

complaint

Mr M complains that he was mis-sold a payment protection insurance policy (PPI) with a loan with HFC Bank Limited (HFC).

background

Mr M took out a loan with HFC in 1998. The loan was originally in joint names with his late father. In 2003 HFC rewrote the debt to remove Mr M's late father from the loan and freeze all interest payments on the loan.

Mr M wasn't able to pay all his debts as they fell due so he entered into a protected trust arrangement in 2004 with his creditors. Mr M was discharged from the protected trust deed in 2009. The effect of this was that Mr M couldn't be chased by his creditors for any debts he had in 2004.

HFC agreed that Mr M was mis-sold PPI and made him an offer to settle his complaint in April 2012. The amount of the offer was £6,993.84. HFC said that because Mr M owed money on his loan account it would use part of the offer towards the loan arrears and pay the remainder to him. This meant that £2,333.96 would be paid to him after the arrears were paid.

Mr M didn't agree with this. He said the whole amount of the compensation needed to be paid to him and that it was illegal for HFC to use part of the money to reduce the arrears. This was because he had previously been in a protected trust arrangement that had now expired, so he believed the debts were written off.

Our adjudicator didn't uphold the complaint. Mr M didn't agree with the view and the matter has been passed to me to make a final decision.

my findings

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

I am not going to look at how the PPI was sold, but whether the offer was fair. I think it was fair and I would like to explain why below.

We expect HFC to put Mr M in the position he would have been in if he had taken the loan without the PPI. So we would expect HFC to calculate the amount Mr M paid for the PPI (including interest at their loan rate) and add simple interest of 8% to this to compensate Mr M for the time he was out of pocket.

HFC made Mr M an offer to repay all PPI premiums and the associated interest on the PPI premiums of £3,613.72. HFC also added 8% simple interest of £3,380.12. The total amount of compensation offered was £6,993.84. HFC said it was going to apply part of the compensation against outstanding loan arrears of Mr M of £4,659.88 and pay the remaining balance to him.

Mr M signed the acceptance form for the offer. The words of the acceptance form said "*as we still have a commitment with HFC bank, the amount of redress paid directly to us is*

subject to the status of our accounts. If there is a residual balance this will be sent to our bank account”.

When Mr M realised that HFC were going to pay off some arrears he said they couldn't do this. I think Mr M thought that he didn't have outstanding debt when he signed the form because he thought he had been discharged from his protected trust deed. So he thought it was breach of the agreement for HFC to try to apply part of his compensation to the arrears and that he should be paid directly.

He also said he had confirmation that any PPI refund could not be applied this way and provided a letter from the insolvency practitioner to support this. This letter is dated November 2014 and says *“I confirm that HFC was a creditor within your Trust Deed and should not be offsetting any PPI funds available to you as you are discharged from your Trust Deed”.*

I note that Mr M said it was illegal for HFC to do what it has done. And I'd like to point out that in coming to my decision I have to take into account the law. But ultimately I have to decide what I think is fair and reasonable taking into account the law, good industry practice and the evidence. I have carefully considered this and I think it was fair for HFC to use the compensation as it has done and I'd like to explain why.

The presence of a protected trust deed doesn't mean the debt no longer exists and when the trust deed is discharged it doesn't mean the debts are cancelled. It just means that the creditor can't chase that debt. The debt Mr M had still exists and some of it related to PPI premiums and interest that Mr M never paid. So I think it's fair for HFC to use the compensation to reduce the debt otherwise Mr M would be getting a refund of PPI premiums and interest he didn't actually pay.

Looking at it another way, I accept that Mr M had overpaid by paying for the PPI. But he had also underpaid on his loan and his loan was also rewritten to remove all of the interest. So the net result of this is that Mr M didn't overpay anything. This is because he paid much less on his loan than he should have done because of making lower payments and he benefited from the interest being frozen. So he shouldn't profit twice from the mis-sale of PPI.

I think the way HFC has worked out how much to pay Mr M follows the approach I'd tell it to take if I thought PPI had been mis-sold. It puts Mr M in the position he would have been in if he hadn't taken PPI. Because of this I think the way in which HFC has calculated its offer is fair and reasonable.

I have also thought about whether Mr M should be paid any more compensation. For example, if the mis-sale of PPI affected him in other ways. I note Mr M has been very frustrated about the time it has taken to resolve this complaint, I also note that he said he was in financial difficulty but didn't give evidence to support this. My role is not to punish the business, instead I need to look at both sides of the dispute and reach a decision based on what I believe is fair and reasonable. I don't think that HFC caused unfair delay in dealing with this complaint. HFC paid the compensation and reduced the loan balance in 2012. I also note that he has other debts, but I cannot see that the mis-sale of PPI caused those debts. So because of this I don't think HFC needs to pay any more compensation.

my final decision

For the reason I have set out above, I am not upholding this case against HFC Bank Limited.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 14 September 2015.

Miranda Bates
ombudsman