

complaint

Mr S's complaint is that HFC Bank Limited ("HFC") mis-sold him payment protection insurance ("PPI") with a series of loans taken out between 2004 and 2007.

background

HFC upheld Mr S's complaint and made him an offer which was worked out following the same way we would tell HFC to put things right. Mr S is unhappy at HFC wanting to pay some of the compensation to reduce arrears on his loan. He wants HFC to pay him all of the compensation.

Mr S couldn't keep up with his loan payments and he last made a payment in 2009. HFC says he still owes £14,294. Mr S considers the debt *statute barred*.

HFC offered Mr S £9,228 which included removing £2,865 he still owed for the PPI from the overall debt. HFC gave Mr S the choice between a £3,233 cash payment with £2,569 paid towards his arrears and not having a cash payment with £5,802 paid towards his arrears.

One of our investigators looked at HFC's offer and thought it was fair. But Mr S disagrees, so the complaint has been passed to me to review.

Mr S also complained about the sale of his loan. I've looked at that complaint separately and I won't consider it under this case reference.

my findings

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

HFC has upheld Mr S's complaint. So I don't need to look into how the policy was sold, but I do need to consider whether HFC's offer is fair.

I think the offer is fair and I'd like to explain why.

We expect a business who mis-sold PPI with loans to put matters right by putting the consumer in the position they would be in now if they'd taken out the loan without PPI.

Mr S borrowed extra to pay for the PPI, so his loans were bigger than they should've been. He would've been paying more than he should've done each month. To put Mr S in the position he would be in now if he'd taken out the loans without PPI, he should get back the extra he's paid. And only have to pay back what would be left on the loans if he'd taken them without PPI.

HFC worked out Mr S paid £6,363 for the extra he paid on his loans because of the PPI. This took account of £561 Mr S got when he claimed under the final policy. It also included simple interest at a rate of 8% a year for the time Mr S couldn't use the extra money he had to pay on his loans because of the PPI.

HFC also worked out that Mr S still needed to pay £2,865 for the PPI on his final loan. It offered to remove this amount from the £14,294 Mr S still owes. Mr S says he doesn't need to repay this debt because he considers the debt *statute barred* and HFC should pay him the money instead. This amount is intended to reduce the balance of his final loan, so going forward Mr S stops paying too much on his loan because of the mis-sold PPI.

Whether or not the debt is statute barred is not something I'll consider in detail in this decision about the sale of insurance. But if Mr S is correct in considering the debt statute barred, it doesn't mean the debt no longer exists – it'd only mean HFC can't continue to seek its repayment. I think HFC's offer is fair because it corrects the amount left outstanding on the loan to the level it'd be without PPI. So I won't tell HFC to pay Mr S the £2,865.

The final issue to look at is whether it is fair for HFC to use the extra Mr S paid each month to reduce the arrears on his final loan.

I've looked at the agreement Mr S signed when he took his final loan. I've not seen that it says HFC has 'the right' to use money it owes Mr S to reduce what he owes them. But we normally say it's fair for the lender to use compensation to reduce arrears on the same loan – as HFC has offered to do. And I've taken account of the legal position which allows people to 'set off' closely connected debts. This means HFC can deduct from the debt Mr S owes it, money that it owes him.

Because HFC has followed our usual approach in these circumstances and because it has done what the law would normally allow, I think its offer to reduce Mr S's arrears is fair. From what I've seen, I don't think Mr S's financial position means HFC should do something different. So I won't tell HFC to pay all the compensation for the mis-sold PPI paid to Mr S directly.

I understand that Mr S didn't accept HFC's offer. HFC says the offer is still available for Mr S to accept and he can still choose between using the full refund to reduce his arrears and taking part of it as a cash payment.

my final decision

I do not uphold Mr S's complaint and I make no award against HFC Bank Limited.

If Mr S accepts my decision, HFC Bank Limited should work out its offer again, bringing it up to the date he accepts.

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

Stefan Riedel
ombudsman