

## **complaint**

This complaint concerns five payment protection insurance (PPI) policies taken out by Mr V. Mr V says HSBC Bank Plc ('HSBC') mis-sold the policies.

## **background**

Mr V took out two credit cards with PPI, two personal loans with PPI and a mortgage payment protection insurance (MPPI) policy with HSBC. Mr V complained about the sale of the policies and HSBC made him an offer. Mr V was not satisfied with HSBC's offer and referred his complaint to this service. Following our involvement, HSBC made another offer in March 2012, setting out the amount of redress. It also said it intended to use all the redress to reduce debts Mr V had with HSBC.

In further correspondence in October 2012, HSBC confirmed Mr V had outstanding debts associated with one of the credit cards, one of the loans and his mortgage; there was no outstanding debt on Mr V's other credit card and other loan. HSBC also confirmed a third party was managing these debts on its behalf and would use all the redress to reduce the outstanding balances of those debts.

We considered HSBC's approach and said it was not in line with our guidance. We said HSBC could not use the compensation from the sale of the PPI policies associated with the first credit card and the first loan to reduce Mr V's arrears on his other credit card, his other loan and his mortgage and that it should be paid directly to Mr V. But HSBC could use the compensation to reduce arrears on the associated credit card, loan and mortgage.

HSBC did not accept our assessment; it said under common law and the banker's right of set off, it could use the compensation to reduce Mr V's arrears. In August 2013, HSBC revised its offer and agreed to pay Mr V compensation for the PPI policy taken out in association with the loan that had no arrears. Mr V did not accept HSBC's offer.

As the complaint remains unresolved, it has been referred to me for final consideration.

## **my findings**

I have included only a brief summary of the complaint above, but I have carefully considered all of the available evidence and arguments from the outset in order to decide what is fair and reasonable in the circumstances.

As HSBC has already agreed to uphold Mr V's complaint about the sale of the PPI policies, I have not considered the merits of his complaint about the mis-sale of the PPI policies. I have only considered the merits to the extent they help me decide whether HSBC's offer is fair and reasonable in the circumstances.

I have considered HSBC's explanation for its intention to use the compensation for the mis-sale of Mr V's PPI policies to reduce his arrears. HSBC says it has a common law and banker's right of set off which permits it to reduce or eliminate the liability where its customers owe sums which are due and payable under a credit agreement or any other related agreement or credit held. As the redress represents part of what Mr V owes it, HSBC says it is fully within its rights to apply that sum to Mr V's debts.

First I have considered HSBC's comments about the banker's right of set off. Having considered the situation, I am not persuaded it applies here. The PPI compensation payable to Mr V is not an account in credit and it cannot be used to offset outstanding debt; here, this means Mr V's credit card, loan and mortgage arrears. Also, the PPI compensation is not money Mr V lent to HSBC or money owed to HSBC by Mr V. The compensation is a refund of money HSBC received from Mr V that he would otherwise have had in his hand.

I accept repaying HSBC is something Mr V *could* do with the compensation. But I am not persuaded it is something he is *required* to do under the banker's right of set off, as this is not a situation where this right applies.

Next I have considered HSBC's comments about the common law (or equitable) right of set off. I have carefully considered what HSBC says about its rights to set off the PPI compensation against Mr V's debts.

When I decide what is fair and reasonable in each case, I must take into account (though I am not necessarily bound by), amongst other things, the relevant law as well as any relevant regulatory rules.

The Financial Conduct Authority (previously the Financial Services Authority) has issued guidance for financial businesses handling PPI complaints. That guidance states:

*"where the complainant's loan or credit card is in arrears the firm may, if it has the contractual right to do so, make a payment to reduce the associated loan or credit card balance, if the complainant accepts the firm's offer of redress. The firm should act fairly and reasonably in deciding whether to make such a payment"* (DISP App 3.9.1 G).

A strict reading of the relevant guidance suggests HSBC can only use PPI compensation to reduce arrears on the *associated* loan or credit card balance and only where *it has the contractual right to do so*. Here, HSBC has confirmed that there are no arrears on one of Mr V's loans and one of his credit cards.

Setting aside whether or not HSBC has a *contractual right*, applying the relevant guidance suggests HSBC is *not* entitled to use the compensation for the mis-sale of PPI alongside this credit card and this loan to reduce the outstanding balance on Mr V's other credit card, his other loan and his mortgage as the first credit card and loan are not the *associated loan or credit card* in this case. HSBC would be entitled to use the compensation for the mis-sale of PPI alongside Mr V's other credit card, other loan and his mortgage where there are arrears, if it has the contractual right to do so.

Next, HSBC says it can rely on an equitable right of set off. The equitable right of set off in law allows a person to 'set off' closely connected debts. This means one person (A) can deduct from a debt they owe another person (B), money which that person (B) owes to them.

For the equitable right of set off to apply, I must be satisfied there is a close connection between the PPI compensation and the outstanding debt to which HSBC would like the compensation transferred. I must also consider whether it would be unjust not to allow HSBC to set off in this way. *Both* tests need to be satisfied in order for me to conclude HSBC has an equitable right to set off the PPI compensation against Mr V's debt.

Having carefully considered the position, I am not persuaded there is a close connection between *redress* for the mis-sale of the PPI policy associated with the first credit card and

the first loan, which arose from failings in the way HSBC sold insurance, and the *arrears* on Mr V's other credit card, other loan and his mortgage, which arise from entirely different circumstances.

HSBC's arguments have not persuaded me the first part of the test – the close connection – has been satisfied and that, therefore, the equitable right of set off applies. And, whilst I understand HSBC's position, I am not persuaded it would be unjust for compensation to be paid directly to Mr V for PPI policies taken out in association with credit where there are no arrears.

In conclusion, I am not persuaded the banker's right of set off or the equitable right of set off apply here for the reasons I have outlined above. In light of this, I consider HSBC should pay the compensation in respect of the PPI policies associated with the credit card and loan that have no arrears directly to Mr V. Mr V may wish to use the compensation from HSBC to repay some of the outstanding balance, but he is not obliged to do so. I consider HSBC can use the compensation in respect of the PPI policies associated with the credit card, loan and mortgage where there are arrears to reduce the outstanding balances of those debts. I also direct HSBC to recalculate its offer to Mr V in respect of all five PPI policies so that it is up-to-date.

### **my final decision**

For the reasons stated above, I direct HSBC Bank Plc to recalculate redress for the PPI policies associated with Mr V's credit cards, loans and mortgage as set out above and to pay any redress for the PPI policies associated with Mr V's credit card and loan that have no outstanding balance to Mr V. I make no further award against HSBC Bank Plc.

Chloe Wooles  
**ombudsman**