

complaint

Mrs J complained about how Tesco Personal Finance PLC (Tesco) was going to repay the compensation it had offered to her for the mis-sale of a regular premium payment protection insurance policy (PPI) sold with a credit card. Tesco wants to use the compensation to set against a debt from arrears on the credit card. Mrs J wants the redress paid directly to her.

background

The background to this complaint is in my provisional decision issued in July 2014. A copy of this is attached and forms part of this final decision.

In my provisional decision I explained what I considered fair and reasonable in the way the compensation for the PPI should be refunded to Mrs J.

Mrs J responded to my provisional decision in detail explaining why she thinks the compensation should be paid directly to her. Mrs J says she still has financial problems and has a number of debts which remain due and which she pays as and when she can. Mrs J still feels she does not owe any debt to Tesco as this was settled by a reduced payment to the company. I considered this point in my provisional decision.

Mrs J did have the use of the money borrowed on the credit card. Tesco is not actively taking action to recover the amount that was left unpaid when Tesco agreed not follow up this debt. There was over £4000.00 outstanding as the debt on the card. Part of this amount was the result of the PPI being added to the account. I believe it is fair that the PPI refund should be used to reduce this debt, unless there is a priority debt which more urgently needs to be paid.

Mrs J did originally provide information showing she was in arrears with her mortgage. If she fails to pay her mortgage then her home could be repossessed. So the mortgage arrears need to be paid to avoid Mrs J possibly losing her home. Tesco offered to pay the compensation direct to the mortgage company to assist in paying this priority debt. But Mrs J did not accept this offer.

Tesco has said it will still agree to pay the compensation it owes to Mrs J direct to Mrs J's mortgage provider if there are still arrears on the mortgage. Mrs J has sent recent correspondence showing there are arrears of just over £2,500.00 on her mortgage.

I've taken into account all the comments made by Mrs J about her other debts and the way she wants to use the compensation from Tesco to help her everyday life. I've also taken account of the fact there is money still owed to Tesco for the credit card debt, even though it is not actively chasing payment.

my findings

I've considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

I believe the offer made by Tesco to pay the compensation direct to Mrs J's mortgage arrears is fair and reasonable. Mrs J would have to agree this payment is made direct to the mortgage company.

In the circumstances if Mrs J agrees that Tesco pays the compensation direct to her mortgage company, then Tesco should update its calculations of the compensation and pay this towards Mrs J's mortgage arrears.

If Mrs J does not agree to this approach then Tesco should use the compensation it owes to Mrs J to set against the credit card debt owed by Mrs J to Tesco.

my final decision

If Mrs J agrees I direct Tesco Personal Finance PLC pays directly to Mrs J's mortgage company the compensation due for the mis-sale of the PPI.

If Mrs J does not agree with the payment direct to her mortgage company to pay her mortgage arrears then I consider it fair and reasonable for Tesco Personal Finance PLC to use the compensation to set against the debt it is owed on the credit card.

I do not uphold Mrs J's complaint that the compensation should be paid directly to her.

I make no further award against Tesco Personal Finance PLC.

Christine Fraser
ombudsman

COPY OF PROVISIONAL DECISION

background

Mrs J took out a credit card with Tesco in 2003 and at the same time purchased a PPI policy.

Mrs J complained to Tesco about the sale of the PPI and in September 2011 Tesco wrote to her stating it upheld her complaint. Tesco offered to refund the costs paid for the PPI from 2003 to the date the card was cancelled. However it went on to say that as the credit card account was in arrears it would apply the refund against those arrears.

Mrs J was unhappy with Tesco's proposal for the repayment of the compensation and requested that Tesco pay the refund directly to her. When Tesco declined to do this Mrs J brought her complaint to this service.

In 2013 an adjudicator indicated that as Mrs J had a priority debt related to her mortgage the refund should be paid by Tesco directly to Mrs J to be used towards this priority debt.

Tesco then offered to pay the refund by cheque to the mortgage company, with Mrs J's consent, rather than set it against the debt owed to Tesco. Mrs J remained unhappy with this proposal wanting the refund paid directly to her and the adjudicator confirmed Tesco should pay the money to Mrs J in view of the priority debt.

Tesco remained unhappy with this approach and has 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 agreed to uphold Mrs 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 Mrs J, only those considerations relating to the redress payable to her by Tesco.

The main focus of Mrs J's complaint is that she considers the compensation should be paid directly to her and not used to reduce the debt she owed in relation to the credit card account she 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)

The guidance suggests that Tesco can use PPI compensation to reduce arrears on the associated loan and where it has the contractual right to do so.

In this complaint the credit card taken out by Mrs J, which went into arrears, was the one which had the PPI attached to it, so it was the *associated* credit card. The simple facts are that Tesco owes Mrs J the redress for the PPI that was paid on the credit card. Mrs J owes money to Tesco connected with arrears on the same credit card. So as there is a direct connection between these two debts as both relate to the same credit card account, there would appear to be a right in this case to set off the debts against each other.

However I also have to consider whether it is fair and reasonable for Tesco to use this right of set off in the circumstances of this complaint.

Mrs J has indicated that in 2011, when the compensation for the PPI was offered by Tesco, she was paying a debt recovery company a reduced amount for the arrears on her credit card debt. Then in 2012 she agreed to make a payment to settle the account debt on a reduced basis. A letter was sent in June 2012 from Tesco which indicated the account was considered repaid and closed but also indicating there was a figure of over £4000 which had remained unpaid on the account.

Mrs J has said as she considered the credit card account fully paid and closed she owes nothing to Tesco and so any refund of PPI should be paid directly to her. Tesco has confirmed the debt on the credit card was never sold to a third party, although an outside debt recovery agent was instructed by Tesco in relation to the debt when the arrears arose. The fact that the letter in 2012 came from Tesco would confirm this to be the case.

It seems to me that Mrs J would still have taken out the credit card in 2003 and I have seen nothing to suggest the account would not have still gone into arrears without the PPI added, as the arrears were far more than the amount paid for the PPI. If no PPI had been added to the credit card, the debt Mrs J owed to Tesco may have been reduced, but there would still have been a debt. Although Tesco agreed to accept a lower amount to close the account and to not seek any further payment of the debt, this does not alter the fact that Mrs J did have the use of the whole of the money which formed the debt from Tesco. So it seems to me reasonable that as Tesco now owes Mrs J some money Tesco should be able to use it against money Mrs J owes the bank related to the same account.

I then have also taken into account the evidence provided by Mrs J that she had a priority debt on her mortgage and so the compensation should be paid directly to her to allow her to use it against her priority debts.

Mrs J submitted to this service evidence of arrears on her mortgage in 2012. She has recently confirmed she is still in arrears. However it seems she has an arrangement in place in relation to this debt and no evidence has been provided to indicate she is not managing to maintain that arrangement. I have seen no evidence that any further default proceedings are being taken in connection with any priority debts.

I have also noted that Tesco has offered to make the compensation payment by cheque to the mortgage company to assist Mrs J with the arrears on her mortgage.

Taking account of all these circumstances I am persuaded that if Tesco is still willing to make the payment towards Mrs J's mortgage arrears, and she is willing to consent to that, if this is a pressing priority debt, then this would be the most reasonable course of action to take. This can only be done if Tesco confirms it is still willing to make this offer and Mrs J agrees to the money being paid to a third party in this way. I can then direct, with the agreement of the parties, that this approach be taken.

If the parties do not agree to this approach then I am currently persuaded on the evidence I have seen so far, it would be fair and reasonable for Tesco to use the compensation payment for the PPI to set against the money Mrs J owed on her credit card account.

If Mrs J can provide to me further substantive evidence to persuade me any priority debts are no longer being met by an arrangement and so should take priority over other debts then I can consider directing the payment to Mrs J.

If there is nothing to show that any priority debt needs to be met urgently, then I would propose to direct Tesco to either, by agreement, pay the compensation to Mrs J's mortgage company or if there is no agreement to set the compensation off against the debt Mrs J owed on her credit card.

my provisional decision

Subject to the further submissions of both parties I am currently proposing to either

1. By agreement of the parties direct that Tesco Personal Finance PLC pay the redress due for the mis-sale of the PPI by cheque in favour of Mrs J's mortgage company;

OR

2. Direct that Tesco Personal Finance PLC use the redress due for the mis-sale of the PPI against the debt owed by Mrs J connected with the credit card account.

Christine Fraser
ombudsman