

complaint

Mr C is unhappy with how Tesco Personal Finance PLC (Tesco) wants to use the compensation it offered to settle his complaint about mis-sold payment protection insurance (PPI) taken out with a loan.

background

In May 1998 Mr C took out a loan with Tesco and at the same time bought a PPI policy. Mr C, through a third party, has now complained the PPI was mis-sold and Tesco agreed to uphold the complaint. It worked out the compensation due to Mr C was £3,054.88 but it said that as Mr C's loan was in arrears it would use this amount to reduce the outstanding balance.

Mr C wasn't happy that Tesco wasn't paying the compensation directly to him as he said other businesses hadn't set off compensation against debts he owed. So he brought his complaint to this service.

Our adjudicator said what Tesco had done was fair. Mr C still wasn't happy and asked for an ombudsman to consider his complaint.

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 agreed to settle Mr C's complaint about the mis-sale of the policy with Mr C's loan. So in this decision I'm not looking at how the PPI came to be sold, I'm only considering if how Tesco wants to use the compensation is fair.

Mr C agrees he defaulted on the loan he took out with Tesco. So he had the use of the money but didn't pay it all back and still owes £8,690.23 to Tesco for what he borrowed in 1998.

Under the Rules set by the Financial Conduct Authority (FCA), known as the DISP Rules, Appendix 3 deals with the handling of complaints about PPI. Appendix 3.9 deals with some aspects of the payment of compensation. At DISP App 3.9.1 it 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 reasonably in deciding whether to make such a payment".

Mr C has raised the issue of whether Tesco has a contractual right to set off his compensation. As he signed a credit agreement he legally entered into a contract to borrow money at a rate of interest and repay it with regular payments. He has breached that contract by defaulting on the terms of payment so Tesco had legal rights under that contract to recover the money it wants paid back.

On Mr C's default in payments to the loan, Tesco referred the matter to its recoveries department and Mr C has been making some small payments towards the debt. But there is

still over £8,500 to be repaid. Tesco has never sold the debt to any third party so the legal interest in the debt Mr C owes remains with Tesco.

So Mr C still has a legal duty to repay that debt. The compensation he is due for the mis-sale is a debt that Tesco owes to him. So what it wants to do is to use its debt to Mr C, to set against the debt he still owes to Tesco.

In law this is called the equitable right to set off which allows people to “set-off” closely connected debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them. DISP App 3.9.1, that I have quoted above, reflects this.

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 unjust not to allow Tesco to set-off in this way. Both tests must be satisfied for me to find that Tesco has an equitable right to set-off the PPI compensation against Mr C’s outstanding debt on his loan.

The PPI sold to Mr C was directly connected to his loan as it was sold at the same time and the premium to pay for the PPI added to what he borrowed. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the loan debt are directly connected.

Having decided there is a close connection, I then need to think about whether it would be unjust not to allow Tesco to set off in this way.

I have looked at the offer letter sent to Mr C in May 2018. Immediately above where the offer is broken down it says; *“As your Personal Loan is currently in arrears we will apply the payment against the outstanding amount”*.

I think this made it clear how Tesco was intending to use the compensation. Mr C knew there was a debt on the loan so he would have realised what Tesco was saying in its offer letter.

Mr C has raised a concern about his other commitments but has provided no evidence to show that he has any priority debts, such as rent, mortgage, tax etc. If this were the case then Tesco has said it would pay the compensation to such a debt before the debt he owes to Tesco. Tesco has also said that as Mr C brought his complaint through a third party, if he provides the invoice from the third party for its costs, it will pay those costs to the third party from the compensation before setting the rest against Mr C’s debt.

This is in line with what I would expect when considering if a firm has acted fairly and reasonably, as required by the Rules. And I think in this case Tesco has done so.

Mr C was concerned that other businesses have paid compensation to him directly even though he owed them debts. He thinks Tesco should do the same, otherwise he says there is inconsistency by businesses in applying the Rules and the law.

There can be many factors which affect what a business does in relation to different products. I do not know the facts of the other cases where Mr C was paid compensation. It is possible, for example, other businesses had sold the debt Mr C owed to a third party, so no longer had a legal interest in his debt and couldn’t set off the compensation.

I can only look at the facts on this complaint about the PPI sold with a loan from Tesco. And I think what Tesco has offered and indicated it will do with the compensation is fair and in line with the Rules and the law.

Mr C has also raised a point about why Tesco required his signed acceptance to set the compensation against his debt if they were following the FCA guidance correctly. As can be seen DISP App 3.9.1 states the business can reduce the debt it is owed with the compensation "*if the complainant accepts the firm's offer of redress*".

Mr C didn't accept the offer as he brought it to this service. If he had signed the acceptance, agreeing it in full and final settlement at that time then Tesco would have automatically been able to set it against the debt. This is why it was required to ask for his signed acceptance.

The amount Mr C still owes on his loan is over £8,800.00. The debt Tesco owes for the PPI compensation is just over £3,000.00. I think it is fair for Tesco to use the compensation against this debt on the loan the PPI was directly related to, for the reasons I have set out.

If Mr C sends Tesco the invoice from the third party it has said it will still pay that out of the compensation. So Mr C should do that as soon as possible and within 28 days of the date of this decision so this matter can be finally resolved.

my final decision

For the reasons I've set out I'm satisfied that what Tesco Personal Finance PLC has offered and said it will do with the compensation due for the mis-sold PPI policy is fair. So I am not upholding Mr C's complaint and telling Tesco Personal Finance PLC to do anything differently.

If Mr C wishes to have the third party representative's invoice paid, he should submit a copy of the invoice to Tesco Personal Finance PLC as soon as possible and within 28 days of the date of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 March 2019.

Christine Fraser
ombudsman