

## **complaint**

Following a successful complaint that three monthly premium Payment Protection Insurance (PPI) policies had been mis-sold, HSBC agreed to refund to Mr M the premiums paid plus interest. Mr and Mrs M have complained that the refunds were applied to other debts they held with HSBC rather than be paid to their account held at another bank as requested.

## **background**

Mr and Mrs M had been sold three monthly premium Payment Protection Insurance (PPI) policies alongside three unsecured personal loans taken out jointly by them. Mr M complained to HSBC that the policies had been mis-sold. HSBC upheld his complaint and agreed to refund the premiums paid (totalling £7,556.69) and interest (totalling £4,446.49). HSBC wrote to Mr M in September 2009 advising him of its offer, and should he choose to accept it, asking him for details of where he would like the monies to be paid.

Mr M replied to this offer and indicated that he wished the monies to be paid to an account in the names of Mr & Mrs M held with another bank outside the HSBC group.

Rather than meet this request, HSBC chose to use the refunded premiums and associated interest to pay off other debts that it was owed by Mr and Mrs M. These debts were being managed by Metropolitan Collection Services (MCS) although HSBC has confirmed that MCS are an internal collections team and therefore not a third party.

The funds were used to settle the following debts;

- Credit Card in the name of Mr M – full settlement
- Personal Loan in the name of Mr M – full settlement
- Bank Account in the names of Mr and Mrs M – full settlement
- Bank Account in the name of Mr M – partial settlement

Mr and Mrs M have complained that they had intended to use the funds to alleviate some other financial hardships they were currently facing and that HSBC should not have applied the refunds to the other debts it held.

## **my findings**

HSBC says it has a right of set off which permits it to use the PPI refunds otherwise payable to Mr and Mrs M to reduce their outstanding debts with it.

I have carefully considered what HSBC says about its rights to set off the PPI compensation against Mr and Mrs M's other 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 (FCA) has issued guidance for 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).*

The FCA guidance refers only to the *associated* loan or credit card - it does not provide direction on using the PPI redress to offset *other* debts, as HSBC has done in this case. I have therefore considered (below) whether it was fair and reasonable for HSBC to set off the compensation in this case.

I have considered whether HSBC has a banker’s right of set off, or an equitable right of set off in law, which means that it could deduct Mr and Mrs M’s debts to them from any money it owes to them (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 other debts that Mr and Mrs M’s owe to it.

The PPI compensation arises as a consequence of the mis-sale of PPI policies alongside loans taken some time ago. The debts that HSBC would like to use the refunds to reduce are outstanding on a number of other accounts and products as detailed above. Other than the loans being in either Mr M’s name, Mrs M’s name or joint names, and being, or having been, provided by HSBC, it seems to me that there can be very little logical connection between the two. This, to my mind, falls well short of a *close* connection between redress for three PPI policies mis-sold some years ago and current debts that HSBC holds.

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 Mr and Mrs M.

The banker’s right of set off to which HSBC refers (and which is reflected in this service’s guidance on the right of set off) 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. 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 (for example, it could not use its right of set off if the consumer held one account in his sole name and another in joint names), and it can only apply its’ right when a debt is due and payable.

From the fact that HSBC has transferred the debts to its collections team it is reasonable to assume that the debts are due and payable. However, redress that is due jointly to Mr and Mrs M (although HSBC has offered it to Mr M only) is being applied against three debts held by Mr and Mrs M in their sole names, and only one held jointly. Additionally, I

am further convinced that the banker's right of set off does not apply in this situation. 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 the PPI policies could be described as an *account* held by Mr and Mrs M which is in *credit*. Mr and Mrs M did not lend their money to HSBC to hold for them. It is money that HSBC should never have taken from them in the first place and of which they have 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 Mr and Mrs M's refunds for the mis-sale of PPI policies to reduce their other debts.

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 am currently minded to conclude that HSBC cannot use the PPI compensation that would otherwise be paid to Mr and Mrs M to reduce their other debts.

Notwithstanding my findings above, however, that HSBC does not have a banker's right of set off or an equitable right of set off in this case, it seems to me that there are two other reasons why it would be fair and reasonable for HSBC to pay the compensation directly to Mr and Mrs M.

Mr and Mrs M have informed this service that they intended to use the refunds they were due to alleviate financial hardship that they faced. Although it is not necessary for me to know the full details of these hardships, the fact that they have a number of accounts that have been placed with HSBC's collections team, would suggest that they also hold debts elsewhere. I consider that it is fair and reasonable for Mr and Mrs M to be able to determine which of their financial needs they consider to be the most pressing.

The total refund amount offered to Mr and Mrs M by HSBC and used to offset the other debts contained an amount of £4,446.49 in gross interest. As correctly identified by HSBC, depending upon the individual circumstances of Mr and Mrs M, this amount might be taxable. Therefore, should Mr and Mrs M be basic rate taxpayers, they would be due to pay to HMRC a sum equivalent to approximately £900. By using these funds to set off additional debts, HSBC clears its debts, but leaves Mr and Mrs M with a debt of significantly higher priority and no funds to meet it.

Given all the above, it follows that I would conclude that HSBC's actions in using the PPI refunds to offset other debts held by Mr and Mrs M are neither fair nor reasonable.

I therefore uphold the complaint raised by Mr and Mrs M and direct HSBC to take the actions detailed in the next section

### **fair compensation**

HSBC has agreed that it has mis-sold the three PPI policies and offered to refund the premiums paid with interest. I direct that it should now make this refund, to a bank account of Mr and Mrs M's choosing, along with an interest payment recalculated to take into account the fact it is being paid now rather than when originally offered.<sup>†</sup>

HSBC should reinstate the original debts to which it incorrectly applied the PPI refunds. These accounts should be reinstated on at least similar terms (interest rate, repayment schedule etc) to those which they enjoyed at the point the PPI refund funds were applied to

them. It is for HSBC to determine, along with Mr and Mrs M as its customers, and taking into account normal business practices, the futures of these accounts.

I have found the actions of HSBC in offsetting these debts to be wholly inappropriate in these circumstances. I therefore find that it has caused distress and inconvenience to Mr and Mrs M and direct it to pay an additional sum of £100 in compensation.

† As noted above, the interest part of the compensation is subject to income tax. The treatment of this part of the compensation in Mr and Mrs M's hands will depend on whether HSBC has deducted basic rate tax from the compensation and Mr and Mrs M's financial circumstances. More information about the tax position can be found on our website. HSBC and Mr and Mrs M should contact HM Revenue and Customs if they want to know more about the tax treatment of this portion of the compensation.

### **my final decision**

For the reasons set out above, I determine this complaint in favour of Mr and Mrs M.

I require HSBC Bank plc to pay Mr and Mrs M fair compensation in accordance with the methodology I set out above. I also require HSBC Bank plc to pay Mr and Mrs M the sum of £100 as compensation for distress and inconvenience.

I make no further award against HSBC.

Paul Reilly  
**ombudsman**