

complaint

Mrs N doesn't think it's fair for Tesco Personal Finance Plc (Tesco) to use her payment protection insurance (PPI) compensation to reduce her outstanding debt.

background

Mrs N was sold PPI with a credit card. In 2018, Tesco upheld Mrs N's complaint about the sale of the policy and, in total, made an offer of £2,668.96 (after tax). But it said it would use Mrs N's refund to reduce her outstanding debt.

Mrs N is represented by her son. He doesn't think Tesco has shown that the whole debt is due and payable – and he wants Tesco to pay some of the compensation to Mrs N. Mrs N is in financial difficulties and has a number of health problems. Mrs N's representative says she needs the money to buy things that will improve her quality of life.

Our adjudicator sent Mrs N's representative evidence to show that her outstanding debt is just under £3,000 – and the whole debt is due and payable. And she said that although she understood why Mrs N wanted some of the PPI compensation to be paid to her directly, she didn't think it would be fair to tell Tesco to do that in this case.

Mrs N's representative disagreed with the adjudicator's opinion, so the complaint has been passed to me. He says Tesco didn't send Mrs N a default notice, so he doesn't think the whole debt is due and payable.

my findings

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

Tesco upheld Mrs N's complaint about the sale of the PPI policy so I don't need to look at what happened when it was sold. And Mrs N hasn't complained about the amount Tesco has offered.

So all I need to decide is whether or not it's fair for Tesco to use Mrs N's PPI compensation to reduce her outstanding debt.

Mrs N's representative says the whole £3,000 isn't due and payable because Tesco hasn't complied with sections 87 and 88 of the Consumer Credit Act 1974 ('CCA 1974'). Section 87 says a business must send the consumer a 'default notice' before it can terminate an account or demand earlier payment of any sum. And section 88 explains what the default notice must say and what it means.

Mrs N's representative says Tesco hasn't sent Mrs N a default notice – so it can't terminate her account or ask her to repay all she owes.

Tesco has sent us a copy of a letter it sent Mrs N dated 20 September 2017. This says:

'We have terminated your credit card account

We recently sent you a Default Notice. Since we have not received the amount requested in the Notice, we are terminating our credit agreement with you.'

The letter says the amount due is £2,999.70.

Mrs N's representative says she didn't receive the termination notice.

I don't think I need to decide whether or not Tesco sent Mrs N a default notice or correctly terminated the account. Tesco has sent us copies of letters it sent Mrs N in August 2017 that show she didn't make any payment in July 2017 or August 2017. As I've explained above, Mrs N owed £2,999.70 in September 2017. Tesco stopped charging Mrs N interest in 2016 and yet her debt today is almost the same as it was in September 2017. So Mrs N hasn't been able to repay much. In these circumstances, I think it's fair for Tesco to use Mrs N's PPI compensation to reduce the amount she owes.

I've thought carefully about whether or not I should tell Tesco to pay Mrs N some of her PPI compensation so that she can buy things that will improve her quality of life.

First, I'd like to say how very sorry I am that Mrs N is going through such a difficult time. I understand why her son has asked for some of the compensation to be paid to her directly – and I don't doubt the money would be put to good use. But I have to look at things from both sides. And Mrs N owes Tesco a lot of money and she hasn't been able to repay much recently. Realistically, I don't know if or when she'll be able to repay what she owes. And in these circumstances, I don't think it would be fair to tell Tesco to pay Mrs N some of her PPI compensation when the likelihood of her repaying her debt seems remote.

Finally, when Mrs N referred her complaint to our service, her representative said: the PPI premiums would have been paid directly to her insurer and Mrs N's monthly credit card payments would have been used to pay the PPI premiums first, so the amount she owes has nothing to do with PPI. He also said Tesco doesn't have a contractual right to use Mrs N's PPI compensation to reduce her balance.

Tesco has sent us a copy of a letter it sent Mrs N dated 12 March 2018 which explains that:

- The PPI premiums were added to Mrs N's credit card balance each month, just like any other purchase – she didn't pay the money directly to the insurer; and,
- Mrs N's credit card payments wouldn't have been used to pay for PPI first – they would have been used to repay different types of debt according to the terms and conditions.

This is how credit card PPI works. To this, I'd add:

- Before the value of a successful claim was deducted, the offer included more than £1,200 in 'interest at Credit Card interest rate'. The reason why Tesco has offered to refund some of the interest it charged Mrs N is because the PPI premiums were added to her credit card balance each month – and she was charged more interest as a result.

That said, this isn't why I've reached the decision I have.

I haven't said I think it's fair for Tesco to use Mrs N's PPI compensation to reduce the amount she owes because her debt includes unpaid PPI premiums (and interest) or because Tesco has a contractual right to do so.

My role is to decide this complaint by reference to what I think is fair and reasonable in all the circumstances of the case. And, put simply, Mrs N owes Tesco some money and Tesco owes Mrs N some money. The debts are closely connected and I don't think it would be fair to tell Tesco to pay Mrs N what it owes her when it's possible she won't pay Tesco what she owes it.

my final decision

For the reasons I've explained, I think it's fair for Tesco Personal Finance Plc to use Mrs N's PPI compensation to reduce her outstanding debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 7 March 2019.

Christopher Reeves
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