr A's outstanding debt on his credit card account.

The PPI sold to Mr A was directly connected to his credit card account. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the credit card debt are closely connected. They are both related to the same account Mr A had with NatWest.

As both parties owe each other money relating to the same account, it seems fair that one amount should be set off against the other.

NatWest has reduced what Mr A owes it and I think it was fair for NatWest to do so.

Mr A has said that he would like to use the compensation for other priority bills that he has. NatWest has said that it will consider any evidence Mr A sends it. And I think this is fair in the circumstance. Mr A should provide any evidence of priority bills to NatWest for it to consider.

**my provisional decision**

For the reasons given above, I am provisionally of the opinion that I'm able to consider and answer Mr A's complaint about National Westminster Bank Plc.

And having done so, I think it was fair for National Westminster Bank Plc to use Mr A's PPI compensation to reduce what Mr A owed it.

Matthew Horner  
**ombudsman**