

complaint

This complaint is about a single premium payment protection insurance (PPI) policy taken out in August 2007 in connection with a personal loan. The policy was taken out following a telephone call between Mrs B and HSBC Bank Plc (hereafter referred to as HSBC), and Mrs B says it was mis-sold.

background

In August 2007 Mrs B applied to HSBC for a loan to provide £5,000 to consolidate her debts. HSBC recommended to her that she take out a single premium PPI policy to cover the loan. As a result Mrs B purchased the PPI for the full term of the loan with an upfront premium of £860. This sum was added to the rest of the loan and resulted in total borrowing of £5,860. This borrowing attracted interest, (£1,387.89 on the loan and £238.04 on the PPI) resulting in an anticipated payment of £7,481.93, to be re-paid over a 36 month period in monthly instalments of £177.92 for the loan and £30.51 for the PPI. The PPI covered the repayments in the event of Mrs B being unable to work due to accident, sickness or involuntary unemployment, and repaid the loan in the event of death. Accident and sickness claims would be paid until Mrs B returned to work or the loan was repaid (whichever happened first), and unemployment claims would be paid for up to 12 months per claim.

On 23 December 2013 I issued a provisional decision explaining the conclusions I had reached and the decision I was minded to take unless either party sent me any further evidence. Mrs B has responded to my decision, submitted new evidence and raised new points which I will respond to below. HSBC accepted my opinion of 23 December.

my findings

In considering this case it became evident that there might be a question mark over whether the case is within the jurisdiction of the Financial Ombudsman Service. This has arisen as Mrs B's bank account was with a branch of HSBC in Guernsey at the time of the sale.

Mrs B came to the UK in May 2007 to begin a new job as a nurse. She was resident in this country in August 2007 and called HSBC from within the UK to initiate the loan sale but cannot remember what number she dialled. As she spoke with a sales assistant who seems to have taken her through the full HSBC telephone sales process for the loan and the PPI, I consider it more likely than not that she spoke to HSBC's contact centre in the UK. I therefore conclude that this case *is* within the jurisdiction of this service and will now consider the merits of Mrs B's complaint.

In doing so, I have considered all of the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances. I have also taken into account the law and good industry practice at the time this policy was sold, as well as any applicable regulatory rules and guidance.

So the questions I need to consider are 1) whether in giving any advice or recommendation, HSBC took adequate steps to ensure the product it recommended was suitable for Mrs B's needs, and 2) whether HSBC gave her information that was clear, fair and not misleading in order to put her in a position where she could make an informed choice about the insurance she was buying.

If HSBC did something wrong when the policy was sold, I need to decide whether Mrs B would have done something different if HSBC had not done something wrong.

It is not in dispute that HSBC recommended the policy to Mrs B, so it should have considered whether it was suitable for her.

Mrs B says in her complaint to us that the PPI was sold to her over the phone and that HSBC did not make it clear the policy was optional and she was not given full and proper information about the terms and conditions of the policy.

HSBC says that it carried out a 'demands and needs' assessment with Mrs B and recommended the policy on the basis of what she had said. HSBC says that its adviser would have explained the main features, benefits and costs of the PPI and subsequently provided documentation that described it further in detail, with a breakdown of the cost of each component ie the loans for the cash and the PPI, the interest charged on each of them and the monthly payments. HSBC says that Mrs B subsequently signed the credit agreement in a branch to take out the policy.

The documentation available for me to review includes the demands and needs statement, the signed credit agreement and the PPI summary and full policy documentation. The policy documentation does contain the relevant information about eligibility and terms and conditions. The credit agreement also shows a breakdown of the costs and Mrs B has signed separately for the PPI.

Of course in this case as the policy was recommended to Mrs B, I think she would most likely have relied more on what she was told than on the written information she was given.

The application for the loan and the recommendation of the PPI took place in a discussion on the phone between Mrs B and HSBC several years ago. There is no recording or written record of what was said at the time. Therefore it is very difficult for me to make a judgement about what verbal communication most likely took place.

I do not doubt that Mrs B has submitted her honest recollections of the sale but I am not persuaded I can attach sufficient weight to her submissions to safely conclude her account of events is any more likely to be representative of what happened than HSBC's. Neither can I safely conclude that Mrs B was most likely led to believe the policy was compulsory to obtain the loan (it seems more likely to me that rather than being told she *had* to take it out she was told she *should* do).

I will next consider whether Mrs B might have taken out the policy if she had been properly advised and fully informed of the benefits, terms and conditions of the policy.

I believe it is more likely than not that she would have done so.

Firstly Mrs B did meet all eligibility criteria at the time of the sale including that she was employed in a permanent job and worked more than 16 hours a week.

I note that the loan and PPI sale were made in August 2007 but then deferred until Mrs B re-started work in December 2007 after some time off due to being injured in a car accident. At the time the PPI policy came into effect she was not affected by any of the limitations or exclusions of the policy.

Mrs B's circumstances at the time do not suggest to me the policy was unsuitable for her, or that it was unlikely she would have been interested in taking out the policy.

Mrs B appears to have had a need for the cover. She appears to have had no savings or insurance policies to fall back on if she became sick, or if she lost her job. Although she has told us that if she had been unable to work due to ill health she would have received some sick pay from her employer (she is unsure how much), I have noted that the loan she was taking out was for a 36 month period. So it seems to me she would most likely have expected to struggle financially if anything went wrong.

Hence I am not persuaded that it was unsuitable to recommend to Mrs B a policy that 1) would pay out accident/sickness benefit in addition to her employment benefits, and 2) would pay out if she became unemployed (to fill an apparent gap in her existing provision). Both of these could have helped mitigate the impact of her income falling if she remained unable to return to work for a prolonged period.

I note that the PPI policy provided a much less than pro-rata rebate of the single premium amount if it was cancelled early (after the first 30 days).

In my view this could have been problematic if Mrs B thought it possible she would repay or refinance the associated loan before the end of the scheduled term, and as a result might want or need to cancel the policy. But the loan was taken out over a term of just 36 months.

Thus, taking into account the lack of evidence to suggest otherwise, I am not persuaded having the flexibility to reorganise her finances in the relatively short period of time the loan was set up to run would most likely have been a material consideration for Mrs B.

So although I have concerns that HSBC may not have given proper consideration to the policy cancellation terms in making its recommendation, or met Mrs B's information needs in this regard, I am not persuaded she would most likely have acted any differently if it had.

While I accept it is possible there were shortcomings in the way this policy was sold, I am not persuaded I can safely conclude Mrs B would have decided against taking it out if she had been properly advised and informed and fully understood the position. Rather, it seems more likely to me that given her then circumstances she would have decided the policy provided potentially valuable protection for her new loan, (at a cost it appears was acceptable to her), and still gone ahead with it.

In response to my provisional decision Mrs B has sent me a photo copy of her passport which shows that at the time of the sale she had permission to work in this country for 5 years. Mrs B has drawn my attention to a paragraph in the question and answer section of the policy document that says;

Question: I am a foreign national working in the UK, indefinitely, am I eligible for cover?

Answer: As long as you meet the eligibility criteria and are able to register with the Department for Work and Pensions if you become unemployed, or for Accident or Sickness and Hospitalisation your condition is confirmed by a doctor entitled to full registration with the General Medical Council.

Mrs B says that this indicates that it is a condition of the policy that she needed to have indefinite leave to stay in the country to be eligible.

I have considered this carefully and whilst this Q&A paragraph does present a scenario where someone has said they have indefinite leave to stay and the business has answered an eligibility question about it, I cannot find any such restriction in the policy's eligibility criteria and therefore I do not agree that Mrs B's permission to work for only 5 years would make her ineligible for it. Furthermore her permission period did cover the whole period of the three year loan and policy.

Therefore taking all this into consideration I am not able to conclude that I should uphold Mrs B's complaint or that I should make an award against HSBC.

my decision

For the reasons set out above, I have decided that this case is within the jurisdiction of the Financial Ombudsman Service and having considered the case I do not uphold Mrs B's complaint against HSBC Bank plc.

Richard Hill
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