

## **complaint**

Mrs A's complaint is about the compensation offered to her by HSBC Bank Plc (HSBC) for two mis-sold payment protection insurance (PPI) policies.

Mrs A signed a settlement form to accept £15,204.01 as compensation for the mis-sold policies. Mrs A says HSBC has declared the offer void, has reduced the figure offered and now proposes to use the majority of the compensation to offset arrears on her loan.

## **background**

Mrs A took out two loans with HSBC. The first loan ending 5335 was refinanced by the second loan ending 7805. Mrs A was sold a single premium PPI policy with both loans. The premiums for the policies were added to the loans and would attract interest.

At some point, the second loan ending 7805 went into arrears.

On 14 February 2012 HSBC wrote to Mrs A. In its letter it said it had "sold" the loan to a third party debt collection agency (DCA). The letter went on to say, *"This means the effective owners of the above account are now XXXX"*.

On the same day the DCA also wrote to Mrs A to say that HSBC had assigned all of *"its respective rights, title and interest"* to the DCA. The outstanding balance on the loan at this point was £21,233.83.

Mrs A complained to HSBC about the sale of the PPI policies. On 6 July 2012 HSBC wrote to Mrs A upholding her complaint and making an offer of compensation. The letter said:

*"In view of my findings, to ensure that this matter has not financially disadvantaged you, I propose to offer the amount of £15,204.01. This figure will effectively return the premiums you have paid along with an element of gross interest"*.

The letter contained an acceptance form which began, *"I accept the offer of £15,204.01 in full and final settlement of my complaint against HSBC Bank Plc."*

The settlement form also contained a section for Mrs A to provide details of the account she wanted the compensation paid into. Mrs A completed the form, signed and returned it.

The letter asked Mrs A to go to a branch of HSBC to provide evidence of identification. I understand Mrs A did this.

On 24 July 2012 HSBC sent another letter to Mrs A. The letter began:

*"I write further to your letter dated 11 July 2012 with regard to the settlement offer made in respect of the policies detailed above."*

*I understand that you are unhappy that the settlement offer will not be paid to you directly but instead will be reclaimed by HSBC and utilised to further reduce your outstanding debt"*.

Mrs A has told us that she didn't write such a letter as she didn't know this is what HSBC intended to do.

The letter went on to say that HSBC had a common law and banker's right of set off which allowed it to use the compensation to reduce the debt.

HSBC wrote again to Mrs A on 20 September 2012. In this letter HSBC told Mrs A that :

*"This debt was always owned by and owed to HSBC".*

The letter went on to say:

*"I regret to inform you that our offer dated 6 July 2012 is now void. Our offer for the Personal Loan Protection Plans (5335 and 7805) will now be £12,489.47. Details of the calculation are outlined in the breakdown of cover attached. I enclose a revised Acceptance of Offer form for your reference".*

Mrs A brought her complaint to this service.

An adjudicator wrote to HSBC setting out her findings. In her letter the adjudicator said that it was fair for HSBC to use the compensation due from the second PPI sale to offset the debt on the second loan. But only if HSBC could show it owned the debt. The adjudicator also said HSBC should pay the compensation from the first PPI policy directly to Mrs A as the first loan no longer existed so there was no debt associated with it. The adjudicator recommended that HSBC should pay Mrs A £200.00 for the distress it had caused her by its handling of her complaint.

HSBC disagreed with the adjudicator's findings and asked for an ombudsman to review the complaint.

Sometime later HSBC contacted this service to make an offer broadly in line with the adjudicator's findings. But Mrs A didn't accept the new offer and has also asked for an ombudsman to review her complaint.

In January 2015 I issued my provisional findings on Mrs A's complaint and invited both parties to comment and provide any additional evidence for me to consider. A copy of my provisional decision is attached and forms part of this final decision.

My provisional findings were that I was minded to uphold Mrs A's complaint, my main reasons were:

- I thought HSBC should have honoured the offer of £15,204.01 it made Mrs A in July 2012.
- Mrs A signed the settlement form and returned it in good faith. I found no reason for her to have thought the offer was incorrect.
- I didn't agree with HSBC that it had a "right of set-off", or that it could use any of the compensation to reduce Mrs A's arrears. I said this because the evidence made me think HSBC had sold the debt before it made the offer.
- I also said I was minded to award Mrs A an additional £700.00 for the distress and inconvenience caused by HSBC's failures in handling this complaint.

Both parties have now replied to my provisional findings.

### **my findings**

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

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mrs A's case.

Neither HSBC nor Mrs A have replied with any new evidence or points for me to consider. Therefore I see no reason to depart from the findings I set out in my provisional decision in January 2015.

### **my final decision**

I uphold Mrs A's complaint against HSBC Bank Plc, and award fair compensation as set out in the attached provisional decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs A to accept or reject my decision before 7 April 2015.

Steve Thomas  
**Ombudsman**

## **COPY OF MY PROVISIONAL DECISION**

### **complaint**

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## **background**

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HSBC disagreed with the adjudicator's findings and asked for an ombudsman to review the complaint.

Sometime later HSBC contacted this service to make an offer broadly in line with the adjudicator's findings. But Mrs A didn't accept the new offer and has also asked for an ombudsman to review her 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.

I think the relevant issues to take into account are those set out in the note on our website about our approach to PPI complaints.

HSBC has agreed to uphold Mrs A's complaint about the mis-sale of the policies and pay her compensation. So I won't address the issue of how the PPI policies came to be sold to her.

I'm currently minded to uphold Mrs A's complaint. I also think HSBC should pay directly to Mrs A the full original amount it offered her, plus interest. HSBC should also pay an amount of compensation for the trouble and upset its handling of this complaint has caused her to experience. I say this for the following reasons:

#### HSBC's offer dated 6 July 2012.

I've carefully read the letter and settlement form sent to Mrs A on 6 July 2012. I can see no mention in either the covering letter or the settlement form that HSBC would use the compensation to offset the arrears on Mrs A's loan.

The covering letter states that the redress would be paid within four weeks of Mrs A's acceptance of the offer. It also invited Mrs A to provide details of her bank account so that the compensation could be paid directly into it.

I've also considered the calculation provided by HSBC. In my view the amount of £15,204.01 was calculated in line with this service's guidelines. So the amount offered was correct. Mrs A would have no reason to think the offer was anything other than the correct amount due to her to settle her complaint.

I also note that in bold type on the acceptance form were the words:

*"Please note that payments cannot be made to third parties".*

I realise HSBC most likely meant this to mean it wouldn't make payment to a claims management company. But HSBC had told Mrs A it sold her loan to a third party. So I think this would only reinforce Mrs A's belief that the payment would be made directly to her.

So overall my view is that HSBC made an offer to Mrs A in full and final settlement that was calculated correctly and set out clearly. Mrs A signed it in good faith. I don't think it was fair or reasonable for HSBC to declare the offer void after Mrs A had signed and returned it.

I also don't think HSBC should use any part of the compensation to reduce her loan as it didn't make any mention of this when it made the offer.

#### other issues raised by HSBC

I've explained above why it's my view that HSBC should've made payment directly to Mrs A after she signed the acceptance form. But I note HSBC has raised other reasons why it should be able to use the compensation to reduce Mrs A's debt.

In its letter to Mrs A dated 20 September 2012 HSBC quoted from the Financial Conduct Authority's rules for assessing PPI complaints:

*"Where the complainant's loan or credit card is in arrears the firm may, if it has a contractual right to do so, make a payment to reduce the associated loan or arrears".*

I'm persuaded that HSBC sold Mrs A's loan to a third party some months before it made the offer. I say this as I have seen a copy of HSBC's letter sent to Mrs A on 14 February 2012 telling her it had "sold" the debt. It follows that it had no contractual right to use any of the compensation to reduce that debt as it didn't own it.

HSBC has since told us it bought the debt back from the third party. This service asked HSBC to provide evidence of this. HSBC has shown us a screen shot from its systems. The screenshot shows a "Buy Back Request" made by HSBC. I note that the request to buy back Mrs A's loan was made on 9 July 2012. That is three days *after it sent the offer to Mrs A*.

So at the time HSBC made the offer it no longer owned the debt and so had no contractual right to use the compensation to reduce Mrs A's debt.

HSBC also raised the issue of "right of set off". For the same reason as above I don't think HSBC can reasonably argue it had a right of set off if it didn't own the debt at the time it sent the offer.

In any event, to avoid any confusion, *even if the loan had not been sold* it wouldn't affect my decision that the settlement form, as signed by Mrs A, should have been honoured and that she should have been paid directly.

HSBC's handling of the complaint.

I think HSBC's handling of Mrs A's complaint has caused her to experience considerable distress and a lot of inconvenience.

I think some of the letters it sent to Mrs A were unhelpful, confusing and in some cases misleading. For example in the letter dated 24 July 2012 which was the first letter she received after signing the acceptance form HSBC said:

*"In the circumstances we are no longer treating this matter as a formal complaint. As such we would urge you to take immediate independent legal advice as to your position.*

*I am further instructed to inform you that any proceedings issued against the Bank will be strenuously defended".*

HSBC should have been aware the tone of this letter was likely to have distressed Mrs A. Particularly as the last correspondence she had received from it was the offer to settle her complaint.

I'm also concerned by the following sentence contained in HSBC's letter dated 20 September 2012. When it told Mrs A:

*"You have advised us that you received a letter from HSBC to inform you that your debt had been passed to #####. Regrettably I am unable to trace this letter from our systems."*

But Mrs A has given this service a copy of the letter dated 14 February 2012 from HSBC clearly telling her it had sold the loan.

I also note that in its letter dated 24 July 2012, HSBC said Mrs A had written it a letter saying she was unhappy that the settlement offer will be used to reduce her debt.

Mrs A has told us she never sent any such letter. Mrs A says she returned the signed settlement form and took her identification into a branch of HSBC as requested.

I find Mrs A's version of events to be persuasive and most likely what happened. In my view it wouldn't make sense for Mrs A to write this letter after signing the settlement form. She would have no reason to be unhappy that the settlement was to be used to reduce her debt. From what I've seen, up until she received the letter of 24 July 2012 HSBC had never mentioned to her what it was intending to do.

By declaring the offer and signed settlement "void" instead of honouring it, HSBC has caused Mrs A considerable inconvenience. It meant the complaint has continued for nearly three years after it should have been resolved and settled.

Because of the above I'm currently minded to award Mrs A an additional £700.00 for the distress and inconvenience caused by HSBC's failures in handling this complaint.

**fair compensation**

Mrs A had a reasonable expectation that she would receive the sum of £15,204.01 within four weeks of signing the settlement form in July 2012. Therefore HSBC should pay Mrs A the sum of £15,204.01 directly.

HSBC should also add interest to this sum calculated at 8% simple from July 2012 until it makes payment to Mrs A. This is to reflect the time she has been “out of pocket” due to HSBC not honouring the settlement form.<sup>†</sup>

HSBC should pay Mrs A £700.00 for the trouble and upset it’s caused her to experience due to its poor handling of her complaint.

<sup>†</sup> HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mrs A a certificate showing how much tax it’s taken off if she asks for one.

### **my provisional decision**

For the reasons set out above, but subject to both parties’ responses to this provisional decision, I’m currently minded to uphold Mrs A’s complaint against HSBC Bank Plc. And award fair compensation as set out in this decision.

Steve Thomas  
**ombudsman**