DRN-3254196

The complaint

Mr P brings this complaint on behalf of his business, which I will call S. He says an adviser from Sandringham Financial Partners Limited mis-sold a Disability Cover for Business policy to S in 2017 because it failed to explain that the policy didn't comprise critical illness cover.

To resolve the complaint Mr P says that the premiums S has paid for the policy from 2017 to 2020 ought to be returned, with interest.

What happened

In December 2016, S met with Sandringham's adviser to discuss personal protection for its two directors, one of whom is Mr P. A second meeting was held in May 2017.

In June 2017, a recommendation was made by the adviser for S to take out two Disability Cover for Business ('*DCFB*') policies until both Mr P and his fellow director Mr C were aged 70. S agreed to this, and began a Vitality Life Business Protection Plan for each of Mr P and Mr C, with sums assured of £650,000 and joint monthly premiums totalling £474.68.

The policies provided life cover and payment of a lump sum if either Mr P or Mr C became disabled because of an accident or suffered one of 48 listed disabling conditions.

In 2020, S revisited its circumstances relating to the protection policies with a different adviser. Mr P says it then became aware that the DCFB policies did not provide the cover they expected – when they had been taken out, Mr P and Mr C understood S would be protected in the event either of them suffered from a critical illness, but this was not the case. Mr P said the adviser had led them to think that if they fell seriously ill, such as with cancer, S would have been appropriately insured.

S therefore complained to Sandringham about the cover it had been sold. It also said there had not been sufficient information provided at the time of the advice in respect of taxation on any claim payments.

In the interim, S had to source a new critical illness ('*CI*') policy to give it the protection it actually required for Mr P and Mr C. It also cancelled the disability cover from both Mr P and Mr C's policies, retaining the life assurance at a reduced premium for each of them.

In August 2020, Sandringham rejected the complaint. It said that its adviser had sold S policies which met the needs of the business at that time. Further, it said S had been given sufficient information by the adviser concerning the details of the policy. Whilst the policies focused on disabling conditions rather than less severe illnesses, there was some overlap with CI cover. On that basis, it said that the policies recommended were at least equivalent to CI policies and had been suitable for the adviser to propose to S.

Sandringham also said that its adviser was not regulated to give advice about taxation. Whilst its advisers require a certain level of knowledge and understanding in relation to tax matters in conjunction with financial advice, the adviser made S aware to seek advice from

professionally qualified accountants or tax advisers in relation to its specific tax matters and liabilities.

S remained unhappy with the outcome of the complaint. It lodged the complaint with this service, where it was considered by one of our investigators. He said that he felt the complaint ought to succeed in part.

He did not believe Sandringham's adviser had acted unreasonably in respect of taxation advice, since he had made clear from the outset that S would need to seek independent tax advice if this was required.

However, in respect of the recommendation, he did think Sandringham's adviser ought to have done more. Though the policy information did set out that the cover was DCFB, the fact find completed by the adviser specifically noted that S wanted CI cover. And the adviser's letter also referred to critical illness. The investigator felt on the information he had seen, the adviser hadn't explained to S that it had taken out DCFB cover, not CI cover.

The investigator concluded that S hadn't been financially disadvantaged by the advice. So he didn't believe he should treat it as if it should not have been taken out altogether. But, he realised S had been put to inconvenience by having to source the cover it actually required elsewhere. He therefore thought that a compensation payment of £100 was appropriate.

Sandringham accepted the investigator's findings.

Mr P said S did not accept the outcome of the complaint. It its view, the only way to put things right was a full refund of the premiums it had paid to date. Mr P said this was because:

- he and Mr C were now older, and taking out CI cover several years later has cost them more than it would have done if S had been able to take it out in 2017;
- they have no doubt that the adviser mis-sold the policies to them;
- they have never heard from the adviser since and wonder how many other businesses have been subject to the same mis-selling practice;
- S accepts that the adviser could not offer it unqualified tax advice – but it did think the adviser was in a position to explain whether a pay-out under a DCFB policy would be taxable or not;
- this would have affected the level of cover S took out and ultimately it is something the adviser ought to have made it aware of;
- in summary, S has been paying for a completely inadequate product since 2017 as a direct result of Sandringham mis-selling these policies to it;
- this has meant Sandringham has benefitted for four years of premiums being paid when it should not have recommended the cover in the first place;
- things could have been far worse if either Mr P or Mr C had needed to make a CI claim.

Our investigator revisited his view in light of the further comments put forward by Mr P on behalf of S. However, he was not minded to change his opinion on the complaint.

He explained that the DCFB the policy was suitable for Sandringham's adviser to propose, as it did provide a level of cover for S; whilst it was in force Mr P and Mr C were covered for a number of illnesses defined in the policy. But, he felt that if S had been properly informed about the content of the DCFB policy versus CI cover, it would have taken that cover out instead.

CI cover was priced for S in 2017 by the adviser, for a premium of £623.13. Though S had since taken out a CI policy, it had done so for a cheaper premium. So, the investigator didn't believe that S had suffered a loss, and no redress was due such as a return of premiums.

Mr P explained that S felt the refund of premiums was the only fair outcome, and so it wanted the complaint to be passed to an ombudsman. He also made a number of further points verbally to our investigator. I will not be setting out the full transcript here, but I have listened to the entire call. In summary, Mr P went into detail to explain how S operated and what it had required in 2017. He also said:

- he felt that perhaps there could be a compromise in redress where Sandringham met a proportion of the return of premiums, such as half;
- he accepts that the DCFB policy could have potentially paid out for claims but not on the same basis as CI cover and S has suffered as a result of this;
- S took the view that, in the main, the DCFB policy would not have provided him or Mr C with cover had they fallen ill;
- what was sold to them by the adviser was not appropriate for what S needed;
- the adviser was paid by commission, so he simply ticked boxes in selling the cheapest policy to S, rather than something that was fit for purpose;
- if the adviser had taken the time to reply to Mr P and explained that he had made the mistake then S wouldn't have complained at all – it would have just carried on and taken out the new CI cover it needed for Mr P and Mr C;
- they could potentially have lost the opportunity to make a claim which would have resulted in significant detriment to S.

Sandringham had no further comments to make.

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'd like to thank the parties for their patience whilst this matter awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld in part. I realise this decision is not the compensatory outcome S has hoped for, but I'll explain below why I have reached this conclusion.

I do not agree that there has been any failing in respect of taxation advice. In fact, Sandringham's adviser explained in clear terms how *"I explained to you that my advice has been focussed on the protection advice, that I do not provide tax advice, and that you should seek advice from your accountant on any taxation aspects. You confirmed you were happy with this approach*". I cannot conclude from this documentation that S was misled about taxation on claim payments, and I have seen no other objective evidence to suggest this was the case.

I accept and understand that CI cover was of paramount importance to Mr P and Mr C when they met with Sandringham's adviser in 2017. The recommendation for term assurance cover was based on seeking critical illness benefit. I say this because the headline of the adviser's suitability letter made it patently clear as to what was required, explaining:

> "*Summary of My Recommendations*
> *What you wanted to do*

When we met you explained that you wish to look at protection needs for your business in the event of the specified Critical Illness or death of either [Mr C/Mr P]."

The letter goes on to explain the valid reasons behind the proposal, and confirming:

"*Taking into consideration the factors contained in this letter and information I collected from you, I recommend the following;*

Provider Vitality Life
Type of Cover Critical Illness Cover & Level Term Assurance"

However, the policy documentation supplied by Vitality explains throughout how it comprises Disability Cover for Business. It is a *similar* type of protection; it pays a lump sum if the person covered becomes disabled because of an accident or illness. But it isn't the CI cover stated in the recommendation above.

Sandringham is right in setting out that some of the conditions covered by this type of policy overlap with 'standard' critical illness policies, including aplastic anaemia, blindness, cancer, cardiomyopathy, deafness, kidney failure and SLE (lupus). However, it is a different policy and it focuses on disablement resulting from listed conditions rather than diagnosis of a different set of listed conditions.

The cover S took out for Mr P and Mr C is not CI cover. Critical illness policies (as policies falling within guidance from the Association of British Insurers) are standardised insofar as they must include cover for heart attack, stroke and cancer at a minimum.

I agree with our investigator that the adviser was in the position to make these differences clear to Mr P and Mr C when they met with him to discuss S's protection needs. And I also agree that the adviser did not do so.

A 'Term & Whole of Life Comparison Report Quotation Data' document was produced, showing the respective costs of the cover if taken out with different insurers. It is clear Vitality was chosen for both Mr P and Mr C based on cost – with it being almost £150 cheaper across the two premiums than the next insurer. Whilst there is nothing principally wrong with this, I would have expected to see the adviser explain the different cover across the policies with S, so as to give some context to the price difference and the features of the policies.

I say that because the comparison report merely refers to the search as "Business Protection Level Assurance, Cover Basis: Life with Critical Illness (accelerated)". I do not expect Mr P or Mr C could ascertain from that how individual policies may or may not actually provide critical illness cover and instead provide DCFB cover instead.

The fact S wanted CI cover for Mr P and Mr C is also borne out by it having rectified the issue of having DCFB (that it didn't feel was appropriate) by taking out new Scottish Widows Protect policies for both directors, cancelling the existing ones bar the life cover.

So, it follows that I agree that it is fair and reasonable to uphold this complaint in part – that being that S took out cover which was broadly suitable in the circumstances but noting that other more expensive cover could have better fit its needs by offering the exact CI benefit that Mr P and Mr C wanted. And, though the insurer told S in its product literature what the policies comprised, nothing in the adviser's letter made that clear; in fact, the letter was misleading in its continued referenced to critical illness cover throughout.

Like our investigator I do not agree that I should direct Sandringham to return the premiums S paid for the DCFB aspect of both Vitality policies. That is not the right redress here. Firstly,

it is important to point out for Mr P that Sandringham did not receive the policy premium payments, the insurer (Vitality) did. In return for those premiums, it administered the protection policies taken out by S for Mr P and Mr C.

Where I determine that a business has caused a financial loss to a consumer or in this case to a micro-enterprise, the rules applying to this service permit me to direct a business to pay a money award as redress. I will do this in circumstances where it is fair and reasonable in my view to do so, and where an eligible complainant has suffered a loss.

Business S has not suffered a financial loss. The cover that it took out did offer a degree of protection for its primary circumstances, which is requiring financial protection for the business in the event either director was unable to work due to serious illness (albeit through DCFB cover, not CI cover). It paid less for the Vitality policies than the respective CI policies would have cost at the next cheapest insurer on the comparison report (which would have been an estimated £623 monthly combined premium). And I note that the new life and CI policies taken out by S in 2020 for Mr P and Mr C have a combined £604 premium.

I recognise Mr P has explained how S is concerned that had he or Mr C needed to make a claim, that there could have been financial detriment to S in that circumstance. But I am not able to consider a money award on what conceivably could have happened. I need to consider redress on the evidence of what should have happened in 2017 and whether the adviser's mistake (in failing to make clear the differing terms of Vitality's offering) caused any quantifiable loss to S such that I should award compensation now. And for the reasons set out, I don't find that to be the case.

Putting things right

I am also able to make awards for non-financial losses, such as distress and upset caused to people bringing a complaint. That is slightly different here, as the complaint is brought by S, which is a limited company.

However, though awards of this nature are usually for upset caused to individuals, this service can also make awards for inconvenience experienced by an entity such as S, where that is appropriate in limited circumstances. In this complaint, though S had identified it wanted to review its protection needs, the result of doing so in 2020 and discovering Sandringham's adviser's error in 2017 will have taken S time to put the mistake right. That is because it felt it had to obtain correct CI cover with Scottish Widows.

Taking this inconvenience into account, I believe the matter would have required a reasonable effort by S to resolve and an award of £100 is appropriate in the circumstances.

My final decision

I uphold this complaint in part. Sandringham Financial Partners Limited must pay S £100 to reflect the inconvenience it has been caused following the advice it received in 2017. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 13 April 2022.

Jo Storey
Ombudsman