

complaint

Mr and Mrs W complain that HSBC Bank Plc mis-sold them a decreasing term life assurance with critical illness policy.

background

In 2004 Mr and Mrs W met with an adviser from HSBC to arrange a business loan to help them buy a business. The adviser recommended a decreasing term assurance policy with critical illness cover.

Mr and Mrs W complained to HSBC in 2015 saying they didn't need the policy. It was mis-sold. Mr W already had a critical illness policy and they had contingency plans in place if he couldn't run the business. Mrs W also had a critical illness policy and extensive cover and benefits from her job. They say they were forced to take out the policy in order to progress with the loan. HSBC has already admitted liability by agreeing to reimburse them for the mis-selling of an interest rate cap insurance policy they were also required to take out at the same time. Mr and Mrs W want a refund of all payments they've made plus compound interest. They also want compensation for their time and trouble.

HSBC explained that due to the passage of time it couldn't locate the full original sales file. But it would've explained the product and Mr and Mrs W had a 30 day cooling off period during which they could've cancelled it. Their signatures to the declaration on the application form confirm they were happy to proceed with the policy. There's no evidence that they were told taking out the policy was a requirement of the lending. But it would've been common practice for a suitable life policy to be required as security for business lending. They weren't mis-sold the policy and adequate steps were taken to explain its features and terms.

Mr and Mrs W don't agree. They feel they'd enough cover already in place. They also had some equity in a number of properties.

Our adjudicator recommended that this complaint shouldn't be upheld. He considered that:

- The advisor noted Mr and Mrs W's circumstances in the fact find including that they already held a joint life and critical illness policy protecting their existing loan. After the meeting the advisor sent a financial review document summing up what was discussed. It said the policy was a recommendation not a requirement. Both Mr and Mrs W signed it to confirm they'd read and understood the recommendation.
- The policy didn't start for almost a year after the meeting so they had the opportunity to discuss it and decide if they wanted to proceed or not. They could've changed their minds.
- Their existing critical illness policy covered a smaller existing loan and it didn't provide enough cover to repay the new loan. Mrs W had sick pay and death cover through her job. But sick pay is different to critical illness cover. It was sensible financial planning to have separate protection for the loan. There was also no guarantee her employment or its benefits would continue.
- It isn't unusual for a bank to ask for suitable life cover for a loan. It's not for us to interfere with HSBC's commercial judgement. If Mr and Mrs W didn't like the conditions imposed by it they were free to go elsewhere for the loan.

- The life and critical illness policy was suitable for their needs at the time and wasn't a condition of the loan.
- He can't take into account what the bank may've done about the interest cap policy. HSBC reviewed the sale of that policy and decided it wasn't suitable for Mr and Mrs W.

Mr and Mrs W don't agree. They say the information on the forms isn't complete. Omitting key information was deliberate to justify the recommendation of the policy. They'd enough existing cover and benefits from Mrs W's job to protect the loan. They didn't need the policy. They were misled and the bank's already accepted it mis-sold them the interest rate cap policy. That policy was mis-sold at the same meetings when this policy was sold. HSBC had enough security over their properties to protect its loan. It was initially clear that the policy was optional but it was at a later meeting that HSBC said the policy was a requirement. At that time they had little option other than to proceed with it.

my findings

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

Some of the evidence in this case is incomplete, inconclusive or contradictory. So, I've made my decision based on what I think is most likely to have happened.

I agree with the conclusions reached by our adjudicator for broadly the reasons given.

On balance I think the recommendation in 2004 to take out a decreasing term assurance policy when taking out the loan was reasonable. It was the correct type for their loan and had an appropriate level of cover and term. I think it met Mr and Mrs W's needs and circumstances at that time.

I also don't think it was a requirement of the loan that the life cover had to be taken out. But even if it had been, that would've been a matter of HSBC exercising its commercial judgement. It was also up to HSBC to decide what security it sought from them for the loan. This would include deciding whether to accept any other existing cover, employment benefits or charges over their properties as security for the loan. It's not for us to interfere in HSBC's legitimate exercise of its commercial judgement.

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In addition cover and benefits from an employer aren't generally deemed to be appropriate for protecting a loan as they can be changed or withdrawn and are only available to a person while in that employment which wasn't necessarily guaranteed.

In any event - whatever HSBC said - it was up to Mr and Mrs W to decide whether they wished to accept its conditions and/or recommendations. Alternatively they were free to seek the loan and/or life cover from another provider.

Mr and Mrs W say HSBC has already admitted liability by settling another complaint they made about the sale of an interest cap policy sold to them at the same time as this policy. My role as an ombudsman is to consider the individual complaint and decide whether

something has gone wrong. I'm required to reach a decision on a complaint that is fair and reasonable in all the circumstances of that particular complaint notwithstanding what may've happened in any other complaints brought by Mr and Mrs W. Furthermore the fact that HSBC may've decided the interest cap policy wasn't suitable for them doesn't mean that the decreasing term life assurance with critical illness policy was mis-sold.

On balance I therefore don't think the decreasing term life assurance with critical illness policy was mis-sold to Mr and Mrs W.

Overall, although I recognise Mr and Mrs W's strength of feeling and frustration, I don't think I can reasonably require HSBC to refund their payments or pay them interest or compensation as they would like.

So, I don't see any compelling reason to change the proposed outcome in this case.

my final decision

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to Mr and Mrs W to accept or reject my decision before 5 November 2015.

Stephen Cooper
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