complaint

Mr and Mrs M's complaint is about a regular premium payment protection insurance (PPI) policy sold to them by HSBC Bank Plc (HSBC) trading as Midland Bank Plc.

background

In September 2012 Mr and Mrs M complained to HSBC about a PPI policy sold to them to protect a loan sometime in the late eighties or early nineties. They gave HSBC two account numbers. One ending in 0525 and another ending 0884.

HSBC replied to Mr and Mrs M in September 2012. HSBC said that the account ending 0525 was a bank account and wouldn't have had any PPI cover. HSBC also said it'd checked its records and couldn't find evidence of the account ending 0884.

Mr and Mrs M weren't satisfied with HSBC's reply and asked us to step in. Mr and Mrs M told us they paid £3.50 every month for the PPI policy for about eight years. They also sent us eight bank statements from a current account ending 0525 which showed £3.50 being taken from the account to pay for a PPI policy. The earliest statement was from April 1992 and the latest one was from May 1993.

HSBC wrote to us in December 2012 to say it had no record of any PPI policy that was sold to Mr and Mrs M.

This service sent HSBC copies of the statements Mr and Mrs M had given us.

In December 2013 HSBC told us it was prepared to make an offer of £28.00 to Mr and Mrs M. It said this was the value of the PPI premiums shown on the eight statements.

Mr and Mrs M didn't accept the offer; they said they were certain they'd paid many more premiums than the eight HSBC had offered to refund.

Mr and Mrs M also gave us six statements from a Midland Bank "Save & Borrow" account. The account was a type of flexible borrowing. This was the account that ended in 0844. It seems the PPI policy was taken out to protect repayments on this account, with the monthly premiums of £3.50 being taken from Mr and Mrs M's current account ending 0525.

An adjudicator from this service wrote to HSBC to say the eight current account statements showed the premiums being paid between April 1992 and May 1993. And the six statements from the "Save & Borrow" account show it was in use between January 1992 and September 1994. The adjudicator asked HSBC if it would now revise its offer.
The adjudicator also asked HSBC to add interest to the PPI premiums to compensate Mr and Mrs M for the time they'd been out of pocket.

HSBC only agreed to increase its offer to £31.50. This was because one of the bank statements covered two months and it had missed one premium of £3.50 from its previous offer. HSBC also said it wouldn't add any interest to its offer.

The adjudicator wrote again to HSBC. She explained the statements from the two accounts showed the "Save & Borrow" account was in use between January 1992 and September 1994. The adjudicator also told HSBC that it should make *reasonable* *assumptions* when calculating PPI compensation where it didn't hold accurate records. The adjudicator didn't think it was fair for HSBC to only refund the premiums shown on the statements Mr and Mrs M had found.

HSBC told us it would make a new offer and assume Mr and Mrs M paid PPI premiums monthly between January 1992 and September 1994 and would refund these. It also said its offer would be in line with this service's guidelines. This means it would add interest to the premiums to compensate Mr and Mrs M for the time they'd been out of pocket.

Mr and Mrs M didn't accept HSBC's latest offer. They told us the premiums were paid for at least five years so they didn't think the offer was fair. Mr and Mrs M asked for an ombudsman to look at their complaint, and the complaint was passed to me.

In October 2015 I issued my provisional findings on Mr and Mrs M's complaint and invited both parties to comment and send me any additional evidence they wanted me to take into account. A copy of my provisional decision is attached and forms part of this final decision.

My provisional findings were that I was minded to uphold Mr and Mrs M's complaint. I thought the fairest outcome was for HSBC to assume Mr and Mrs M paid PPI premiums for 48 months from June 1991 when working out the compensation it owes them.

Both parties have now replied to my provisional findings. HSBC said it had no further evidence to add. It asked that the points it raised previously be taken into account.

Mr and Mrs M have said they accept my provisional findings.

my findings

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

We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr and Mrs M's case.

Neither HSBC nor Mr and Mrs M have replied with any new evidence or points for me to consider. So I see no reason to change the findings I set out in my provisional decision in October 2015.

putting things right

I've set out below what HSBC needs to do to calculate the compensation.

HSBC should put Mr and Mrs M in the position they'd be in now if they hadn't taken out PPI. So HSBC should:

– Pay Mr and Mrs M the amount they paid each month for the PPI. In this case that means 48 payments of £3.50 beginning from June 1991.

– Add simple interest to each payment from when they paid it until they get it back. The rate of interest is *15% a year until April 1993* and 8% a year from then on†. This is to compensate Mr and Mrs M for the time they've been out of pocket. It's the same rate that's used by the courts and I think it's a fair rate to use.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr and Mrs M a certificate showing how much tax it's taken off if they ask for one.

my final decision

For the reasons set out above and in my provisional decision I uphold Mr and Mrs M's complaint.

I direct HSBC Bank Plc to pay Mr and Mrs M fair compensation as explained in the *"putting things right"* section of this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 30 December 2015.

Steve Thomas
ombudsman

copy of my provisional decision

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Mr and Mrs M didn't accept HSBC's latest offer. They told us the premiums were paid for at least five years so they didn't think the offer was fair. Mr and Mrs M have asked for an ombudsman to look at their complaint.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about the sale of PPI on our website and I've taken this into account in deciding Mr and Mrs M's case.

HSBC has agreed to pay compensation to Mr and Mrs M for the sale of the policy. HSBC says this compensation will be in line with our approach. So I won't look into how the PPI policy was sold to

Mr and Mrs M. I've looked at HSBC's offer to see if it's fair and reasonable and that it follows our approach.

Where a business is offering to compensate a consumer for a mis-sold PPI policy I'd expect it to put the consumer back in the position they'd be in if the policy wasn't sold. This includes compensating them for the time they'd been out of pocket.

I wouldn't expect HSBC to have kept detailed records of Mr and Mrs M's accounts for over twenty years. But equally I don't think it's fair to expect Mr and Mrs M to have kept detailed records either.

But we do expect a business to use *reasonable assumptions* to fill in the gaps where information isn't available.

In this case I don't think HSBC took this approach when it made its original offer of £28.00 or when it updated it to £31.50. The original offer only refunded the premiums shown on the bank statements, it didn't take into account the gaps between the statements. This meant that for it to be accurate Mr and Mrs M would've needed to have cancelled and then reinstated the PPI policy several times over a short period of time. And I don't think that's very likely to have happened. Also HSBC said it wouldn't add interest to the premiums paid by Mr and Mrs M to compensate them for being without the money. And I don't think this was a fair or reasonable approach to take either.

Turning to the latest offer I can see HSBC has offered to assume that Mr and Mrs M paid premiums each month from January 1992 to September 1994 a total of 33 months. But I've looked at the "Save and Borrow" statements and I can see there was a balance of around £1,300 brought forward to January 1992. This suggests there was a balance on the account in December 1991. And in September 1994 there was a balance of around £1,400 carried forward. Which suggest the account was in use in October 1994.

I've also taken into account what Mr and Mrs M told us. They first said the "Save & Borrow" account was started in 1987 and ran for around eight years. Later Mrs M told us it might've run for five years until 1992. But I can see it was still open in 1994. It's not surprising given the time that's passed that Mr and Mrs M's recollections are not clear.

Unfortunately Mr and Mrs M don't have any other statements that might help. Mrs M has told us she did have other statements but they moved home in 2014 and can't find them now.

I've taken all the above into account when deciding what's fair in this case. Mr and Mrs M have told us they think HSBC should assume they paid the PPI premiums for at least 60 months. On the other hand the statements show me the "Save & Borrow" account was open and being used for at least 35 months.

I think the "Save & Borrow" account was most probably in use for longer than 35 months, and with PPI premiums being paid to protect the repayments. I think Mr and Mrs M probably paid some premiums before December 1991 and some after October 1994.

But it wouldn't be fair for me to tell HSBC to refund 60 months based solely on Mr and Mrs M's recollections (although I accept they may be correct). It's most likely Mr and Mrs M paid PPI premiums for between 35 and 60 months. So in this case I think a fair and reasonable outcome is for HSBC to assume Mr and Mrs M paid the PPI premiums for 48 months beginning in June 1991.

putting things right

I've set out below what HSBC needs to do to calculate the compensation.

HSBC should put Mr and Mrs M in the position they'd be in now if they hadn't taken out PPI. So HSBC should:

- Pay Mr and Mrs M the amount they paid each month for the PPI. In this case that means 48 payments of £3.50 beginning from June 1991.

- Add simple interest to each payment from when they paid it until they get it back. The rate of interest is _15% a year until April 1993_ and 8% a year from then on†. This is to compensate Mr and Mrs M for the time they've been out of pocket. It's the same rate that's used by the courts and I think it's a fair rate to use.

† HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr and Mrs M a certificate showing how much tax it's taken off if they ask for one.

my provisional decision

For the reasons set out above, but subject to both parties' responses to this provisional decision, I'm intending to partly uphold Mr and Mrs M's complaint and direct HSBC Bank Plc to pay Mr and Mrs M compensation as set out above.

Steve Thomas
ombudsman