

complaint

This complaint is about a payment protection insurance (PPI) policy arranged with a personal loan taken out with HSBC Bank plc ("HSBC"). Mr B – who is self-employed - says that when he fell ill and tried to claim on the PPI, he was told that he would have to cease trading altogether. This, he says, meant he was forced to take out a managed loan against his wishes.

background

The circumstances of this complaint, briefly, are that Mr B had a loan with HSBC, covered by PPI. He suffered an injury that prevented him from working, and tried to claim on the PPI. Mr B was apparently told that, because he was self-employed, the policy terms required him to cease trading altogether in order to claim. As this was not a practical option for Mr B, he abandoned the claim, but struggled to meet the loan repayments from his current account – also with HSBC.

In 2006, HSBC consolidated Mr B's various debts into a single loan, called a managed loan, but Mr B has since continued to have difficulty maintaining the loan repayments. Mr B believes the managed loan was forced on him, and is unhappy that part of the managed loan balance comprises the premium from the (in his view useless) PPI policy from the previous loan. He says he is unable to enter into an individual voluntary arrangement (IVA) because the managed loan includes business as well as personal debt. Nor, he says, can he obtain a new loan.

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 trust Mr B will not take it as a discourtesy that I have condensed his submissions in the way that I have. I believe I have captured the main thrust of his arguments.

I should explain that this decision is not about whether the PPI itself was mis-sold with the original loan. That is not the complaint we have been asked to consider; indeed, Mr B has specifically said that he wanted the PPI, and that his dissatisfaction with it is solely that when he tried to use it he was unable to. In any event, HSBC has agreed to treat the policy as if it had been mis-sold, and offered Mr B redress. I will return to the offer of redress in due course, but in the meantime, any comment I make about the PPI policy is in the context of the wider complaint.

the PPI claim

Mr B's argument, if I have understood him correctly, appears to be that, had Mr B succeeded in claiming on the PPI policy for his previous loan, he would not have needed to take out the managed loan. As far as the claim is concerned, it seems that Mr B could in fact have claimed when he tried to. The policy term he was apparently told about that required him to cease trading applied to unemployment claims, but Mr B was trying to make a disability claim.

Clearly, I do not know what discussions took place between Mr B and the insurer, so I cannot draw any reliable conclusions on why Mr B came to understand that the disability claim he wanted to make would be dependent on him complying with a policy term that applied only

to unemployment claims. Claims are handled not by the bank but by the insurer, in its capacity as provider of cover. Banks may act as intermediary between customer and insurer, but that will vary from business to business according to custom and practice. It is not a requirement.

Overall, and in the round, I am not persuaded of the likelihood that the reason Mr B did not realise he could claim on the PPI when he suffered his injury was because of an act or omission on HSBC's part. Latterly, I understand that the insurer has indicated that it would be willing to consider a retrospective disability claim from Mr B. Again, I shall return to this point shortly.

the loan

To the extent that it was apparently set up with the intent of rescheduling debts that already existed to make them more affordable in Mr B's changed circumstances, it is difficult for me to conclude that Mr B has been prejudiced by taking it out. To put him back in the position he was in before the managed loan was taken out – the remedy we seek to apply when upholding a complaint – would necessitate the recreation of the debts Mr B had before the managed loan was granted, with the accounts for those debts then being reconstructed from the point of sale up to the present time. This would involve the retrospective replacement of the loan repayments Mr B has made with the payments he would have made to the "old" debts in the intervening years if those debts had remained active.

I consider it very unlikely that such an exercise – assuming it were practical or even possible to do so - would be to Mr B's advantage, I say this because the very nature of HSBC's managed loan product is that it is intended specifically as a "last resort" exercise for people in severe financial difficulties. The managed loan consolidates all of a consumer's existing liabilities into a single account, with the repayment period calculated to ensure the resulting monthly instalment is matched to an assessment of the consumer's immediate financial circumstances.

Whilst I can understand that Mr B will have found the exercise distressing - and one that he would very much have preferred not to have gone through - it seems reasonable to conclude that the consolidation of debt into the managed loan was beneficial to him, and that unwinding it retrospectively would not be. Overall, for these reasons, I do not find that the managed loan was mis-sold, or that the need for it could have been avoided but for errors and/or omissions on HSBC's part

I mentioned earlier that it is my understanding that the insurer in this case, has indicated it would be willing to consider a retrospective claim from Mr B, backdated to when he was originally injured. However, a disability claim could only be made if the policy remained in force, which would preclude Mr B from accepting HSBC's offer of redress for the policy mis-sale. I am aware that Mr B does not consider the policy to have been mis-sold, but it seems to me the matter is not that clear cut.

If accepted by the insurer, a back-dated disability claim would pay out a sum of money that could go some way towards reducing the current balance of the managed loan. Similarly, the offer of redress for mis-selling, would release a substantial amount of money to Mr B to ease his current financial difficulties.

In summary, either of the potential remedies has scope to improve Mr B's financial situation, but not eliminate his original debt altogether. However, in view of my earlier findings, I do not consider that would be a fair outcome.

It is not for me to tell Mr B whether he should accept the offer of compensation for mis-selling the policy or, instead, reject the offer and keep the policy in place to preserve his ability to make a retrospective disability claim. That is a decision only Mr B can make. My understanding is that the redress for mis-selling the PPI – which HSBC would need to recalculate up to the eventual date of settlement if accepted - is likely to be greater than the benefits payable under a successful retrospective claim, but Mr B should check this for himself with HSBC and/or the insurer before deciding what course of action he wishes to take.

my final decision

I do not doubt that Mr B is in a difficult position. However, for all of the reasons I have explained, I am unable to conclude that his position has been caused (or made materially worse) by something HSBC Bank plc either did, or failed to do. It follows that I do not uphold the main thrust of his complaint.

I would encourage Mr B to consider one or other of the alternative courses of action available to him regarding the PPI policy, and let HSBC Bank plc know what he has decided.

Jeff Parrington
ombudsman