

complaint

Mr A's complaint concerns the mis-sale of a PPI policy and calculation and payment of redress by HSBC Bank Plc (HSBC) for the mis-sale of a single premium payment protection insurance (PPI) policy taken out with a loan.

background

Mr A complained to HSBC about the sale of a PPI policy that was taken out in connection with a loan in 2007.

HSBC has upheld Mr A's complaint that the PPI was mis-sold to him and offered to refund to Mr A the premium paid for the PPI that was added to the loan plus the interest charged on the premium.

The loan went into default in 2008 and HSBC proposed to pay the redress it had calculated as due to Mr A against the debt still owed that is associated with the loan.

Mr A was unhappy that HSBC wanted to use the redress to set against the debt he still owed to the bank related to the loan. He felt the redress should be paid directly to him.

An adjudicator from this service looked at Mr A's complaint and indicated they considered the offer and way HSBC proposed to pay the redress to Mr A was fair and reasonable.

However Mr A remained unhappy and has requested an ombudsman review his complaint.

my findings

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

I would clarify that in this decision I am *only* addressing the issues relating to redress and payment of this for the mis-sale of the PPI policy sold in connection with the loan in 2007. As HSBC has agreed to offer to pay Mr A compensation I shall not address the issue of how the PPI policy came to be sold to Mr A, only whether HSBC's offer is fair and reasonable in the circumstances of this complaint.

When compensation is paid it is the approach of this service that the consumer should be put back in the position they would have been in if they had not taken out the PPI policy. The principle issue in this complaint is whether it is fair and reasonable for HSBC to set the refund of PPI premium cost and interest against the debt which was owed in connection with the loan.

The loan Mr A took out in 2007 went into arrears in 2008 and the PPI policy was cancelled. At the point of cancellation HSBC made a non pro-rata refund of the PPI premium against the debt still outstanding to reduce this debt Mr A owed to the bank.

When HSBC upheld Mr A's complaint it calculated the additional amounts he had paid for PPI before the loan went into arrears and the refund was made to the loan account. This amount it offered to refund, plus an amount of 8% interest, but HSBC wants to set this refund against the still outstanding debt.

HSBC has indicated that the outstanding amount on the loan remains as a debt owed to the bank although collections are being made through a third party acting on behalf of the bank.

I understand Mr A wants the full redress payment to be issued to him and not paid against the debt he owes to HSBC. It seems to me that Mr A is still in debt to HSBC and part of that debt relates to the PPI premium taken out on the loan. It therefore seems in this complaint fair and reasonable for HSBC to set the redress due for the mis-sale of the PPI against the debt.

I have also taken account of the guidance issued by the Financial Conduct Authority (FCA) for financial businesses handling PPI complaints. This 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 reasonable in deciding whether to make such a payment". (DISP App 3.9 1 G)

This guidance suggests that HSBC can use PPI compensation to reduce arrears on the *associated* loan where it has the contractual right to do so. As this is the associated loan in this particular case it seems that if HSBC may, if the contract permits, have a right to set the compensation here against the arrears.

Setting aside any contractual right there is also the equitable right of set off in law which allows a person to 'set off' *closely connected debts*. This means that one person (X) can deduct from a debt that they owe another person (Y), money which that person (Y) owes to them.

For this to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt which HSBC would like the compensation set against. *If* this first hurdle is met I must also consider whether it would be unjust not to allow HSBC to set off in this way. *Both* tests must be satisfied for me to conclude HSBC has an equitable right to set-off the PPI compensation against Mr A's outstanding arrears.

In relation to the first limb of the test, I am persuaded there is a close connection between the *redress* payable in respect of the PPI policy taken out by Mr A as it was directly related to the loan on which the arrears exist.

Whilst Mr A has indicated he may have some other debts there is no substantive evidence that any of Mr A's current debts should be cleared as a priority to the debt he owes to HSBC.

In summary I am not persuaded it would be unjust to allow HSBC to set the refund for the PPI against the debt Mr A owes to the bank in connection with his loan.

I have taken note of Mr A's comments that he believes HSBC should be punished for selling him the PPI.

The approach of the financial ombudsman service is not to punish a business by making monetary awards to customers simply because something has gone wrong, beyond placing consumers *back in the position they would have been in* had the failing not occurred. Mr A would still owe his debt to HSBC, as I am persuaded he would still have taken out the loan. But it would be substantially reduced if he had not purchased the PPI. So by paying the redress against the debt Mr A owes on the loan would put him as far as possible back in the position he would have been in had he not purchased the PPI.

As far as I am aware Mr A has not accepted to date the offer of HSBC. Therefore HSBC should recalculate the 8% interest due to Mr A. It should add interest on each of the payments made at the rate of 8% per year simple from the date of each payment made by Mr A to the date the compensation is paid. This final figure may then be set against the debt Mr A owes to HSBC.

my final decision

For the reasons I have outlined I am satisfied that HSBC Bank Plc has offered fair and reasonable compensation for the mis-sale of the PPI in this complaint.

I make no further award against HSBC Bank Plc.

Christine Fraser
ombudsman