

complaint

Mr D 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 D has been represented throughout his complaint.

background

Mr D took out a loan with Welcome Finance. The loan had PPI attached.

At some point Mr D got into trouble in making the repayments on the loan. In 2012 Welcome Finance sold the debt on to a third party.

Mr D complained that the PPI policy had been mis-sold. Welcome Finance agreed to settle Mr D's complaint and calculated the compensation to be £1,123.51.

But, Mr D still had a debt outstanding with the third party – which is more than the £1,123.51 Welcome Finance owed Mr D.

Welcome Finance said that it was going to buy the debt back from the third party and use the PPI compensation to reduce the amount Mr D owes for this debt. But, before it could do so, Mr D needed to accept the offer of compensation.

Our adjudicator looked at the complaint and thought the approach Welcome Finance was going to take was fair. And she set Welcome Finance a deadline to buy the debt back by. Mr D disagreed with the adjudicator's view and asked for the complaint to be seen by an ombudsman.

Since our adjudicator's view Welcome Finance has confirmed that in July 2017 it bought the debt back. And the total debt outstanding for Mr D's loan account is £1,484.98.

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 D, his representative and Welcome Finance have said. I understand that Mr D 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 do, *as far as possible*, put the consumer back 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 D's loan and calculated that it would have offered him £1,123.51.

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

Part of Mr D's loan account debt included some unpaid PPI. Welcome Finance's final response explained that this was £288.21. So this amount will just be taken off the debt and Mr D 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 (£835.30) is what Mr D actually paid towards the PPI policy during the life of the loan, including 8% simple interest – because technically he is out of pocket for this money. Welcome Finance should update the 8% simple interest on the offer to bring it up to date.

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. How much the debt is sold or bought for I don't think has relevance in this case. That is a commercial decision which has been made by Welcome Finance. Ultimately, there is still a debt on Mr D's loan account which Mr D hasn't paid back.

Mr D isn't happy because he says Welcome Finance didn't own the debt when it made the offer so it didn't have a right to do this. It is also my understanding that Mr D hasn't accepted the offer yet. I agree that Welcome Finance didn't own the debt at the time it made the offer. And if Welcome Finance didn't own the debt now and so no longer had a legal interest in it, I'd agree that it wouldn't be fair for it to keep the compensation. But Welcome Finance has bought the debt back and do own it again now.

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 D's outstanding debt on his loan account.

The PPI sold to Mr D 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 D had with Welcome Finance.

I've also seen nothing to show Mr D 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 D to reduce his loan account debt which he owes it.

Mr D's representative has raised a few other concerns.

Firstly, they believe that 8% simple interest part of Mr D's compensation should be treated differently and paid directly to Mr D. As I've explained above, Welcome Finance has agreed that it owes Mr D a debt – which includes the 8% simple interest. But Mr D also owes Welcome Finance a debt and that debt is more than what Welcome Finance owes him. So I think it's fair for Welcome Finance to use the debt it owes Mr D, to reduce the debt Mr D owes it.

Mr D's representative has also noted that Mr D has made more in loan repayments than the credit he initially borrowed, so thinks it's unfair that it's considered that he hasn't paid much of the loan back.

Mr D would've signed a loan agreement in which he agreed to repay the credit he borrowed, and the interest on that credit, by a certain date. I can see that Mr D took out this loan in 2003 and it had a term of three years. He borrowed £2,010 and if his loan had run to term and if he'd kept up with the agreed loan repayments he'd have paid £2,767.13 overall. Welcome Finance sold the debt in 2012, six years after his loan was due to end, and to this date, the credit Mr D borrowed still hasn't been fully repaid.

I haven't seen a copy of Mr D's loan account and what he has or hasn't paid back – so I don't know what happened. From the information I have it's clear he got into a bit of difficulty in making his repayments and he was likely charged extra in interest/charges because of this.

If Mr D wasn't making full repayments or missing repayments then he would've incurred extra charges and likely extra interest – depending on what was agreed in the loan agreement. And because of this it's likely the payments he was making wasn't reducing the credit he borrowed at the same rate as agreed in his loan agreement – because any repayments he was making was likely also going towards paying off those extra charges/interest.

I accept it's likely Mr D has paid more than the credit he initially borrowed but I don't think this is relevant to his complaint about the PPI compensation and what Welcome Finance intend to do with that compensation.

Mr D has mentioned that he agreed to settle this debt in full and final settlement in 2007 – which he did and yet his loan remained. I don't know what happened here – or what the agreement was between Mr D and Welcome Finance. But the evidence suggests there is still a debt on this loan account.

Welcome Finance might've agreed to 'write off' the debt for a final and lesser payment. If this is the case, this wouldn't mean that the debt no longer existed – because the full amount wouldn't have been paid back. It would just mean that Welcome Finance agreed not to pursue Mr D legally for the debt going forward. If Mr D has concerns about the debt on his loan account or about any agreement he had with Welcome Finance before the debt was sold on then he should, if he hasn't already, raise these concerns to Welcome Finance in the first instance. This decision is just commenting on whether the compensation Welcome Finance has offered Mr D to resolve his PPI complaint is fair and what it intends to do with that compensation.

As I've mentioned, it is my understanding that Mr D hasn't accepted the offer from Welcome Finance yet. Welcome Finance has said that it is awaiting Mr D to accept the offer before using the compensation to reduce his debt. So at the moment the outstanding amount is still £1,484.98. I don't know what Welcome Finance intend to do to recover this amount. But if Mr D doesn't accept that offer then the outstanding debt on his loan account will stay at £1,484.98 and it's possible that Welcome Finance will continue to pursue that amount.

I understand Mr D will be disappointed with the outcome and that he doesn't agree with the approach the business has taken. I want to assure him that I've considered everything he's told us. I don't want Mr D to mistake me not agreeing with him as being biased towards the business – or just going along with what Welcome Finance say. My job is to come to a fair and reasonable outcome based on the evidence I have and whilst taking account of the relevant laws, rules and good industry practice.

my final decision

As I've discussed above, my final decision is that the offer Welcome Financial Services Limited has made to resolve Mr D's PPI complaint is fair. So I don't think it needs to pay the compensation directly to Mr D.

Welcome Financial Services Limited should update the 8% simple interest on the amount Mr D was out of pocket for, as discussed above, to bring the offer up to date.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 January 2018.

It is up to Mr D whether he accepts this final decision or not. If Mr D accepts this decision then it will be legally binding on both parties and Welcome Financial Services Limited will need to reduce the amount Mr D owes it by £1,123.51.

But, if he doesn't, then the decision won't be legally binding on him or Welcome Financial Services Limited. This means that Welcome Financial Services Limited would have the right to withdraw the offer it has made.

Martin Purcell
ombudsman