

## complaint

Miss F complained about the single premium payment protection insurance (PPI) policies she was sold in connection with three loans (A-5089; B-2935; C-4296). Following the initial complaint, HSBC Bank Plc agreed to uphold the complaint in connection with all three loans and made an offer to Miss F in 2011.

However, in agreeing to uphold the mis-sale complaint, HSBC said that it would be applying the calculated redress to offset arrears on a subsequent loan (D-9187) that Miss F took out together with the arrears on her current account. I have noted that loan D was passed to a debt collection agency. Miss F has complained about this approach and has asked HSBC to pay her the redress from loans A, B and C directly.

## my findings

I have included only a brief summary of the complaint above, but I have considered all of the available evidence and arguments, in order to decide what is fair and reasonable in the circumstances.

Since HSBC has already accepted that it mis-sold the policies (in connection with loans A, B and C) to Miss F, I do not need to consider the merits of this complaint again here. I need to decide whether the method used by HSBC to determine what compensation Miss F is due, if any, is fair and reasonable.

Our general approach to calculating redress for PPI mis-sales in connection with a loan is that HSBC should put Miss F back in the position she would have been in now if she had taken out the loan without the PPI policy.

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 Services Authority (known as the Financial Conduct Authority since 1 April 2013) 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 is entitled to seek to 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 F’s case, there are several loans, which I regard as separate sales, with each requiring separate consideration. So this means that, setting aside whether or not HSBC may have a *contractual right*, applying the relevant guidance suggests that it is *not* entitled to use the compensation for the mis-sale of PPI in loan A (account ending 5089) and loan B (account ending 2935) and loan C (account ending 4296) to reduce arrears on loan D (account ending 9187) since the accounts are unconnected and accordingly not associated.

HSBC has argued that it ought to be allowed to rely on what is often called the 'bankers right of set off'. This means that it should be entitled to reduce Miss F's indebtedness to it (the arrears balance on the sold account – 9187 plus arrears on Miss F's current account) from any redress it owes to her in connection with the PPI mis-sales from loans A, B, and C.

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. 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, and it can only apply its right when a debt is due and payable.

In this case, I am not convinced that the banker's right of set off applies. 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 satisfied that compensation (or the liability to pay it) for the mis-sale of a PPI policy could be described as an *account* held by Miss F which is in *credit*. The compensation represents the repayment of money that HSBC should not have taken from Miss F in the first instance. So, 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 F's compensation for the mis-sale of any of the PPI policies here.

There is, of course, a general *equitable* right of set-off, one which this service recognises and which I consider has some relevance to this complaint.

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 loan account to which HSBC would like the compensation 'transferred'*. I must also consider – but only if this first 'hurdle' is met – 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 one or more of Miss F's outstanding debt balances.

I entirely accept that redress payable in respect of the mis-sale of a PPI policy can and often should be set-off against the loan with which the sale of the PPI was associated. That basic principle is consistent with the FSA guidance referred to above, and I suspect informed the framing of that guidance.

But it is another matter to say that a *previous* loan, refinanced by the loan with which the PPI was sold, or a *later* loan refinancing the loan with which the PPI was sold, is to be regarded as *closely* connected with the *debt* arising (eg the requirement to pay compensation) from the mis-sale of a PPI policy which was *not* sold at the same time.

So, having carefully considered all of the available evidence, I am not persuaded that it is fair and reasonable for HSBC to use the compensation payable for the PPI policies associated with loans A, B, and C to reduce the outstanding arrears on loan D.

I say this because these loans and any PPI policies purchased in connection with these loans represented wholly separate transactions. And I note that Loans A, B and C were all fully repaid and appear to have no outstanding arrears.

I have also noted that HSBC has not calculated redress in line with our general approach, instead calculating 8% interest up to the point at which the outstanding debt was passed to Metropolitan Collections Services Limited, rather than the date of settlement with Miss F. I consider, therefore, in summary, that HSBC should re-calculate the redress payable in respect of the PPI mis-sales for loan A (5089), loan B (2935) and loan C (4296) in accordance with our general approach and guidelines indicated below and then pay this amount directly to Miss F.

### **fair redress**

It is my understanding that the three loans in question were repaid early, and the associated PPI policies were cancelled. Accordingly, HSBC should:

(A) In respect of each loan:

- recalculate the loan and the payments to what they would have been if Miss F had taken the loan without PPI;
- repay to Miss F the amounts by which the payments actually made exceeded the recalculated payments;
- pay Miss F interest on each of these amounts at 8% per year simple<sup>†</sup> from the date each payment was made to the date the compensation is paid;
- recalculate the balance that would have been outstanding at the end of each loan had the recalculated loan not included PPI.

(B) Calculate how much of the balance that was carried forward to the subsequent loan related to the cost of the PPI policy taken out for the previous loan; and

- repay to Miss F all amounts paid under each subsequent loan in respect of the carried forward balance, including interest and charges;
- pay Miss F interest on each of these amounts at 8% per year simple<sup>†</sup> from the date each payment was made to the date the compensation is paid.

(C) Set out in writing for the consumer details of the calculations under (A), (B) and (C).

<sup>†</sup> – This part of the compensation may be subject to income tax. The treatment of this part of the compensation in Miss F's hands will depend on whether HSBC has deducted basic rate tax from the compensation and Miss F's financial circumstances.

More information about the tax position can be found on our website.

Miss F should refer back to HSBC if she is unsure of the approach it has taken and HSBC and Miss F 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**

My final decision is that I uphold this complaint and direct that HSBC Bank Plc should recalculate the redress in respect of the mis-sales (once again, in accordance with the standard approach of the Financial Ombudsman Service).

The redress should then be paid directly to Miss F.

Andrew Macnamara  
**ombudsman**