

complaint

This complaint concerns the redress related to two single premium payment protection insurance policies (PPI) sold in association with two loans from Tesco Personal Finance Plc (Tesco).

Tesco has upheld Mr J's complaint and offered him redress. But Tesco wants to use the redress due for both of the policies against an outstanding debt on the second loan Mr J took out in 2007.

Mr J is unhappy with this and wants the redress paid directly to him.

background

Mr J took out a loan with Tesco in July 2006 and then refinanced this with another loan from Tesco in January 2007. On both occasions Mr J purchased PPI by way of a single premium which was added to the loan and attracted interest. Mr J went into arrears on the second loan in 2009 and a debt remains outstanding on this loan.

Mr J complained to Tesco about the sale of the PPI with his loans in 2011. In January 2012 Tesco wrote to Mr J agreeing to uphold Mr J's complaint and setting out the redress it was willing to pay Mr J in respect of both PPI policies. However it went on to say that as the second loan was in arrears it would be using all the redress to reduce the arrears on the second loan.

Mr J was unhappy with Tesco's approach and brought his complaint to this service through a third party. Mr J believed the redress should be paid directly to him and he also considers he should be compensated for the way Tesco has dealt with his complaint.

In June 2014 an adjudicator from this service wrote to Tesco formally setting out her findings. The adjudicator said that it was fair for Tesco to use the redress from the second mis-sold PPI policy to reduce the arrears on the second loan. However the adjudicator did not consider it fair that Tesco use the redress from the PPI policy sold with the first loan to reduce arrears on the second loan. The adjudicator asked Tesco to pay the redress from the first PPI policy sold in July 2006 directly to Mr J.

Tesco has not responded to the adjudicators findings and so the complaint has been passed to an ombudsman for a decision.

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.

As Tesco has agreed to uphold Mr J's complaint about the sale of the PPI policies I will not address the issue of how the PPI policy came to be sold to Mr J. I will only address whether it is fair and reasonable for Tesco to apply the redress payable to Mr J in respect of the sale of both PPI policies to the arrears on the second loan.

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 the debt owing on the second loan account he had with Tesco.

PPI policy sold in January 2007

This service would generally consider it fair and reasonable for a business to “off-set” the redress payable for the mis-sale of a PPI policy against a consumer’s arrears on their account which would remove or reduce those arrears. However we would not normally consider it fair for a business to use redress to off-set arrears on a non-related account.

I am satisfied that the PPI policy sold in January 2007 was purchased directly in connection with the loan taken out at the same time. It follows that I consider it is fair that Tesco can use the redress for the PPI policy sold in January 2007 to reduce the arrears on the loan taken out at the same time.

PPI policy sold in July 2006

Tesco indicated during the course of the investigation that as the second loan refinanced the first, there was a chain of loans and it had a right to set-off the redress payable for both PPI policies against Mr J’s outstanding arrears on the second loan. It said that this approach was consistent with the general law which recognises the equitable right of one party to set-off amounts owed where the other party is in debt to it.

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*. It is in line with this principle that I have found it fair and reasonable that Tesco can use the redress from the second mis-sold PPI policy to off-set arrears against the second loan taken out in January 2007.

It is not the same situation with the first loan taken out in July 2006. This first loan taken out by Mr J which had PPI attached to it (the associated loan) has been settled by refinancing it with Tesco, so there are no arrears on this loan. So 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 outstanding balance on his second loan as this is not the “*associated loan*” in this case. There are no arrears outstanding on this first loan, only on the refinanced loan.

Tesco has suggested it can rely on the equitable right of set-off. This in law allows a person to ‘set-off’ *closely connected debts*. This means that one person (X) can deduct from a debt that they owe another person (Y), money which that person (Y) owes to them.

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.

I accept there is a connection between the loans taken out by Mr J; the first loan taken out in August 2006 was refinanced into the loan that holds the arrears that Tesco are looking to off-set the redress to. I accept this refinanced loan would have included an amount for the PPI policy premium associated with the first loan sold in August 2006.

However I am not persuaded there is a close connection between the *redress* for the mis-sold PPI policy taken out in August 2006 in connection with Mr J's first loan and the outstanding *arrears* on the loan taken in January 2007. The redress for the PPI policy arises from regulatory failings. The arrears on Mr J's refinanced loan are not the result of regulatory failings and flow from completely different circumstances.

So I am not persuaded the redress and arrears are sufficiently closely connected for it to be fair and reasonable for the *redress* from the mis-sale of the PPI policy for the first loan to be off-set against the *arrears* on the refinanced second loan.

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 with regard to the first loan I do not need to consider the circumstances of priority debts in relation to this.

The second loan taken out in 2007 and the compensation for the PPI sold with that does meet the first part of the test, being closely associated, so I do need to consider whether it would be unjust for Tesco to use the PPI redress as set-off against the debt Mr J owes them if Mr J has more pressing priority debts.

I have seen no substantive evidence that there are any priority debts (eg rent, utility bills etc) that are outstanding and would take priority over the debt Mr J owes to Tesco in relation to his second loan.

distress and inconvenience

In 2010 Mr J was made redundant and has suffered some financial difficulties. He also in early 2014 had a major health problem. He has expressed concern about how Tesco has handled his complaint and the additional stress and inconvenience caused to him during some difficult times in having to continually follow up his complaint.

I am concerned about the way Tesco has dealt with this particular complaint. Tesco put forward its offer to Mr J in Jan 2012 and since that time has been made aware that its offer and approach to setting off the redress against a debt not directly connected with the PPI is not in line with the approach of this service. A number of decisions have been issued by this service in cases very similar to this one outlining the approach that should be taken in such circumstances.

In February and March 2014 this service put the standard approach we take in such cases to Tesco and asked it to reconsider its position and respond in relation to Mr J's complaint. Tesco has said it was considering this at a senior level and would present its position at various dates, however it has failed to do so.

In mid May 2014 this service chased for a response from Tesco and it was highlighted with Tesco that Mr J's complaint was being dealt with as a priority due to a serious health issue which he had suffered.

Despite being made aware of the issues in this matter Tesco did not respond. The adjudicator issued a written view in June 2014 formally setting out the position of this service. In that view Tesco was asked to respond as a priority due to the length of time taken to progress the case and in particular in view of Mr J's change in health. As no response was received to that view the matter has been referred to me to make a final decision to bring the matter to a close for Mr J.

I consider the way Tesco has dealt with this complaint has caused inconvenience to Mr J but also added a great deal of stress to him at a time when he was seriously unwell. In view of all these factors I am awarding Mr J an additional payment of £300.00 for the distress and inconvenience caused by Tesco in dealing with his complaint.

my final decision

For the reasons set out above my final decision is that Tesco Personal Finance Plc should recalculate the redress due to Mr J for both mis-sold PPI policies in line with this service's guidelines in order to bring it up to date.

Tesco Personal Finance Plc may use the redress due to Mr J from the PPI policy sold in January 2007 to reduce the arrears on the loan take out at this time by Mr J.

Tesco Personal Finance Plc must pay the redress due to Mr J from the PPI policy sold in connection with the loan in July 2006 *directly to Mr J*.

I also direct that Tesco Personal Finance Plc should pay directly to Mr J £300.00 for the distress and inconvenience caused by the way it has dealt with this complaint.

Christine Fraser
ombudsman