complaint

Mr B isn't happy with how Welcome Financial Services Limited ('Welcome Finance') has offered to resolve his complaint about a payment protection insurance ('PPI') policy attached to his loan.

Mr B has been represented throughout his complaint.

background

In 2003 Mr B took out a loan with Welcome Finance. The loan had PPI attached.

At some point Mr B got into trouble in making the repayments on the loan and Welcome Finance sold the debt on to a third party.

In 2017 Mr B complained that the PPI policy had been mis-sold. Welcome Finance agreed to settle Mr B's complaint and calculated the compensation to be £464.59 (after tax).

But, Mr B still had a debt outstanding with the third party – which was more than the £464.59 Welcome Finance owed Mr B.

Welcome Finance bought the debt back from the third party. The total debt outstanding was £2,738.78 and Welcome Finance wanted to use the PPI compensation to reduce the amount Mr B owes for this debt.

Our adjudicator looked at the complaint and thought the approach Welcome Finance intended to take was fair.

Mr B's representatives disagreed. They said the debt related to a different loan account, so it was unfair for Welcome Finance to use the compensation to reduce a debt on a different loan.

Our adjudicator responded and advised that the Mr B's original loan was rewritten so she considered the loans were related and it was still fair for Welcome Finance to use the compensation to reduce the debt.

As the matter hasn't been resolved it's been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.
I've listened to everything Mr B, his representative and Welcome Finance have said. I understand that Mr B will be disappointed, but I agree that the approach Welcome Finance wants to take to resolve his complaint is fair. I'll explain why.

When a business agrees to refund a PPI complaint we expect it to, *as far as possible*, put the consumer in the position they would've been in had they not taken out the PPI policy.

Welcome Finance looked at the effect PPI had on Mr B's loan and calculated that it would have offered him £464.59 (after tax).

Part of Mr B's loan account debt included some unpaid PPI. Welcome Finance's final response explained that this was £66.69. So this amount will just be taken off the debt and Mr B wouldn't be entitled to 8% simple interest on this amount – because he's never been out of pocket for it as he's never paid it back.

The rest of the compensation (£397.90) is what Mr D actually paid towards the PPI policy (in premiums and associated interest) during the life of the loan, including 8% simple interest – because technically he is out of pocket for this money.

But because Welcome Finance said there were still arrears on the loan account, which hadn't been paid back, it would use Mr B's PPI compensation to reduce those arrears.

Welcome Finance sold the debt on to a third party. Welcome Finance had a right to sell the debt to the third party and it also has a right to buy that debt back. I've seen confirmation that Welcome Finance has bought the debt back.

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 Welcome Finance to set-off in this way. Both tests must be satisfied for me to find that Welcome Finance has an equitable right to set-off the PPI compensation against Mr B's outstanding debt on his loan account.

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

I appreciate why Mr B and his representatives thought the debt related to a different loan account because Mr B had three loan account numbers. But in effect, Welcome Finance was not setting up a new line of credit for Mr B, it was amending or 're-writing' his existing ones and in order to do so – it had to generate a new loan account number.

It's effectively an amendment of his original loan. In these circumstances I think it's fair and reasonable to treat Mr B's outstanding debt as the same line of credit as his original loan. So Welcome Finance is entitled to set off all of the compensation against Mr B's outstanding debt – they are, in effect, a single line of credit.

I've also seen nothing to show Mr B has priority debts so he needs the compensation to pay those. So, again I think it's fair for Welcome Finance to use the compensation it owes Mr B to reduce the debt he owes it.

my final decision

As I've discussed above, my final decision is that the offer Welcome Financial Services Limited has made to resolve Mr B's PPI complaint is fair. And it was fair for Welcome Financial Services Limited to purchase the debt back from the third party and use the PPI compensation to reduce the debt Mr B owed it.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 25 July 2018.

Matthew Horner
ombudsman