

## **The complaint**

Mr and Mrs S complain that Bank of Scotland plc (trading as Halifax) mis-sold them a 'Total Mortgage Protection Plan' (TMPP).

## **What happened**

Mr and Mrs S took out a TMPP in November 2003 when they applied for a further advance on their mortgage with Halifax. They took out a further advance of £63,000 on a repayment basis over a 24-year term.

By way of explanation, TMPP can be split into sections – Mortgage Repayments Cover (which is a form of mortgage protection insurance - MRC), Life Cover, and Critical Illness Cover (CIC).

The MRC element of the TMPP covered Mrs S for accident sickness and unemployment. The life and CIC elements were set up on a level term basis and would pay a lump sum if either Mr or Mrs S died or were diagnosed with a critical illness. The TMPP provided for £63,000 worth of cover and had a 24-year term, the cost of the premium was £34.57 a month.

In April 2021 Mr and Mrs S complained to Halifax. They said that the policy was mis-sold because it was added without their consent and they didn't need or want the policy.

Halifax looked into their concerns but didn't uphold the complaint. In summary, it said it was satisfied the TMPP was suitable. And that Mr and Mrs S were provided with sufficient information to enable them to make an informed choice as to whether or not to take out the TMPP.

One of our investigator's considered this complaint. He recommended we uphold the complaint. In short, he said Mr and Mrs S should've been sold a decreasing term policy and not a level term one. He didn't investigate the MRC part of the policy as this was looked at separately. In conclusion, our investigator recommended Halifax pay them the difference in premiums had it sold them a more suitable policy at the time.

Halifax agreed with our investigator's opinion, but Mr and Mrs S remained unhappy. They maintained that the policy was added without their consent and they had no use for the life or CIC policy as they had a separate policy that would've helped in these events.

So, the matter has been passed to me for a final decision.

## **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 point out that the MRC does not form part of my decision, as noted above, it was investigated separately and therefore I will not make a finding about this element of the policy. All further references to the TMPP focus on the life and CIC only.

I should start off by explaining that in order to uphold a complaint I need to see sufficient, persuasive evidence to safely conclude that a business did something wrong – and that a customer has suffered financially as a result. When the issue relates to something which happened a long time ago, there is often very little paperwork making it difficult, but not impossible in some cases, to safely assess what happened.

In this case, I recognise Mr and Mrs S are adamant that they weren't aware of what was being sold and they didn't need either element of the policy. But I simply don't consider there is enough evidence to conclude that Halifax, or its adviser, misled them into taking out a policy they didn't want. Whilst the paperwork from the time of sale is limited due to the passage of time, I think on balance, they were given sufficient information to know that they were purchasing life and CIC as part of their policy.

I have therefore assessed whether, on balance, it was reasonable to recommend life and CIC for their mortgage and a protection plan as part of it.

Halifax recommended the TMPP to Mr and Mrs S. This meant it had to make sure the policy was suitable, as well as giving them the information they needed to decide whether to take it out. Due to the length of time that has passed since the sale of the policy there is very little evidence from the point of sale. But I can see a point of sale document, a signed declaration by Mr and Mrs S before starting the plan, dated 5 November 2003 which does make reference to the policy. I think if this was something that Mr and Mrs S hadn't wanted or didn't realise, they'd been sold, they more likely than not would have raised this at the time. So, on balance, I think they were aware of the sale of the life and CIC policy.

Further, I don't think it was unreasonable for Halifax to recommend life and CIC to Mr and Mrs S, given that they were making an important financial commitment. Mr and Mrs S told us they had an existing assurance policy they could've relied on. They have sent correspondence relating to an application for alternative cover with another provider, but I have not seen anything to suggest this cover was actually in place at the time of the advice. It follows that I'm not satisfied they had alternative cover and/- or that it was drawn to the attention of the Halifax adviser at the time.

I can see the cover with Halifax was set up on a level term basis – with the sum assured remaining constant throughout the term.

That might have been preferable for Mr and Mrs S if, for example, they were paying their mortgage on an interest-only basis – where the mortgage amount stayed the same. But this wasn't the case; Mr and Mrs S had a repayment mortgage – with the mortgage amount decreasing over time. A better option for Mr and Mrs S would have been for the life and CIC on a reducing basis to coincide with their repayment mortgage. This would most likely have been a cheaper option for them. Given this would have been a cheaper option, I think it's likely that if Mr and Mrs S were presented with this recommendation, they would have accepted it.

So, whilst I don't think it was unreasonable for Halifax to sell or recommend life and CIC, I do think it should have been done on a decreasing term basis. So, I'm upholding Mr and Mrs S's complaint in part.

### **Putting things right**

Halifax should put Mr and Mrs S in the position they would've been in had they taken out decreasing term life and CIC rather than level term cover. Bank of Scotland plc should:

- Pay the difference between the cost of an equivalent decreasing life and CIC term assurance policy and the cost of the life and CIC level term assurance policy which they have paid for.
- Pay interest at the rate of 8% per year simple on the partial premiums refunded (as above) from the date each premium was paid to the date of settlement.

### **My final decision**

My final decision is that I partially uphold Mr and Mrs S's complaint. I require Bank of Scotland plc (trading as Halifax) to put things right for Mr and Mrs S as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs S to accept or reject my decision before 1 September 2022.

Rajvinder Pnaiser  
**Ombudsman**