

complaint

Mr T's complaint is about the way HSBC UK Bank Plc (HSBC) has offered to compensate him for its mis-sale of a payment protection insurance (PPI) policy attached to a credit card.

background

In 2002, Mr T took out a credit card with HSBC. At the same time he was sold PPI to protect his monthly card repayments if he wasn't able to work.

In 2018, Mr T complained to HSBC that the PPI had been mis-sold to him. HSBC upheld Mr T's complaint and offered to compensate him for this. It calculated that it owed him £2,136.72 in relation to this mis-sale. But because there was still an outstanding amount on Mr T's credit card account of more than this amount, it said it would use this compensation offer to reduce the amount he still owed on his account rather than paying it to him directly.

Mr T wasn't happy with HSBC's offer. He thought that the mis-sale had contributed to the severe financial difficulties he had experienced in more recent years. So he thinks that he's owed more than HSBC has offered to compensate him for this mis-sale. And he thinks that the compensation shouldn't be used to reduce his outstanding credit card balance but should be paid directly to him, to help him with his current financial difficulties.

Our adjudicator thought that the amount which HSBC had offered to Mr T in compensation for this mis-sale was fair. And she also thought it was fair for HSBC to use this compensation to reduce Mr T's outstanding credit card debt with it. Mr T disagreed with the adjudicator's view, so the case has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

HSBC has upheld Mr T's mis-sale complaint. So in this decision I won't be looking at how the policy came to be sold. I'll only be looking at whether the way HSBC has offered to compensate Mr T for this mis-sale is fair.

HSBC has provided details of how it has calculated the amount of compensation owed to Mr T because of the mis-sale of PPI on his credit card. It doesn't still have a full transaction history for his card account since the date of this sale. But this isn't that surprising given how long ago the sale took place. In these circumstances, we would expect a business to estimate the customer's outstanding monthly balances, and the PPI premiums charged on these balances, for periods when this information is missing. And we would expect this to be done by applying fair and reasonable assumptions to the information for periods when it was available. Having looked at the way HSBC has estimated the outstanding monthly balances on Mr T's card account and the PPI premiums which he was charged, I'm satisfied that this was done in a fair and reasonable way.

I've next looked at the way in which HSBC has calculated the total compensation owed to Mr T for this mis-sale. HSBC needed to put Mr T back in the position he would have been if the PPI premiums hadn't been added to his card account, including any additional interest or other costs he suffered as a result of these PPI premiums. And, again, I'm satisfied that HSBC has carried out these calculations in a way which is both fair and reasonable.

HSBC has provided evidence to show that Mr T still had an outstanding balance on his card account of £6,574.50 when it made its offer of compensation to him and that his account was in default. So I'm satisfied that there was a much larger amount still owing by Mr T on his card account than the offer which HSBC made to compensate him for his PPI mis-sale complaint. I now need to consider whether it was fair for HSBC to offset the compensation of £2,136.72 it offered against this outstanding debt.

As Mr T defaulted on his card account, he owed HSBC an amount for the money he borrowed on the account (including interest and other charges) which hadn't ever been paid back. HSBC was out of pocket for this money. It accepted that it owed Mr T money for the PPI compensation it had offered him. So it owed him a debt too. And it has "set-off" its debt for the PPI compensation against the debt Mr T still owed on his card account.

There is in law what is called "*the equitable right of set-off*" which allows people (and businesses) to "set-off" closely connected debts. This means that one person ("A") can deduct from a debt they owe another person ("B"), money which that person ("B") owes to them.

For this right of set-off to apply, I must be satisfied that there is a close connection between the PPI compensation offered to Mr T and his outstanding debt to HSBC. I must also consider whether it would be fair for HSBC to use set-off in this way. Both tests must be satisfied for me to find that HSBC has an equitable right to set-off the PPI compensation in the way it has.

The PPI sold to Mr T was directly connected to his credit card account. Using the right of set-off I have outlined above, I'm satisfied the PPI compensation and the outstanding card account debt are closely connected. They are both related to the same account Mr T had with HSBC. And I haven't seen any compelling evidence to show that Mr T had more pressing needs for the compensation than reducing the arrears on this debt. So I think it's fair for HSBC to use the compensation it's offered to reduce his outstanding card account balance in the way it proposes to do.

In any event, part of the outstanding debt Mr T owes on his credit card account is for PPI premiums that were added to the balance but which Mr T has never paid. So if HSBC paid the compensation directly to Mr T, he'd be receiving compensation for PPI premiums that he never paid. And I don't think that would be fair.

I've thought about what Mr T has said about the PPI mis-sale contributing to the financial difficulties that he is now experiencing. And I can understand that these difficulties are distressful for him. But I don't think it would be fair for me to conclude that this PPI mis-sale was a significant cause of these difficulties and that, as a result, he's owed more in compensation from HSBC than it has offered. So whilst I fully recognise that this will be a disappointing outcome for Mr T, I still think that the amount of compensation offered is fair and reasonable. And I don't think HSBC has done anything wrong in offsetting this compensation against the amount of credit card debt which he still owes.

my final decision

For the reasons given, I'm not upholding Mr T's complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 June 2019.

Simon Furse
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