DRN-5045050

## The complaint

Mr and Mrs I complain that a level term assurance policy was mis-sold to them in 1998 by HSBC Life (UK) Limited.

## What happened

In 1998 Mr and Mrs I took out a policy with Marks & Spencer Life Assurance Ltd, which later became HSBC Life (UK) Limited – for ease I'll mostly just refer to HSBC in my decision. The policy had a sum assured of £250,000 and a term of 25 years. In January 2023 Mr and Mrs I received a letter from HSBC letting them know the policy was ending on 31 January 2023. They remember speaking to a salesperson when they took the policy out, who told them the policy could be renewed or extended at the end of the term, up to age 79. When they requested this in 2023, they were told it wasn't possible, so they complained about being given misleading information at the sale.

HSBC didn't uphold the complaint, explaining that the policy had been sold on a non-advised basis, and that they would have been given the policy documents explaining how it worked in 1998. Mr and Mrs I remained unhappy and so brought the complaint to our service. An investigator considered it and didn't uphold it, explaining that there was no evidence that formal advice had been given, and that the documents confirm the policy couldn't be extended.

Mr and Mrs I disagreed – in summary they said that the regulations weren't as strict in 1998, so the lack of documented advice doesn't mean none was given, and the investigator hadn't looked into whether the salesperson had earned commission. They felt the investigator had reached a generic conclusion, without proper consideration of the law, and hadn't taken into account their specific personal recollections and circumstances. As the investigator wasn't persuaded to change her mind, the case has been passed to me for a decision.

## 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 consider that the central question I need to answer is did the salesperson gave Mr and Mrs I a guarantee that they'd be able to extend the policy, so that they were misled into taking it out. Having considered the evidence, I've reached the same conclusion as the investigator. When looking at a complaint where there is a difference in what the parties say happened, I need to make a finding as to what I consider more likely to have taken place, based on the balance of probabilities, considering all the evidence available.

In this case, due to the time that's passed, HSBC don't have a copy of the application form Mr and Mrs I filled in, nor do we have the salesperson's recollections. When formal advice was given in 1998, it was standard industry practice that a fact find document would have been completed, which sets out the adviser's notes of the customers circumstances and objectives. Following the advice, a suitability report would have been given setting out the recommendations. There is no fact find or suitability report here.

So, I have limited evidence of what Mr and Mrs I were told here. What I do have consists of Mr and Mrs I's recollection of events and the paperwork that describes the product (the policy illustration, key features document and terms and conditions). I also have HSBC's statement that these particular policies were always sold on a non-advised basis – they've sent me a screenshot that shows no individual agents were attached to the policy on their system, which they say indicates advice wasn't given.

I've carefully considered Mr and Mrs I's recollections. I don't doubt that they've provided their memory of events as truthfully as possible, but I'm mindful that over time memories fade and can change. So, while they strongly believe their recollections are an accurate reflection of the conversations that took place, I can't simply adopt their recollection as fact. I have to weigh it up against the other evidence to decide what's more likely to have happened.

I'm also conscious that if the salesperson did lie about the policy, their lie could have been discovered quite simply by Mr and Mrs I. This is because as part of a standard sales process in the 1990s, policy documents were sent direct to the customer once the policy was put in place. This doesn't completely prevent lying – but I do consider that it makes it less likely, due to the risk of discovery.

The key features document for this sort of product is a leaflet usually provided during or before the sale of this type of policy and in my experience, this was common practice in 1998. It's also common that it would be sent by the insurer with the policy documents and terms and conditions, after a policy was put in place. I know Mr and Mrs I have said they didn't receive anything at the point of sale. However, I consider it's likely they would have been given some literature by the salesperson explaining the policy and would have been expecting something from the insurer to confirm once the policy was set up. The key features document is the most likely information to have been given to them when they applied, as in the 1990s these were commonly provided at the initial point of contact. So overall I am convinced that its more likely than not that Mr and Mrs I would have received this document. The key features for Mr and Mrs I's policy says:

"*It pays out a cash lump sum if you die or are diagnosed as terminally ill before the end of your chosen term. You can take out the Plan if you are aged 18 to 74… You can choose any term from 3 to 25 years. But your cover must end before your 80th birthday… If you need more cover later on, the extra amount can be provided through an additional Plan.*"

Mr and Mrs I remember being told by the adviser that the policy could be extended until age 79. It's clear from the above extract that this was the oldest age the business was willing to provide cover up until. The key features also mentions the ability to apply for extra cover at a later date. It is possible that Mr and Mrs I were told these two pieces of information and that they thought it meant that the policy could be extended to age 79.

The key features don't specifically mention the ability to extend the term of the policy at its end. It states there could be a term of up to 25 years for this type of policy, which is how long Mr and Mrs I's policy was originally for. I'm satisfied that the way this is phrased clearly and unambiguously states the 25 is the maximum – so even if there was an extension available, this wouldn't have been possible for Mr and Mrs I due to the maximum term already having been chosen.

From the way Mr and Mrs I have described how they thought the option to extend the term of policy operated, they thought it was a guaranteed option – that HSBC would grant them the additional cover, regardless of any changes to their health in the interim. However, based on how its described above, the policy didn't include a guaranteed insurability option. Rather, the documents state that if extra cover was requested it would be provided through the provision of a separate policy, which would require new medical underwriting. In effect, further cover is requested simply by applying for a new policy at a later date. There were no written guarantees that the cover would be accepted or that if it were accepted, that it would be at the same premium.

Mr and Mrs I have mentioned the salesperson would have been motivated by commission. The illustration says: "*Marks and Spence Life Assurance Limited does not pay commission to any salesperson*". As mentioned above, the screenshot HSBC has provided shows there's no agent attached to the policy – and there would need to be one listed in order for them to have received commission. So, I'm satisfied no commission was paid here.

I'm also convinced that its likely no advice was given here, as Mr and Mrs I's recollections are about information given by the salesperson on how the policy worked – rather than remembering telling the salesperson what their needs were and being told this specific policy was the best one for their needs. This is important because it means that HSBC is not responsible for ensuring the policy was suitable for Mr and Mrs I's objectives in 1998. Instead, HSBC's obligation was to ensure that the information they provided about the product was clear fair and not misleading, so that Mr and Mrs I could make an informed decision about whether or not the product was right for their needs.

Overall, I'm not convinced that Mr and Mrs I were misled about the way the policy worked. I consider the paperwork is clear fair and not misleading, particularly in relation to the maximum policy term of 25 years. I've not been persuaded that I have strong enough evidence that Mr and Mrs I were told that any extra cover was guaranteed to be granted.

I understand Mr and Mrs I will be disappointed with the decision I've reached. It's an unfortunate situation that they find themselves in, as they no longer have the cover that they valued. But I'm not persuaded that I have enough evidence to find that HSBC mis-sold the policy, for the reasons set out above.

## My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs I to accept or reject my decision before 8 January 2025.

Katie Haywood
**Ombudsman**