

## **complaint**

Mrs D's complaint is about HSBC Bank Plc ('HSBC') declining her claim on a payment protection insurance ('PPI') policy.

## **background**

In early 2001 Mrs D took out the PPI to protect her loan repayments if she later couldn't work because of accident, sickness or unemployment, subject to the policy terms.

In July 2007 Mrs D made a claim under the policy when she stopped working to become a full time carer for her ex-husband. Mrs D says that HSBC declined the claim on the basis that the PPI did not provide unemployment cover for people aged 60 or over. But Mrs D says that the policy did in fact cover her past 60, until August 2009, and that it ought to have covered her for the term of her loan.

In response to her claim and later complaint about the claim being declined, HSBC told Mrs D that she was not covered for the policy and it refunded the PPI payments in September 2008 (around £4,000 consisting of policy premiums paid plus interest). (Mrs D had previously made two claims under the policy and had received around £4,000 in benefits.) Mrs D accepted this compensation, effectively for the policy having been mis-sold, but she remains aggrieved. The crux of Mrs D's complaint here is about her claim in 2007 not being paid out, and the misinformation she says she was given at that time by HSBC about the policy not covering her because she was 60 – when in fact it did. She also says that she was unable to make repayments on the loan, and that she has had to endure being contacted about this.

Mrs D asked us to look into HSBC's decision in 2007 not to pay out her unemployment claim. Our adjudicator who investigated Mrs D's complaint did not recommend that it should succeed. He pointed out that HSBC has told us that it has no evidence to suggest that Mrs D's claim in 2007 was declined because of her age. However, due to the passage of time HSBC is now unable to tell us the background as to why Mrs D's claim was declined.

In the absence of information from 2007 about the reason for the claim being declined, our adjudicator considered what Mrs D has told us, and what the terms and conditions of the policy stated. He did not think that the policy prevented someone aged 60 or over from claiming for unemployment. He thought it possible that Mrs D's claim had been declined not because of her age, but because she had chosen to take retirement before the age of 65. The policy set out that under these circumstances - where a policyholder chooses to retire before 65 - then they are no longer eligible for unemployment cover. Overall he felt unable to conclude that HSBC had acted unfairly in declining Mrs D's claim.

Mrs D did not accept our adjudicator's assessment and asked for her complaint to be passed to an ombudsman for a final decision.

## **my findings**

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

Mrs D says that HSBC wrongly declined her unemployment claim in 2007 because she was over 60 years of age. She says she was not told about any restrictions on making a claim,

and so she expected her claim to be paid. Although she has received compensation for the policy not covering the term of her loan – effectively for the policy having been mis-sold, Mrs D says that it later turned out that the policy did in fact cover her for longer, until August 2009, and so her 2007 claim ought to be reactivated and paid out. To resolve her complaint Mrs D would now like HSBC to pay her claim.

HSBC says that it can find no evidence in its records that it told Mrs D that the policy did not cover her past 60. But it seems to me possible that when responding to the claim in 2007 HSBC did indeed give Mrs D this response – as it wrote to her solicitors in April 2010 stating that the policy cover ceased at state retirement age for females (60 years).

In declining Mrs D's unemployment claim in 2007 it also seems likely, based on the evidence that is available in this complaint, that the reason HSBC declined it was due to the following term in the PPI:

*“Retiring Before the Age of 65*

*If you retire before the age of 65, you will still be covered for life, disability, hospitalisation and personal accident cover up to the age of 65. However you will no longer be eligible for unemployment cover”*

And so I think that Mrs D's unemployment claim was declined by HSBC because she had chosen to take retirement before the age of 65, and not simply because she was over 60. But I do not necessarily think that the reason given by HSBC in 2007 – whether accurate or not - means Mrs D's retrospective claim ought now to be paid.

I have come to this view for the following reasons. I understand that Mrs D did not give up work to retire, but instead to care for her ex-husband. The policy document does not set out what the position is for people who give up work to become a carer for a member of their immediate family. But the Association of British Insurer's 'statement of principles' has given guidance for unemployment in this situation, relating to policyholders who become carers. Under the guidance in order to make a successful claim, Mrs D would have to meet all of the four listed conditions below:

*“In situations where policyholders who were in employment and therefore eligible to take out cover subsequently become Carers, Insurers will consider a claim under the unemployment provision of a policy if the individual can provide evidence that they:*

- are required to care for a member of their immediate family*
- are in receipt of a Carer's Allowance,*
- were not aware that they would need to be a Carer prior to policy inception, and*
- have ended their employment (including self-employment) to become a Carer.” (1.12 Carers)*

Mrs D's unemployment claim came about because she says she left her work to care for her ex-husband, a member of her immediate family at the time. On the facts here it does not appear that Mrs D would have known she would need to do this at the time she took out the policy.

But the above guidance also requires the policyholder to be in receipt of Carer's Allowance, once they leave their employment. And it is this condition which Mrs D does not meet, based on the information I have: I understand that Mrs D has been looking into this aspect, but has not shown that she was receiving Carers Allowance. During our investigation of Mrs D's complaint against HSBC she has told us that rather than Carer's Allowance, her ex-husband

persuaded her to claim Pension Credit. So although I sympathise with Mrs D, and have carefully considered all of the points she has made, I am unable to conclude that her claim ought to have been paid by HSBC in 2007, or now retrospectively.

Mrs D has made the point that ex-husband made her retire and claim pension credits, and this was not of her own making. But HSBC is not responsible for Mrs D's decision to leave work or to claim pension credit. The decision to claim pension credits, rather than Carer's Allowance, means I cannot conclude that the guidance above would apply. I also need to explain that, even if I had concluded that HSBC ought to pay Mrs D benefit, any benefit paid would need to be offset against compensation for the policy mis-sale.

### **my final decision**

My decision is that I do not uphold Mrs D's complaint against HSBC. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 5 October 2015.

Claire O'Connor  
**ombudsman**