

complaint

Mrs A is unhappy with how HFC Bank Limited ('HFC') has resolved her complaint about a payment protection insurance policy ('PPI') attached to a loan.

HFC Bank Limited sold the policy. But HSBC Bank plc has answered Mrs A's complaint. For sake of ease I'll refer to 'HFC' throughout my decision.

background

I sent Mrs A and HFC a provisional decision on 21 September 2017 setting out why I thought HFC should pay Mrs A some of the PPI compensation it had already set off against Mrs A's loan account debt. I've attached this provisional decision below and it forms part of this decision.

In my provisional decision I set out the background to Mrs A's complaint.

HFC responded to my provisional decision to say it agreed and was willing to pay the £131.23 directly to Mrs A and add £131.23 back onto the debt Mrs A owes it.

Mrs A responded to my provisional decision with some points she wanted me to consider further. In summary, these points are:

- Mrs A has asked whether HFC could pay her £200 rather than the £131.23.
- Mrs A disputes whether the offer letter HFC provided from 2015 is genuine.
- Mrs A still would like some extra compensation for stress and inconvenience.

my findings

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

I understand Mrs A will be disappointed – but I don't see any reason to depart from my provisional decision. So I still think it's fair for HFC to pay £131.23 directly to Mrs A and add £131.23 back onto the debt Mrs A owes. I don't think HFC needs to pay any more.

I went into my reasoning in some detail in my provisional decision. But, where necessary, I'll expand on the points that Mrs A raised in response to my provisional decision.

Mrs A's request for £200

In my provisional decision I explained why I thought it was fair for HFC to pay Mrs A £131.23.

The reason why I've suggested the amount of £131.23 is because this is compensation for what she actually paid towards the PPI policy when she was making her loan repayments.

Mrs A *only* actually paid £58.16 extra – in the monthly *loan repayments* she made - because of PPI (this included the extra interest she was charged because of the PPI).

Mrs A is out of pocket for that £58.16. Because when she made her monthly loan repayments some of that included paying off what she had also borrowed for PPI. Because Mrs A is out of pocket for that £58.16, HFC has added 8% simple interest which comes to £64.55 (after tax).

The rest of what she borrowed for the PPI policy she hadn't paid back. This formed part of the *overall* debt on her loan account when Mrs A got into trouble making her monthly repayments.

I don't think it would be fair for HFC to pay Mrs A money that she never paid. The unpaid borrowing for the PPI formed part of her overall loan debt with HFC. I think it was fair for HFC to take this amount off the outstanding debt.

So I don't agree with Mrs A's request for £200 and I don't think it would be fair for HFC to pay Mrs A anymore than the £131.23 it has already agreed to pay.

The letter from HFC in 2015

Mrs A has suggested that a letter which HFC showed us it sent to a representative on behalf of Mrs A isn't genuine.

This is because whilst the letter is dated 2015 there is a note dated October 2017 on the acceptance form attached to the letter. Mrs A also said she has never had a representative.

I agree that the date of October 2017 is there – but I think HFC has merely amended the bottom of its letter to highlight that the overall figure of the debt Mrs A owes would've reduced since 2015. I haven't seen enough evidence which would suggest this letter from HFC in 2015 isn't genuine.

The fact that the letter provided isn't on letter headed paper is common and the norm for electronically stored letters. The letter is in a template and only printed out on letter headed paper or put on letterhead if sent electronically. It is quite usual for letters to be stored without the letterhead and so a copy provided later would often be in the format provided.

I also understand Mrs A has said that she didn't appoint a representative. But HFC has also showed me a copy of the complaint letter that the representative sent to HFC on behalf of Mrs A in 2015. There is also a signed form to say that Mrs A had given authority to a representative to handle her complaint. So, from the information I have, it's clear that she did appoint a representative to handle her PPI complaint – but I understand that she may not remember doing this. I've asked an adjudicator to provide a copy of this to Mrs A.

Mrs A did mention in her complaint this has taken more than two years to resolve. And it has. But Mrs A has also said she didn't receive this letter sent in 2015. As I mentioned in my provisional decision, I haven't seen anything from between 2015, when Mrs A initially complained, and when HFC wrote out to Mrs A in 2017 to suggest that Mrs A was chasing a response from HFC or querying why she hadn't had a response. From what I've seen, Mrs A only followed up this complaint after HFC wrote directly to Mrs A in 2017.

I think it's more likely Mrs A didn't get this letter because of the fault of her representative and not HFC.

Mrs A has now seen a copy of this letter and also says it doesn't say what HFC intended to do with her compensation. I disagree. On the acceptance form which would've come with the letter it sets out that there were arrears on the account and it planned to use the compensation and the unpaid PPI to reduce the amount Mrs A owed.

The letter also says '*we agree for this amount to be offset against my liability to HSBC Bank plc in order to reduce our overall indebtedness*'.

Extra compensation for trouble and upset

I've explained in my provisional decision why I don't think HFC need to pay Mrs A any extra compensation. And she hasn't given me any new information to consider. So I see no reason to depart from what I've already said.

putting things right

In summary, I think it's fair for HFC to pay Mrs A back what she actually paid towards the PPI policy, including the 8% simple interest it has already calculated. As I've discussed above, this comes to £131.23.

It's my understanding that HFC have already off-set this amount from Mrs A's loan account. So HFC can adjust Mrs A's loan account to put this £131.23 back onto the debt that she owes.

I don't think HFC should pay Mrs A any of the rest of what she borrowed for the PPI because she didn't actually pay it back – so she's never been out of pocket for this money. But her loan had been adjusted to remove the PPI costs from the outstanding debt so she will never have to repay this money.

HFC has agreed to do this.

my final decision

For the reasons discussed above, I direct HFC Bank Limited to pay Mrs A £131.23 and reinstate this amount onto the debt on Mrs A's loan account. HFC Bank Limited should arrange payment directly with Mrs A and as soon as possible.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 13 November 2017.

Martin Purcell
ombudsman

my provisional decision

background

Mrs A had a loan and with this loan she was sold a PPI policy.

Mrs A complained that she had been mis-sold this PPI policy in 2015. At that time she had a representative.

HFC made Mrs A an offer in 2015. In a letter – sent directly to her representative – HFC said that because she had an outstanding debt on her loan account it was going to use this PPI refund to reduce that amount. Mrs A says she didn't receive this letter.

At that point in 2015 – Mrs A's loan account was in debt by around £7,064. HFC said that following her PPI complaint it was going to reduce that amount by what it was offering in compensation, which was around £1,176 – leaving a remaining balance of around £5,888.

HFC say it didn't hear back from Mrs A or her representative in 2015, so no further action was taken.

HFC then wrote to Mrs A directly in 2017 to point out that it hadn't heard back from Mrs A about its offer but it was still willing to honour the offer and was willing to pay her £1,191.70. Later on in the letter it said '*we may use the redress to repay or reduce any linked debt outstanding*'. Mrs A returned the acceptance form after receiving this letter.

Because Mrs A had changed her surname since she took out this loan with HFC, it asked Mrs A to verify her identity before taking any further action.

After Mrs A did this, HFC confirmed to Mrs A that it was going to use her PPI refund to reduce an outstanding debt she has on the same loan account.

Mrs A isn't happy with this – she thinks she should be paid all of the money. She also says she is having trouble financially and needs the money to help repay some essential bills. Mrs A also would like compensation for the poor service she says she received from HFC.

Our adjudicator looked at this complaint and thought the approach HFC had taken was fair and so didn't think it should do anything else. But he did ask HFC to update the amount awarded for 8% simple interest, to bring it up to date. HFC agreed to do this.

Mrs A disagreed with our adjudicator and asked for an ombudsman to look at the complaint. So it has been given to me to issue a decision.

my provisional findings

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

Because Mrs A has given us some more information about her personal circumstances I am going to suggest that HFC pay her £131.23 of the PPI compensation. I don't think this is as much as Mrs A expects – so I understand that she might still be disappointed with this. But I'd like to explain, to both parties, why I think HFC should pay this amount.

Mrs A's offer

When a business agrees to refund a PPI policy we expect it to, as far as possible, put the consumer back in the position they would've been in had they not taken out the PPI.

Mrs A was sold a single premium PPI policy. What this means is, when she borrowed the money for her loan, she borrowed an extra amount – which was added to her borrowing – for a PPI policy. She would pay off the extra amount borrowed for PPI at the same time as her loan. The PPI policy, like her loan, had interest charged on it.

With a single premium PPI policy, we'd generally expect a business to refund the extra amount the consumer borrowed for the PPI, the interest that was charged on that extra borrowing and 8% simple interest, to compensate the consumer for the time they've been without that money.

But, with Mrs A's loan, at some point she had trouble making the repayments. As of 2015, she still owed around £7,064 towards the loan. Mrs A has told us she has a court order to make regular payments of £40 towards this debt.

At the point that she got into trouble making her loan repayments, she'd only actually paid £58.16 extra - in the loan repayments she had made - because of PPI (this included the extra interest she was charged because of the PPI). HFC also said that it would add £64.55 (after tax) in 8% simple interest.

That left an amount of around £1,053 that Mrs A borrowed for PPI but never actually paid back and formed part of her overall loan account debt. She wasn't out of pocket for this money – because she's never paid anything towards it. And I don't think that Mrs A got into financial trouble *directly* because she had PPI on her loan account – because the PPI made up a low percentage of her overall loan debt. So I think it's fair for HFC to take this amount off the outstanding debt on the loan account – because this puts her overall debt in the position it would've been in had she not been sold the PPI policy.

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

For this right to set-off to apply, I must be satisfied that there is a close connection between the PPI compensation and the outstanding debt. I must also consider whether it would be fair for HFC to set-off in this way. Both tests must be satisfied for me to find that HFC has an equitable right to set-off the PPI compensation against Mrs A's outstanding debt on her loan account.

The PPI sold to Mrs A was directly connected to her loan. Using the right of set-off I have outlined above, I am satisfied the PPI compensation and the loan debt are closely connected. They are both for the same account Mrs A had with HFC.

Next I have to consider whether or not it's fair for HFC to set-off in this way. Sometimes it might not be fair for a business to set-off in this way if a consumer has higher priority or more pressing debts they need to pay.

It's important to note here that I'm only considering whether it would be fair for HFC to off-set the amount Mrs A actually paid towards the PPI. Looking at the offer letter HFC sent in 2015, this amounts to £58.16 paid towards the PPI - including the interest, and £64.55 (after tax) in 8% simple interest. HFC has agreed to award 8% simple interest up until 2017, so has offered an extra £8.52 (after tax). This totals £131.23 that I'll be considering.

We do have to consider and decide upon what may be a priority or a more pressing debt than the loan debt and to do this we look at all the information provided in each particular case.

Since our adjudicator initially gave his view, Mrs A has told us and provided evidence of the financial troubles she's having. Mrs A showed us evidence that she owes her electricity company around £800 (as of August 2017) and that she is in debit with her gas company by around £500 – she's making regular payment towards this of £25 a week.

Mrs A hasn't shown anything to suggest that her utility companies are taking legal action against her, or that her utilities are at a risk of being shut off – but I think that in this particular case, it would be fair for HFC to pay Mrs A the £131.23.

extra compensation for trouble and upset

Mrs A wants extra compensation because of the service she says she's received from HFC.

This service can make an award of additional compensation when we think something has had an emotional or practical impact on a consumer. And also when we think a consumer has been put to more trouble than would be normal when pursuing a complaint. We don't add up and award money for each individual thing (such as postage). Instead, we look at everything that's happened – and then take a step back and decide what's fair compensation overall. If we did make an award this wouldn't be intended to punish a business – this is the role of the financial regulator, the Financial Conduct Authority.

Looking at everything that's happened – I don't think HFC has treated Mrs A unfairly. I'll explain why.

Mrs A first brought her complaint to HFC through a claims management company. HFC responded to them with details of what it was willing to offer in 2015. HFC then didn't hear from Mrs A or her representative so took no further action.

HFC then proactively wrote out to Mrs A directly in 2017 about this offer – which HFC didn't have to do. At that point Mrs A did return the acceptance form.

I haven't seen anything from between 2015, when Mrs A initially complained, and when HFC wrote out to Mrs A in 2017 to suggest that Mrs A was chasing a response from HFC or querying why she hadn't had a response. I think it was more likely Mrs A's representatives fault and not HFC's that Mrs A didn't receive the letter from 2015. Mrs A seems to have been unhappy with HFC only after she received her letter in 2017. So, I agree it has taken more than two years to resolve, but I don't think that is HFC's fault. And I also think it's unlikely that this delay has caused much stress or inconvenience for Mrs A.

I accept that the letter Mrs A received in 2017 did say that HFC were going to pay Mrs A the offer – which in the circumstances could be interpreted as misleading – but the letter did also say *‘we may use the redress to repay or reduce any linked debt outstanding with HSBC repayment services’*. The acceptance form that Mrs A signed also says, *‘we will credit your nominated account with the balance of redress after all applicable deductions...outlined in this letter have been taken into account’*.

I do think HFC could've worded this letter to Mrs A better. It would've been more useful for them to re-send the letter that it sent to her representative in 2015 which did set out what HFC were doing with her refund. But I also think it's reasonable to assume that Mrs A was aware she had a debt on this loan account – especially as she has continued to make monthly repayments towards it. I think there was enough in this letter that should've made her aware that HFC might use this money to reduce her existing debt. So whilst I accept HFC's letter in 2017 could've been better – I don't think, based on the circumstances, it was unreasonable.

Mrs A also isn't happy that HFC asked her to go through the process of identifying herself for her then not to receive the compensation.

I can understand Mrs A's frustration about this – and I can see, on the face of it, why it might've seemed like an inconvenience. But, again, I don't think HFC has done anything wrong. HFC said that Mrs A had changed her surname since she had this loan – so it's only right that they take steps to verify her identity.

And whilst Mrs A didn't physically get any of the refund to spend herself, she did still get the benefit of her loan account debt – which she's still making repayments to – being reduced. So I don't think it was unreasonable for HFC to verify her identity.

In summary, I don't think that HFC has treated Mrs A unfairly and I won't be asking it to pay her any extra compensation.

putting things right

In summary, I think it's fair for HFC to pay Mrs A back what she actually paid towards the PPI policy, including the 8% simple interest it has already calculated. As I've discussed above, this comes to £131.23.

It's my understanding that HFC have already off-set this amount from Mrs A's loan account. So HFC can adjust Mrs A's loan account to put this £131.23 back onto the debt that she owes.

I don't think HFC should pay Mrs A any of the rest of what she borrowed for the PPI because she didn't actually pay it back – so she's never been out of pocket for this money.

my provisional decision

For the reasons discussed above, I'm intending to direct HFC Bank Limited to pay Mrs A £131.23 and reinstate this amount onto the debt on Mrs A's loan account.