

complaint

Mr A's complaint is that HSBC Bank Plc intends to use some of the redress from a mis-sold payment protection insurance (PPI) policy to clear the arrears on the loan the PPI was connected with.

Mr A says all the redress should be paid to directly to him.

background

In January 2011 Mr A complained to HSBC about the sale of the PPI policy.

In September 2011 HSBC wrote to Mr A. In its letter HSBC explained that it was upholding Mr A's complaint. The letter went on to say it had calculated the redress due to Mr A as being £4,057.08. This was the amount that HSBC say would have the effect of putting Mr A back in the position he would have been in if he had not been sold the PPI policy.

HSBC also stated that the redress would be used to reduce Mr A's debt with HSBC.

Mr A did not accept HSBC's offer and brought his complaint to this service via a third party.

In April 2013 Mr A's representatives confirmed to this service that Mr A was unhappy with HSBC's offer as he believed he had cleared the debt which HSBC intended to use the redress to reduce. Therefore Mr A's representatives told us Mr A wanted the redress paid to him directly.

An adjudicator wrote to Mr A in May 2013. In his letter the adjudicator explained that HSBC had provided evidence that Mr A's loan had fallen into arrears and in 2007 was passed to its internal collections department. At the same time, a bank account held by Mr A which was also in arrears was passed to its internal collections department. The two outstanding debts were then merged into one account. The outstanding debt in May 2013 was £2,268.87. The adjudicator explained that HSBC was proposing to use part of the redress from the mis-sold PPI policy to clear the outstanding £2,268.87 with the remainder being paid directly to Mr A. The adjudicator explained that in his view this was a fair and reasonable outcome.

Mr A, through his representative did not accept the adjudicator's findings and asked that an ombudsman review the complaint.

my findings

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

HSBC has agreed to uphold Mr A's complaint about the sale of the PPI policy. Therefore I do not need to consider the circumstances of how the PPI policy came to be sold to Mr A.

Firstly I note that Mr A's representatives told us that Mr A believed there was no outstanding debt as he had repaid the loan. I am persuaded from what I have seen that this is not the case. HSBC has supplied screenshots from its systems which satisfy me that the outstanding balance of Mr A's loan account and the arrears from Mr A's bank account were merged in 2007 and passed to HSBC's internal collections department. I am satisfied that as of May 2013 there remained an outstanding balance on the merged account of £2,268.87.

The only issue remaining for me to decide is whether it was fair and reasonable for HSBC to use part of the redress to reduce the debt currently being held with its internal collections department.

The Financial Services Authority (FSA) (now known as the Financial Conduct Authority) issued guidance for financial businesses handling PPI complaints. This 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).”

I have firstly considered whether HSBC holds the contractual rights to Mr A’s debt. HSBC has told this service that in 2007 it passed Mr A’s loan account to its *internal* collection department. HSBC has confirmed that it did not sell Mr A’s debt to any third party and that it remains the owner of Mr A’s debt. Because of this I am satisfied that HSBC holds the contractual rights to Mr A’s debt.

I have also considered whether HSBC is proposing to use the redress to reduce the outstanding debt on the loan associated with the PPI redress. I did have some concerns that HSBC had merged the debt from the loan with the outstanding arrears from Mr A’s bank account when it passed the debts to its collection department. This *could* have resulted in some of the redress being used to reduce the arrears from Mr A’s bank account which was not closely associated to the PPI redress.

However HSBC has provided evidence to show that when the arrears were passed to its collection department the debt on the loan was £14,512.98 while the bank account arrears were £1,975.89. As of May 2013, only £2,268.87 of the total arrears remained outstanding. HSBC has said that Mr A’s repayments would have been used to reduce the smaller debt first, therefore I am satisfied that the remaining arrears most likely relate to the loan associated with the PPI policy rather than the bank account arrears.

I therefore consider it fair and reasonable for HSBC in this instance, to *“set-off”* the redress payable for the mis-sale of the PPI policy against Mr A’s arrears on his loan account – and remove those arrears. This is because HSBC is entitled to use PPI compensation to reduce arrears on the *associated* loan balance where *it has the contractual right to do so*. Any redress remaining after the arrears on the loan account have been cleared should be paid directly to Mr A in the form of a cheque.

my final decision

For the reasons set out above my final decision is that I do not uphold Mr A’s complaint. Mr A has not yet received the redress so HSBC Bank Plc should recalculate the redress payable to bring it up to date including interest for the time he has been out of pocket.

HSBC Bank Plc can use the redress to clear the outstanding debt on Mr A’s loan account with any remaining redress being paid directly to Mr A in the form of a cheque. I make no other award against HSBC Bank Plc.

Steve Thomas
ombudsman