

## **complaint**

Mr and Mrs L complain that HSBC Bank Plc mis-sold them a packaged HSBC Plus account in 2009. It later became the Advance account.

## **background**

Mr L had held a sole account with HSBC for a number of years before 2009. He and his wife wanted to open a joint account and did so during a meeting with a HSBC advisor at a branch. They say that they were told that the only account they could open was the paid-for packaged Plus account.

In 2013 Mr and Mrs L downgraded their packaged account to a free one and earlier this year they complained to HSBC about what had happened in 2009. It didn't agree that it had mis-sold the Plus account and so Mr and Mrs L brought their complaint to this Service.

One of our adjudicators looked into the matter and recommended that Mr and Mrs L's complaint shouldn't be upheld. They didn't agree with her assessment and asked – as they are perfectly entitled to – for an ombudsman to consider their case afresh.

A few weeks ago I issued a provisional decision in which I explained why I was minded to uphold Mr and Mrs L's complaint. I invited the parties to provide anything more they wished me to consider before I issued my final decision. Mr and Mrs L have told us they have nothing more to add. HSBC hasn't provided any further evidence but has asked me to consider some points.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I'm not persuaded to change my original conclusions.

This is what I said in my provisional decision:

It's Mr and Mrs L's recollection that they wanted to open a joint account because they had a cheque payable to both of them. They say that they weren't given a fair choice about taking the account because they were told by the advisor that the Plus account was the only one available to them. HSBC says that its advisor would've followed a process in which she went through the details of the Plus account and would've offered Mr and Mrs L a fair choice.

Where the evidence is unclear or there are conflicts between what the parties say happened, I make my decision based on the balance of probabilities. In other words, I look at what evidence we do have and the surrounding circumstances to help me decide what is more likely to have happened.

HSBC has provided us with a copy of the account opening form. I accept that this is signed by Mr and Mrs L. I also acknowledge that boxes have been ticked to indicate that they have received various documents relating to the account. But Mr and Mrs L don't deny that they consented to opening the account and they tell us they were aware of the travel insurance and breakdown cover but that they told the advisor they didn't need either as they had stand-alone cover which they'd already purchased. I don't think that there is anything in the form which would've alerted Mr and Mrs L to the fact that they could have a free account.

Our adjudicator thought that as Mr L had previously had a free account with HSBC that it was likely that Mr and Mrs L knew free accounts were available. From what I've seen of their circumstances I think it's likely that Mrs L also had a free current account – apparently with another bank. So I'm open to the possibility that they did know that free accounts were available. But I also think that consumers meeting with an advisor in branch - keen to deposit a cheque and open a joint account - are likely to believe what they are told.

Mr and Mrs L have also been consistent throughout their complaint about why they are unhappy. And having listened to their conversation with our adjudicator I find them to be consistent with each other and their testimony to be plausible. And the fact that they don't appear to have used any of the benefits provided by the account leads me to conclude that what they are saying is more likely to have happened.

HSBC says that Mr and Mrs L did benefit because Mr L had a flexi saver account and after the opening of the Plus account he received a preferential interest rate. It tells us that this meant Mr L received an extra 0.05% interest each year on his savings in that account. But HSBC also tells us that the balance in 2009 was around £800. I accept that Mr and Mrs L paid a reduced fee of £6.47 per month for the first three months after they opened the Plus account but after that it went up to full price of £12.95 - and they were tied in to the account for minimum of 12 months. So the first year's fees amounted to over £130. I'm not persuaded that Mr and Mrs L would've thought the Plus account was good value if the only benefit was going to be an extra 0.05% interest on their savings – which I calculate to be around an extra 40p on the balance at the time.

I note HSBC's argument that Mr and Mrs L could've decided against keeping the account and cancelled within 14 days of opening. I also acknowledge that they kept it for around four years. But as the purpose in opening the account was to pay in a cheque, I don't think that immediately cancelling the account was likely to have been an option considered by Mr and Mrs L. And this is especially so as I'm persuaded they were told the Plus account was the only joint account they could have. In those circumstances, I don't find it surprising that they kept it for as long as they did. And I'm minded to uphold their complaint and require HSBC to pay them some compensation.

In response to my provisional decision HSBC has pointed out that as Mr and Mrs L had free sole accounts at the time, they are likely to have been aware that free accounts were available. I acknowledged this point in my provisional decision. But they were opening their first joint account with HSBC. I also accept that it would've been open to them to take their cheque to another high street bank and open an account elsewhere. But they went to HSBC – presumably because Mr L banked there. And they tell us that as they needed to pay in their cheque, they felt they had no option.

I've previously explained that I've found Mr and Mrs L to be consistent and plausible. So on the one hand I find their testimony to be credible but on the other HSBC is only able to tell us what it thinks would've happened. So on balance I'm persuaded that the meeting went along the lines recalled by Mr and Mrs L. So I uphold their complaint.

### **fair compensation**

I require HSBC Bank Plc to pay Mr and Mrs L fair compensation by refunding all of the Plus account (and later Advance account) fees paid by them, together with interest on each of these account fees at a rate of 8% simple per year<sup>†</sup> from the date of payment to the date the compensation is paid.

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

**my final decision**

For the reasons outlined above and in my provisional decision I uphold Mr and Mrs L's complaint and require HSBC Bank Plc to pay them fair compensation as set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs L to accept or reject my decision before 5 February 2016.

EJ Forbes  
**ombudsman**