

complaint

This complaint is about a mortgage payment protection insurance (PPI) policy taken out in 2002. Mr and Mrs P say HSBC Bank Plc ("HSBC"), trading as First Direct, mis-sold them the PPI.

background

Mr and Mrs P took out a PPI policy with a mortgage in 2002. They were both covered by the policy for accident, sickness or unemployment.

They paid a monthly amount for the PPI. If either of them had made a successful claim, the policy would have paid out 50% of the repayment benefit for up to 12 months.

Our adjudicator didn't uphold the complaint. Mr and Mrs P disagreed with the adjudicator's opinion, so the complaint has been passed to me.

my 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 P's case.

I've decided the policy wasn't mis-sold. I'll explain why.

HSBC had to make it clear to Mr and Mrs P that the policy was optional and they had to agree to take it out. Mr and Mrs P have said they were told they had to take out the PPI in order to get the mortgage. HSBC don't have all of the paperwork from the sale, which is understandable considering this took place over 16 years ago. So I need to consider what I think is more likely to have happened.

Both parties agree that the mortgage was taken out during a telephone call. HSBC says it would have given Mr and Mrs P basic information about the PPI in the phone call and then sent them a pack containing the application form. HSBC no longer has the actual form that Mr and Mrs P would have completed but it has provided a sample which it says they would have had to complete in order for PPI to have been added to their account.

Having looked at this sample form I can see it asks for details of the applicants to be covered by the policy and the amount of benefit that is required. It also states at the top of the form that you should complete this form '*if you would like us to arrange cover*' – this suggests that there is a choice about taking out the policy. The form also includes a direct debit mandate to complete in order to give permission to the bank to take the premiums from their bank account.

I've noted that Mr and Mrs P's representatives have commented on the printed crosses which appear next to the signature boxes and they say this shows that Mr P had to sign if he wanted the finance. But from looking at the form I can't see anything which suggests that the policy was compulsory or that taking this cover was a requirement of the mortgage. The fact that this was a separate form does indicate that this was not part of the mortgage application. I think it's more likely that the printed cross next to the signature box is there to

ensure that an applicant wishing to take out PPI does remember to sign the form. I don't think this shows that HSBC put any pressure on Mr and Mrs P to take out the policy or that it means the policy had to be taken out in order to be given the finance.

So, based on everything I've seen and been told, I think HSBC made it clear that the PPI policy was optional and Mr and Mrs P agreed to take it out, knowing they could refuse it if they didn't want it.

HSBC says it didn't recommend the PPI to Mr and Mrs P. But Mr and Mrs P have said they were given advice about the policy. From what we've been told, the pack about PPI was sent to Mr and Mrs P after an initial telephone conversation was held about the mortgage. So it doesn't seem likely that HSBC completed a personal review of their circumstances, which would be necessary in order for it to make a recommendation on the suitability of the policy for them. So I don't think HSBC did recommend the policy to Mr and Mrs P which means it didn't have to check if it was right for them. But it did have to make sure Mr and Mrs P got the information they needed to decide if it was right for them.

It's possible the information HSBC gave Mr and Mrs P about the PPI wasn't as clear as it should've been. But they chose to take out the PPI - so it looks like they wanted this type of cover. Based on what I've seen of their circumstances at the time it doesn't look like they were affected by any of the exclusions to or limits on the PPI cover - so it would have been useful for them if something went wrong. It also looks like the PPI was affordable. So I don't think better information about the PPI would have put them off taking out the cover.

I've thought about everything Mr and Mrs P and their representatives have said - including what they have said about the sick pay and savings that they had and why they think this means the policy shouldn't have been sold to them. But as I've mentioned previously, the policy was not recommended to them which means it was for Mr and Mrs P to make their own decision about whether the cover available was of use to them, taking into account what they knew of their employee benefits and any savings. So this point doesn't change my decision.

This means I don't think the PPI was mis-sold. So HSBC doesn't need to refund everything Mr and Mrs P paid for it. But HSBC has offered to give Mr and Mrs P back some of the cost of the PPI. I don't think it needs to do anything more.

HSBC will make arrangements to pay Mr and Mrs P now I've issued my final decision.

my final decision

For the reasons stated above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs P to accept or reject my decision before 10 January 2019.

Jenny Giles
ombudsman