

complaint

Mr J brought his complaint to this service as he was unhappy with the way HFC Bank Limited ("HFC") had indicated it would refund the compensation it had offered for a mis-sold PPI policy. HFC later made further offers and Mr J became confused as to how HFC had calculated the different figures in the different offers.

background

Mr J brought his complaint to this service as he was unhappy with the way HFC had indicated it would refund the compensation it had offered for a mis-sold PPI policy. HFC later made further offers and Mr J became confused as to how HFC had calculated the different figures in the different offers.

background

Mr J complained to HFC in April 2011 about the sale of a PPI policy that was purchased in 2000 alongside a loan he took out with HFC. In June 2011 HFC wrote to Mr J agreeing to uphold his complaint that the policy had been mis-sold and it set out the compensation it proposed to pay him for the mis-sale.

Mr J had fallen behind in his payments on the loan and this had been sold to a third party debt agency in June 2007. HFC indicated it proposed to pay the full amount of compensation it had calculated to the third party to reduce the outstanding balance on the debt. Mr J was not happy with this approach and brought his complaint to this service.

During the course of the investigation in June 2012 HFC indicated it had recalculated its figures and its first offer made in June 2011 was incorrect. It made a new offer of settlement which reduced the compensation due, and again stated this would all be paid to the third party. Mr J was unhappy as he felt the figures used were incorrect and did not represent the total amount he had paid for the PPI policy to date.

HFC wrote to Mr J again in August 2012 indicating that he had made a claim on the policy which had not been taken into account in its June 2012 offer. Therefore it had again recalculated the figures and the offer was further reduced. Again HFC indicated it was proposing to pay the compensation to the third party to reduce the debt.

In March 2013 an adjudicator indicated to HFC that as the debt had been sold to a third party it would not be fair and reasonable for HFC to pay the compensation money to that third party.

HFC then indicated it agreed with this approach and it sent a further offer to Mr J. This offer, in March 2013, indicated HFC had calculated the premiums plus interest paid from the start of the PPI in November 2000 to February 2006 (when Mr J fell into arrears), plus 8% simple interest per year on that figure, less an amount paid out for a successful claim. HFC indicated it would pay the amount identified from this calculation directly to Mr J.

However an additional amount was calculated for PPI ("PPI balance"). This was the balance, less an adjustment for any non pro-rata refund made on cancellation, that had remained as part of the loan when it was sold as a debt to the third party in 2007. HFC was proposing in its offer that this PPI balance be used as an account adjustment on the outstanding balance of the debt. HFC said this was because this represented a sum Mr J had not actually paid for the policy.

Enquiries made by this service indicated that the PPI was cancelled in 2006. HFC indicated Mr J would have received a non-pro rata refund of the PPI at that time and this had been taken into account when the calculation was made to identify the PPI balance. This PPI balance was therefore still part of the debt when it was sold in June 2007.

Mr J was still paying reduced sums against the debt and so it seemed was still paying for the PPI policy. HFC confirmed the amount of the PPI balance identified had not been set against the debt which was sold.

In August 2013 an adjudicator made a recommendation that proposed HFC should make certain calculations and pay all the compensation calculated directly to Mr J. It was also recommended £100 should be paid to Mr J for the distress and inconvenience caused by HFCs dealing with this matter.

HFC indicated it accepted the calculations and agreed to pay the amount suggested for distress and inconvenience. However HFC maintained Mr J had not actually paid the amount calculated in as part of the debt that was sold. It proposed that this figure should be set against the balance of the debt with the third party and so should not be sent to Mr J.

As HFC did not agree with the adjudicator's recommendation the matter has been passed to an ombudsman for determination.

my findings

I have briefly outlined above the background but I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

HFC has agreed to uphold Mr J's complaint about the mis-sale of the policy. Therefore I will not address the issue of how the PPI policy came to be sold to Mr J.

redress calculations and repayment

The main focus of Mr J's complaint is that he considers the calculations of the compensation are unfair as he had continued to pay towards the cost of the PPI after the debt was sold to the third party. He has also been greatly confused by the number of offers and changes made by HFC in this matter.

I have looked at all the calculations made by HFC in this matter. It seems to me that the amount calculated as the premiums and interest actually paid by Mr J from 2000 to 2006 has remained consistent. Changes and errors seem to have been made on other aspects of their calculations resulting in the different offer figures. This has caused confusion in this matter.

The approach of this service is that when a PPI policy has been mis-sold the consumer should be as far as is practical put back in the position they would have been in had the sale not taken place.

In this complaint I am of the view on the evidence presented that although the policy was cancelled in February 2006 not all the elements of the PPI policy were removed from the loan at that time. HFC indicated to this service in May 2013 the figure calculated at cancellation (the PPI balance) had not been set against the loan. So when the debt was sold to the third party this figure formed part of the debt. HFC now want to set this amount against

the debt. However Mr J has still been paying amounts to the debt since 2006 and so this means in effect that Mr J has still been paying towards the cost of the policy since 2006.

When HFC sold the debt to a third party that was a commercial decision and HFC accepted an agreed price for the debt. This meant that Mr J now owes and pays money to the third party, not to HFC, for that debt. So it would be our approach in such circumstances to calculate the compensation to the point that the debt was sold, in addition to the amounts actually paid, and pay *all* parts of the compensation to the consumer.

I have not seen anything to persuade me I should not follow the standard approach in this particular matter and for Mr J to be paid all the compensation due. HFC did not write off this debt, so it is not seeking to set any amount not paid at the time by Mr J as part of that debt against its losses. The debt was sold on a commercial basis by HFC to a third party. Mr J has continued to pay towards that debt, part of which is for the PPI he was mis-sold by HFC. I am therefore persuaded it is fair and reasonable that he should be refunded all the costs he has incurred for the PPI, less any amount he received as a result of a claim.

distress and inconvenience.

As set out in the background to this matter HFC has made several offers and it seems made a number of errors in its calculations. It has now acknowledged Mr J received incorrect calculations and indicated it was willing to make an additional payment of £100 for the distress and inconvenience this may have caused.

It is not the purpose in awarding distress and inconvenience payments to punish businesses. It is however appropriate to award distress and inconvenience payments to reflect the effect of the businesses actions on the consumer.

I am of the view Mr J has suffered considerable distress and inconvenience in this matter. He originally brought this complaint to the ombudsman service as he felt the compensation figure should be paid to him and not the third party. It is likely that had HFC made its offer to pay the calculated at that time to Mr J, in line with this services approach, he would have accepted it.

HFC had indicated in its various offers that they were in line with the approach of the ombudsman service. It has been pointed out to them this was not the case. I am of the view that HFC's errors and approach to this complaint has delayed the matter for a considerable period of time. Mr J has spent a great deal of time and effort in pursuing this complaint.

I am of the view that a figure of £200 should be paid to Mr J for the distress and inconvenience caused to him by HFC's errors and the way it has dealt with this complaint.

fair compensation

In summary Mr J should as far as possible be placed back in the position he would have been in had the PPI policy not been sold. To do this I require HFC to calculate the redress due to Mr J as follows:

- A. work out and repay the extra monthly payments *actually paid* by Mr J because PPI was added to the loan by:
 - calculating how much the loan payments would have been if Mr J had taken out the loan without PPI;

- subtracting those amounts from what Mr J actually paid and paying him the difference;
- paying Mr J interest (simple, not compound) on each of these amounts at the rate of 8% a year from the date each payment was made to the date the redress is paid[†]

B. Work out and repay to Mr J:

- the difference between the loan balance with the PPI policy and the loan balance without the PPI policy at the date of sale of the debt to the third party;
- taking into account any PPI premium refunded to the consumer when the policy was cancelled;
- paying Mr J interest (simple, not compound) on the amount calculated from the date of cancellation of the PPI policy in 2006 to the date the redress is paid[†].

C. Any amount paid to Mr J as a result of a successful claim made under this policy may be deducted from the total redress due to be paid to him.

D. Write to Mr J to set out the details of the calculations and amounts under (A), (B) and (C) above.

[†] I understand HFC is required to deduct basic rate tax from this part of the compensation. Whether Mr J needs to take any further action will depend on his financial circumstances. More information about the tax position can be found on our website.

Mr J should refer back to HFC if he is unsure of the approach it has taken and both parties should contact HM Revenue & 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 uphold this complaint and direct HFC Bank Limited to pay compensation directly to Mr J as set out above.

I also award an additional figure of £200 to be paid by HFC Bank Limited to Mr J for the distress and inconvenience he has suffered due to the way HFC Bank Limited has dealt with his complaint.

Christine Fraser
ombudsman