Financial Ombudsman Service

complaint

Mr J brought his complaint to this service as he was unhappy that National Westminster Bank Plc (NatWest) wanted to use the compensation connected with a complaint about a payment protection insurance (PPI) policy to offset an outstanding debt related to a current account overdraft and a loan he has with the bank. Mr J wants the compensation paid directly to him.

background

Mr J complained to NatWest about the sale of a PPI policy taken out in March 2000 alongside a loan the reference for which ended in 1828. This loan was closed in April 2001.

In March 2011 NatWest wrote to Mr J offering to settle his complaint by refunding the cost of the PPI premium plus interest. However NatWest said that it would pay the compensation towards debts it said Mr J had with the bank. These debts related to a totally different loan ending with #9175 taken out in 2004, some three years after loan #1828 was closed and also a debt related to an overdraft on a current account. These debts were with the bank's credit management services section.

Mr J was unhappy with NatWest's proposal for the repayment and requested that it pay the refund compensation directly to him by cheque. Mr J disputes that he owes any enforceable debts to NatWest. When NatWest declined to pay the refund of the PPI costs directly to Mr J, he brought his complaint to this service.

An adjudicator from this service indicated to NatWest that its proposal to refund the redress against debts which were not related to loan #1828 alongside which the PPI was purchased was not in line with the ombudsman service approach and would not be fair and reasonable. NatWest disagreed and 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.

NatWest has agreed to offer a refund of the PPI costs to Mr J to settle his 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 Mr J, only those considerations relating to the redress payable to Mr J.

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 any debt which is unrelated to loan #1828 alongside which he purchased the PPI. Mr J disputes whether there is any enforceable debt on loan #9175 or his current account.

NatWest has stated it does not accept *"that because the premium refund relates to a previous loan and the refund was made to a different account, that it cannot be used to reduce the current account arrears. As the servicing account for the loan, the current account debt is in part due to the original loan and both are inextricably linked by this close association".*

NatWest 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 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*".

A strict reading of the relevant guidance suggests that NatWest can only use PPI compensation to reduce arrears on the *associated* loan and only where *it has the contractual right to do so.*

In this complaint loan #1828 taken out by Mr J (the associated loan) was closed in April 2001. NatWest have been unable to produce any evidence that when this loan was closed there were any arrears on this account. Setting aside whether or not NatWest has a *contractual right*, applying the relevant guidance suggests that NatWest is not entitled to use the compensation for the mis-sale of the PPI sold alongside loan #1828 to reduce the outstanding balance on debts related to Mr J's current account and loan #9175 as these are not the "*associated loan"* in this case.

However NatWest is also raising the wider, equitable right of set off, which I need to consider. For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which NatWest would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow NatWest to set off in this way.

I accept that redress payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That is consistent with the FCA guidance referred to above.

But it is another matter to say that a debt occurring as the result of a totally separate loan or an overdraft on a current account, albeit in part an account used to make the payment of the loan repayments, is to be regarded as *closely connected* with the debt arising (for example the requirement to pay compensation) from the mis-sale of a PPI policy.

In this complaint NatWest has stated Mr J's current account was used to service loan #1828. However that was a current account from which Mr J made many payments, not only the payments to service the loan.

The redress for the PPI policy arises from shortcomings in the way the policy was sold alongside loan #1828. As the current account was not set up *exclusively* for servicing Mr J's loan, I am not persuaded if there is a debt on the current account it is *closely connected* to the compensation for the mis-sale of his PPI policy. The debts Mr J may owe to NatWest arise from different circumstances.

I consider any current account and/or loan #9175 debts are not so closely associated with the PPI "*deb*t" NatWest owed to Mr J that the principal of set off should be used in this situation.

Taking account of all the facts in this complaint I am of the view it is fair and reasonable that the redress should be paid directly to Mr J by cheque.

I therefore uphold Mr J's complaint.

NatWest must recalculate the interest at 8% per year simple† to bring this up to date to the date of settlement.

† I understand NatWest is required to deduct basic rate tax from this part of the compensation. Whether Mr J needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr J should refer back to NatWest if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

my final decision

For the reasons set out above my final decision is that National Westminster Bank Plc should recalculate the redress due to Mr J for the PPI policy refund in line with this service's guidelines in order to bring it up to date.

National Westminster Bank Plc should then pay this redress due to Mr J from the PPI policy sold in connection with the loan #1828 *directly to Mr J.*

I make no other award against National Westminster Bank Plc.

Christine Fraser
ombudsman