Financial Ombudsman Service

complaint

Mr J brought his complaint to this service as he was unhappy that National Westminster Bank Plc ("NatWest") used part of the redress from two mis-sold PPI policies to offset an outstanding debt related to a current account he had with the bank. Mr J wants all the redress paid directly to him by cheque.

background

Mr J complained to NatWest about the sale of two PPI policies that were purchased in 1999 and 2000 alongside two loans he took out with the bank. In March 2013 NatWest wrote to Mr J agreeing to make an offer on each of the PPI policies sold to settle the complaints and it set out the compensation it proposed to pay him.

NatWest informed Mr J that it would pay the redress for the premiums and interest towards a debt he owed the bank in connection with a current account. It indicated it would pay directly to Mr J the 8% interest calculated on both redress amounts to compensate him for being out of pocket.

Mr J was unhappy with NatWest's proposal for the repayment and requested that it pay all the refund compensation directly to him by cheque. When NatWest declined this Mr J brought his complaint to this service.

In 2013, an adjudicator indicated to NatWest that its proposal to refund the redress was not in line with the ombudsman service approach and would not be fair and reasonable. NatWest disagreed and requested an ombudsman consider the complaint.

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.

NatWest has agreed to uphold Mr J's complaint about the mis-sale of the policies. Therefore I will not address the issue of how the PPI policies came to be sold to Mr J, only those considerations relating to the redress payable to Mr J.

The main focus of Mr J's complaint is that he considers all the compensation should be paid directly to him and not used to reduce a debt on a totally different account he held with NatWest.

NatWest has stated it does not accept *"that because the premium refund relates to a loan and the refund was made to a different account, that it cannot be used to reduce the current account arrears. As the servicing account for the loan, the current account debt is in part due to the original loan and both are inextricably linked by this close association".*

NatWest has put forward what is the general law position of the equitable right of set off which allows one party to set off amounts owed where the other party is in debt to it, where those debts are "*closely connected*".

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

The Financial Conduct Authority has issued guidance for financial businesses handling PPI complaints. That guidance states:-

"where the complainant's loan or credit card is in arrears the firm may, it if 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 reasonable in deciding whether to make such a payment".

A strict reading of the relevant guidance suggests that NatWest can only use PPI compensation to reduce arrears on the *associated* loan and only where *it has the contractual right to do so*.

In this complaint the two loans taken out by Mr J (the associated loans) have been settled as they ran to term, so there are no arrears on those loans. Setting aside whether or not NatWest has a *contractual right*, applying the relevant guidance suggests that NatWest is not entitled to use the compensation for the mis-sale of the PPI sold alongside Mr J's loans to reduce the outstanding balance on a debt on his current account as this is not the "*associated loan"* in this case.

However NatWest is also raising the wider, equitable right of set off, which I need to consider. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which NatWest would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow NatWest to set off in this way.

I accept that redress payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That is consistent with the FCA guidance referred to above.

But it is another matter to say that a debt occurring as the result of an overdraft on a current account, albeit in part an account used to make the payment of the loan repayments, is to be regarded as *closely c*onnected with the debt arising (e.g. the requirement to pay compensation) from the mis-sale of a PPI policy.

In this complaint NatWest has confirmed Mr J's current account was used as "*a normal current account by the customer and handled other credits and debts not related to the customers loans*". Mr J made many payments from this account, not only the payments to service the loan.

The redress for the PPI policies arises from shortcomings in the way the policies were sold alongside each of the loans. As the current account was not set up *exclusively* for servicing Mr J's loans, I am not persuaded the debt on the current account is *closely connected* to the compensation for the mis-sale of his two PPI policies. The arrears on Mr J's account arise from different circumstances.

The PPI compensation debt due to Mr J arises as a result of the mis-sale of PPI policies which were not sold with, or justified by, the debt arising as the result of an overdraft on the current account.

I have also considered the offer letters, offer statements, declaration and acceptance forms sent to Mr J at the time NatWest made its offers. Mr J was sent two similar letters, each two pages long which contained details of how the redress was calculated. Approximately half way down the second page of each offer letter it states: "*To accept our offer all you need to do is sign and return the declaration at the end of this letter. On receipt we will arrange for a payment to be made, subject to clearance of any arrears or indebtedness you may have with the Group. Please do not make any amendments as this will result in the form being null and void*".

The declaration and acceptance that Mr J was asked to sign however stated *"I understand that the offer will take into account any arrears on my account. The remaining balance, if any, will then be paid to my NatWest current account, or by cheque if no account remains open*".

NatWest has confirmed that Mr J had no arrears on the loan accounts which were associated with the PPI. Whilst the letter suggests the payment may go towards other debts "*with the Group*" that is not what the actual declaration Mr J was required to sign said. In my opinion the wording in the covering letter was not in a particularly prominent part of the letter and does not specifically say that any part of the redress would be used to clear the debt on Mr J's current account.

It is more likely that Mr J would carefully read the statement on the actual acceptance and declaration form he had to sign to accept each offer. This statement only indicates that the redress would be used to "*clear any arrears on my account*". I am of the view this refers only to arrears on Mr J's loan accounts and it seems he had no arrears on these accounts. This statement does not specifically mention that the redress would be used to clear the outstanding debt on the current account.

I have taken note of the fact that Mr J has indicated to this service he is suffering severe financial hardship and so he has more pressing financial needs than the debt on the current account. However I consider the current account debt not to be so closely associated with the PPI "*deb*t" NatWest owed to Mr J that the principal of set off should be used in this situation. Thus I do not need to make a firm finding on if it would be fair and just for NatWest to use the redress for set off in view of Mr J's hardship circumstances.

summary

I am not persuaded overall that there is a close association between the debt that arose from Mr J's current account and the debt NatWest owed to him for the mis-sale of two PPI policies on two totally separate loan accounts. I am also not persuaded that under the terms of the offer it made NatWest should have paid the redress to a closed current account. It was its policy to pay by cheque where there was no current account with the Bank, a fact confirmed in a letter of NatWest in April 2013.

Taking account of all the facts in this complaint I am of the view it is fair and reasonable that the redress should be paid directly to Mr J. I therefore uphold Mr J's complaint.

fair compensation

Mr J has repaid both loans in full so there are no outstanding arrears on the loans which were associated directly with the sale of the PPI. Mr J should as far as possible be placed back in the position he would have been in had the PPI policy not been sold. I understand that in January 2014 NatWest paid the refunds due to him into the current account debt and sent a cheque to Mr J for the 8% interest it had calculated due at that time.

I direct that NatWest should pay directly to Mr J, by cheque, the amounts calculated for the redress on both the PPI policies. This may require an adjustment of the current account debt as I understand the redress has already been paid as a set off against the current account overdraft debt.

NatWest must also recalculate the interest at 8% per year simple† to bring this up to date and pay Mr J the difference between the new 8% total and that amount already calculated and paid directly to Mr J. The difference in these amounts being paid to Mr J direct.

† I understand NatWest 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 NatWest 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 of Mr J that the full redress for both PPI policies should be paid directly to him. National Westminster Bank plc should not have used any of the redress to reduce the debt on Mr J's current account.

National Westminster Bank Plc should recalculate the redress and pay Mr J fair compensation directly to him as set out above.

I make no other award against National Westminster Bank Plc.

Christine Fraser
ombudsman