

complaint

Mr and Mrs M are complaining that Santander UK Plc (Santander) mis-sold them two payment protection insurance (PPI) policies. They're unhappy that it wants to use some of the compensation it's offered to reduce a debt it says they still owe.

background

In 2005 Mr and Mrs M took out a PPI policy alongside a loan (loan one) through Santander (trading as Alliance and Leicester). The cost of the PPI was added to the loan, so attracted interest. In 2006 Mr and Mrs M took out another loan (loan two). They took out a PPI policy with this loan too. And the cost of the PPI was also added to the loan, so attracted interest. Loan two paid off loan one and the PPI policy on loan two was cancelled.

In 2008 Mr M became unemployed and they were unable to keep up with their loan repayments. So they entered into a repayment plan to repay the loan with reduced monthly repayments. Santander then later passed the debt onto a debt management company (DMC) to pursue the debt on its behalf. Mr and Mrs M are unhappy with the way that Santander and the DMC pursued them for the debt. They said it was very threatening. And they said that it caused them a lot of stress.

Mr and Mrs M said that the DMC later contacted them to say that they owed £2,718.47. And they say it offered them to pay £2,038.61 which they thought was in full and final settlement of the debt.

Mr and Mrs M are also unhappy that, despite settling the debt, they still have a bad credit rating. They said they always kept up with their restructured payments. So they don't think it's fair that their credit rating should be affected. They say that they can't take out any credit as a result of this.

In 2013, Mr and Mrs M complained to Santander that it had mis-sold them the PPI policies. Santander agreed the policies were mis-sold. And it offered them £957.09 in compensation. But it said that they still owed £679.61 on the loan. So it wanted to use some of the compensation to pay off this debt. Mr and Mrs M didn't think this was fair. They say that they had an agreement to pay £2,038.61 and, even if the debt does exist, Santander can't pursue them for it any more. They think that Santander's approach is morally wrong.

Santander has since agreed to pay the compensation it owed for loan one to Mr and Mrs M directly. But it didn't agree to update the credit file. It said that the payment they made to settle the debt was a percentage of the outstanding debt. So, had Mr and Mrs M not taken out PPI, they would've just paid less to settle the debt in 2010. Santander also commented that, even if they had paid off the debt in 2010, they'd still entered into a repayment plan before then where they paid less than they should've each month. And this would've affected their credit rating.

I issued a provisional decision in November 2016 saying that I thought the way Santander had offered to compensate Mr and Mrs M was fair. I've attached a copy of my provisional decision to this decision. And it forms part of this decision.

Mr and Mrs M responded to say that they didn't accept my provisional decision. They said that they complied with all the conditions that Santander imposed on them when Mr M became unemployed. They explained that, the way Santander and the DMC pursued them

for the outstanding debt had an impact on Mrs M's health and caused them both a lot of stress.

They said that they initially entered into a repayment plan with Santander paying back £100 per month. But they learnt that taking out a loan for £3,000 over five years would cost £104. So they thought taking out this loan would be a good solution to the matter. But when they applied for it, Santander declined the application because of their credit rating.

Mr and Mrs M say that they only agreed to pay the DMC £2,038.61 on the condition it was in full and final settlement. And they say that the DMC said it was a final payment. They think the DMC deliberately mis-led them because it knew it could recover the shortfall in the future.

Finally, Mr and Mrs M say that, in awarding compensation, this service looks to compensate the consumer and fine the business. They think that this service should award the same amount in compensation to the consumer as it fines the business to stop it acting in the same way in the future.

Santander said it didn't have anything else to add.

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 taken into account the extra comments that Mr and Mrs M have made, but I've reached the same conclusion as I did in my provisional decision. And I'd like to explain why.

First of all this complaint is about the mis-sale of PPI. So, despite my natural sympathies for the situation Mr and Mrs M found themselves in when Mr M became unemployed, I can't look at the way that Santander and the DMC pursued them for the outstanding debt.

Mr and Mrs M want me to take Santander and DMC's conduct into account in deciding whether it's fair for Santander to be allowed to use some of the compensation to pay off some of the debt. But, whether Santander or the DMC acted fairly or not, doesn't impact on whether Mr and Mrs M still owed Santander money or not. And this is the issue I have to decide. They will have to contact Santander separately if they're unhappy with the way Santander pursued the outstanding debt on the loan after Mr M became unemployed.

As I set out in my provisional decision, the payment Mr and Mrs M made of £2,038.61 wasn't to clear the debt. But it was in partial settlement of it. It's quite common for DMCs to offer a consumer to pay a percentage of a debt. This ensures that it receives some of the money owed. And in return it agrees to not pursue the consumer for the remaining debt.

I don't know for certain what the DMC said to Mr and Mrs M. Mr and Mrs M say that the DMC told them it was in full and final settlement. I think it's likely that the DMC told them that they wouldn't have to pay anything more towards the debt. But this is exactly what the offer was – to not pursue them for the money any further. So, once they made the payment of £2,038.61, they didn't have to pay anything towards the debt again. But it didn't mean the remaining debt was written off. And, as I said in my provisional decision, the letter the DMC sent to Mr and Mrs M to confirm the payment also said that the debt did still exist.

So, while Santander wasn't going to ask Mr and Mrs M to repay the remaining debt, they still owed it. And Santander is allowed to use its "right of set off" to use some of the compensation it owes to pay off the outstanding debt. Santander still isn't asking Mr and Mrs M to make a further payment towards the debt. But, given they do still owe it money, I think it's fair for Santander to use some of the money it owes Mr and Mrs M to reduce what Mr and Mrs M owe Santander.

Finally, Mr and Mrs M say that part of this service's role is to fine and punish businesses. But this service isn't the regulator of financial businesses – that is the Financial Conduct Authority. So we don't fine and punish business. If we award compensation, it's to put things right where something's gone wrong. And as I've said above, I don't think Santander has acted unfairly in this case.

my final decision

For the reasons I've set out above, I think Santander UK Plc can use the compensation it owes Mr and Mrs M for mis-selling PPI on loan two to reduce what they still owe on that loan. But it should pay the compensation it owes for mis-selling PPI on loan one to them directly. Santander UK Plc should update the simple interest if it hasn't already paid the compensation. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 23 January 2017.

Guy Mitchell
ombudsman

COPY OF MY PROVISIONAL DECISION

complaint

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background

In 2005 Mr and Mrs M took out a PPI policy alongside a loan (loan one) through Santander (trading as Alliance and Leicester). The cost of the PPI was added to the loan, so attracted interest. In 2006 Mr and Mrs M took out another loan (loan two). They took out a PPI policy with this loan too. And the cost of the PPI was also added to the loan, so attracted interest. Loan two paid off loan one and the PPI policy on loan two was cancelled.

In 2008 Mr M became unemployed and they were unable to keep up with their loan repayments. So they entered into a repayment plan to repay the loan with reduced monthly repayments. Santander then later passed the debt onto a debt management company (DMC) to pursue the debt on its behalf. Mr and Mrs M are unhappy with the way that Santander and the DMC pursued them for the debt. They said it was very threatening. And they said that it caused them a lot of stress.

Mr and Mrs M said that the DMC eventually contacted them to say that they owed £2,718.47 and it asked them what they could afford to pay. And they said that they agreed to pay £2,038.61 which they thought was in full and final settlement of the debt.

Mr and Mrs M are also unhappy that, despite settling the debt, they still have a bad credit rating. They said they always kept up with their restructured payments. So they don't think it's fair that their credit rating should be affected. They say that they can't take out any credit as a result of this.

In 2013, Mr and Mrs M complained to Santander that it had mis-sold them the PPI policies. Santander agreed the policies were mis-sold. And it offered them £957.09 in compensation. But it said that they still owed £679.61 on the loan. So it wanted to use some of the compensation to pay off this debt. Mr and Mrs M didn't think this was fair. They say that they had an agreement to pay £2,038.61 and, even if the debt does exist, Santander can't pursue them for it any more. They think that Santander's approach is morally wrong.

Our adjudicator partially upheld the complaint. She thought that Mr and Mrs M did still owe Santander money. But she thought that this money was only for loan two. So she thought it was fair for Santander to use the compensation it owes for mis-selling PPI on loan two to reduce what they owed. But she thought it should pay the compensation it owes for loan one to Mr and Mrs M directly.

The adjudicator also noted that Santander had offered more in compensation than what Mr and Mrs M still owed on the loan. So she thought that, had they not taken out PPI, they would've cleared the debt in 2010. And she thought Santander should update the credit file to say that Mr and Mrs M had cleared the debt in 2010.

Santander agreed to pay the compensation it owed for loan one to Mr and Mrs M directly. But it didn't agree to update the credit file. It said that the payment they made to settle the

debt was a percentage of the outstanding debt. So, had Mr and Mrs M not taken out PPI, they would've just paid less to settle the debt in 2010. Santander also commented that, even if they had paid off the debt in 2010, they'd still entered into a repayment plan before then where they paid less than they should've each month. And this would've affected their credit rating.

The adjudicator still thought her assessment was fair. So Santander asked for an ombudsman to review the complaint.

my provisional findings

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

In this decision I'm only looking at the impact taking out PPI has had on Mr and Mrs M. I note that they're also unhappy with the way that Santander handled the setting up of the repayment plan and also with the way that it pursued the debt. But it will need to raise this issue separately with Santander.

Santander has accepted that it mis-sold the PPI. So I haven't looked at how the policies were sold to Mr and Mrs M. In this decision, I've looked at whether I think Santander can use the compensation it's offered to reduce an outstanding debt. I've also looked at whether taking out PPI has affected their credit rating.

do Mr and Mrs M still owed money on their loan

Mr and Mrs M defaulted on their loan repayments in 2008. They then entered into a repayment plan to repay the loan with reduced monthly repayments. In 2010 Mr and Mrs M agreed to make a final payment of £2,038.61 towards the debt. But they actually owed £2,718.47. So it didn't pay off the debt. And Santander's internal records show that the debt still exists. It didn't get written off, but Santander and the DMC agreed to not pursue Mr and Mrs M for the remaining money. I also think the letter the DMC sent to Mr and Mrs M to confirm the payment also said that the debt did still exist. So they still owe Santander £679.61.

can Santander use the compensation it owes Mr and Mrs M to pay off this debt?

Mr and Mrs M say that the DMC said that it wouldn't pursue them for the outstanding debt. So they think it's unfair that Santander is now using the compensation to pay off this debt. I accept that they were told they wouldn't be pursued for the debt. But I don't think Santander is. Santander is using its "right of set off" to pay off this debt. The "right of set off" allows Santander to use compensation it owes a consumer to pay off any arrears on the same account.

As I said, Mr and Mrs M still owe Santander £679.61 on loan two. So I think Santander can use any compensation it owes them for mis-selling PPI on loan two to reduce the outstanding debt. Ultimately, both parties owe each other money on this account. I think it's fair that Santander can offset one against the other.

But Mr and Mrs M only owe Santander money on loan two. Loan one was paid off in full when they refinanced it in 2006. So they don't owe Santander any money on loan one. So I don't think it's fair that Santander can use its right of set off for any compensation it owes for

mis-selling PPI on loan one. And it should pay any compensation it owes on this loan to Mr and Mrs M directly. Santander has agreed to do this.

did taking out PPI cause Mr and Mrs M to have a bad credit rating?

Our adjudicator thought that Mr and Mrs M would've been able to pay off their loan in full in 2010 if they hadn't taken out PPI. They said that Santander owed them £957.09 in compensation for PPI. So she thought that Mr and Mrs M would've only owed about £1,761.38 (the original debt of £2,718.47 less £957.09) had they not taken out PPI. Given they were able to pay £2,038.61, she thought they would've paid the debt off in full in 2010. And she thought Santander should change their credit rating to reflect this.

While I can understand why the adjudicator's reached the conclusion she did, I don't agree. To compensate Mr and Mrs M, Santander needs to refund everything they've paid for PPI (including interest) and what they still owe for it. It also needs to pay 8% simple interest for any time they've been out of pocket.

Santander has worked out that it needs to refund £674.15 for what they've paid because they took out PPI. And it thinks it owes them £257.94 as simple interest to compensate them for being out of pocket. I think the majority of the compensation that Santander has offered is to refund premiums that Mr and Mrs M had already paid and 8% simple interest.

I say this because PPI was only a very small part of the amount Mr and Mrs M owed on loan two. The total they had to pay back on loan two was about £12,000. But only about £600 of this was for PPI. Part of each repayment Mr and Mrs M made towards the loan paid off what they owed for PPI. So I think this means that only a very small part of the remaining £679.61 was for PPI – the majority of it was what she still owed on the loan. So, I don't think they would've been able to pay off the debt in full in 2010 had they not taken out PPI, as the amount they owed at that time wouldn't have been very different.

Ultimately, I think the reason Mr and Mrs M had a poor credit rating is because they were unable to keep up with their loan repayments, not because they took out PPI.

my provisional decision

For the reasons I've set out above, I intend to say that I think Santander UK Plc can use the compensation it owes Mr and Mrs M for mis-selling PPI on loan two to reduce what they owe on that loan. But it should pay the compensation it owes for mis-selling PPI on loan one to them directly.

I also don't think taking out PPI has affected their credit rating. So I don't think Santander UK Plc needs to change Mr and Mrs M's credit file.

Guy Mitchell
ombudsman