

## **The complaint**

Mr D complains that he was mis-sold a critical illness policy by an adviser from Bradford & Bingley ('B&B') Limited in December 1999. In summary, he says the policy wasn't suitable for his needs, contained benefits that weren't relevant to him such as children's cover and disability benefit and it was sold to generate commission for the adviser.

Mr D therefore wants B&B to return the premiums he has paid since the policy began.

## **What happened**

Mr D met with an adviser from B&B as he was taking out mortgage lending of £30,000 for a 25-year term. He agreed to take out two policies – life and critical illness cover alongside the mortgage lending and a second critical illness policy which is the subject of this complaint.

The policy came into force on 11 February 2000. It offered £32,000 of critical illness cover for a 38-year term, until Mr D reached retirement.

In 2019, Mr D complained. He said he felt the adviser had used a 'hard sell' approach to push a policy onto him that wasn't needed, in order to generate commission. He also said that he had benefits available to him through his employment at the time which would have provided the extra cover, had he required it.

B&B rejected the complaint in September 2020. It said Mr D had been recommended two policies, with this one providing additional lifestyle benefit if he had fallen ill. It said it had not found any evidence that the policy sold was unsuitable. B&B also said the policy was presented in a fair, correct and reasonable manner with the terms and conditions being fully explained to Mr D.

Mr D therefore brought his complaint to this service, where it was considered by one of our investigators. He said whilst he noted B&B had said that the policy was additional to mortgage protection, he felt there had been no clear justification for the recommendation in Mr D's circumstances.

Our investigator concluded that since Mr D had already received advice about life cover and critical illness cover on the same day, he did not believe there was any reason to recommend a second critical illness policy for additional cover. On that basis, he felt B&B ought to refund the premiums Mr D had paid for the policy, with interest.

Mr D accepted the investigator's conclusions. However, B&B disagreed. It said:

- the recommendation of the second CIC policy was something the Mr D understood and accepted;
- on this basis, the relevant box – family protection not mortgage protection – on the application form sent to the insurer of the policy was ticked by Mr D;
- it believes that this further policy was taken with the purpose of providing Mr D with additional support beyond mortgage protection if he had fallen ill;

- it cannot be said why the sum assured was chosen, but it seems to be based on a multiple of Mr D's salary at the time;
- there was also a box to choose basic or comprehensive cover, and Mr D picked the comprehensive cover, which added children's cover by default;
- there is no evidence to show the policy was sold as a 'hard sale', as Mr D has suggested;
- if Mr D had not agreed with the recommendation, he did not have to agree to it;
- he could also have cancelled the policy;
- he was given sufficient documentation to know what the policy comprised;
- the fact Mr D held the policy for 20 years must show it was of worthwhile benefit;
- in summary, the recommendation was a prudent and sensible one to make.

Mr D didn't have any further comments to add.

### **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.

Having looked at everything before me, I also believe this complaint should be upheld.

I have no reason to dispute Mr D's recollection of the advice he received. However, whilst this evidence is something I take into account, I must also weigh up B&B's version of events as well as any other evidence such as contemporaneous documentation from the times of the sale. Where there is conflicting evidence, I have concluded what I believe is most likely, on the balance of probabilities.

Because of the passage of time, there is limited information available regarding the advice Mr D was given. However, B&B has been able to supply the application dated 17 December 1999 and the policy documentation issued thereafter.

In that application, Mr D signed a declaration confirming he understood and accepted the information provided to him – and there is no evidence I've seen that suggests that the policy was a requirement of his mortgage lending. That notwithstanding, I do not accept B&B's view that the policy was otherwise suitable to recommend to him. That is because Mr D took out two sets of insurances; I think in his circumstances this was more than was reasonably required, noting that there is no clear justification for the additional lifestyle cover.

Insurances such as life, unemployment and critical illness cover are a prudent step to take to provide security for a significant liability such as a mortgage. And Mr D had accepted this – taking out a decreasing term life and critical illness policy at the time, with a sum assured and term matching that of his mortgage liability.

Further protection beyond clearing any debt might be a sensible consideration to provide financial support in the event that a person may fall seriously ill. However, if this is being recommended by an adviser then that will depend on an assessment of the needs of the applicant, and their circumstances – such as having financial dependents or a need for an amount to ensure their lifestyle can be maintained if they were to become seriously ill.

The second critical illness policy was recorded on the application as being required for 'personal/family protection' – on that basis, a lump sum based on a multiple of Mr D's annual income was proposed. However, at the time Mr D was in his 20's, he was single and without dependents. It could be the case that Mr D required additional cover beyond clearing his mortgage in the circumstances he fell ill – but there is no evidence that this was the case. I'd

expect to see a reasonable justification for the proposal, by an assessment of Mr D's needs.

Mr D also had contractual income and sickness benefits through his employment. These are not as secure as the taking out of an insurance policy, because employment benefits can be involuntarily lost. However, I am satisfied that in this case, Mr D was happy to rely on those as a further security, because his only documented financial liability was the mortgage debt and this was covered at the same time by the decreasing term life and critical illness policy – so in the event of a valid critical illness claim, a sum equivalent to the mortgage debt would have been paid to him.

Further, the policy application says Mr D has an existing policy applied for within the last twelve months, but refers to it as “*DTA Life Cover*” – omitting the critical illness insurance Mr D already had. The form also asks if Mr D had critical illness cover already, and this was recorded as “*none*” – but that wasn't correct.

I do not believe the adviser properly considered Mr D's circumstances or arrangements in respect of the first protection policy. If the adviser had done so, the further cover would not likely have been suitable to recommend. Therefore, I believe the complaint should succeed.

### **Putting things right**

I direct Bradford & Bingley Limited to refund the total premiums Mr D has paid from the policy's inception until the date this decision is accepted by Mr D. At that point, the policy will be cancelled, if it has not already been cancelled by Mr D.

Interest should be added at gross rate of 8% simple per annum from the date the premiums were paid, to the date of settlement.

If B&B considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr D may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

### **My final decision**

I uphold this complaint and direct Bradford & Bingley Limited to pay the redress I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 24 May 2022.

Jo Storey  
**Ombudsman**