

complaint

Mr K's complaint was that he was mis-sold payment protection insurance (PPI) in relation to two loans with HSBC Bank Plc (HSBC) taken out in 2005 (loan one) and 2007 (loan two).

background

HSBC accepted that the PPI policies had been mis-sold to Mr K and made him an offer in 2012.

HSBC worked out that Mr K was owed £4,203.26 in compensation for loan one and £8,458 in compensation for loan two.

HSBC said that the compensation for loan one would be paid directly to Mr K but because loan two was in default, the offer would be used to reduce the balance on the loan account.

Mr K is not happy with this. He wants HSBC to pay him all of the compensation. Mr K also raises a number of further complaint points which I have addressed below.

Our adjudicator thought that Mr K's settlement was fair and said HSBC didn't need to pay all of the compensation to Mr K. Mr K disagreed with this and the matter has been passed to me to make a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

We expect HSBC to put Mr K back in the position he would have been in if he had taken the loan without the PPI. So we would expect it to calculate the amount that he paid for the PPI and add 8% simple interest to this to compensate him for the time he was out of pocket.

I understand that the compensation for loan one has been paid to Mr K. I also note that Mr K is not disputing the amount of the calculations but the method in which they will be paid. So I will not discuss the calculation of the offers other than to say they are in line with the approach I would expect HSBC to take.

Mr K makes the following complaint points:

- Because the PPI was mis-sold in the first place, this meant that both the credit agreements for loan one and loan two were invalid.
- If it had not been for the PPI being so expensive at the outset, he wouldn't have fallen into arrears and the PPI had the effect of worsening his overall financial position.
- In relation to loan one he complains that because HSBC linked the acceptance of loan one and loan two together, it meant they delayed paying him the compensation for loan one. This delay in making the payment also worsened his financial position.
- He has stressed he has a number of other debts under a debt management plan and debts to HMRC, so the money should be paid to him to pay off these other debts.

- HSBC didn't advise him that he had a right to make partial repayments under the loan which also would have improved his position.
- HSBC have breached the banking code of conduct by not treating him fairly or with sympathy.

I have carefully considered these points made by Mr K and I make the following comments.

We're not set up under our rules to enforce agreements – we don't have the power to tell Mr K he should pay back what he owes HSBC. That's a matter that would need to be resolved in the courts. But we can look at whether it is fair for HSBC to try to enforce the agreement. And our approach is that if Mr K obtained credit and his application was assessed and granted in a fair way, it's only fair for HSBC to expect Mr K to repay what he owes them. But it doesn't affect what HSBC should do to put right the mis-sold PPI or whether it can use the compensation to reduce the outstanding and overdue debt. The debt still exists whether enforceable or not.

To put him back in the position he would be in if he'd taken the loan without PPI, he should get back the extra he'd paid and only need to pay back what would have been left on the loan if he'd taken it without PPI. HSBC has followed this approach. It has agreed the PPI was mis-sold and it has made an offer to correct its error.

Mr K complains the PPI was expensive from the outset and so caused the arrears. I accept that a portion of the arrears would have been made up of the PPI but the majority of the arrears relates to the loan repayments and is money that Mr K didn't pay in the first place, it is a debt owed to HSBC. I don't accept that the PPI caused these arrears as a whole. The portion of this debt that would have been the PPI premiums has been restructured to take account of that and remove it. What is outstanding is the debt relating to the loan repayments which was not paid in the first place. The result of this is that Mr K doesn't owe HSBC for the PPI anymore; he just owes what is remaining on the loan without PPI.

HSBC initially said they would offset all of the compensation for loan one off the outstanding arrears even though loan one related to a separate debt. I can see that HSBC amended this offer and said that the compensation for loan one would be paid directly to Mr K and that Mr K was satisfied with that.

It is both fair and reasonable for HSBC to use the compensation for the mis-sale of PPI to reduce arrears if the loan sold alongside the PPI is also in arrears. I fully acknowledge Mr K has other debts but I also note that these are not more pressing debts. I need to consider the Mr K's position at the time the offer was made in June 2012, the debt to HMRC was in a payment plan which started around May 2012 and concluded in February 2013. Other debts were also under a debt management plan. This means that HSBC are entitled to offset the compensation for loan two against the debt outstanding for loan two.

HSBC were not required to tell Mr K he could make extra payments – and even if it did, his payments would've stayed the same as shown on the credit agreement. In any event, it seems unlikely Mr K could've made extra payments given that he needed to refinance and ended up defaulting on his loan.

But even if partial repayments had been made it is likely that arrears still would have been outstanding due to Mr K not paying the debt he owed and in this circumstance HSBC would still be entitled to pay off these arrears.

As for Mr K's comments on being treated fairly and reasonably and breaches of the banking code. I have thought about this. But I consider that the way HSBC handled the PPI complaint was fair and is not against the principles set out in the banking code. In addition to this point, I think that the compensation offered by HSBC in its offer is fair and reasonable. Mr K has been fully compensated for the mis-sale of PPI and as a result of this some of his overall debt is substantially reduced.

I see that Mr K has not been happy with how this case progressed and also the length of time it has taken. I don't think HSBC should have linked acceptance of both of the loans together and say that the compensation wouldn't be paid until both loans were accepted. I can also see that originally saying compensation for loan one would be paid against loan two arrears caused some confusion and delay. I think HSBC should pay an amount for the trouble it caused Mr K and I direct it to pay an amount of £200.

Looking at all of the facts overall, I think HSBC has acted reasonably and I think it is fair and reasonable for them to use the compensation for the mis-sale of the PPI to reduce the arrears of the loan sold alongside the PPI.

my final decision

For the reasons I have set out above, I am not upholding Mr K's complaint against HSBC. I don't think Mr K is due any more compensation for the mis-sale of PPI or that the compensation should be paid to him instead of against the arrears.

But I acknowledge that HSBC could have handled matters a bit better and because of this HSBC should pay Mr K an extra £200 for the trouble it caused him and to pay any remaining compensation after the arrears have been paid, to Mr K.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 5 October 2015.

Miranda Bates
ombudsman