DRN-4290672

The complaint

A company, 'S', complains that HSBC UK Bank Plc ('HSBC') mis-sold an income protection insurance policy providing cover for its director and key worker, Mr S.

Mr S has brought this complaint on S's behalf and, for ease of reading, I've referred to Mr S throughout this provisional decision.

What happened

Mr S bought an income protection insurance policy in December 2011. The policy was sold by HSBC during a meeting. The sale was advised – which means that HSBC made a recommendation to Mr S that the policy met his demands and needs at the time.

In 2022, the underwriter (insurer) of the policy declined a claim which Mr S had made because it said the policy didn't provide cover for chronic illnesses.

Mr S made a complaint to HSBC that the policy had been mis-sold. HSBC sent a final response letter to Mr S saying, amongst other things, it was satisfied that the limitations on future claims for chronic illnesses were highlighted at the point of sale.

Unhappy, Mr S brought the matter to the attention of our service.

One of our investigators looked into what had happened but said he didn't think HSBC had done anything wrong. Mr S didn't agree with our investigator's opinion, so the complaint was referred to me as the final stage in our process.

I made my provisional decision about Mr S's complaint in July 2023. In it, I said:

'I'm sorry to hear that Mr S has been through a difficult time, and I'd like to assure him that I've considered his complaint independently and impartially as is required under the rules that govern us.

Mr S brought a separate complaint to our service about the insurer's decline of his claim. That complaint has already had a final decision made by a different ombudsman and cannot be revisited. My role when making this provisional decision is limited to considering the regulated activities which HSBC is responsible for (i.e., the sale of the policy).

This policy was sold on an advised basis. I think it's fair and reasonable to apply the principles set out in relevant industry rules (the Financial Conduct Authority's 'Insurance: Conduct of Business Sourcebook') to the circumstances of this complaint. Under these rules, HSBC needed to make sure this insurance policy was suitable for Mr S. It also needed to provide Mr S with information about the policy that was clear, fair and not misleading so he could make an informed decision about whether to buy it. These rules applied when the policy was sold in 2011, as they do now.

I have no way of knowing for certain exactly what was said during the meeting when this policy was sold. So, I must base my decision on the available evidence to decide, on the

balance of probabilities, what I think is more likely than not to have happened in the circumstances.

I wouldn't generally expect HSBC to provide a verbatim transcript for a sales meeting. I've considered the contemporaneous documents from the time of the sale of the policy, which I think are a persuasive record of what is likely to have been discussed.

The policy application form – which is unsigned by Mr S as it was completed by a HSBC staff member on his behalf – says:

> *"I…acknowledge that for my own benefit and protection, it is very important that I am aware of and have considered the effect on the exclusions from cover … for any chronic illness or for any illness or injury for which the life insured has had treatment, diagnosis or investigation in the last 12 months. These exclusions have been explained by the adviser and are set out in the Policy Summary and Policy Document given to me. I acknowledge that the adviser cannot confirm the potential impact of any specific medical condition. The box(es) ticked below best describe the life insured's situation."*

The following box was ticked by the HSBC staff member on Mr S's behalf:

> *"I, the life insured, do not have a chronic illness and have not had any treatment, diagnosis or investigation for any illness or injury in the last 12 months."*

The fact that Mr S's signature isn't on the application form doesn't mean that it's not a persuasive record of what is likely to have been discussed at the time.

I understand Mr S feels the wording used on the application form indicates that the exclusion for chronic illnesses only applies where there has been treatment, diagnosis or investigations for that illness within the last 12 months. I don't agree. I think the application form clearly refers to chronic illnesses and illnesses for which there have been treatment, diagnosis or investigation in the last 12 months as two separate things. It wouldn't be possible for every potential medical condition which could be classified as a chronic illness to be listed – and this is acknowledged in the application form itself when it references that HSBC's adviser cannot confirm the potential impact of any specific medical condition.

The application form states that medical reports may be required to support the application. I don't think this is unclear or misleading. Medical records weren't required for cover under this particular type of policy to be confirmed, and I don't think the adviser needed to specifically point out to Mr S that his medical records wouldn't be obtained before his application for the policy was approved. I also don't think the application form needed to direct prospective purchasers to consult their GP before proceeding with the policy application. There may be occasions where a prospective purchaser may wish to do this but it's not unreasonable for HSBC to assume that prospective purchasers have an awareness of their own medical history. In any event, it's not for a GP to interpret the policy criteria - that's for the insurer to do. And I don't think it's practical, reasonable or necessary to have a medical expert present at the sale of policies like this one.

I've also considered the Financial Planning Report which was signed by Mr S. I've attached a copy of this Report to my provisional decision for Mr S to see. The Financial Planning Report says that Mr S was made aware of the limitations in cover for chronic illnesses.

HSBC's fact-find (a copy of which is also attached for Mr S to see) says that a previous income protection policy was deferred/declined by underwriting, and that HSBC recommended to proceed with this policy instead because it didn't required underwriting.

There appears to have been some confusion surrounding this point. The statement by HSBC that this policy didn't require underwriting means that this policy was not tailored or priced based on the risk presented by Mr S's individual medical history. Instead, this policy was set up to provide a more general type of cover, where the insurer limits the risks by setting out exclusions relating to certain medical conditions. Every insurance policy has an insurer who underwrites/provides the policy. So, the fact that this policy has an underwriter (an insurer) doesn't mean that HSBC gave incorrect information to Mr S.

Overall, I think the information which Mr S was given by HSBC was clear, fair and not misleading. The evidence I've seen suggests that Mr S wanted to protect his position as a key worker for S, and that he'd already had a previous application for an individually underwritten income protection insurance policy deferred/declined. Having considered the features of this policy – including the deferred period – I'm satisfied that this policy was suitable for Mr S's demands and needs at the time it was sold to him.

Mr S, in return for the premiums paid, had the benefit of this policy for the risk of making a valid claim which was covered under the terms and conditions of the insurance. The fact that the policy didn't operate in the way Mr S expected it to when he made his unsuccessful claim doesn't mean that the policy was of no use to him.

Even if I thought there were failings in HSBC's sales process, I'd need to consider what – if anything - Mr S would have done differently were it not for any such failings. I understand Mr S says hindsight isn't now relevant and that he'd either have kept his previous personal accident policy or sought cover elsewhere. But personal accident insurance policies generally provide a different type of cover to income protection insurance policies, and I can't fairly conclude based on the evidence that I've seen that Mr S would have been able to purchase cover elsewhere which didn't contain similar limitations. So, even if were to accept that HSBC didn't sell this policy in the way it should have, I don't think it's likely Mr S would have acted any differently.

HSBC's final response letter said that this policy was still running and set out various options for Mr S to consider. If the policy continues to run then Mr S may wish to revisit these options. I'm sorry to disappoint Mr S, but I don't currently intend to direct HSBC to do anything further.'

HSBC responded to my provisional decision and said it had no further comments to make. Mr S responded and said he didn't accept my provisional findings. Mr S said I hadn't taken account of his very strong arguments, and that I hadn't specifically addressed any of his valid points. Mr S said our service should do more to make sure others aren't sold policies like this.

What I've decided – and why

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

I've thought carefully about everything Mr S has told us, and I'm satisfied that my provisional findings address his key complaint points about the sale of this policy. Our service makes independent and impartial decisions about the circumstances of an individual case – we're not a regulator and we have no power to require businesses to change their general sales processes. For the reasons I explained in my provisional decision, I don't think Mr S's policy was mis-sold to him by HSBC.

My final decision

My final decision is that I don't uphold S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 7 September 2023.

Leah Nagle
Ombudsman