

## The complaint

Miss A and Mr L complain that Thomas Oliver UK LLP, part of Openwork Limited's network, gave them misleading advice when recommending a decreasing term assurance policy, and have wrongly charged them for cancelling it.

All references to Openwork will include Thomas Oliver UK LLP.

## What happened

In April 2017 Miss A and Mr L met with an Openwork adviser who recommended they start a joint life assurance policy to cover the cost of any remaining mortgage, if one of them were to die or become critically ill. The policy matched their mortgage in terms of amount, duration and type – it was on a decreasing basis, so went down in line with the balance of their repayment mortgage.

Miss A and Mr L cancelled the policy in August 2019. This was because they thought the policy was a mandatory part of the mortgage but found out this wasn't the case when they re-mortgaged their property. They were later pursued by the adviser for a cancellation fee of £1,236. This was the charge payable to the adviser if the policy was cancelled within 48 months of its start date.

Miss A and Mr L complained to Openwork saying they'd been misled by the adviser. They said he told them the policy was a condition of the mortgage and this was the only reason they purchased it. Given the advice they'd been given, they didn't think it was fair that they were being pursued for the cancellation fees. Miss A and Mr L also wanted a refund of the premiums they'd paid to date.

Openwork didn't uphold the complaint. It said no fees were charged in connection with the advice about the policy and that fees were only payable if it was cancelled within a 48 month period. As Miss A and Mr L cancelled the policy with 22 months remaining of this cancellation period, Openwork didn't think the adviser had done anything wrong by pursuing them for payment. Openwork was also satisfied that the recommendation was suitable based on Miss A and Mr L's needs at the time of the advice.

Our investigator didn't uphold the complaint. In brief, he thought the recommendation was suitable. And he didn't think there was any evidence to show the adviser misled Miss A and Mr L about whether the policy was a condition of the mortgage.

Miss A and Mr L didn't agree and asked for an ombudsman's decision. In summary, they made the following points:

- They didn't want the policy and cancelled it once they realised it wasn't mandatory;
- The recommendation wasn't suitable because they had access to financial support from their family in the event of one of them dying or becoming ill;
- They have no reason to lie about what they were told;
- They do remember receiving the documents but relied on the advice;
- Companies should be held accountable for poor practice and undue sales techniques.

## **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.

Miss A and Mr L have made numerous points in support of this complaint. We are an informal service and our rules allow me to focus on what I consider relevant. So if there's something I've not mentioned, it isn't because I've ignored anything – I haven't. I've just focused my decision on what I think impacts on the outcome of the case. I'll also mention at this stage that where there's a dispute about what happened, I've based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

I can see on 3 April 2017, Miss A and Mr L signed the agreement about what fees would be payable in relation to the policy advice. This said that fees were payable if the policy was cancelled within 48 months from its commencement date. Looking at this two page document, I think this clearly set out what fees would be payable and when.

Although the policy details weren't specified on the agreement itself, it was clear that if Miss A and Mr L were going to take one of the policies recommended to them, a fee would apply if they didn't keep it for 48 months. And it's worth noting that just because the fee agreement had been signed, Miss A and Mr L were not obliged to take out the policy Openwork recommended. So all in all, I don't think the adviser was unreasonable in pursuing this fee when he was notified of the policy being cancelled within the 48 month period.

But Miss A and Mr L say they were specifically told by the adviser that the policy was a condition of the mortgage and this was the only reason they agreed to take it out. In support of what they say, they've pointed to the call with the policy provider in August 2019. In this call, Miss A said they'd been told the policy was a condition of the mortgage and she'd recently found out it wasn't. So she asked the provider to cancel the policy.

I understand where Miss A and Mr L are coming from here. But I need to balance what they've said with the contemporaneous evidence such as the documentation they were given at time of the sale. They were given a mortgage key facts document and illustration on 21 March 2017 – this was when Miss A and Mr L met with the adviser to discuss their mortgage requirements. Both these documents said the only insurance that was a condition of the mortgage borrowing was buildings insurance. The application for the life assurance policy was made two weeks later on 3 April 2017.

Miss A and Mr L say they didn't read the documents because they relied on what they told by the adviser. But I'm satisfied they were given sufficient information to be clear that the policy wasn't mandatory. Not just at the meeting but after the event. As well as the documents I've already referred to, Miss A and Mr L would've been sent a mortgage offer – this would have repeated, and expanded on, what they had been told in the key facts. I can also see that the suitability letter dated 21 April 2017, which set out the adviser's reasons for recommending the policy, didn't include the reason that it was a condition of the mortgage.

The documents provided to Miss A and Mr L at the point of sale, were all important and as such, were intended to be read by the recipients. I can't fairly hold Openwork responsible if Miss A and Mr L chose not to read them.

I think I need to reiterate at this stage that my findings are based on what's more likely than not to have happened. I recognise there's a dispute over whether or not Miss A and Mr L were told by the adviser they must take out life assurance to secure their mortgage. And I'm

not accusing any party of 'lying' by saying that, on balance, I don't think the evidence supports they were led to believe this by the adviser. It's just I think it's more likely than not in light of the available evidence, they were made reasonably aware by the adviser that the policy was a recommendation not a must have.

I've also considered whether the policy was suitable. Miss A and Mr L say the policy wasn't suitable because they have the financial resources through their family, to pay off any remaining mortgage if one of them were to die. But the fact find makes no reference of this financial support and there's no evidence the adviser was made aware of this. But even if Miss A and Mr L did make the adviser aware of this financial support, I still don't think this makes the recommendation unsuitable. The size of the borrowing at nearly £400,000 was substantial – if one of them were to die or become extremely ill, the loss of one income would have had a significant impact on their overall financial position.

From what I can see, the policy provided life and critical illness cover that matched the amount and term of the mortgage Miss A and Mr L had taken out. This would have avoided them having to rely on selling the house, relying on family or putting themselves under a significant financial burden if one of them died or became critically ill. So on balance, even with what Miss A and Mr L have said about their family's financial support, I'm satisfied the recommendation was a suitable one to make.

I note Miss A and Mr L think our service should hold companies accountable for undue sales practices. But my role is to assess complaints on an individual basis. And for the reasons I've set out above, I don't think Openwork or its adviser have done anything wrong, so I won't be asking it to do anything differently on this particular occasion.

### **My final decision**

I'm not upholding the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A and Mr L to accept or reject my decision before 26 January 2021.

Yolande Mcleod  
**Ombudsman**