



complaint

Mr B complained about the single premium payment protection insurance (PPI) policies he was sold in connection with a loan (loan 3 - account ending *****9181). Following the initial complaint, HSBC Bank Plc agreed to uphold the complaint in connection with this loan and made an offer of £3,633.10 to Mr B in September 2011.

However, in agreeing to uphold the mis-sale complaint, HSBC said that it would be applying the calculated redress to offset arrears on a subsequent loan (loan 4 - account ending *****4054) and arrears on Mr B's current account. I have noted that loan 4 and the current account were passed to a debt collection agency. Mr B has complained about this approach and has asked HSBC to pay him the redress from loan 3 directly.

my findings

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

Since HSBC has already accepted that it mis-sold the PPI policy in connection with loan 3 to Mr B, I do not need to consider the merits of this complaint again here. I need to decide whether the method used by HSBC to determine what compensation Mr B is due, if any, is fair and reasonable.

Our general approach to calculating redress for PPI mis-sales in connection with a loan is that HSBC should put Mr B back in the position he would have been in now if he had taken out the loan without the PPI policy.

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 Services Authority (known as the Financial Conduct Authority since 1 April 2013) has issued guidance for firms 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, then, suggests that HSBC is entitled to seek to 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*.

In Mr B's case, there are several loans/accounts, which I regard as separate sales, with each requiring separate consideration. So this means that, setting aside whether or not HSBC may have a *contractual right*, applying the relevant guidance suggests that it is *not* entitled to use the compensation for the mis-sale of PPI in loan 3 to reduce arrears on loan 4

and arrears on the current account since the accounts are unconnected and accordingly not associated.

HSBC has argued that it ought to be allowed to rely on what is often called the 'bankers right of set off'. This means that it should be entitled to reduce Mr B's indebtedness to it (the arrears balance on loan 4 plus arrears on Mr B's current account) from any redress it owes to him in connection with the PPI mis-sale from loan 3.

The banker's right of set off to which HSBC refers is a right a bank has to transfer funds from a consumer's account which is in credit to a consumer's account which is in debt. It is sometimes referred to as the right to combine accounts, but it can only be used by a bank when the consumer holds both accounts in question in the same capacity, and it can only apply its right when a debt is due and payable.

In this case, I am not convinced that the banker's right of set off applies. I say this because the banker's right of set off refers to a credit in one *account* being transferred to a debt in another *account*. I am not satisfied that compensation (or the liability to pay it) for the mis-sale of a PPI policy could be described as an *account* held by Mr B which is in *credit*. The compensation represents the repayment of money that HSBC should not have taken from Mr B in the first instance. So, in this case, I am not convinced that the banker's right of set off can be relied upon by HSBC to justify using Mr B's compensation for the mis-sale of any of the PPI policies here.

There is, of course, a general *equitable* right of set-off, one which this service recognises and which I consider has some relevance to this complaint.

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

In order for the equitable right of set off to apply, I must be satisfied that there is a *close connection between the PPI compensation and the loan account to which HSBC would like the compensation 'transferred'*. I must also consider – but only if this first 'hurdle' is met – 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 that HSBC has an equitable right to set off the PPI compensation against one or more of Mr B's outstanding debt balances.

I entirely accept that redress payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That basic principle is consistent with the FSA guidance referred to above, and I suspect informed the framing of that guidance.

But it is another matter to say that a *previous* loan, refinanced by the loan with which the PPI was sold, or a *later* loan refinancing the loan with which the PPI was sold, is to be regarded as *closely* connected with the *debt* arising (eg the requirement to pay compensation) from the mis-sale of a PPI policy which was *not* sold at the same time.

So, having carefully considered all of the available evidence, I am not persuaded that it is fair and reasonable for HSBC to use the compensation payable for the PPI policy associated with loan 3 to reduce the outstanding arrears on loan 4 and the current account.

I say this because these loans and any PPI policies purchased in connection with these loans represented wholly separate transactions. And I note that Loan 3 was fully repaid and appears to have no outstanding arrears.

I consider, therefore, in summary, that HSBC should pay this amount directly to Mr B.

my final decision

My final decision is that I uphold this complaint and direct that HSBC Bank Plc should recalculate Mr B's redress up to date and pay it directly to Mr B.

Andrew Macnamara
ombudsman