

## **complaint**

Mr B's complaint is about what HSBC UK Bank Plc (HSBC) has done with the compensation due for a mis-sold payment protection insurance (PPI) policy associated with his credit card.

## **background**

Mr B took out a credit card with HSBC in June 1998 and at the same time took out a PPI policy. Mr B has complained the PPI was mis-sold and HSBC has upheld that complaint and offered £3,817.72 in compensation.

HSBC said Mr B went into debt on his credit card and the debt owing of £6,837.98 was passed to its recoveries department in May 2008. So HSBC was using the compensation due to Mr B to set against the debt Mr B had with the bank.

Mr B doesn't agree he has a debt on the credit card. He says HSBC hasn't been able to prove any debt exists. And even if he did have a debt when the card closed, he says that debt is now statute barred under the Limitations Act so HSBC cannot set the compensation against it.

Our adjudicator said they thought what HSBC had done was fair. Mr B didn't agree and asked for an ombudsman to consider his complaint.

## **my findings**

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

Mr B took out the credit card and PPI in June 1998. The PPI was cancelled in March 2007. Because this was all over ten years ago HSBC doesn't have full records of the account. It only has some data records recorded on its computer systems. This isn't surprising as businesses have no legal liability to retain records for more than six years.

Mr B has no records from the time and has said he had no recollection of a debt with HSBC or of being chased for a debt. He also has stated that even if he had a debt in 2008 this is 11 years ago and is statute barred.

So the only evidence available is the computer records available from HSBC which Mr B says are unreliable and possibly "doctored". Mr B submits this is not acceptable paperwork and doesn't prove he had a debt.

Many businesses only have computer records when dealing with matters from many years ago. These are generally accepted as being reliable, although they only provide some basic information.

The records from HSBC show Mr B opened his credit card account in June 1998 and he took out the PPI at the same time. Mr B hasn't disputed that this information is correct.

These records also show that the PPI was cancelled in March 2007 and that the account was in debt and passed to the HSBC's recoveries department in May 2008. In 2008 the credit card account would've been frozen and no further interest charged after this date. But

is it very likely Mr B had not been paying regular monthly payments for some time and this also may be why the PPI was cancelled in 2007.

I can only look at what is fair based on the evidence that is presented by both parties. Mr B has told us he was mis-sold the PPI but hasn't been able to provide any further detail about his credit card account at all. Although he has disputed he owes a debt to HSBC, he has indicated that even if he did have a debt it was now "statute barred".

The Limitations Act does place restrictions on recovery of debts that have not been acknowledged within six years. This then means active recovery action cannot be taken for the debt. However it doesn't mean that a debt no longer exists.

In this case Mr B used his credit card and had the benefit of what he spent but then didn't pay everything back. He hasn't been able to show he ever repaid the full debt on his credit card when it was closed or afterwards through the HSBC recoveries department. HSBC records show the balance was £6,837.98 when the account was passed to its recoveries department on 6 May 2008 and no payments have been received since.

The fact HSBC didn't chase for the money Mr B owed may have been due to his circumstances at the time. But it doesn't mean Mr B doesn't owe that money. He borrowed the money to spend and he had in effect a contract with HSBC to pay it back.

The PPI was charged to the card and in fact would be deemed to form part of the balance until the balance was cleared. So it did form part of the money Mr B owed on his credit card when he stopped paying. By using the compensation to set off against the credit card debt does mean HSBC is actually removing the costs of the PPI from the amount Mr B owes. And Mr B would still owe HSBC for over £3,000 for other spending on the credit card.

HSBC does have the right of set off as this PPI compensation is a debt HSBC owes Mr B. And the money spent by Mr B on his credit card is money he owes HSBC. As both these debts related to the same account it means that HSBC can set one debt off against the other.

I also note the issues raised about the different amounts of debt stated in the offer letter HSBC sent to Mr B. The £6,837.98 is the debt Mr B owed on his credit card when he stopped making payments to it. Mr B also owed HSBC £5,650.36 which was for his bank account with a flexible loan facility.

Because the PPI was charged to the credit card it was directly linked to that account and debt. So HSBC had a right to set off the compensation against that particular account. However the other debt on the bank account and loan facility were separate to the credit card account, so not closely linked to the PPI sold with the credit card. HSBC gave Mr B the choice of using the PPI compensation to pay off his debt on these other accounts in the offer letter if he wished, but it couldn't use the right of set off for this debt. So the letter set out both options, which may have been a little confusing.

I have considered the offer of HSBC and how it has worked that out. It has used the actual data it has for the PPI costs from March 2005 to March 2007. For the time before this it has estimated the costs of the PPI. I think how HSBC has calculated the costs Mr B would've paid for the PPI is fair based on the limited information available.

HSBC has also worked out some 8% simple interest which was £2,067.69. This is paid to compensate a consumer for being out of pocket. In this case Mr B actually wasn't out of pocket from 2007 as some of his debt was caused by the PPI and that wasn't repaid as the debt has never been cleared. So this compensation is probably more than HSBC needed to pay.

In summary I think what HSBC has offered to settle Mr B's complaint and what it has done with the compensation is fair.

**my final decision**

I think what HSBC UK Bank Plc has offered for the compensation related to the mis-sold PPI policy and what it has done with that compensation is fair. And I'm not telling it to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 April 2019.

Christine Fraser  
**ombudsman**