

## The complaint

Mr and Mrs J complain they are paying more for their Whole of Life (WOL) plan than they should be because Lifesearch Partners Limited didn't complete the application for the plan properly, which led to a higher premium being payable.

## What happened

Mr and Mrs J wanted to take a WOL plan for Inheritance Tax ("IHT") mitigation purposes and through Lifesearch they applied for an initial amount of cover of £1.5 million. They wanted premium protection - referred to as Waiver of Premium (WOP) benefit - included in the plan they were going to take out, but this wasn't included in the application that was made on their behalf.

The provider of their plan had a re-price of rates in March 2017 and this meant that on proceeding with their application the premium Mr and Mrs J had to pay was the post re-price rate, which was higher than the premium they would have paid if the application had included the WOP in the first place. The plan started in July 2017 and included automatic inflation increases.

I issued a provisional decision on the complaint, my first provisional decision, in which I made the following key findings:

- It isn't in dispute that Lifesearch didn't include WOP benefit in the application made to the provider in December 2016.
- The difference in the base premium Mr and Mrs J are currently paying and what they would have paid is £202.49.
- It is more likely than not they will continue the WOL plan until death not just for between 20 and 34 years as Lifesearch argue.
- In calculating future loss it is appropriate to use the PXA08 mortality tables suggested by Mr and Mrs J's expert.
- I am not satisfied that it is possible to say Mr and Mrs J have suffered a loss by exercising the inflation option under the policy or will do so by exercising the option in future years.
- I would need to see some persuasive evidence their estate would increase such that they would need to increase the sum assured each year and even then it would seem likely that other IHT mitigation steps would be taken.
- The discount that should be applied to any award for the WOP benefit being payable before Mrs J reaches 65 should be based on the "CMI IP 06 Income Protection claim inception tables – Occupational Category 1".
- Mr and Mrs J didn't fail to mitigate their loss because they didn't take out Income Protection policies instead of the WOP benefit and it is difficult for Lifesearch to argue they should, given the quote it obtained for this was never presented to Mr and Mrs J.
- A discount of 1% should be applied for accelerated receipt.

Neither party agreed with my first provisional decision and their respective solicitors raised a number of issues in response to my findings. Lifesearch's solicitors provided further expert

evidence from an actuary (“the report of BW”) and a financial adviser (“the report of ML”) and Mr J then provided a response to this further expert evidence. I thereafter issued a second provisional decision the key findings from which are as follows:

- The report of ML raises some issues about the possible suitability of the WOL policy but this wasn’t an issue raised in Mr and Mrs J’s complaint and the report doesn’t go as far as saying it was unsuitable.
- In any event I wouldn’t expect Lifesearch as a life insurance broker to come up with alternative IHT solutions.
- The figure to be used for calculating the additional base premium is £202.49 as previously agreed by the parties.
- I am not satisfied that they wouldn’t continue with the WOL policy even if they used other IHT mitigation strategies.
- In calculating mortality the more up to date tables referred to in the report of BW – the PA.16 tables – should be used.
- It is possible Mr and Mrs J are paying more when increasing the sum assured under the inflation option, but it is not possible to say it is more likely than not they are doing so based on the evidence.
- It is more likely than not Mr and Mrs J’s estate will increase in value and as such their potential IHT liability will also increase but that doesn’t mean they will continue to use the inflation option year on year.
- I don’t accept that Mr and Mrs J would simply continue to increase the sum assured whatever the cost and would only want their children to benefit from their estate on their deaths.
- It is more likely than not that Mr and Mrs J would want their children to benefit from their estate before they died, and this would also make sense in terms of IHT mitigation.
- The discount for the WOP benefit should be based on “CMI IP 06 Income Protection Claim Inception Tables – Occupational Category 1”.
- Mr and Mrs J didn’t fail to mitigate their loss because they didn’t take out income protection policies.
- The discount for accelerated receipt should be 1%.

Mr and Mrs J, as with my first provisional decision, agreed with some of the findings in my second provisional decision but not with others. They provided some further evidence and, in summary made the following points in relation to those findings they didn’t agree with:

- The quote from the provider dated 9 June 2017 provided a total premium with 0% commission with the total amount of premium payable over the term of the policy, assuming no change to the cover, being £347,371.10. This figure is repeated in the provider’s letter dated 27 June 2017.
- The above total premium figure doesn’t include the automatic inflation option.
- The evidence he has now obtained from the provider shows 44 years of prices confirming the monthly and yearly premiums and the additional amount payable post reprice.
- The data provided by ReAssure shows the pre-reprice premium (with 50% commission) and the post reprice premium (with 0% commission).
- The data shows that the pre-reprice rates at 50% commission over 44 years amounts to £2,820,034.80 while the post reprice rates at 0% commission payable for the current policy amounts to a total of £4,047,558.53, a loss of £1,227,633.73.
- The information from the provider shows that whilst the difference in premium starts at £202.49 it rises substantially over time.
- The evidence shows they have sustained a loss because of the increase in the premiums, contrary to what the ombudsman has said.
- The information from ReAssure shows that it is possible to show what the outcome

from reprice will be and this is also confirmed in the letter from the provider dated 15 January 2022 which states that *“it is likely that the illustration provided will increase in value when repricing occurs and unlikely that it will reduce given policy holders age as previously advised.”*

- The ombudsman gave a list of factors that the provider used when deciding on the premium under the automatic inflation option but only age and the providers experience are taken into account.
- The policy schedule refers to increasing the premium without the need for further medical evidence and the provider’s letter of 15 January 2022 also clarified this.
- Lifesearch had no option but to reduce its commission to reduce the losses payable and they would like the ombudsman to acknowledge there is no benefit to them from this, as they are still paying in excess of what they should be paying.
- It is more than fair and reasonable to say that no one else can represent what he and Mrs J intend, and it is disappointing that they are being constantly questioned on their intention given the option for redress they have offered – namely for Lifesearch to pay monthly on an ongoing basis.
- He and his wife have no intention to take the proactive steps required to stop taking the inflation option each year. It does not seem fair or reasonable to discount this option which they have used each year and will continue to use.
- They invite the ombudsman to consider the fact they are willing to accept Lifesearch paying monthly, directly to the provider if necessary, if there is any question about the intention to keep paying this. This seems the fairest option in the circumstances.
- They have been saving for their children since birth and to date each have savings which will fall outside of their estate if they satisfy the IHT seven-year rule. The savings will only increase over the years.
- They also utilize the full junior savings allowance every year and will do so going forwards which would provide over £133,000 for their daughter and just short of £150,000 for their son, ignoring any investment growth.
- Any further gifting of assets doesn’t immediately remove any IHT liability and more importantly doesn’t meet his or his wife’s wishes given how much they are already putting in savings and also, given their children’s ages, other options cannot be taken up any time soon.
- He and his wife calculated and were fully aware of the cost of the WOL plan including the inflation option and ensured that payment could be made for the whole of their lives from income/investments.
- If they pass further assets down before death, they would be in a position where they couldn’t service the WOL plan from income and this could cause further IHT issues as noted in the report from ML.
- Their Wills and expression of wishes dated October 2018 shows they don’t intend gifting assets until the children reach 25 and then only at a nominal percentage of the value of the estate.
- In short, they want their children to stand on their own two feet before they are provided with significant amounts from the estate. It is something of a family tradition even if others don’t agree with it and it is unfair of anyone to question this given the option provided to Lifesearch – to pay the additional premium amount on an ongoing basis.
- The children don’t require any part of their assets anytime soon given they are already well provided for and this doesn’t include future savings.
- They have considered other IHT options such as gifting further assets - which they don’t want to do because they lose control of the assets and the income from those assets - and Business Property Relief (BPR) – which would require significant investment to impact IHT and is riskier than they would want. They are also aware of the different types of trust arrangements available. However, as already mentioned they don’t want to lose control of their assets and wouldn’t want their children to have

- a large part of their estate before a certain age.
- The ombudsman's view that their estate will continue to grow is welcomed and the figures that have been provided are conservative.
- The ombudsman is invited to disregard the expert evidence Lifesearch relies upon regarding the automatic inflation option given the information he has now provided which shows that they will continue to suffer a loss under that option.
- If Lifesearch and/or the ombudsman is unwilling to award redress on Lifesearch paying a monthly delta then at the very least on a balance of probabilities the ombudsman should find that he and his wife will continue to exercise the option given their wishes to stay in control of their estate and service the WOL plan through income.

I issued a third provisional decision, the findings from which are set out below

*"Using the same headings as in my second provisional decision my findings are as set out below and are made on a balance of probabilities – what is more likely, than not – based on the available evidence.*

What is the difference between the base premium Mr and Mrs J would have paid if there had been no mistake and what they are paying?

*In my first provisional decision I said the monthly difference on which redress should be calculated is £202.49 being the difference between the base premium they are paying of £804.10 and the figure of £601.61 being the premium they would have paid before the re-price if Lifesearch had taken 50% commission. I maintained that figure in my second provisional decision and have been provided with no further information or evidence that would lead me to change that figure.*

Over what period should Lifesearch be responsible for the additional base premium amount?

*In my first provisional decision I thought that it was more likely than not Mr and Mrs J would keep the plan until death. I explained in my second provisional decision why I wasn't minded to change this finding and have been provided with no information or evidence that would lead me to change this now.*

*I did however find that it would be reasonable to use more up to date mortality tables and think that in calculating mortality the PA.16 Tables should be used with CMI 2017 Improvements and 1.25% long term rate.*

Should Lifesearch pay anything for the increase to premium under the inflation option?  
*This is the most contentious issue and has been the subject of various reports and evidence in the course of this complaint.*

*I didn't allow anything for this in either my first or second provisional decisions. I wasn't satisfied on the evidence that it was more likely than not that the increase in premium under the inflation option would be more under the plan Mr and Mrs J have than it would be under the plan they would have had just because the plan they have was inception post reprice at a higher initial premium.*

*In my second provisional I pointed to the fact that Mr and Mrs J are not paying commission under the plan they have whereas they would have been paying commission if nothing had gone wrong, and that commission was one of the factors that the provider said could impact the premium payable. I note that Mr J has said that the only factors that impact the increase in premium under the inflation option are age and the experience of*

*the provider. But what I set out were factors the provider had said would impact the premium in answer to one of the questions put to it by the parties.*

*I also made reference to the provider repricing policies around every five years and said that I didn't think it was possible to say what the outcome of any re-price will be on the premium payable for increasing the sum assured under the automatic inflation option. Mr J has now given me figures from the provider for the premiums payable if the automatic inflation option is used year on year for 44 years, from the plan's inception in 2017. The provider has given figures for both the plan Mr and Mrs J should have had, with a starting monthly base premium of £601.61, and the plan they have, with a starting monthly base premium of £804.10.*

*The figures show the increase in premium under the automatic inflation option are more under the plan Mr and Mrs J have than they would have been under the plan they should have had. The provider has calculated the figures on current rates, and these take no account of what might happen on repricing.*

*Mr and Mrs J have applied the automatic increase under the inflation option every year to date. This is obviously a loss that is capable of being calculated based on the figures provided.*

*The difference in the premiums that Mr and Mrs J have paid and what they would have paid amounts to a total of around £1,542. If they stopped using the automatic inflation increase as from now and the sum assured remained at the current amount they would, going forwards, still continue to pay an additional ongoing amount each year - over and above the additional amount they are paying for the base premium - of £653.40. This amount is an ongoing loss that they are entitled to recover.*

*However, it is Mr and Mrs J's case that they are entitled to much more than this on the basis they will continue to increase the sum assured under the automatic inflation option over their lifetimes.*

*Regarding future increases in the premium under the automatic inflation option the provider's figures show the difference between what Mr and Mrs J will pay for increasing the sum assured each year and what they would have paid widens year on year. The total difference over 44 years amounts to £1,219,628.73 based on the provider's figures.*

*However, these figures are based on current increment rates. They don't take account of future repricing, as the letter from the provider to Mr and Mrs J dated 12 January 2022 makes clear. In a further letter to Mr and Mrs J dated 15 January 2022 the provider did state:*

*"We can confirm that it is likely that the illustration provided will increase in value when repricing occurs and unlikely that it will reduce in value given policy holders age as previously advised."*

*The illustration is a reference to the 44 years of pricing information and as such the letter suggests that the figures provided in the illustration will, on repricing, be higher than what are shown. I take this to mean that the figures currently shown for the monthly premium payable if the automatic inflation increase is applied each year will be higher on repricing - for both the plan Mr and Mrs J have and the plan they should have had.*

*I acknowledge that this doesn't mean the difference between the two premiums will be the same as the provider has calculated after it has carried out any future repricing exercise and it could be less than the figures shown. But equally the figures could be higher. In the*

*absence of any better evidence, and given Mr and Mrs J are willing to accept monthly payments to the provider which would deal with any uncertainty, I think in the circumstances of this case it is fair and reasonable to base any redress I award for Mr and Mrs J continuing to use the automatic inflation option into the future on the figures provided.*

*In my previous provisional decisions I said I wasn't satisfied that Mr and Mrs J would simply continue to increase the sum assured under the WOL plan year on year whatever the cost or that they would only want their children to benefit after their deaths. I said I thought it was more likely than not they would want their children to have the benefit of their estate before their deaths and that this also would make sense in terms of IHT mitigation.*

*Mr J has made various points in response to my findings on this issue. He challenges what I have said about he and Mrs J giving away part of their estate to the children before death. He says they want the children to stand on their own two feet and that this is a family tradition and only he and his wife can say what their intentions are.*

*I acknowledge what Mr J has said about their intentions, but I still need to weigh up the evidence and make findings on a balance of probabilities. On one hand they say they want their children, who are both currently very young, to stand on their own two feet. On the other they have told me that they already have savings in place for the children that amount to nearly £500,000 each.*

*This doesn't really suggest that the children are expected to stand on their own two feet such that Mr and Mrs J would choose to retain their entire estate until death rather than take other IHT mitigation steps in due course.*

*Mr and Mrs J have provided copies of their Wills and expression of wishes letters completed in 2018 as further support to their argument that they wouldn't gift large parts of the estate to the children. The Wills don't provide the children with the entirety of Mr J's and Mrs J's estate on their deaths but do provide them with substantial assets on reaching 25 years of age.*

*I am not persuaded that the Wills provide persuasive evidence that Mr and Mrs J wouldn't take other IHT steps in the future. I accept that they wouldn't necessarily do so whilst the children remained minors. I can therefore see them relying on the WOL plan until the children reach adulthood.*

*Given the Wills allow for the children to receive substantial benefits at 25 it seems reasonable to me to find that Mr and Mrs J would be willing to start using other IHT mitigation strategies in line with that such as gifting money or assets to the children either fully or by way of trust. I am not satisfied that it is more likely than not that they would rely just on the plan for IHT mitigation beyond that point given this would require them to pay an ever-increasing amount into the plan over their lifetimes.*

*I accepted in my second provisional decision that it was more likely than not Mr and Mrs J's estate would grow in value and that as such their potential IHT liability would increase over their lifetimes. Given what I have said about it being reasonable to rely on the WOL plan for IHT mitigation whilst the children are minors it follows that there may be a need to increase the sum assured to cover the increase in the value of estate.*

*There is no agreement as to what the estate might increase in value by. The parties have each provided evidence that show very different values arrived at by using*

*different assumptions as to growth. I don't think the assumptions of either party's expert are unreasonable.*

*The evidence of ML on behalf of Lifsearch calculates that the estate could be worth around £8.3 million when the youngest child reaches 25, with a potential IHT liability at that time of around £2,443,000. If Mr and Mrs J continued to use the automatic inflation option they would have a sum assured that would cover this after increasing the sum assured for a further six years. The additional amount they will have paid in premiums above what they would have paid would amount to £25,010 at that point and if they made no further increase to the sum assured they would pay an ongoing additional amount each year of £5,176.68 to keep the sum assured at the same level going forwards from then.*

*Mr and Mrs J's wealth manager provides very different figures for what their estate would be worth at the point the youngest child reaches 25. On its calculations the estate would be worth over £15.7 million with a potential IHT liability at that point of £4,754,900.*

*The figures from the provider show that they would need to continue using the automatic increase option every year until the youngest child was 25 at which point the plan would provide a sum assured that was just short of the projected IHT liability at that point. The additional amount they would have paid in premiums at that point would amount to £138,393 by my calculations. If Mr and Mrs J then kept the sum assured at the same level going forwards they would have to pay an additional amount of £14,783.76 every year from then.*

*As I have said, I don't think either set of assumptions used by the party's experts are unreasonable. In the circumstances I think it is fair and reasonable to use a midway point between the two calculations. I have therefore used a figure of £12 million as the value of the estate at the point the youngest child reaches 25. That would lead to a potential IHT liability of around £3.4 million.*

*The figures from the provider show that Mr and Mrs J would need to use the inflation option each year for the next 13 years to get to that sum assured. This would cost them an additional amount of £44,702.96. To keep the sum assured at that level going forwards it would cost them an ongoing additional yearly amount after 13 years of £6,933.96.*

*Should Lifesearch pay anything under the options to increase the sum assured for other specified reasons?*

*The plan allows for the sum assured to be increased for specific reasons such as when a mortgage or salary increase takes place. Mr and Mrs J have provided a letter from the provider dated 9 February 2022 which provides a quote for increasing the sum assured by £150,000 under those options. The additional premium for this is calculated at £100.79 each month for the plan they have as compared to £65.51 each for the plan they should have had.*

*From the information available Mr and Mrs J did contact the provider previously with a view to increasing the sum assured under the mortgage option. However, the provider asked for evidence that the mortgage had increased, this being one of the criteria for exercising the option. From what I have seen this was then not pursued. I have seen no persuasive evidence that this is something they still intend. Given their financial position there seems no good reason they would need to increase the mortgage on the family home.*

*The other option that the provider referred to was increasing the sum assured due to a salary increase. The amount by which the sum assured could be increased by is the lower*

*of five times the increase in annual basic earned income or £150,000. In other words, the sum assured could be increased by less than £150,000. I have seen no evidence by which I could make a finding that it is more likely than not Mr and Mrs J would increase the sum assured under this provision.*

What discount should be applied because Mr and Mrs J have WOP benefit?

*I said that I accepted Mr and Mrs J's expert's basis for calculating this – namely "CMI IP 06 Income Protection Claim Inception Tables – Occupational Category 1". I have seen no persuasive evidence that would lead me to change my finding on this.*

Have Mr and Mrs J failed to mitigate their loss?

*I have been provided with no argument or evidence that would lead me to change my finding that Mr and Mrs J didn't fail to mitigate their loss because they didn't take out income protection policies instead of the WOP benefit they wanted.*

What discount should be used for accelerated receipt?

*I am still of the view that a discount of 1% is reasonable. Although the lump sum payment is to compensate them for the additional amount they are having to pay for the plan they don't need to use the lump sum for that purpose. They have the financial ability to pay the additional amount from other money they have available. I don't see why they should have to put the lump sum at risk by investing in the circumstances."*



In response to my third provisional decision Mr and Mrs J made the following points:

- They are pleased that I have not changed my finding as to the amount of the increased base premium of £202.49 each month.
- They are pleased that I have agreed the payment for the additional base premium should be until second death.
- It makes a significant difference to the redress if the ombudsman doesn't allow the automatic inflation option for the whole of life as part of the losses.
- It is disappointing that their offer from day one, to accept redress based on a monthly redress which would be the fairest outcome as it would remove all assumptions, has not been adopted.
- Lifesearch's expert (ML) stated that the use of a lifetime trust and some cheaper term assurance could have been a better solution and they want the ombudsman to note that this demonstrates Lifesearch failed to advise him properly.
- In the alternative it demonstrates it didn't understand the policy it sold to him and didn't consider the suitability of the policy and whether an alternative plan could have offered a better solution.
- They want to make clear that their intention was at the outset and remains that they want a policy to provide an inheritance to their beneficiaries.
- In the Barnett Waddingham report of 10 August 2021 it states that one of the reasons for taking out a guaranteed whole of life policy is to provide an inheritance to the beneficiaries.
- In the circumstances it seems unjustifiable to question their intent given this is something they have stated was an objective from the start. In the circumstances they would like the ombudsman to reconsider the use of the WOL policy as a savings plan.
- The ombudsman has referred to substantial savings being intended for the children but these are to assist up to university and allow them to enter the workplace without being in debt, but this is where gifting parts of their estate stops.
- They have enclosed a letter from the provider which confirms that although commission is a factor in this case, it has no benefit.
- So, whilst it may be beneficial to be on 0% commission ordinarily, it makes no difference in their case.
- They would like the ombudsman to acknowledge that the 44 years of data from the provider represents the minimum loss when the automatic inflation option gets applied each year.
- They would like the ombudsman to review the letter from the provider dated 30 May 2022 which confirms that it is likely that on repricing they will pay more in premiums than they would have done pre-reprice.
- They are disappointed that the ombudsman does not find the Wills and legal documents persuasive, especially as they were finalised before the referral to our service.
- If they do not die, then the children will only benefit upon second death and the current mortality tables don't have them passing when the children are 25.
- They are having a third child, so if the ombudsman's view remains the same as in his third provisional decision then they hope he will take the third child age as the age at which they would stop using the inflation option.
- The ombudsman should disregard the projections from ML as to the future value of the estate as the expert report acknowledges that full details weren't available and assumed asset returns have been made without knowing their attitude to risk.
- ML have reduced the property values based on figures from Saville's, but the figures are higher in every part of the country and even more so for London where they have property.
- The same issues apply to the projections for investments made by ML and the

ombudsman is again invited to disregard the figures provided.

- The report of ML said the projections were generous because inflation was low, but the model is now incorrect because of changes in the global economic environment.
- They have provided a letter from the provider dated 22 June 2022, which summarises the impact of them applying to increase the sum assured under the salary option and the effect of the inflation option. It can be seen that this year's inflation option increased the sum assured by 7.84%.
- They have sufficient income and investment income to meet current and ongoing demands of the WOL policy to death.
- They think the conservative growth figures for property is 10% and for investments 9% and cash 1.5%.
- There is a higher probability of taxation charges given they started the policy on a higher rate and this element of the complaint has not been considered to date.
- They would like the ombudsman to award redress for the increase to the sum assured under the salary option which they requested in February 2022 before the third provisional decision.
- They didn't pursue an increase under the mortgage option because the property they were considering had subsidence, but they will be relocating and obtaining further lending given current rates and what can be achieved with investments.
- They would like the ombudsman to make an award for legal costs and expenses given these would not have been incurred but for the actions of Lifesearch.

### **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 have considered everything that Mr and Mrs J have said in response to my third provisional decision.

I have kept to the headings previously used in my provisional decisions as far as possible but I will address a couple of issues Mr and Mrs J have referred to first.

Firstly, they have referred to the report from ML indicating a lifetime trust and some cheaper term assurance being possibly a better option (to the WOL policy). They say this demonstrates that Lifesearch failed to advise them properly. This raises the prospect of the policy being unsuitable.

I referred to the potential suitability issue raised by ML in its report in my second provisional decision. I made the point that Mr and Mrs J had not complained about suitability and that the report didn't go as far as saying the WOL policy was unsuitable – although I did comment that as a life insurance broker I wouldn't have expected Lifesearch to discuss other IHT mitigation strategies.

So it is clear to the parties, I have not investigated the issue of suitability in any depth in this complaint given the advice was not obviously wrong – in that a guaranteed WOL policy is a recognised way of mitigating against a potential IHT liability - and it wasn't raised as an issue in the original complaint. So, any comments I have made about suitability should not be taken as definitive findings on that issue.

Secondly, Mr and Mrs J have referred to a higher probability of taxation charges which has not been addressed previously. I think it's beyond the scope of my decision to make findings on tax charges that may or may not become payable based on the evidence I have been provided with in this complaint.

Turning to the other issues in the complaint my findings are as set out below.

*What is the difference between the base premium Mr and Mrs J would have paid if there had been no mistake and what they are paying?*

I have seen no information that would lead me to change my finding that this should be £202.49 as I have previously found.

*Over what period should Lifesearch be responsible for the additional base premium amount?*

I have been provided with no information or evidence that would lead me to change my previous finding that this should be over Mr and Mrs J's lifetimes and using PA.16 tables with CMI 2017 improvements and 1.25% long term rate.

*Should Lifesearch pay anything for the increase to premium under the inflation option?*

Having previously not allowed anything in my first two provisional decisions I was persuaded in my third provisional decision that I should award something for this based on further evidence from the provider which showed Mr and Mrs J would pay more under the inflation option for the post-reprice policy they have than they would have done for the pre-reprice policy they should have had.

I pointed out that Mr and Mrs J have used the inflation option year on year since the start of the policy and this was therefore capable of calculation. I calculated the amount paid at the time of my third provisional decision was £1,542 and that Mr and Mrs J would pay an additional £653.40 each year - over and above the additional base premium amount. I said that this was an ongoing loss they were entitled to recover even if they didn't exercise the inflation option again. I have seen no information that would lead to me changing that finding save that there has been another increase to the premium under the inflation option since my third provisional decision so the amount payable to date will need to take account of that.

I am still of the view that it is reasonable to find that Mr and Mrs J would continue to increase the sum assured under the inflation option going forward but was not persuaded this would be over their lifetimes as they argued.

The provider's figures for the premium increase both for the pre-reprice policy and the post-reprice policy they do have are based on current rates, as I have previously noted. The evidence indicates that the difference shown would probably be greater after future re-pricing. However, there is no way for me to know at this time what the difference would be on any future re-pricing. So, there is no way for this to be accounted for in the redress awarded. In short, the figures provided by the provider based on current rates are the best available evidence as to what the difference will be.

I also acknowledge that the figures from the provider are based on an increase to the sum assured of 5% whilst the increase this year was above that due to inflation being higher this year. But again, there is no way of calculating what the increase to the sum assured will be by incorporating figures for inflation in the future as there is no way of knowing what inflation will be. The only known figure is the 5% which applies unless inflation is higher. In the circumstances it is fair and reasonable to use that as the basis of any calculation going forward.

This leaves the issue of the period over which Mr and Mrs J would use the inflation option. They still argue this should be based on them using this option for life. However, I am not

persuaded this would be fair or reasonable. There is no way to know with any degree of certainty what Mr and Mrs J may do in the future and I am mindful they argue strongly they would not divest themselves of part of their estate to their children for IHT purposes during their lifetimes.

However, I find it difficult to accept that, they would allow their estate to keep accruing in value over their lifetimes without taking additional IHT mitigation steps, such as gifting part of the estate or putting it in trust for the children. I am not persuaded that simply applying the inflation option and paying what will be an increasing amount by way of premium each year into the WOL policy until they die is likely.

I acknowledge what Mr and Mrs J have said about the WOL policy being intended as savings for the children as well. They have pointed out that the report of BW identifies that providing an inheritance to beneficiaries is one of the reasons people decide to take out a guaranteed WOL policy. But just because it is possible such a policy can be used for that purpose doesn't mean this is the reason Mr and Mrs J took out the WOL policy. Also, taking out a WOL policy at a guaranteed premium is not the same as taking out such a policy and then increasing the premium year on year every year.

I have seen no persuasive evidence the policy was taken out to provide an inheritance to the children and I think it is more likely than not that the policy was taken out to mitigate against potential IHT. I think the argument that the WOL policy is intended as an inheritance isn't really consistent with it being used as the main IHT mitigation strategy given the policy proceeds would be needed to pay the IHT liability rather than be paid to the children as an inheritance.

This leaves the issue over what period Mr and Mrs J would use the inflation option. They argue they would not give significant parts of the estate to the children in their lifetimes. They have said that the current savings they have put aside for the children are to assist with the costs of university and ensure the children enter the workplace without debt. But, putting on one side that the amounts involved seem far in excess of what would be required for this, I am still not persuaded that Mr and Mrs J would elect to keep control of the entirety of their estate until death rather than take further IHT mitigation steps in due course.

Mr and Mrs J have pointed out that their two current children can only benefit under the Wills at 25 if Mr and Mrs J are both dead and that the life expectancy evidence doesn't show they will have died at that time. I acknowledge what they have said and I didn't intend to suggest that I thought the children would inherit under the Wills at 25. My reference to the ages in the Wills was simply to make the point that whilst Mr and Mrs J said they expect the children to stand on their own two feet the Wills indicated a point at which they would be happy for the children to have the benefit of part of the estate.

I accepted in my third provisional decision that Mr and Mrs J might choose not to take other IHT mitigation steps whilst the children are minors but was not persuaded that they wouldn't take such steps when the children became adults. The 25 years referred to in the Wills gave a point at which they might reasonably start doing so given Mr and Mrs J's ages at that time, the extent of their estate and the age of their children and I think it is still reasonable to use this.

I think it gives a reasonable cut off point for when Mr and Mrs J might start taking other IHT mitigation steps such as putting money in trust. I acknowledge Mr and Mrs J are now expecting a third child but that doesn't change my view as to when they might reasonably be expected to take other IHT mitigation steps. In short, I don't think they would push back the time for taking such steps just because they are having another child.

In this regard I would point to the evidence that Mr and Mrs J have provided and on which they rely, as they have put forward their arguments as to what they would do in reliance on this evidence.

Based on their evidence, in 2041 when their second child is 25 Mr and Mrs J's estate would be such that there would already be a shortfall of around £100,000 between their potential IHT liability and the amount payable under the policy. In other words the policy would not provide the cover needed to cater for the full potential IHT liability as at 2041.

In short, Mr and Mrs J would need to start to take further IHT mitigation steps before or around 2041 in any event based on the evidence they rely upon. I don't accept that Mr and Mrs J can reasonably argue that they would in any event increase the sum assured under the policy and pay more by way of premium year on year until death when the policy won't cover the potential IHT liability and the gap between the sum assured and potential IHT liability would widen year on year.

Put another way, the argument they intend to keep on using the inflation option until death isn't consistent with the evidence they have put forward as to what their estate will be worth in future. So, I don't accept that their intention is simply to keep on using the inflation option and paying more and more into the policy rather than looking at other IHT mitigation options including the possibility of gifting to the children or putting part of their estate in trust.

I acknowledge that in my findings I have not used the figures provided by their wealth manager but instead have used a mid-point between the value shown by their evidence and the value shown in the report of ML. The issue I have identified above as to the policy not covering the IHT liability as of 2041 doesn't arise in that case. However, that doesn't change my view that Mr and Mrs J more likely than not would take other IHT mitigation steps in due course rather than keep on using the inflation option under the policy and increasing the sum assured and premium every year.

Mr and Mrs J have said I should disregard the evidence of ML when it comes to the future valuation of their estate and have provided some further information in support of what they have said. However, whilst I have considered what they have said and the information provided I am not persuaded I should change my finding on this. Both sides experts are attempting to project the potential value of the estate many years into the future and I think there is a degree of speculation involved in this on both sides.

In short, I think it is very difficult to say with any degree of certainty what the estate might be worth years from now. In the circumstances I think a midway point between the figures provided by the parties experts is fair and reasonable.

So, I am still of the view that an estate value of £12 million as at 2041 is a reasonable assumption. In my third provisional decision I found that the WOL policy will provide the sum assured to cover the IHT liability for this amount some years before 2041, assuming the inflation option continues to be used year on year.

I acknowledge that linking the value of the estate and sum assured as I have done when they are not linked in time might be questioned given it allows that Mr and Mrs J will increase the sum assured year on year - above what they need to cover the IHT liability in those years - before then stopping use of the inflation option when the sum assured reaches around £3,400 some years before the potential IHT liability would reach that amount.

But I am not satisfied they would keep using the inflation option to 2041 given the increasing costs they would be paying for this each year. To give some idea of those

costs, using the figures the provider has supplied in January 2022, the amount they would have paid at the outset for the pre-reprice policy is £7,219.32 in the first year. At the point the sum assured amounts to £3.4 million, in around 2035, the yearly figure they will be paying would have increased to over £21,000. If they continued using the inflation option until 2041 in that year they would pay £35,493.

I am not satisfied that they would keep on paying increasing amounts into the policy given I think its main purpose was IHT mitigation. I acknowledge that it is possible they will do so. It is also possible they will decide not to keep on increasing the sum assured sooner. Using the point at which the sum assured amounts to £3.4 million is a reasonable compromise in my view.

I cannot see any reasonable basis for thinking that Mr and Mrs J would simply keep throwing money into the WOL policy no matter what the cost. The money they pay into the WOL policy is money lost to the estate. It makes no sense for Mr and Mrs J to pay ever increasing amounts into a WOL policy and reducing the amount in the estate by doing so when there are other alternatives that could provide the IHT mitigation the policy is intended to provide without such cost to the estate.

*What discount should be applied because Mr and Mrs J have WOP benefit?*

I have previously said the discount should be 1% and I have been provided with no further argument or information in relation to this that would lead me to change that finding.

*Should Lifesearch pay anything under the options to increase the sum assured for other specified reasons?*

I note the explanation Mr and Mrs J have provided as to why they didn't go ahead with the increase under the mortgage increase option. Whatever the reason, they didn't pursue this at the time and I have seen no persuasive evidence they would do so in the future. As I noted in my third provisional decision this option required there to have been an increase in the mortgage and there is no persuasive evidence they would increase the mortgage.

I acknowledge that Mr and Mrs J have referred to an intention to purchase a new home and that they would do this by way of mortgage. I accept that might be what they are thinking of doing but whether they will purchase a new home by way of an increased mortgage I think is far from clear. There seems no good reason they would need to increase the mortgage given their financial position even if they buy a larger home at greater cost. I am therefore not satisfied any allowance should be made for them exercising this option.

The other option referred to is the salary increase option. I allowed nothing for this previously, as again I had seen no evidence at the time that it was more likely than not they would exercise the option. However the position has now changed, as Mr and Mrs J have now exercised the salary increase option. It is therefore now unarguable that Lifesearch will have to pay the amount of the premium over and above what would have been paid for this option under the pre-reprice policy.

*Legal and expert costs*

Mr and Mrs J now claim for legal costs, counsel's fees, and expert fees totalling £94,716. Generally we do not allow anything for costs incurred by a party in bring a complaint to our service but there are occasions where it is appropriate to award something because the costs were necessarily incurred.

So far as legal costs and counsel's fees are concerned, I am not persuaded it was necessary for these to be incurred for this complaint to be referred to us or for us to deal with it.

The position with regard to the expert fees and wealth manager fees is different in my view as I don't think I could have reached a fair and reasonable decisions without the benefit of the information they have provided and I don't think it is information that Mr and Mrs J would otherwise have been able to provide to me themselves.

As such I think it is fair and reasonable to allow the costs of the experts and wealth manager which in total have been put forward as amounting to £21,000 subject to Mr and Mrs J providing evidence to Lifesearch they have been charged those fees.

### **Putting things right**

Mr and Mrs J have pointed out that throughout they have been willing to accept Lifesearch paying redress on an ongoing basis rather than as a lump sum and that this would avoid any uncertainty as to the redress.

I acknowledge the point they make but this would potentially tie the parties together, based on their arguments, for around 44 years in circumstances where there would not ordinarily be an ongoing relationship. Furthermore it would involve a third party, the provider, who would have to provide calculations to the parties on an ongoing basis over that period.

In all the circumstances I think it is fair and reasonable that this matter be finalised now by way of a lump sum payment.

### *Past Loss*

The base premium Mr and Mrs J have paid since the start of the plan is £202.49 more each month than they would've paid but for Lifesearch's mistake. In addition, Mr and Mrs J have increased the sum assured each year at an additional cost over and above what would have been payable. Mr and Mrs J have also now exercised the increase to the sum assured under the salary increase option.

Lifesearch should therefore calculate and pay Mr and Mrs J.

- The amount of additional base premium to date.
- The amount of the increase to the base premium under the inflation option over and above what they would have paid for exercising this option under the pre-reprice policy based on the information from the provider.
- Simple interest at 8% simple per year on each additional amount payable from the date of each payment to the date of settlement.
- Expert fees and wealth manager fees of £21,000 subject to proof.

### *Future Loss*

Lifesearch should calculate and pay Mr and Mrs J:

- The amount they will pay over their lifetimes for the base premium using the annual figure of £2,429.88 (£202.49 a month) from the date of settlement
- The amount over and above what they would have paid under the pre-reprice policy over their lifetimes for the salary option they have now exercised.
- The amount over and above what they would have paid under the pre-reprice policy

- for exercising the inflation option until 2035.
- The ongoing additional amount payable for the premium for the policy until death based on the ongoing additional premium amount being fixed at the point the sum assured is £3.4 million.

In calculating future loss Lifesearch should use the mortality tables I have identified and apply the appropriate discount for the WOP benefit being claimed and for accelerated receipt as I have set out above.

#### *Distress and Inconvenience*

I have noted what Mr and Mrs J have said about the award for distress and inconvenience. I still think an award of £500 is reasonable in the circumstances.

#### **My final decision**

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend that Lifesearch Partners Limited pays the balance.

**Determination and award:** I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Lifesearch Partners Limited should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

**Recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Lifesearch Partners Limited pays Mr and Mrs J the balance plus any interest on the balance as set out above. This is a recommendation only and isn't binding so the complainant should consider taking legal advice before accepting my final decision in respect of the amount of redress above £150,000.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J and Mrs S to accept or reject my decision before 9 September 2022.

Philip Gibbons  
**Ombudsman**