DRN-3332122

The complaint

Mr and Mrs O's complaint concerns their mortgage protection plan ('*MPP*') originally taken out with HSBC in 1989. Their three main concerns relate to 1) being forced to take out the policy 2) not being given the opportunity to review or amend it in 2003 and 2008 and 3) that HSBC has not treated them fairly because it has mishandled their complaint, specifically their subject access and right to rectification requests under data protection legislation.

To resolve the complaint, Mr and Mrs O want all of their premiums to be returned with interest, an explanation for the delay regarding their data requests, an apology and compensation for the stress and anguish they've been caused.

What happened

Mr O had been an employee of HSBC's since the early 1980's. The MPP he and Mrs O took out in 1989 matched the term, type, and amount of their mortgage lending. It had a reviewable premium with a net 15% staff discount, and reviews took place in 2005, 2009 and 2012. The monthly premium began at £11.27 each month; it reduced to £8.31 in 2005 and finally £7.30 from 2009. The MPP ran until the end of its term in 2014.

Further borrowing took place in 2003, when Mr and Mrs O agreed to a relocation package. At that time they increased their mortgage to £110,000. And in 2008, they took out a further interest-only mortgage with HSBC, at the same level of borrowing.

In 2019, a claims management company ('*CMC*') complained on Mr and Mrs O's behalf about this policy and a payment protection insurance ('*PPI*') policy. Thereafter, Mr O carried on with the complaint. He said the MPP was mis-sold as it wasn't put to Mr and Mrs O that it was optional, nor was it established that the policy was suitable for them. He also said the terms were not explained and the benefits held in their respective employment rendered the cover unnecessary.

In November 2020, HSBC rejected the complaint. It said the policy was sold at a time when HSBC required life insurance as condition of mortgage lending. The policy wasn't optional and HSBC was entitled to conditions when offering mortgages. If Mr and Mrs O had been unhappy about that, they could have sought their lending elsewhere.

In terms of suitability, HSBC said there was an absence of documentation from 1989 because of the time that had passed. However, it did not believe the policy was mis-sold.

If did pay Mr and Mrs O £100 for the time it took to offer a reply to the complaint and the general poor service Mr and Mrs O said they had experienced.

Mr O said he and Mrs O disagreed and sent in a detailed response to HSBC for further information. In the interim, Mr O also lodged a complaint with the Information Commissioner's Office ('*ICO*') and HSBC's chief executive, following a subject access request he had originally pursued on 5 July 2020.

HSBC issued a further reply to the complaint in late November 2020. It cross referenced Mr O's detailed submissions. I will not set that out in full here, but in summary it said:

- it could not locate precise sales documentation, but on other information it had seen from that period, life assurance was a condition of mortgage lending;
- in 2003 and 2008, a protection policy wasn't a condition for new lending because HSBC had changed its policy requirement from late 2000 onwards;
- it could not verify or make findings on what Mr O and Mrs O had been told verbally in 1989;
- a staff discount would have been available for the cover, but it did not mean that the policy was mandatory;
- it did not agree that Mr and Mrs O wouldn't have had the option to seek their mortgage lending or policy elsewhere;
- death in service benefits were not a suitable alternative to life cover running alongside the mortgage;
- the PPI complaint was an unrelated matter;
- the delay in handling this complaint was because the CMC had not made clear there were two complaints or given a reference for the life policy;
- it was only when Mr O followed the matter up himself in August 2020 that the specific concerns were put to HSBC;
- it disagreed that the offer of £100 was unreasonable for any service failings;
- in respect of Mr O's concerns about disclosure of information, it supplied him with the internal customer information findings ('*CIF*') document dated November 2020 which comprised HSBC's notes and conclusions on the complaint.

The complaint was also referred to this service in October 2020 where Mr O made significantly detailed further submissions, reiterating the subject of the complaint and his concerns over HSBC's further response which came at a difficult time with his health.

Before and after this referral, a series of correspondence continued between Mr O and HSBC relating to his and Mrs O's data rights, missing information and their concerns over the time HSBC had taken to provide evidence. The subject access request was responded to by HSBC in December 2020 and March 2021. It also issued a second complaint response. It agreed to pay a further £550 in compensation for the poor service Mr and Mrs O had experienced. However, Mr O said information in the form of calls remained outstanding.

Mr and Mrs O remained dissatisfied and much of this centred on Mr O's unhappiness with the information set out in the CIF document. He also said that because the policy had ended in 2014, he and Mrs O no longer had any MPP cover. Mr O noted that if HSBC had replied within the 30 days it should have, he and Mrs O would have been spared six months of upset at a time when Mr O had been very unwell. He felt that they ought to be awarded a total distress payment in the region of £2,000 to £5,000 as well as the £3,100 of premiums they had paid being returned with interest.

The CIF document was later rectified and reissued by a different complaint manager at HSBC in June 2021.

A third complaint response letter was also issued to Mr O in June 2021. HSBC said it had agreed to revise its existing offer of £650 for service failings to £2,000. It said this was for failing to treat Mr and Mrs O fairly in terms of the time taken on their complaint journey, which had caused Mr O particular worry when he was suffering with poor health. It also said that the offer would remain open to Mr and Mrs O irrespective of the referral of their complaint to the Financial Ombudsman Service.

Although it upheld the service aspect of the complaint, HSBC said its view was otherwise unchanged about the rest of the complaint, which it did not uphold.

Mr O said he and Mrs O were still unhappy with the service they had received though they accepted receipt of the £2,000 compensation. They explained how the continued delays by HSBC had increased their anxiety levels exponentially. They also said that Mr O's stress became heightened every time he had to deal with HSBC.

In January 2022, HSBC completed Mr O's subject access request in relation to supplying outstanding unencrypted call recordings.

The complaint was considered by one of our investigators in February 2022. She felt it should succeed, in part. In respect of the sale of the policy she said Mr and Mrs O now understood that their policy was a condition of the mortgage lending at that time and so it had not been unreasonable for HSBC to require the MPP in order to offer the lending.

She also did not think HSBC ought to have reviewed the MPP in either 2003 or 2008. In 2008, no advice was received from HSBC regarding the change to Mr and Mrs O's mortgage type, so she didn't think HSBC should have done anything at that time.

In 2003, Mr and Mrs O were relocating and increased their mortgage liability. On balance, it appeared that there was not advice given to Mr and Mrs O about their mortgage, and consequently the investigator did not think HSBC had unfairly prevented them from reviewing, cancelling or amending the MPP at that time. In fact, HSBC could not have cancelled the policy – that would have to be an instruction from Mr and Mrs O.

In terms of the rectification of data held about Mr and Mrs O, the investigator did not think HSBC had behaved unfairly. She said it had responded and reissued the CIF document that Mr O had said contained errors. She didn't believe it was fair to require HSBC to do anything further.

Finally, she felt that HSBC had unreasonably caused delays when dealing with Mr and Mrs O's subject access request. Mr O had spent a considerable amount of time chasing HSBC, meaning he didn't receive the proper response to his request for some eighteen months. She felt the prolonging of the complaint had caused Mr O distress and a payment of £450 was warranted in the circumstances.

HSBC accepted the investigator's findings.

After further discussions with the investigator Mr O said he and Mrs O disagreed with the findings. He supplied cross-referenced comments to the investigator's view, totalling 29 pages. I will not be setting this document out in full here. In summary, Mr O said:

- they did not accept that the complaint about the sale of the policy was resolved;
- they remain of the view that the policy was mis-sold to them;
- HSBC breached FCA, ICO and DPA principles;
- even if the policy was a condition of the lending, they still had the right to receive information in a clear and non-misleading way;
- the inaccuracies remain in the CIF document;
- in 1989, HSBC did not tell Mr and Mrs O that the MPP was a condition of the lending;
- nor did it tell them they could seek the cover or the lending elsewhere;
- the events of the discussion with the branch manager at the time are a matter of record;
- there was no explanation or advice given on the terms and restrictions of the policy;

- this was Mr and Mrs O's first ever mortgage and they had no family history of mortgage lending;
- at the time the financial institutions were commission driven;
- there was no internet access at the time, so he and Mrs O had to place reliance on what they were told;
- they were not told of the difference between the MPP and their death in service benefits;
- until recently they assumed the policy was unnecessary as their death in service benefits were appropriate cover for the mortgage;
- in effect HSBC has received a 'free pass' on the 1989 mis-selling;
- this is particularly since limited documentary evidence exists from the time of the sale;
- however, Dispute Resolution ('DISP') rules set out in the FCA Handbook say that firms should recognise that oral evidence may be sufficient and not dismiss evidence from the complainant solely because it is not supported by documentary proof;
- now Mr and Mrs O have the further information, they feel the investigator ought to reconsider this point;
- in 2003, they were denied the opportunity to make an informed choice despite increasing their mortgage lending;
- nor were they told that an MPP was no longer a condition of the lending;
- likewise, they still had an information need in 2008 and this wasn't met;
- these events should be assessed on a probability and reasonability basis;
- they believe the question this service ought to ask itself in respect of the 2003 sale is:
    - *In 2003 given what they now know, that MPP was no longer a condition of the sale, would Mr and Mrs O still have purchased an MPP or life policy cover at the level of £30K, when they knew that the new mortgage was increased to £110K*?"
- they question why would they have retained an insufficient policy once they remortgaged?;
- just because the relocation package was a non-advised process, does not mean that the mortgage sale in 2003 was also non-advised;
- this is plainly untrue and contrary to events and facts of this complaint;
- it must follow that their protection needs in 2003 were not properly assessed;
- they broadly agree with the investigator that the 2008 sale was non-advised but their view is that in the case of a non-advised sale, a responsible lender is still required to provide the very basic of information needs and it should have addressed the existence of the MPP policy because this would have triggered them to take action;
- in respect of the production of information, HSBC is in breach of ICO guidelines;
- under the right to rectification within relevant data protection law, there is no one single CIF document which contains all the inaccuracies identified;
- just because established procedures were in place doesn't mean they were followed;
- this is the reason HSBC has already paid out £2,000 for service failings;
- in 1989, 2003 and 2008 Mr and Mrs O had clear information needs, but HSBC failed to deliver this very basic information in a way that was fair, clear and not misleading, with substantial consequences;
- Mr O worked for HSBC for 28 years, from the 1980's - however, up to 2003 his retail banking experience was limited so he and Mrs O did not have the knowledge assumed by HSBC;
- their associated payment protection insurance complaint was upheld;
- they realise with hindsight that they may have been too trusting;
- they also believe the £450 proposed figure should be revisited.

Mr O gave a detailed summary of his employment history in relation to his understanding at the relevant times complained about. He also set out thirteen questions (which I will not repeat here) for consideration, principally concerning HSBC's complaint handling process.

Our investigator told Mr and Mrs O that she was not persuaded to change her view on the complaint. She said there was no new information for her to consider. She reiterated that she did not agree HSBC was obliged to bring up the existing MPP in 2003 or 2008. In terms of the £450 compensation, she felt this figure was an appropriate amount to reflect the impact the delay of the subject access information.

She also noted that she did not believe she was required to make further findings on the CIF document HSBC had produced, or the right to rectification as this had been actioned by HSBC. Mr O was free to still disagree with it, but it did not relate to any findings of fact by the investigator.

Finally, she said she noted Mr and Mrs O now wanted the 1989 sale to be considered. However, she said that on general grounds prior to 2001, HSBC required protection policies to be taken out as a condition of mortgage lending. She couldn't say what was said in person in 1989, but the policy taken out was suitable for Mr and Mrs O as a means of protection for the event either one of them had passed away during the mortgage term.

Mr and Ms O still disagreed. Mr O reiterated that the FCA guidance required businesses to treat all customers fairly and provide them with clear, fair information when possible; HSBC hadn't done this in 1989 and 2003. He also said if HSBC had told them that the MPP wasn't needed in 2003, then they would have cancelled the older policy.

Mr O also requested the opportunity to submit a further report of another 17 pages. As before, I won't be repeating the report here. I have read the comments in full. Much of the report reiterates Mr and Mrs O's submissions as summarised above and Mr O confirms it to be a consolidation of their view on the matter. The additional points not already made elsewhere were:

- Mr O's recollections were far more specific than the average customer, given his specific financial services employment history;
- they feel the ombudsman ought to make determinations on whether the sales were advised or not, if the FCA guidance was breached, whether the rectification requests were actioned to the level that is required by GDPR and whether HSBC complied with all regulatory and legal guidelines, and give as much insight as possible into this;
- rather than focus on the detailed and personal explanations from Mr O, this service has preferred the weighting of the evidence from HSBC;
- no negative inferences should be drawn from the fact that Mr and Mrs O haven't retained paperwork or that they retained the policy;
- our investigator said that Mr and Mrs O's policy would still have paid out if required;
- but from 2003 there was a significant shortfall in mortgage cover and therefore the policy would have been considered unsuitable for Mr and Mrs O's needs and personal circumstances at the time;
- so leaving an £80,000 deficit in life cover isn't acting in Mr and Mrs O's best interests anyway;
- nor does it demonstrate that HSBC provided the very basic of information needs to Mr and Mrs O to enable them to make an informed decision as to whether they should cancel or amend the policy;
- HSBC had the information about the MPP before it but chose not to remind Mr and Mrs O about it;

- the impact of feeling disbelieved and having unfounded views submitted by HSBC has caused Mr O to feel anxious;
- in turn, this has made him feel that he has to document everything so his and Mrs O's views are not unfairly misrepresented;
- the FCA guidelines previously referred to required HSBC to "*consider whether omission of relevant fact will result in information given to the customer being insufficient, unclear, unfair or misleading*;
- again, if it wasn't HSBC's responsibility to remind Mr and Mrs O that a MPP was no longer a condition of lending in 2003 then whose responsibility was it?
- insufficient weighting has been applied to Mr and Mrs O's oral evidence, reasonability tests and balance of probability.

Mr and Mrs O also gave a timeline of events to explain how long it had taken to progress the complaint with HSBC, and their frustrations that rectification requests remain outstanding.

HSBC did not have any further comments to make.

What I've decided – and why

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

I thank the parties for their patience whilst this matter awaited an ombudsman's decision. I can see Mr O has gone to a considerable effort in corresponding with both HSBC and our service. He has supplied comprehensive written accounts of his view on his and Mrs O's complaint at what I can see has been a difficult time, and I thank him for doing so.

I know that this process has been upsetting for Mr O and I do appreciate the vulnerabilities he has highlighted. I do not intend to make matters worse for him, but I also won't be addressing every individual submission Mr and Mrs O have made. Nor will I be providing my findings on the basis that they have asked.

I am not required to comment on each point or make the specific determinations that they've requested – and, some of the points are not within the scope of this service, which I'll explain further below. However, I can assure Mr O that I have reviewed all of the evidence on file.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances, and this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider are the central issues in this complaint, based on the evidence before me.

Having looked at everything, I also believe this complaint should be upheld on the basis that a payment should be made to Mr and Mrs O for the trouble and inconvenience they've been caused by HSBC. I do not otherwise agree that the complaint should succeed.

I realise that Mr and Mrs O have explained that their PPI complaint was upheld. But that has no bearing on this complaint as they are separate products and distinct complaints. I do not agree that an inference should be drawn merely because another complaint has succeeded.

I won't be issuing any findings on the way in which HSBC has handled the complaint for two reasons. One, we are not the regulator, as Mr O is aware, that role falls to the FCA. And two, complaints to this service do need to be about specific regulated activities or any ancillary activities, including advice, carried on by a business in relation to regulated activities.

Complaint handling is not a regulated activity in its own right and does not fall within our jurisdiction.

Turning to the 1989 sale, I do not believe that the recommendation made to Mr and Mrs O was unfair or unreasonable. Neither party disputes that at the time, HSBC required term assurance to be taken out alongside mortgage borrowing as it was a condition it applied to its lending criteria. What Mr and Mrs O say now is that HSBC didn't make them aware that this was the case, or they might have sought the borrowing or insurance elsewhere. Their recollection is that the environment was highly-pressured and the culture was sales driven.

I accept that given his employment with HSBC, Mr O would have a greater recall of the way in which it operated in 1989. HSBC does not hold any documentary evidence about the sale but I don't find that unreasonable given the amount of time that has passed and relevant laws around the timescale within which data can be retained.

I have no reason to dispute Mr and Mrs O's recollection, and I can see how they have gone into considerable detail about what happened at the time. However, it is not the case that a complaint will or will not succeed based on whichever party has the ability to provide relevant documentation, or that any burden of proof shifts on that basis. In fact, that could work against some consumers where businesses may have the capacity to retain data securely and more easily.

Along with Mr O's submissions I must also weigh up what HSBC says. Where there is conflicting evidence, I'll decide what I believe is most likely, on the balance of probabilities.

In my view, I cannot see why Mr and Mrs O would not have been told about the need for life assurance alongside the lending – it was a condition across all HSBC residential mortgages at the time and though Mr O worked in a different part of HSBC, I am not persuaded that the adviser would have known this was the case but fail to tell Mr and Mrs O about it.

Even if I were to accept that Mr and Mrs O were misled, I don't believe they'd have likely sought their lending or MPP elsewhere. The policy had a 15% discount as Mr O worked for HSBC. And, provisions Mrs and Mr O said they had in place from employment benefits were not comparable or as directly suitable as taking out life assurance for the lending.

Having suitable life assurance for a mortgage debt is a sensible step to take. However, death in service benefits are not generally considered a suitable means of ensuring a mortgage is protected in the event of death, since employment benefits can be involuntarily lost.

Contrastingly, the MPP matched the term, type and value of the mortgage proposed. Even if it had not been a condition of the lending, I believe it would have been a suitable proposal for the adviser to have recommended to Mr and Mrs O; I say that noting that when applying for their mortgage in 1989, they didn't have any existing life assurance cover in place.

The policy ran for its entire term. Had Mr or Mrs O needed to pursue a claim for death benefit, they could have done so. I would not therefore recommend that the premiums be returned to Mr and Mrs O in any event, as they have had the benefit of the life insurance.

By 2003, the requirement for a life policy alongside mortgage lending was no longer a business requirement of HSBC's. Mr O says at this time when he and Mrs O increased their mortgage under HSBC's relocation scheme for employees, they were given mortgage advice. HSBC says this was not the case and the arranging of the mortgage for such schemes was done on a non-advised basis.

As before, there isn't determinative evidence available which would confirm whether the sale was advised or non-advised. But, I don't believe this is material to the issues Mr O brings now which is that HSBC failed in its duties under FCA guidelines in terms of ensuring he and Mrs O had clear information about the policy they'd taken out 14 years earlier. He says this meant he and Mrs O were denied the opportunity to take action about it.

Nonetheless, I do not believe the most likely version of events, on balance, was that advice was given. If there had been some form of advised sale in respect of the mortgage, I would reasonably expect the adviser to have recommended life cover for the shortfall when taking out the new mortgage. Mr O accepts this – he says that if HSBC had acted correctly he and Mrs O would either have increased their cover (presumably by means of a top-up policy) or cancelled it, since it was no longer a condition of lending.

However, no policy was taken out. So, following through Mr O's arguments now, no redress is due for the sale of a policy that did not happen. By that I mean no refund of premiums could be made, which is the compensation Mr and Mrs O sought for the 1989 policy.

Alternatively Mr and Mrs O say that they would have cancelled the 1989 policy, but it must be the case that by 2003 they knew they could have mortgage lending approved without the condition of life assurance – as the previous policy only matched the old mortgage's sum assured and had no bearing on the new, increased borrowing.

I know Mr O questions that if wasn't HSBC's responsibility to remind him and Mrs O that a MPP was no longer a condition of lending in 2003 then I ought to establish whose responsibility it was. But as I've said above, I believe Mr and Mrs O likely knew or should have known that this was the case, because they did not take out any further policy with a corresponding new sum assured to match the additional lending.

This principle also applies to the 2008 sale. The change to the mortgage type was not completed under advice from HSBC. I note Mr O accepts this. I cannot therefore conclude that it ought to have done anything differently at that time in respect of making Mr and Mrs O aware of the MPP policy they held from 1989, given it was not party to the re-mortgage.

In respect of the other matters, I will not make any findings about whether the rectification requests in the CIF document were actioned by HSBC in accordance with GDPR or whether HSBC complied with regulatory and legal guidelines regarding data protection in any wider sense. That is not my role; that falls to the Information Commissioner's Office and Mr O has already pursued the matter with that organisation.

Likewise, though Mr O has set out all of the relevant regulatory guidelines where he believes these have been breached, we are not the FCA. Whilst I have taken into account relevant law and regulations; regulator's rules, guidance, standards; codes of practice; and where appropriate what I consider to have been good industry practice at the relevant time, we do not act as a regulator. As I've already said above, my remit is to set out what I believe to be fair and reasonable to both parties in the circumstances against that framework.

On that basis, I believe further compensation is warranted for the ongoing service issues in respect of subject access that Mr O required. Mr O had to chase HSBC repeatedly from July 2020 to January 2022 to obtain telephone recordings, before these were eventually supplied in a format that he could access. And this has clearly caused a great degree of frustration and upset to him, as he believed these were material to pursuing the complaint at this service and therefore relevant to my findings here.

While I don't agree that the calls would have prevented the material grounds of complaint from continuing (noting that complaints about complaint handling aren't a regulated activity

of themselves), I realise Mr O did not appreciate that distinction. This heightened his concerns and compounded his need to cross-reference and document every communication with HSBC as he felt his views would not otherwise be properly disclosed to this service.

Though any findings about breach of data protection laws are a matter for the ICO, the extensive time taken to resolve the matter has naturally caused Mr and Mrs O additional upset, and I therefore agree a further payment ought to be made to them for that.

Putting things right

HSBC should pay Mr and Mrs O a further £450 in addition to the compensation payment already made and accepted by the parties to reflect the significant inconvenience and disruption that required many months of effort for Mr O to sort out. I am pleased to note that HSBC agrees to make this payment, should the decision be accepted.

My final decision

I uphold this complaint. HSBC UK Bank Plc must pay Mr and Mrs O £450 for the upset they've been caused when dealing with their request to obtain information held about them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O and Mrs O to accept or reject my decision before 28 July 2022.

Jo Storey
Ombudsman