

The complaint

Mrs J complains to Sesame Limited (Sesame) she was sold an unsuitable life assurance policy.

What happened

In 2015, Mrs J was contacted by a representative of Sesame to review her life assurance policy. As a result, Mrs J replaced her existing policy at the time with a new policy that increased her sum assured and ran for a longer term with only a minimal increase to her monthly premium.

While reviewing her mortgage in 2021, Mrs J also reviewed her life cover provisions and realised the policy she'd been sold in 2015 was set-up on a 'non-smoker' basis. Mrs J said she'd made it clear at the time of taking out the policy she was a social smoker, so she raised a complaint.

Sesame didn't uphold Mrs J's complaint saying the recommendation of a 'non-smoker' policy was appropriate for her at the time and that she'd signed to say she'd not smoked in the previous 12 months.

Sesame did apologise for the time it had taken them to complete their investigation, paying Mrs J £175 to acknowledge it could have been completed sooner.

Unhappy with Sesame's response, Mrs J asked The Financial Ombudsman Service to investigate her complaint.

One of our Investigators looked into things and thought Sesame were at fault. To put things right she said they should refund Mrs J the difference between the cost of her original policy premium taken out in 2011 and the cost of the 2015 replacement policy – from the point of sale in 2015 until she arranged alternative cover in 2021.

In addition, our Investigator said Sesame should pay interest at 8% simple on that amount up until the date of settlement and pay Mrs J £150 compensation for the distress and inconvenience the matter has caused.

Neither Mrs J nor Sesame agreed with our Investigator's opinion.

Sesame remained of the opinion that by answering 'none at all' to the question regarding her having smoked in the last 12 months or not, this was indicative of Mrs J wanting a 'non-smoker' policy. They also said her occupation and industry experience is relevant in her understanding the consequences of answering the question incorrectly.

Sesame also said the £175 compensation already paid to Mrs J in respect of the trouble and upset caused had been accepted so they didn't agree they needed to pay anything further.

Our Investigator considered Sesame's response but remained persuaded Mrs J made the representative aware she wanted a 'smoker' policy, and it was more likely than not she wouldn't have taken the new policy had it been made clear it was set up based on 'non-smoker' terms. Our Investigator also said the £175 compensation previously paid by Sesame was awarded to recognise poor complaint handling so she remained of the opinion they should pay an additional £150.

Mrs J said to put her back in the same financial position had Sesame's error have not occurred would be for them to cover the difference in premiums between what she was paying and what she's having to pay now, from the point of sale in 2015 until the end of her original 2011 policy's term.

Our Investigator considered Mrs J's comments but said because she was unable to say for sure if the new policy would run for the full term, she wasn't able to ask Sesame to put her back in the exact position Mrs J was asking for. She did however reconsider what she felt was reasonable in terms of redress to put things right and said she thought Sesame, in addition to what she'd previously set out, should pay Mrs J the difference in premiums for 50% of the remaining term.

Whilst Mrs J remained of the opinion the difference in premiums should be covered by Sesame for the full term, she agreed to accept our Investigator's opinion.

However, Sesame remained of the belief a degree of responsibility ought to have been taken by Mrs J in ensuring the cover she had in place met her requirements. As no resolution could be reached this complaint has been passed to me to decide.

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 done so, I've decided to uphold Mrs J's complaint and for much the same reasons as our investigator. I'll explain why.

But first, I'm aware I've summarised this complaint in far less detail than has been provided, and I've done so using my own words. No discourtesy is intended by this. Instead, I've concentrated on what I think are the key issues here. Our rules allow me to do this.

This reflects the nature of our service as an informal alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every detail to be able to reach what I think is the right outcome reasonable in the circumstances of this complaint.

And, where evidence is incomplete, inconclusive or contradictory, I've looked to reach my decision about the merits of this complaint on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and wider circumstances.

It's not in dispute Sesame's representative contacted Mrs J in 2015. I've seen nothing to persuade me Mrs J was proactively looking to review the life cover she had in place prior to being contacted.

While I do consider it reasonable that to Mrs J, enhancing her cover considerably for an increase to her premium of under £5 a month would've been of interest. I'm also persuaded by her testimony and her actions both before and after taking out the policy in 2015 that having the correct cover in place was equally as important to her, if not more, to provide for her family should the worst happen.

The application completed in January 2015 asked the question *"During the last 12 months have you smoked any cigarettes, cigars, a pipe or used nicotine replacements?"* and was answered *"none at all"*.

Mrs J has explained she'd not smoked in the 12 months prior to taking out the policy as her and her partner had been trying to conceive, was pregnant and had then recently given birth.

But Mrs J says despite this, she made it clear to the advisor she remained and always would remain a social smoker and it was important for her policy to reflect this so there would be no risk of complications should a claim need to be made.

Mrs J's testimony has been consistent throughout, and I think reinforced by her having taken out a policy on 'smoker' terms in 2011 prior to Sesame's representative contacting her, and by her taking out a replacement 'smoker' policy in 2021 in an attempt to put the right cover back in place soon after discovering the 2015 policy had been set up on 'non-smoker' terms.

I've looked at the fact find from 2015 which appears to have been completed the day after the policy application, and not by the advisor that Mrs J spoke to. It's clearly inconsistent to the application itself as it records her as having smoked in the 12 months prior as 'yes'.

I've not been able to listen to the call from the time the policy was taken out and I don't consider the fact-find completed to be reliable. Because of this, I've had to look at what information is available to me and take a balanced approach as to what I think is most likely to have happened at the time.

And for the reasons I've explained above, I've placed more weight on the testimony provided by Mrs J.

While I have taken into consideration Sesame's belief Mrs J ought to have taken a degree of responsibility having accepted the policy, it remains that she received advice from an expert in the field and I'm satisfied it's reasonable she relied on the advisor giving her the policy she asked for.

Sesame says the advisor posed the questions accurately and Mrs J's answers were recorded accurately. They also say the recommendation of the 'non-smoker' policy was appropriate for her at the time it was recommended. But I don't agree.

I acknowledge Sesame's belief there was a responsibility for Mrs J to ensure she had the right cover. But as I've said, Sesame's representative was the expert here and whilst I understand the specific question may have been answered accurately, it was the responsibility of the advisor to ensure the policy met Mrs J's needs.

If the application did not provide an option to answer that she'd not smoked in the last 12 months, but remained a social smoker so required a policy on those terms, then I would've expected to see the adviser recommend her not to amend her cover and retain the policy she had in place. Had he done, I'm satisfied Mrs J wouldn't have gone ahead and taken out the policy in 2015.

In summary, I'm persuaded Mrs J wanted a policy on a 'smokers' terms and this wasn't what she was provided. Because of this and for the reasons I've explained above I've decided Sesame need to put things right.

To ensure she had the correct cover back in place Mrs J took out a new policy in 2021 at a higher premium to her original policy. She cancelled the 2015 policy at the same time.

So, Sesame should pay Mrs J the difference between her 2011 policy premium and the premiums she's paid since to date plus 8% interest.

I've also thought about Mrs J's policy going forward. Mrs J's original 2011 policy was set up to run for 32 years until 2043. While I'm persuaded this cover remains important to her and she has no plans to cancel it, I can't say for sure her current policy will run until the end of the original term. This is because Mrs J's circumstances may change, or the worst could happen, and the policy could come to a natural end.

Because of this I'm not of the opinion Sesame should pay Mrs J the difference in premiums until 2043. But I also don't think it's fair nor reasonable Mrs J covers the difference in full either. So, I've decided Sesame should pay Mrs J the difference in premiums for half of the remaining original policy term. Redress isn't always an exact science and considering all the circumstances of this case, I'm satisfied this is a fair and reasonable resolution.

I've also listened to the call Sesame's representative made to Mrs J after the issue came to light in 2021. Whilst it's clear the call, stated as 'off the record' shouldn't have been made, it was disclosed to Mrs J that there was possibly an option to reinstate her policy on 'smoker' terms and due to the circumstances of the sale, for the representative to cover any gap in backdated premiums.

This call was closely followed by Sesame's final response letter in which they didn't uphold her complaint. I can understand why having felt like the representative had admitted an error had occurred, for then to be told nothing had gone wrong, it must've caused Mrs J a great deal of distress and inconvenience in addition to finding out she had the wrong cover in place in the first instance.

Sesame paid Mrs J £175. But as our Investigator explained this was to recognise, they could've completed their investigation sooner. I'm satisfied Sesame should also pay Mrs J compensation and I think £150 is fair and reasonable taking into consideration all the circumstances of this case.

Putting things right

To resolve this complaint, Sesame should:

- refund Mrs J the difference in premiums paid, between her 2011 policy premium (£21.88) and her 2015 policy premium (£26.88) from the inception of the 2015 policy until it's cancellation.
- refund Mrs J the difference in premiums paid, between her 2011 policy premium (£21.88) and her 2021 policy premium prior to any indexation (£55.16) from the date her 2015 policy was cancelled to the date of settlement.
- to the above amounts Sesame should add 8% simple interest from the date's premiums were paid until the date of settlement.
- if Sesame considers that they're required by HM Revenue & Customs to take off income tax from any interest due to Mrs S, they should tell her how much they've taken off. They should also give Mrs S a certificate showing this if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.
- pay Mrs J the difference between her 2011 policy premium (£21.88) and her 2021 policy premium prior to any indexation (£55.16) to cover 50% of the time between the date of settlement and the original policy term end date in 2043. As Mrs J has not yet had to pay these premiums, Sesame isn't required to add interest to this amount.
- pay Mrs J £150 compensation for the distress and inconvenience caused.

My final decision

I uphold this complaint and require Sesame Limited to put things right by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 24 February 2023.

Sean Pyke-Milne
Ombudsman