

complaint

Mrs K has complained about a regular-premium payment protection insurance (PPI) policy she took out in connection with a credit card she arranged 1993. She originally bought the policy through Midland Bank (Midland). However, Midland has since been taken over by HSBC Bank Plc and so I have referred to HSBC, rather than Midland, throughout this decision.

Mrs K considers that HSBC mis-sold PPI to her. She recalls that it did not give her a choice to take the credit card without PPI, but told her that PPI was a mandatory requirement for the card.

In the course of this investigation, Mrs K has also mentioned potential complaints about loans she took out with HSBC. However, I would like to clarify that this decision only relates to her complaint about potential mis-selling of the PPI policy associated with her credit card.

background

One of our adjudicators assessed this complaint informally and did not consider that there was convincing evidence that HSBC had mis-sold PPI to Mrs K. The adjudicator therefore recommended that her complaint should not be upheld. Mrs K did not accept the adjudicator's recommendation and asked for an ombudsman to review the complaint.

my findings

I have examined all the evidence and arguments provided by Mrs K and HSBC from the outset, in order to decide what is fair and reasonable in the circumstances. I have taken into account the law and good industry practice which applied at the time the policy was sold. In essence, the questions I need to consider in this complaint are:

- whether HSBC gave Mrs K any advice or recommendation, and if so whether it took adequate steps to ensure that the product it recommended was suitable for her needs, and
- whether HSBC gave Mrs K information that was fair, clear and not misleading in order to put her in a position where she could make an informed choice about the insurance she was buying.

If I judge HSBC to have failed on one or both of these questions, I will consider whether it is likely that Mrs K would still have bought the policy if HSBC had not failed in its obligations towards her.

On our consumer questionnaire, Mrs K told us that, when she applied for the card and the PPI policy, she spoke to one of HSBC's representatives on the phone and completed a postal application. She also stated that HSBC did not advise her about PPI or recommend it to her. She has since told us that she may have completed her application form at one of HSBC's branches. HSBC has told us that it has no records from the time of the sale and cannot tell how Mrs K applied for the policy. However, in correspondence it has also stated that at the time it could "*only recommend HSBC branded products*", implying that it may have recommended PPI to Mrs K.

Owing to this conflicting evidence and lack of records from the time, I have been unable to determine with certainty whether HSBC recommended PPI to Mrs K or whether she bought PPI on an “*information only*” basis. However, for the reasons that I have set out below, I have been able to make a final decision on this case without reaching a firm judgment on the precise sales process that HSBC used.

Whichever way HSBC sold the policy to Mrs K, it had to let her know that PPI was optional. Mrs K has stated that HSBC told her that:

“it was mandatory to sell PPI along with... the card... it was a must”.

HSBC has denied this. It has told us that the policy was optional and that it has no evidence that it misled Mrs K into thinking that she had to take PPI in order to qualify for the card. Mrs K has accepted that she completed an application form for the policy and either posted it to HSBC or filled it out at a branch; it seems to me, therefore, to be more likely than not that HSBC gave her a choice about PPI and she chose to take it on her application form. I do not dispute that she has given us her honest testimony that she does not remember this, but she took out the policy quite a long time ago and memories can easily become hazy after such a lengthy period. On balance of the evidence available to me, I am satisfied that HSBC made Mrs K aware that PPI was optional.

As mentioned previously, I have not reached a firm judgment on whether HSBC recommended PPI to Mrs K. If it did make a recommendation, then it had to ensure that the policy was suitable for her. To check this, I have weighed the policy’s benefits against Mrs K’s circumstances to assess if she had a potential need for the cover it provided; and I have examined the policy’s features to determine if it had any eligibility rules, exclusions or limitations which made her ineligible for the policy or made it unsuitable for her.

The policy was designed to cover Mrs K’s credit card repayments if she was unable to work due to an accident or sickness or if she became unemployed through no fault of her own. In these circumstances, it would have paid off 10% of Mrs K’s balance on her monthly statement for up to 12 months. In the unfortunate event of Mrs K’s death, the policy would also have paid off the outstanding balance in full.

Mrs K has told us that if she was off work due to an accident or sickness she was not entitled to substantial sick pay and did not have any significant savings or alternative insurance of a similar type to PPI. It seems to me, therefore, that at the time Mrs K applied for her credit card she had a potential need for the type of cover that PPI provided and that she may well have found its benefits attractive.

The policy had eligibility rules which required policyholders to be aged between 18 and 65 and to be working for at least 16 hours per week. Mrs K met these rules and so was eligible for the policy.

The policy’s main exclusions applied to claims from people with some types of pre-existing medical conditions. I understand that Mrs K did not have any health problems at the time she took out the policy. She was not, therefore, affected by these exclusions. They did not make the policy unsuitable for her.

The policy’s main limitations applied to claims from people who were on fixed-term contracts of employment. However, I understand that Mrs K was not in this type of employment and so was not affected by these limitations. They did not make the policy unsuitable for her.

From the above, it follows that even if HSBC did recommend PPI to Mrs K, I cannot see any grounds to conclude that the policy was unsuitable for her.

Whichever sales mechanism HSBC used, it was also obliged to inform Mrs K clearly and fairly about the policy's features, so that she could make an informed choice. HSBC has told us that it supplied Mrs K with product information, however it has not provided convincing evidence that it brought Mrs K's attention to the importance of reading this information before she applied for the policy. I am not, therefore, satisfied that HSBC met its obligations to inform Mrs K about the policy. However, as I have already determined that Mrs K had a potential need for the policy, and I have not found any grounds which made it unsuitable for her, I doubt that she would have declined it even if HSBC had informed her properly.

Similarly, HSBC had to inform Mrs K clearly about the policy's full costs, but it has not demonstrated how it did this. However, I understand that throughout the policy's life, its cost has been in the range of 69 to 79 pence for every £100 of Mrs K's statement balance. For the benefits which I have already described, I consider this to have been a competitive price in the marketplace. I doubt, therefore, that Mrs K would have declined PPI even if HSBC had explained its charges correctly.

During the course our investigations into this complaint, Mrs K has referred to a claim that she made against the policy when she became unemployed in 2006. She has told us that the insurer rejected her claim and that this shows that HSBC must have mis-sold the policy to her. However, she has not provided any further details of the claim and I do not consider that it provides compelling evidence that HSBC did mis-sell PPI. Furthermore, HSBC has told us that the insurer has no records of the claim. If Mrs K wishes, she is free to pursue this further, but she would need to make any complaint to the insurer before we can investigate this issue for her.

In conclusion, although I have not determined if HSBC recommended PPI to Mrs K or if she bought the policy on an "*information only*" basis, I am satisfied that HSBC made her aware that PPI was optional and that she chose to purchase the policy. I consider that she had a potential need for the type of cover the policy provided and I have not found any grounds to conclude that it was unsuitable for her.

Even though I accept that HSBC may not have provided Mrs K with full information about the policy's features and costs, I doubt that she would have declined it even if HSBC had informed her properly.

my decision

For the reasons outlined above, I do not uphold the complaint. I make no award against HSBC.

Steve Townsley
ombudsman