

The complaint

Mr and Mrs J have complained about the amount of compensation HSBC UK Bank Plc paid them for the mis-sale of a payment protection insurance (PPI) policy.

What happened

Mr and Mrs J complained to HSBC about the sale of PPI on their mortgage. HSBC agreed it had been mis-sold and offered them compensation.

HSBC worked out the compensation based on the earliest date their records started, in 1996. However, Mr and Mrs J pointed out that they'd had the mortgage since 1989. They said they'd taken out the PPI back then.

Our adjudicator looked into things independently and upheld the complaint. They suggested that HSBC backdate the start date to 12 months before the records happen to begin. HSBC didn't agree, so the complaint's been passed to me to decide.

I sent HSBC and Mr and Mrs J a provisional decision on 30 November 2022, to explain why I thought the complaint should be upheld. In that decision, I said:

Based on what I've seen so far, I don't think HSBC's offer was quite fair – I'll explain why.

When a business has mis-sold PPI, we expect them to put their customer in the financial position they'd be in now if they'd never been sold the policy – as far as it's possible to do that. That means using reasonable assumptions for periods when records aren't available, in order to estimate what they might have likely paid.

It's rather unlikely indeed that Mr and Mrs J's PPI policy just happened to start on the very same day that HSBC's earliest records go back to. I can see that both sides accept it's likely that the PPI started beforehand.

HSBC argue that, without records, any particular start date would be arbitrary. That may be the case – without much evidence, to some extent any particular date is arbitrary. But then with that in mind, the date HSBC used is also very much arbitrary, too. They acknowledge themselves that it's not an accurate date for when the policy actually began.

The date HSBC used also happens to be the latest possible date the PPI could have been taken out – which means their assumptions work entirely in their own favour. That doesn't seem fair. We expect businesses to make reasonable assumptions, and we expect things to be fair for both sides.

Mr and Mrs J recall taking out the PPI when they took out their mortgage in 1989. HSBC's records only go back to 1996, but show that the policy was active by then. So the policy was taken out at some point between those dates.

To start the calculation at the start of the mortgage would be most favourable to Mr and Mrs J, but perhaps unfair on HSBC. And to start the calculation at the date the records happen to begin would be most favourable to HSBC, but unfair to Mr and Mrs J. So in order to treat both sides fairly and equally, the fairest thing is to start the calculation at the halfway point between those dates.

HSBC argue that it would be unfair for them to refund premiums which we can't prove were paid. But they're mistaken. First, it's worth keeping in mind that the reason they have to pay this compensation is because HSBC mis-sold this insurance in the first place, and now have to put that right. And as I mentioned before, it's very unlikely that the PPI just happened to start on the exact same day HSBC's earliest records start. It's much more likely that the PPI policy was already in place by then – meaning that Mr and Mrs J had already been paying premiums for a mis-sold policy before the records began.

So in order to fairly compensate Mr and Mrs J, and to put them in the financial position they would have been in but for the PPI, it was almost inevitably going to involve refunding some premiums which they likely paid, but which we can't definitively prove they paid. It's our normal approach that businesses should make reasonable assumptions about what happened before records began, and that businesses should refund an estimate of the premiums paid then – and HSBC should be familiar with our approach by now.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 14 December 2022. HSBC objected to the provisional decision, which I'll talk about below.

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.

In response to the provisional decision, HSBC said they didn't actually know when the mortgage started and didn't have any evidence of this. They felt it was unfair to assume a start date based only on one side's recollections from decades prior.

As far as I can see, HSBC did not mention before that they didn't actually know when the mortgage started, they only said they didn't know when the *PPI* started. It may have been pertinent for them to raise this at an earlier stage.

In any case, we went back to Mr and Mrs J about this. They provided a copy of their letter from Midland Bank (later HSBC) dated 6 July 1989. This confirmed that on that day, their mortgage was drawn down, and their repayments started the following month. I find this to be sufficient evidence of their mortgage's start date.

Since we now know when the mortgage started, HSBC will be able to recalculate the redress starting at the halfway point between then and the date their records begin. And I still think that's the fairest way to resolve this case, based on the reasoning in my provision decision set out above.

So having reconsidered the case, I've come to the same conclusions as before.

Putting things right

I direct HSBC UK Bank Plc to recalculate their offer, using a start date that's halfway between the mortgage start date and the date the records happen to begin.

I then direct HSBC UK Bank Plc to pay any outstanding compensation to Mr and Mrs J based on this new calculation.

My final decision

I uphold Mr and Mrs J's complaint, and direct HSBC UK Bank Plc to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J and Mr J to accept or reject my decision before 7 February 2023.

Adam Charles
Ombudsman