summary of complaint

This complaint concerns two single premium payment protection insurance (PPI) policies purchased in connection with two unsecured loans obtained in 2001 and 2005 with HSBC Bank Plc.

background to complaint

Miss A purchased two single premium PPI policies in connection with two unsecured personal loans in 2001 and 2005. Miss A repaid the first loan by refinancing with the second loan obtained in 2005. She repaid the second loan in full.

Miss A believes the policies were mis-sold and complained to HSBC. HSBC upheld her complaint and offered her compensation to put her back in the position she would have been in had the PPI policies not been sold.

HSBC wrote to Miss A in 2012 informing her that it would use the redress amount offered to repay an outstanding debt held on a separate loan account.

Miss A does not want her redress used to reduce this debt and believes it would be unfair for HSBC to do so as the PPI redress is unconnected to this loan account.

The complaint was investigated by one of our adjudicators who did not consider it fair and reasonable for HSBC to use the redress to reduce an unconnected, outstanding debt. As the parties could not agree a resolution to this complaint it has been passed to me to determine.

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 Miss A's complaint about the sale of the PPI policies, I have not considered the merits of the mis-sale complaints here. What remains in dispute, and what I must decide here, is whether it is fair and reasonable for HSBC to use the redress payable to Miss A for the mis-sale of the PPI policies to reduce an unrelated debt Miss A has outstanding with HSBC.

HSBC says it has a common law right of set off and banker's right of set off which permits it to use the PPI compensation otherwise payable to Miss A to reduce her outstanding debt with HSBC. I have carefully considered what HSBC says about its rights to set off the PPI compensation against Miss A's other unrelated debt.

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 (formally the Financial Services Authority) 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 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*. In Miss A's case, the *associated* loans have been repaid in full, so there are no arrears on those loans. So, setting aside whether or not HSBC has a *contractual right*, applying the relevant guidance suggests that HSBC is *not* entitled to use the compensation for the mis-sale of PPI alongside Miss A's loans to reduce the debt on another unrelated account, since that is not the *associated loan* in this case.

HSBC argues, however, that it can rely on a banker's right of set off, or an equitable right of set off in law, which means that it can deduct Miss A's debt to it (sitting on a separate loan account) from any money it owes to her (the PPI compensation).

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 account 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 that HSBC has an equitable right to set off the PPI compensation against the debt accrued by Miss A on an unrelated account.

The PPI compensation arises as a consequence of the mis-sale of PPI policies alongside loans taken out in 2001 and in 2005. The debt that HSBC would like to use the compensation to reduce is a separate unrelated personal loan account. Other than the loans being in Miss A's name and being, or having been, provided by HSBC, it seems to me that there can be very little logical connection between them. This, to my mind, falls well short of a *close* connection between redress for two PPI policies taken out over seven years ago and a separate unrelated personal loan taken out at a later date.

So the circumstances seem to me to fail the first test required for me to conclude that HSBC has an equitable right of set off. However, for the sake of completeness, neither have I seen persuasive evidence that it would be unjust for HSBC to pay redress directly to Miss A.

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, in effect, a similar scenario to that described by the equitable right of set-off.

But I am not convinced that the banker's right of set off applies in this situation as HSBC argues. 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 convinced that the compensation for the mis-sale of a PPI policy could be described as an *account* held by Miss A which is in *credit*. Miss A did not willingly provide this money to HSBC to hold for her. It is money that HSBC should never have taken from Miss A in the first place and of which she has been deprived the use. In this case, I am not convinced that the banker's right of set off can be relied upon by HSBC to justify using Miss A's compensation for the mis-sale of a PPI policy to reduce another unrelated debt.

So overall and on balance, I am not persuaded by HSBC's arguments that it has a banker's right of set off or an equitable right of set off in this case. So I conclude that HSBC cannot use the PPI compensation that would otherwise be paid to Miss A to reduce another debt held.

my final decision

For the reasons set out above, I direct HSBC Bank Plc to recalculate redress for the PPI policies so that it is up to date and then pay the amount to Miss A directly.

Mark Richardson
ombudsman