

complaint

This complaint concerns the redress related to a single premium payment protection insurance policy (PPI) associated with a loan from Tesco Personal Finance Plc ("Tesco").

Tesco wants to set the redress due to Mr J against an outstanding debt related to another loan Mr J had with Tesco. Mr J wants the redress paid directly to him.

background

Mr J took out a loan with Tesco in May 2005 and at the same time purchased a PPI policy. In December 2006 Mr J repaid the loan in full. In February 2007 Mr J took out a new loan with Tesco and did not purchase a PPI policy.

Mr J complained to Tesco in 2012 about the sale of the PPI on his first loan in 2005. Tesco wrote to him in January 2013 stating it upheld his complaint and offered a full refund of the costs paid for the PPI. However it went on to say that as his second loan was in arrears it would apply the refund against those arrears on the second loan account.

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

In 2013 an adjudicator indicated to Tesco that its proposal to use the redress to set-off against the later loan would not be fair and reasonable as the loans were totally separate accounts. Tesco 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.

Tesco has agreed to uphold 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, only those considerations relating to the redress payable to him.

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

Tesco 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 (FCA) (previously the Financial Services Authority (FSA)) 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, 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 reasonable in deciding whether to make such a payment”. (DISP App 3.9 1 G)

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

In this complaint the loan taken out by Mr J which had PPI attached to it (the associated loan) was fully repaid in December 2006. So there are no arrears on that loan. Setting aside whether or not Tesco has a *contractual right*, applying the relevant guidance suggests that Tesco is *not* entitled to use the compensation for the mis-sale of the PPI sold alongside Mr J’s first loan to reduce the arrears on his second loan as this is not the “*associated loan*” in this case.

Tesco is also raising the wider, equitable right of set off. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which Tesco would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow Tesco to set off in this way. *Both* tests must be satisfied for me to conclude Tesco has an equitable right to set-off the PPI compensation against Mr J’s outstanding arrears.

Tesco originally indicated that the two loans were not linked and that the second loan from February 2007 had no PPI attached to it. However in response to the adjudicators view it has stated “*the amount carried forward to the second loan, contained an element of the Payment Protection Insurance from the first loan*”.

I have looked carefully at the credit agreements for both loans. The first loan agreement, states it was for home improvements only. The second loan agreement, dated almost two months after the first loan was settled, states it is for a new car. I note in the section marked “*Purpose and Amount of Loan*” it says at section (a) “*up to £0.00 for refinancing Account Details*”. Indicating that there was no refinance element to this loan.

Taking all these factors into account it seems to me that the second loan was not a refinance of the first and so had no element of PPI attached to it and no link at all with the first loan.

I have seen no evidence that there is a link between the two loans other than them both being taken out with Tesco but by totally separate agreements. It follows I am not persuaded the debt on the second loan is *closely connected* to the compensation for the mis-sale of Mr J’s PPI policy. The arrears on Mr J’s second loan arise from different circumstances.

I have also noted Tesco’s comment in response to the adjudicators view regarding the consideration of priority debts and that in their view this would not apply in Mr J’s circumstances so set-off should be permitted. This is the second part of the test I referred to earlier. However as the first part of the test showing a *close connection* between the PPI compensation and the outstanding debt has not in my view been met I do not need to consider the circumstances of priority debts.

In summary having considered all the available evidence I am not persuaded that there is a close association between the debt arising from Mr J's arrears on his second loan and the debt Tesco owed to him as redress for the mis-sale of the PPI policy on the first loan. It follows I am not persuaded that the equitable right of set-off applies here. So I am of the view it is fair and reasonable that the redress should be paid directly to Mr J.

I understand that the offer from Tesco was not accepted by Mr J and so the redress has not as yet been paid to him. In these circumstances Tesco must recalculate the interest at 8% per year simple† to bring this up to date to the date of settlement.

† I understand Tesco 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 Tesco 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 that Tesco Personal Finance Plc should pay the redress directly to Mr J.

I make no other award against Tesco Personal Finance Plc.

Christine Fraser
ombudsman