

complaint

Mr B is complaining that HFC Bank Limited (HFC) wants to use the compensation it offered for the mis-selling of a payment protection insurance (PPI) policy to reduce his outstanding debt.

background

Mr B was sold PPI with a credit card (account ending 5626). In 2017 HFC upheld Mr B's complaint about the sale of the policy and made an offer totalling £7,870.42 (after tax). In its letter it explained Mr B's refund would be used to pay off his outstanding debt.

Mr B's representative didn't think HFC had shown that Mr B had an outstanding debt. So it wanted HFC to pay the money to Mr B directly.

Our adjudicator looked at the complaint and thought HFC's offer to use the refund to reduce the outstanding debt was fair.

Mr B's representative disagreed with the assessment. It argued that HFC failed to provide a satisfactory response to a section 77/78 request under the Consumer Credit Act 1974 (CCA 1974). So it thinks HFC can no longer enforce the debt and the refund should be paid to Mr B directly.

Because of this, the case has been passed to me for a decision.

my findings

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

HFC upheld Mr B's complaint about the sale of the policy so I don't need to look at how it was sold. And Mr B hasn't complained about the amount HFC offered.

In this decision, I've only looked at whether it is fair for HFC to use the compensation it's offered to reduce Mr B's outstanding debt.

Having done so, I think it's fair for HFC to use Mr B's offer to reduce his outstanding debt and I will explain why below.

I've not considered whether or not HFC met its obligations under sections 77 and 78 of the CCA 1974. Put simply, these sections explain that when asked, creditors have a duty to give debtors information about their accounts and how much they owe. And for the time the information isn't given, creditors aren't able to enforce the agreement.

The original complaint was about the sale of Mr B's PPI policy and how the refund should be paid. A complaint about the provision of information about a debt under sections 77 and 78 is a different complaint to one about the sale of PPI, which is what I've concentrated on in this decision. If Mr B wishes to complain that HFC hasn't given him the right information he would need to do so directly to HFC.

But even if I thought HFC weren't able to enforce the debt due to sections 77 or 78 CCA 1974, it wouldn't make a difference to this complaint. That's because I'm not considering whether or not HFC are entitled to enforce the agreement – in fact it's not asking Mr B to pay

anything toward the debt at this stage. And even if the debt isn't enforceable due to HFC not supplying the right information, it doesn't mean the debt no longer exists.

Instead I need to consider whether it's fair, in all the circumstances, for HFC to use the compensation in the way it wants to.

We'd usually say a business can use a customer's compensation to reduce their arrears if the PPI policy was sold alongside the account in arrears. In this case Mr B had a balance on his credit card when he was offered compensation. And the PPI was sold alongside the same account.

HFC provided a copy of a letter from Mr B's debt management company sent in 2015. The letter contains a list of the amounts Mr B owed to different businesses. One of the accounts listed was for an HFC account ending 5626. The balance owed in 2015 was £8,945.19.

And HFC have provided screen shots showing an account ending 5626 for Mr B. They show there was an outstanding balance of £8,685.10 in August 2017.

It also provided a copy of a letter sent to Mr B's representatives, dated 13 January 2017, stating there was a balance of £8,685.10 for the account ending 5626.

Mr B's representative hasn't said that Mr B doesn't owe anything to HFC or that the amount it says is owed is wrong. So I'm satisfied that Mr B does owe £8,685.10.

In short, HFC owes Mr B something (£7,870.42) and Mr B still owes HFC something (£8,685.10). Both of these relate to the same credit card account, so I think it's fair for HFC to use the compensation to reduce the debt.

my final decision

For the reasons set out above, I don't uphold Mr B's complaint. I think it is fair for HFC Bank Limited to use the compensation it owes Mr B to reduce his outstanding debt.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 November 2018..

Mark Hutchings
ombudsman