

complaint

Miss H's complaint is about payment protection insurance (PPI) policies she was sold by HFC Bank Limited (HFC), associated with some loans and also an issue she has about repaying one of the loans.

background

Miss H took out three loans with HFC in the late 1980s early 1990s. With each loan she took out a PPI policy.

The evidence from HFC indicates that in 2012 Miss H complained about two of her PPI policies and HFC upheld her complaint that the PPI was mis-sold and it offered her compensation. But Miss H never returned the payment instruction forms so the compensation was never paid.

In 2018 Miss H again complained about the PPI sold to her with three loans. For the two policies on which HFC had made offers in 2012, it reaffirmed it was willing to offer compensation to settle the complaints as this was never paid in 2012.

HFC also considered separately Miss H's complaint about a third loan with PPI taken out in 1989, loan reference ending 7521. Again, HFC upheld the complaint that the PPI with this third loan was mis-sold and offered compensation.

Miss H wasn't happy with the compensation offered for the policy with loan 7521. But she also said that she had paid the loan settlement amount twice. She wasn't happy with what HFC said and brought her complaint to this service.

I issued a provisional decision on this complaint in October 2020. Both parties have responded to that decision with a number of comments. I have taken into account all responses when reaching my final decision.

my findings

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

As I indicated in my provisional decision Miss H complained about three loans with PPI when she brought her complaint to this service. HFC agreed all the PPI policies were mis-sold and had offered compensation for all three policies.

I would clarify that copies of correspondence sent to Miss H in 2012 about the two loans, 7328 and 8023, with PPI attached to them has been provided by HFC. Whilst I note Miss H says she does not recall complaining in 2012 or receiving any correspondence, the records from HFC do show that a complaint for these two loans with PPI was considered at that time and it was upheld that the PPI was mis-sold. However, in 2019 HFC confirmed the compensation was not accepted and paid in 2012, so it recalculated and updated its offer for the two policies sold with these two loans. Miss H accepted the offers made for these two policies, therefore I am not considering these two PPI policies any further.

However, for the PPI with loan ending 7521 Miss H remained unhappy with the compensation offered. She believed she had paid the settlement figure on this loan twice

and wanted the full cost of the PPI refunding plus the double settlement for the loan and compensatory interest on all of this.

I would reassure Miss H that I have looked at all the evidence she has provided, and also the evidence provided by HFC, as provided by both parties initially and also in response to my provisional decision.

settlement of loan 7521

Miss H believes that as HFC mis-spelt her surname in some correspondence and her date of birth was incorrectly entered on the loan application form, there were different accounts set up in different names on HFC's records and payments may have been made to the wrong accounts, so she has overpaid for the loan on this account. She has again reiterated this in her reply to my provisional decision, but I remain satisfied this is not the case.

Miss H has also expressed concern that HFC has not provided all its records from 1995 to 2002. Businesses are only legally required to keep records for six years. So HFC does not have all the actual documents from the time. But they do have some correspondence and computer system records and it has provided copies of all the records it holds for Miss H's account.

HFC provided search results it had undertaken on its systems for the different spellings and date of birth that Miss H has identified, and no different account numbers have been found. The records show Miss H took out just the three loans in 1989 and 1990. No other loans, accounts or payments have been identified from any of the searches against all the alternatives of her name spelling and wrong date of birth. So there would appear to be no duplicate accounts in different names for loan account 7251 or for any other accounts with alternative spellings of Miss H's name.

Although there was an error in the spelling of Miss H's name on HFC's system and in some correspondence, when dealing with loans and financial products, it is the loan reference number that is the important identification for an account. And from what I've seen, although Miss H's name may have been entered incorrectly at one time by HFC, this hasn't affected the account that was being dealt with and any payments processed to it. I have seen nothing to show that HFC had two accounts and two debts showing for loan 7251, as Miss H has suggested.

Miss H took out loan 7251 in 1989. This was loan credit facility where Miss H could use the credit when she needed, PPI being charged only when there was a balance owing and in effect the loan and PPI worked a little like a credit card.

It seems Miss H had some financial problems and stopped making payments to the account in 1994 and the loan facility was closed with a balance still owed by Miss H. Miss H has indicated she believes HFC stopped claiming the account was closed in 1994 after she had produced a letter dated 1995 from a third-party debt collection company that was chasing the account debt. But that isn't the case. Miss H fell into arrears on the loan repayments in 1994 and so the loan credit facility was closed, in effect closing the account for her use. The credit facility was closed, but there was a debt still owing on the account that was referred to a debt recovery company.

HFC referred the amount outstanding to the debt recovery company, to act as HFC's agent, after the account was closed for use and this debt company chased Miss H for payment. At

this point HFC did not sell the debt to this debt recovery company, it used the services of this third-party company to chase the debt on behalf of HFC. In May 1995 the debt recovery company sent Miss H a letter indicating as she had failed to respond to requests for payment it was looking at taking legal proceedings against her.

Miss H says at this point in 1995 she settled the debt. She has again indicated in response to my provisional decision that was the case. But I have seen no evidence that the outstanding amount was actually paid in 1995. As this debt recovery company was acting on behalf of HFC, if a payment had been made some of it would have been passed to HFC and show on its records as a payment against the account. As I indicated in my provisional decision, in December 1995 the debt amount is still shown as outstanding.

The letter from the debt recovery agent dated May 1995, although it has the mis-spelling of Miss H's name, does quote the correct loan account number. This letter refers to various actions that may be taken to recover the debt amount, one of which is obtaining a charging order on Miss H's property. I have seen nothing to show legal proceedings were taken in 1995 but records held by HFC indicate there was a charge was put on her property for £542 and it seems likely this was a voluntary charge. Once the debt was secured in this way against the property, the debt management company returned the file to HFC in May 1996.

Taking all these facts and the evidence I have seen into account, I remain of the opinion that Miss H probably worked with the debt management company following its letter in May 1995 and she possibly agreed to a charge being made against her property, meaning the debt was secured against her property and no further action chasing Miss H for the debt would have taken place.

In response to my provisional decision Miss H has said she would never have agreed to a charging order on her property. However, the information Miss H has provided from her solicitor in October 2002 clearly shows a charge against the property in favour of HFC had been made as this was settled. For a legal charge of this sort to be made against a property it either is done with the agreement of the property owner or by direction of the court. There is no evidence from either party that a court order was obtained, and there doesn't appear to be any court costs added to the debt, indicating court action was taken. Although it is possible Miss H could have paid the court costs and this is what she paid at the time, rather than the outstanding debt about. Whatever happened there was a charge put on her property either with her consent or by direction of the court.

So although Miss H recalls paying the debt recovery company the full amount of the debt in 1995, I have seen no evidence of payment being made for the outstanding debt amount and there is evidence of a charge against her property for the amount of £542. This all took place over 25 years ago and memories can fade. Based on the evidence I have seen, I think it most likely a charge for the £542 was made against Miss H's property and the amount was not actually paid to the recovery agent at that time.

It seems this charge for £542 against Miss H's property was then formally removed in 2003. The debt was repaid when Miss H re-mortgaged in 2002. By this date HFC had sold the debt to a third party, this was done in 2001. But as the charge against the property was in the name of HFC it took some time for this to be formally resolved and removed in 2003.

So I don't think Miss H paid the debt amount twice. I think in 1995 an arrangement for the debt to be charged on her property was made and this stopped all action against her for active debt recovery at that time. This means she did not actually pay the full amount

outstanding to the debt recovery agents in 1995, and I have seen no evidence that she did. The evidence I have seen shows the debt of £542 was paid when she re-mortgaged in late 2002, and the charge was then removed in early 2003.

PPI compensation with loan 7521

HFC offered compensation of £190.04 to settle this mis-sale complaint. This was to refund the amount of the premium paid whilst Miss H was making repayments, any interest paid on the premium as part of the repayments and also to provide some compensatory interest for any time Miss H was out of pocket.

I have asked HFC for information about its calculations to show how it worked out the compensation due.

The information provided to date states that Miss H made 49 monthly payments towards the PPI cost which was in total £90.29 for the premiums cost and £83.10 for the interest caused by the premiums. HFC has also indicated that a fee of £15.00 was caused by the PPI and this is also included to be refunded. In addition, HFC has worked out compensatory interest of £1.65 before tax, giving the total of £190.04

From the information that was provided I indicated in my provisional decision that I didn't think the compensatory interest had been calculated correctly taking into account all the facts of this case.

The calculations provided show HFC has calculated £1.65 as compensatory interest up to December 1995. During the time this credit account was in use, there would have been some brief times it was in credit and so this £1.65 was most likely to compensate for those times. In December 1995 the account was in debt and so no further compensatory interest would have been due until Miss H was out of pocket again for any of the costs of the PPI – that being when the account would be in credit but for the PPI being included in the account.

But as the account had closed in 1994 with a debt owing, no compensatory interest had been calculated on the basis Miss H wasn't out of pocket for the PPI costs as she hadn't repaid the full amount due for the loan account balance, some of which would have been for the PPI costs. It is only when an account is in credit when all the PPI is removed from the balance that compensatory interest is due.

Evidence has however been provided that Miss H did settle the full debt amount, when the charge on her property for the amount of the debt was repaid. This is indicated as being in 2002 when Miss H contacted HFC about removing the charge on her property. HFC had by this time sold the debt to a third party in 2001, but once the debt was settled in full by Miss H, that is when the charge on her property was settled, she was out of pocket for the full costs of the PPI.

As I have indicated above this debt was clearly settled in full when Miss H re-mortgaged in 2002, the charge being removed in 2003. By this time HFC had no legal interest in the debt, but it is responsible for paying compensatory interest on mis-sold PPI from whenever Miss H had paid the full amount outstanding. Therefore, from October 2002 Miss H was out of pocket for the total costs of the PPI, which from the records and calculations provided by HFC indicate this was for an amount of £188.39.

So, from October 2002, simple interest should be calculated on this £188.39 to the date of final settlement. This would be in addition to the compensatory interest of £1.65 calculated as due when the account was active.

summary

In summary I don't think Miss H paid the settlement amount of her debt twice. So I'm not intending to tell HFC to refund an amount of £542 that Miss H claimed was paid twice.

However, I don't think the compensation calculated by HFC for the compensatory interest was correct. HFC has not calculated compensatory interest for the time Miss H was out of pocket after she settled the debt in full in October 2002 and evidence has been provided of this, both by Miss H and also by HFC's records. Therefore, I am directing HFC to recalculate the compensatory interest, taking this into account.

I have considered all the points Miss H made both at the start of her complaint and also in response to my provisional decision. I have tried in this decision to address the main points raised in response to my provisional decision, although most of the issues had already been addressed in that decision. Miss H hasn't provided any new evidence to support her arguments about making the payment twice, only her recollections from 25 years ago.

I have also noted she thinks the offer letter sent for loan 7521 was sent separately to the offers for her other two loans because her name was incorrectly spelt in the letter for 7521. However, as HFC indicated to Miss H in its letter of 29 April 2019, it had already considered the two other loans in 2012 and upheld them. But as loan 7521 had now been raised, this was dealt with separately to consider if the PPI policy attached to this loan was also mis-sold. The mis-spelling of Miss H's name is regrettable, but I cannot see this has affected in any way the compensation offered, and what is fair compensation, for the PPI mis-sold with loan 7521.

I asked HFC in my provisional decision to provide evidence as to why it may consider compensatory interest was not due from October 2002. It has not provided any evidence to disagree with my findings.

I also asked if HFC was not contesting by findings it should provide a calculation of the 8% compensatory interest on the PPI costs from 2002 to date. It has acknowledged this request but despite a reminder has not provided the calculation requested.

Miss H paid a total of £188.39 for the PPI and since the debt was settled, she has been out of pocket for this full amount. I have had a calculation done and this indicates that 8% simple interest on the PPI costs of £188.39 would be £277.99 before tax, including the £1.65 for the time the account was in credit when active, calculated up to 31 January 2021. If payment is made after this date additional compensatory interest should be calculated to the date of final payment.

As I have seen no new evidence from either party that persuades me to change the findings of my provisional decision, I am directing that HFC should refund the actual costs caused by the PPI of £188.39 plus compensatory interest before tax of £277.99, making a total of £466.38 be paid to Miss H as compensation for the mis-sold PPI with loan 7521.

my decision

For the reasons I've set out above, and also as indicated in my provisional decision, I am not satisfied that the calculation HFC Bank Limited made for the compensatory interest on the amount paid for the mis-sold PPI is correct. Therefore, I am directing HFC Bank Limited to pay total compensation before tax of £466.38 to Miss H, subject to any update to the compensatory interest if payment is made after 31 January 2021, as I think this is fair compensation in all the circumstances.

I am not upholding that Miss H paid the settlement of her debt to HFC Bank Limited twice, so I'm satisfied there is no duplicate payment to refund in addition to the mis-sold PPI compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 10 January 2021.

Christine Fraser
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