

## **The complaint**

Mr and Mrs T are complaining about the mis-sale of a total mortgage protection plan (TMPP) by Bank of Scotland plc trading as Halifax.

## **What happened**

In 2002, Mr and Mrs T went into a Halifax branch to apply for a mortgage. They say they were told they'd need to take out various financial protection insurances as a condition of the mortgage. For Mr T, they took out life assurance, critical illness cover (CIC), and mortgage repayment cover. And for Mrs T, they took out life assurance and CIC. These were all set up within one TMPP.

In 2009, Mr and Mrs T increased their mortgage borrowing and the mortgage advisor changed the TMPP. Mr and Mrs T say the changes were made without explanation and were inappropriate. Mr T's plan was split into two, keeping the existing mortgage repayment cover but with a new policy for life assurance and CIC. Mrs T's plan was unchanged. Although Mr T's life assurance and CIC was extended to match the new mortgage term, Mrs T's cover now fell short of the mortgage term – and so did Mr T's mortgage repayment cover.

Mr and Mrs T are complaining about the events in 2002 and in 2009. And they're complaining that Halifax didn't cancel their policies when they paid their mortgage off early in 2016.

Mr and Mrs T's complaint has been split – the mortgage repayment cover has been considered under a separate complaint as it's a form of payment protection insurance (PPI). So my decision will only consider the life assurance and CIC aspects of the complaint.

When they looked at this complaint, Halifax initially said that Mr and Mrs T had brought their complaint outside the time limits allowed by the Financial Conduct Authority (FCA). But they went on to address the complaint points briefly. They said that insurance wasn't a condition of the mortgage in either 2002 or 2009. They said they had no documentation from the 2002 sale, but that the 2009 sale documentation showed that Mr and Mrs T asked for the policies to be set up in the way they were, and that they understood the cover that would be provided.

Halifax also said Mr and Mrs T were responsible for cancelling the policies as policy holders. They said they were standalone policies, and added that the annual mortgage statements didn't make any reference to the policies which confirms they weren't attached to the mortgage.

Our investigator looked at Mr and Mrs T's complaint. She first suggested to Halifax that the complaint wasn't out of time and we could look at the complaint and they accepted. So she went on to look at the merits of the complaint. She said there wasn't much information about the 2002 sale but it was clear from the mortgage offer that it wasn't conditional on life assurance and CIC. However, she noted that she'd have expected Halifax to have recommended decreasing term assurance (DTA) rather than level term assurance (LTA) given the nature of the mortgage.

In relation to the 2009 sale, our investigator said it was clear Mr and Mrs T had engaged with the advisor and knew they would be underinsured as a result of the decisions they took. She also said the mortgage offer made it clear that it was only conditional on Mr and Mrs T taking out buildings insurance – not life assurance or CIC.

Our investigator also said she thought Mr and Mrs T should have been aware that their policies were still in place and that it was their responsibility to cancel them when they no longer needed them.

Our investigator said that Halifax should refund Mr and Mrs T the difference between the cost of the LTA policy they took out in 2002 and the cost of an appropriate DTA policy. Halifax accepted this but when they looked up the cost they found that DTA would have been more expensive. So our investigator concluded that Halifax hadn't done anything wrong and didn't uphold Mr and Mrs T's complaint.

Mr and Mrs T weren't happy and asked for an ombudsman's decision – so their complaint's come to me. In disagreeing with our investigator's view, they said they'd not signed the documentation from the 2009 sale and said they'd never have put themselves in a situation where there would have been a shortfall in the event of Mrs T's death.

### **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.

Although I appreciate it'll be a disappointment to Mr and Mrs T, I'm not upholding their complaint, for the same reasons as our investigator. I'll explain why, considering the three complaint points separately.

#### *The 2002 sale*

Although Mr and Mrs T say they were told the policies were a condition of the mortgage, I can't see anything to show that was the case. And there aren't any records of the conversations that took place at the time. So I can't be sure what happened, but I'm satisfied the mortgage offer shows that it was conditional on property insurance but not on any other insurance.

There's limited evidence about the sale process, but I've seen enough to think that the advice was suitable for Mr and Mrs T at the time.

At the time of the 2002 sale, Mr and Mrs T were taking on a mortgage for the first time. They had two young children, and as such, it made sense for them to have life assurance and CIC to give financial protection for each spouse and for the children in case anything were to happen. The sum assured for both policies matched the amount of the mortgage, so if either Mr or Mrs T had died or become critically ill, the remaining spouse or children would have had the means to pay off the mortgage.

As our investigator noted, the mortgage was a repayment mortgage, and we'd normally expect to see life assurance and CIC set up with a decreasing sum assured to match the gradually reducing mortgage balance. But in this instance, Halifax have confirmed that this would have been more expensive than the policies Mr and Mrs T took out. So I'm happy the life assurance and CIC policies that Mr and Mrs T entered into were suitable for them at the time and therefore weren't mis-sold.

### *The 2009 sale*

Mr and Mrs T's primary complaint about the 2009 sale is that they came away underinsured – the mortgage was expected to still be in place when Mrs T's life assurance and CIC was due to expire.

In 2009, Mr and Mrs T extended their mortgage to borrow £51,163 over 23 years. The mortgage offer made it clear they didn't need to take any insurance through Halifax, but they did need to have buildings insurance. The advisor's internal notes from the time of the sale note: *"...they have specific [sic] requested that a new plan be set up for just Mr [T] for the total amount for life and critical illness whilst Mrs [T] will retain the existing cover of £31,000 level term, Mr being on decreasing term. They are aware that there is a shortfall of cover should a claim be submitted for Mrs T..."*

I appreciate Mr and Mrs T have challenged the validity of the advisor's note as they haven't signed it. They say there's no evidence that the discussions described in the advisor's note actually took place. While I accept what Mr and Mrs T are saying, there's no recording of the conversation, nor did Mr and Mrs T provide any notes from the time. The advisor's notes were an internal document which was never intended to be signed by the customers, and they have an electronic signature and date throughout. I have to decide what's most likely to happen and in this instance I have two accounts – one from the notes written at the time, and one from Mr and Mrs T's recollections over ten years after the conversation took place. I'm inclined to place more reliance on the advisor's note and I'm satisfied it shows that Mr and Mrs T were engaged in the conversation and chose the cover that they wanted.

I also note that Mrs T hasn't needed to make a claim on her life assurance or CIC. So she's suffered no loss as a result of being underinsured – and she'd have had to pay more over the last ten years for the amount of cover she says she wanted. That means that even if I'd decided Halifax had mis-sold the policies in 2009, there'd have been no redress due to Mr and Mrs T.

### *Cancellation of the policies*

Mr and Mrs T say Halifax should have cancelled the policies when they repaid their mortgage in 2016, several years early. But the policies weren't directly associated with the mortgage – as Halifax explained, the mortgage statements don't mention the policies. The terms and conditions for the TMPP say:

*"Your plan will not end automatically when your mortgage ends. If you want your plan to end when your mortgage ends, you must contact the administration office to end your plan."*

So I think Mr and Mrs T would reasonably have been aware they'd need to take steps to cancel their policies. And I don't think it's fair to say Halifax should have cancelled the plan without any specific instruction to do so from Mr and Mrs T – they wouldn't have been legally allowed to. I also note Mr and Mrs T spoke to Halifax in March 2016 and February 2017 about the possibility of cancelling the policies and on both occasions chose to keep them in place. That suggests to me that Mr and Mrs T wanted to keep the cover.

### *Summary*

Taking everything together, I'm satisfied Mr and Mrs T took out a suitable plan following the sale in 2002. Although they were underinsured after the 2009 sale, I think it's more likely than not this was their choice and was discussed with the advisor. And I can't see that Mr and Mrs T have lost out as a result. Finally, I'm satisfied Halifax were right not to cancel the policies when Mr and Mrs T repaid their mortgage.

**My final decision**

As I've explained above, I'm not upholding Mr and Mrs T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 15 April 2021.

Clare King  
**Ombudsman**