

complaint

Mr M, Mr S and Mr W have complained about the term assurance policies they were each sold by HSBC Bank Plc. They believe HSBC didn't follow their instructions and so the policies were mis-sold.

background

In 2006 Mr M, Mr S and Mr W applied for a business loan with HSBC. The loan was set up over a twenty five year term and on a capital repayment basis. A hedging product was also involved in this transaction at this point in time. At the same time they were each sold a level term assurance policy over a term of ten years with a benefit which represented each of their individual share within their company.

The complaint was investigated by one of our adjudicators who felt it couldn't be upheld. She was of the view that the polies were a condition of the lending. She also thought that based on the paperwork completed at the time of the sale Mr M, Mr S and Mr W appear to have specified the type of life cover they wanted and had clear objectives for it.

Mr M, Mr S and Mr W didn't agree with the assessment. They said HSBC hadn't followed their instructions – they wanted the policies to be set up in trust and that their wives should have been protected by the policies. They also said that HSBC had charges over a number of their business assets so they saw no need for the life policies in the first place.

While the adjudicator considered the points her view of the complaint remained unchanged. She did however uncover that HSBC didn't assign the policies as it should have done and as it was recorded in the point of sale documentation. Because of this HSBC agree to pay Mr M, Mr S and Mr W each £250.

Mr M, Mr S and Mr W didn't accept the offer or agree with the assessment. So as an agreement can't be reached the complaint has been passed to me to review.

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 have come to the same conclusion as the adjudicator.

Firstly it's worth pointing out that the hedging product was found to have been mis-sold and Mr M, Mr S and Mr W have all been redressed accordingly. However while this is the case it doesn't automatically follow that the life policies sold at the same time were also mis-sold. In my view from all I have seen I think Mr M, Mr S and Mr W would have taken a loan anyway and therefore it's very likely some form of life cover would have also been sold/required.

In order for me to uphold the complaint I need to be able to safely conclude that Mr M, Mr S and Mr W either didn't need the policies because they had other adequate cover in place or that the type of cover provided by the polices was not suitable to protect the type of loan they were taking out. Or that the policies were taken out without their knowledge. However given everything I have seen there just isn't enough evidence to reach that conclusion.

Up to this point it has been concluded that the life policies were a condition of the loan Mr M, Mr S and Mr W wanted to take out. HSBC has suggested this was fact after this Service began its investigations into the complaint.

However I'm not so sure that this is actually the case because the documents for the loan don't specifically state that term assurance life cover policies on each of the partners' lives were necessary security for the plan. At best the documents are ambiguous and not very clear. So I can understand why Mr M, Mr S and Mr W have queried this assertion.

If the policies were a condition of the loan then this would have been communicated during the sales meeting. If this was the case then HSBC's policy to make life cover a condition of the borrowing is not something this Service can challenge. This would be the case regardless of how much other security the bank held for a particular business or how much that business was worth. So essentially if Mr M, Mr S and Mr W wanted to borrow through HSBC at that point in time and life protection was a condition of its lending then they would have to take out the life cover.

But, in any event Mr M, Mr S and Mr W have said all the way through their complaint that it was their intention to put in place a life policy for the protection of a widow. They've said they wanted to be in a position if one of them had died of being able to pay the widow a proportion of the partnership value which would give the remaining partners breathing space to arrange distribution of the balance without resorting to a forced sale of their business.

This is what the policies they were sold did.

Having examined the documents completed during the sales meetings it's recorded throughout that the objective was protection for their business loan. It also looks like Mr M, Mr S and Mr W requested the policies to set up on a single life basis for a sum which represented their business share which also equated to one third of the value of the loan.

I can also see that they specifically requested the term be for ten years because they felt this was the longest time they would retain this particular liability.

It is also recorded that decreasing cover was discussed (as would be normal for this type of repayment loan) but Mr M, Mr S and Mr W wanted the cover to be on a level basis because apparently they felt it would provide more choice in the future and as the cover would be constant it could be used against any potential future borrowing.

This paperwork also confirms that the policies were to be taken out to protect the loan because Mr M, Mr S and Mr W said there was no other cover in place to do so.

In light of all of this information taken from the point of sale documents it's very hard for me to conclude that they had other adequate cover in place – because it's recorded that they didn't; that they didn't want the policies – because they have admitted to wanting to protect their widows; or that the policies were unsuitable given the type of loan repayment – they specifically requested that level cover be taken for the ten year term again for specific reasons.

Furthermore given the policies weren't assigned (although the documentation from the point of sale records that they should have been) the policies met their objectives of providing cover for their wives. As a side point the assignment of the policies to HSBC would indicate that the policies were a condition of the lending. However as already mentioned I can't be

sure of this. Nevertheless because the policies should have been assigned and weren't the offer made by HSBC in recognition of this seems reasonable to me.

Overall therefore as I have explained I can't safely conclude the policies were mis-sold. If they were a condition of the lending then regardless of any other security HSBC held or the value of the business Mr M, Mr S and Mr W had to takeout the cover. Regardless of this they have said they wanted the cover and it looks like they specified the type of policy they wanted even down to the rationale for a shorter term and why the cover should be level rather than decreasing. And while the policy may not have met with their objective of protecting their widow in the event of death had it been assigned correctly, the fact is it wasn't assigned and so met their objective.

my final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M, Mr S and Mr W to accept or reject my decision before 14 October 2016.

Ayshea Khan
ombudsman