DRN-3784240

The complaint

Mr M complains that Parallel Financial Limited failed to set up critical illness and income protection insurance policies in 2015.

Mr M is being represented by his partner – Ms T – but for ease I'll refer to Mr M throughout my decision.

What happened

Both sides are aware of the background to this complaint, so I won't repeat that here. But in summary Mr M has complained that Parallel failed to set up an income protection and a critical illness policy (with different insurers) for him in 2015. Sadly, in 2019 he needed a quadruple-bypass heart operation. He asked Parallel to help with his claim, which Parallel agreed to and said it had contacted the alleged insurer. But it was then confirmed that no such policy was ever put in place. A complaint was raised and Parallel made an offer of £25,000.

Mr M didn't accept the offer. He wants the total claim for his critical illness policy to be paid with compensation including legal fees of £4,200. So, he brought his complaint to the Financial Ombudsman.

The Investigator felt the complaint should be upheld and that Parallel was responsible for Mr M not having critical illness cover in place. He said that there was evidence to indicate that, had Mr M completed an application for critical illness cover on the terms Parallel recommended in 2015 (which would've offered a sum assured of £3,500 paid each month for the remainder of the term, with the policy running until Mr M reached the age of 65), the insurer would've been prepared to offer the cover at its normal prices. So, it's most likely Mr M would've been in a position to make a successful claim after his heart operation in 2019, and the claim value would've exceeded the £25,000 offer.

The Investigator said Parallel should contact the insurer to see:

- whether a claim would've been payable and if it would've been then Parallel should meet the full value of any claim with interest;
- what date the claim likely would've been accepted, assuming it had been brought and handled reasonably promptly;
- how much Mr M would've received in total to the end of the policy term;
- how much Mr M would've paid in premiums prior to a claim being accepted, assuming the policy had been in place from October 2015 and assuming a claim had been paid reasonably promptly as above. These could be deducted from the total claim amount.

Parallel didn't agree and asked for the complaint to be referred to an Ombudsman. It said it provided advice to Mr M in relation to an income protection and critical illness policy in 2014 that would last up to five years. But this wasn't taken up by Mr M, which shows he has a history or not proceeding with policies. And if he had proceeded with the 2014 policies, he wouldn't have needed to return in 2015 for further advice.

Parallel added that in relation to the 2015 policies that weren't set up, and which forms the basis of this complaint, it received a completed application for a critical illness policy with a monthly benefit of £3,500 per month and extending the term of the critical illness cover to Mr M's 65th birthday. But its advisor did seek further information from Mr M in order to proceed.

Parallel said a call was arranged but this was cancelled by Mr M and the advisor couldn't submit the application without this outstanding information. So, the policy wasn't put in place and Mr M was most likely aware of this position in 2015 despite the annual statements from Parallel saying otherwise. Parallel thinks it was Mr M's own actions that led to the policy not being set up.

I considered the complaint and told both sides I was minded to uphold it. I said I was minded to say that Parallel should pay Mr M the full amount he would've expected to receive from a critical illness claim with the insurer (once the insurer confirmed it likely would've accepted a claim) minus the premiums he would've paid, with 8% simple interest and £1,500 in compensation.

This service contacted the insurer who said it likely would've accepted a claim for Mr M in the circumstances.

Mr M accepted the decision and said the total amount he would've expected to receive was £182,000 minus £9,000.20 in premiums.

Parallel responded to say that this service doesn't have the authority to ask it to pay any more than £160,000 for this complaint. So, it made that offer to Mr M as a gesture of goodwill saying it wasn't prepared to admit liability here.

Mr M hasn't accepted Parallel's latest offer and has asked for an Ombudsman's 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.

Having done so, I'm going to uphold this complaint.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

Mr M has said that according to his records he was expecting a call with Parallel in 2015 and that the call didn't happen but that he didn't cancel it. And that Parallel had sent him various documents since 2015 which showed the policy had been set up.

Parallel said a call was arranged with Mr M but this was cancelled by him. And the advisor couldn't submit the application without the outstanding information he wanted to discuss with Mr M. So, the policy wasn't put in place and Mr M was most likely aware of this position in 2015. Parallel thinks it was Mr M's own actions that led to the policy not being set up.

I note the 2014 policies didn't proceed at Mr M's wishes. But I don't consider it fair for Parallel to blame Mr M for not having cover in place because he didn't want the 2014 policies. Mr M said the proposed terms in 2014 weren't acceptable to him. This is supported by Parallel's own comments and evidence that a conversation took place in 2015 to improve the terms of the previous policies that were discussed. And I'm satisfied he returned and spoke to Parallel again in 2015, in order to arrange improved terms. I think this shows that Mr M did want the critical illness policy, he later tried to claim on, in 2015. He completed the application form and submitted it to Parallel. And there was an e-mail from Mr M's partner (dated 28 September 2015) which told Parallel to go ahead on the improved terms.

Parallel questions whether Mr M wanted the later policy and again references the fact the 2014 policies weren't set up and that it sent an e-mail to him asking for further information. But I've seen the e-mail that was sent to Mr M on 27 October 2015 by Parallel which asked to have a conversation with him. It says the following;

"I sent your Declaration of Health to the insurer last week and I'm just waiting to hear from underwriters. I have also now received the…Data Capture Forms which you kindly signed and returned. There are some sections on these Forms that I require your input on and in this respect I wondered if you had 10-15 minutes to speak with me this week?"

Parallel says Mr M cancelled this call. Mr M disputes this saying he had a diary entry for the call but there was no further communication between the two. Mr M says this led him to believe nothing further was needed.

Parallel has then provided a copy of a letter it sent to the insurer for the income protection policy, dated 30 October 2015, which says that policy is no longer wanted. But there are no letters to confirm the critical illness policy was no longer wanted. And I note in an internal e-mail at Parallel that the insurer had underwritten Mr M already for the critical illness policy but a quote Parallel had obtained for an income protection policy was only valid until 28 October 2015.

From reading the above e-mail – dated 27 October 2015- I don't think it's sufficiently clear that if Mr M didn't have a conversation with Parallel about the critical illness policy then the application wouldn't be submitted. In fact, it confirms the Declaration of Health had been submitted and Parallel was waiting to hear back from the underwriters. I don't think this is persuasive evidence that shows an application wouldn't be submitted if a call didn't take place. I think it's more likely here that for all Mr M knew, Parallel wanted to have a generic conversation with him and get some further input. The e-mail says Parallel was waiting to hear from the underwriters, but Mr M wasn't told what that response from the underwriters was and there is no further documented communication after this point apart from the annual statements and reviews (that I'll move on to below). So, I don't think it was unreasonable for him to assume there wasn't an issue with the critical illness policy at that point in time.

Parallel said it's not up to it to chase its clients to see if they want protection policies. Again, I don't find this very persuasive, given all the circumstances here, because Parallel has sent annual statements to Mr M saying the policy was put in place. Parallel might not consider itself obligated to chase clients to see if they want to proceed with a policy, but it does have to send accurate and clear communication which isn't misleading.

As the Investigator pointed out, the statements provide detailed information about an income protection policy and a critical illness policy. They list individual policy numbers and start dates of 13 November 2015 (around two weeks after the request to have a chat with Mr M from Parallel). Again, it wouldn't be unreasonable for Mr M to assume his policies had been set up upon receiving this and there was nothing further for him to do. Otherwise, why would

he receive policy numbers and a confirmed start date after he provided a completed application form to his advisor. The policies were then listed on his annual statements from February 2016 every year until 2019.

There was also a letter from January 2017 following a review of Mr M's investments and protection which took place at his home. This mentions Mr M's existing protection policies, and that it was recommended they be put in a flexible discretionary trust to mitigate potential future inheritance tax. This adds further weight to the point that Mr M would've considered his policies had been set up. And that Parallel thought the same if a conversation and recommendation took place in relation to the policies.

Parallel says Mr M should've been alerted to the fact that no premiums were taken for his policies and that as a sophisticated businessman, it's more likely than not he would've been aware there was no cover in place. But I don't find this very persuasive. Mr M went to Parallel for financial advice. So, I don't think it was unreasonable for him to assume that the policies had been put in place, given the correspondence he received from regulated financial advisors, saying they had been set up. It's clear Mr M trusted the advice and service he received here, and I don't find that to be unreasonable in all the circumstances.

Parallel has confirmed to this service that the policies were falsely displayed on the annual review packs and shared with Mr M. And that although his plans weren't in force, it was also led to believe they were by its employee. It therefore inadvertently led Mr M to believe the same. I don't think I need to delve too deeply into why the employee took the action they did. But I think the fact the employee decided to hide the fact the policies hadn't been set up from both Parallel and Mr M is more persuasive evidence - on balance - that they were important to Mr M. Otherwise it wouldn't have been necessary to mislead both Parallel and Mr M.

And I don't think it would be right for Parallel not to take responsibility for the employee who decided to take that course of action. Ultimately, it was that course of action that led to Mr M thinking that he had the required and wanted cover in place. And I note there appear to have been fabricated conversations between the same employee and Mr M and his partner where it was relayed to them that the employee was in discussions with the insurer about the claim. With some e-mails stating the insurer was considering rejecting the, what appears to be, fictional claim.

I note from the e-mails that the income protection policy needed to be confirmed by 28 October 2015. As both parties confirm no conversation took place that day, I think it's likely the information needed to progress that policy was always unlikely to be obtained and submitted on time. So, I'm not willing to ask Parallel to make up for the loss of that policy. But the critical illness policy is different. I'm satisfied that cover was wanted, and Parallel's errors meant Mr M was unfairly led to believe this policy was active. So, I think the fairest thing to do would be for Parallel to pay compensation to the value of a successful critical illness claim under the policy that should've started in 2015.

Parallel has suggested that if this service still thinks the complaint should be upheld then a reduction to the redress should be made due to Mr M's own actions and any loss should be capped at the difference in cover between the 2014 policy and the 2015 policy given the 2014 policy would've been in place and Mr M would've been able to benefit from this had he responded with a start date back in 2014. And a reduction should be made to any award suggested because of Mr M's own negligence in not speaking to Parallel in 2015 and then not responding accordingly.

After considering Parallel's recommendation, I disagree that Mr M should've his redress reduced. And I find Parallel's reasoning to be unfair. I don't consider the 2014 policy not going ahead to be a reasonable point. I'm satisfied that nothing went ahead in 2014 because

it wasn't suitable for Mr M – hence the reason he returned and discussed different terms which has been confirmed by Parallel. And the bar for me making a finding that Mr M has been negligent is high and one that Parallel has not met, based upon my reasons for upholding this complaint. But to be clear, I can understand why a reasonable person would've considered this policy had been put in place. So, I've found no reason to reduce Mr M's redress here.

Putting things right

The insurer of the critical illness policy has confirmed that a coronary artery bypass was covered under the policy. So, if Mr M's medical evidence supported that, and it isn't disputed that he suffered a heart attack and had a quadruple bypass, then it likely would've settled the claim. It's also worth noting that as a part of this service's investigation the insurer has also had sight of Mr M's medical circumstances in order to confirm whether or not it would've likely offered a policy in 2015. So, the insurer's responses satisfy me that its more than likely Mr M would've been able to successfully claim under the policy.

Parallel has said that it won't pay more than the award limit of £160,000. It says that only judgment interest can be awarded in addition to the maximum award limit of £160,000. And that any interest added to the total award limit is directed at compensating Mr M. But Parallel says the 8% interest is part of the money award and should therefore be subject to the limit. Parallel has also raised the case of Bunney v Burns Anderson plc which it says remains authority for the fact that the Financial Ombudsman has no jurisdiction or power to make a money award in excess of the statutory cap.

In this case, the complaint event occurred before 1 April 2019 (when Mr M thought the policy had been set up) and the complaint was referred to us after 1 April 2020 but before 1 April 2022 (it was referred to us in November 2020), so the applicable compensation limit would be £160,000. So, where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I consider appropriate. Here, I can tell Parallel to add 8% simple interest per year, to the total award limit of £160,000, from the date the claim should've been paid to the date of settlement. But if I think that fair compensation is more than £160,000, I may recommend that Parallel pays the balance.

Mr M was diagnosed in January 2019 and had his surgery in February 2019. Upon a successful claim, the benefit would've become payable from the date of diagnosis to the date of Mr M's 65th birthday in May 2023. The benefit under the policy would've been £42,000 per year or £3,500 per month. In total Mr M would've been able to claim £182,000 from the policy.

The premium cost was going to be £204.55. I think it would be fair to say that a claim would've most likely taken up to six weeks to consider and accept. Mr M told Parallel about the claim in May 2019. Six weeks from that date would be July 2019. So, I think July 2019 would be a reasonable time to say that Mr M would've stopped paying premiums towards this policy. Mr M would've paid a total of £9,000.20 in premiums from November 2015 to July 2019.

The £160,000 compensation for this complaint is less than what Mr M would've expected to receive from the critical illness policy – (£182,000), minus the premiums (£9,000.20) which comes to £172,999.80.

Parallel has raised an issue with me awarding 8% simple interest per year from the date the claim should reasonably have been paid to the date of settlement.

My power to award interest derives from s229(8) of the *Financial Services and Markets Act 2000* which provides:

> ***"S229(8)** A money award—*
>
> *(a)may provide for the amount payable under the award to bear interest at a rate and as from a date specified in the award; and…"*

This power is replicated in DISP3.7.8R.

The DISP rules further provide at DISP3.7.5G:

> *"For the purpose of calculating the maximum money award, the following are excluded:*
>
> *(1) any interest awarded on the amount payable under a money award."*

I'm satisfied that these provisions give me the power to award interest on the money award, as well as the discretion to determine the rate at which it must be paid and the date from which it is payable.

The discretion to award interest enables me to fairly compensate Mr M for being deprived of the claim money from the date it should've been paid to the date the money award is finally settled. I believe it to be fair and reasonable to award interest on that basis. I think that being deprived of that money has come at a cost to Mr M – he is a private individual for whom the deprivation of money might have resulted in borrowing costs and/or lost opportunities to invest or use the money for his benefit. It's fair that he should be compensated for that loss during the time he should've had use of it, and I consider our broad-brush rate of 8% simple to be a fair measure of that loss. I'm satisfied that it's that cost that the interest award in s229(8) of FSMA is designed to redress.

My award here asks Parallel to pay the claim (the money award) and compensate with interest (the interest award) for the time in which Mr M should've had use of the claim money (had a policy been set up and the claim paid). This is in line with the established approach of the Financial Ombudsman Service. It's also in line with the approach in the courts, where pre-judgment interest can be awarded *on top of* damages.

To be clear, in this case the money award comprises the value of the claim that should've reasonably been paid to Mr M (£160K) around July 2019. The pre-determination interest I'm awarding is the interest award that's paid on top of that sum from the date the claim should've been paid. This interest is not taken into account when applying the money limit (DISP3.7.5G). There is a further interest award that is payable if Parallel fails to settle this claim in time (post-determination interest). The money award and the interest awards are distinct from each other, as is recognised in our rules at DISP3.7.1R, which provides:

> ***DISP 3.7.1R***
>
> *Where a complaint is determined in favour of the complainant, the Ombudsman's determination may include one or more of the following:*
>
> *(1) a money award against the respondent;* ***or***
>
> *(2) an interest award against the respondent;* …[my emphasis]

Parallel says it's only the post-determination interest (interest owing for late payment) that is excluded when applying the money limit. But this is not what the guidance in DISP3.7.5G says. That provision makes it plain that *any interest awarded* should not be taken into account in the application of the money limit – and that must therefore include both the pre-determination and post-determination interest I have awarded.

Parallel has also raised the court case of Bunney v Burns Anderson Plc. But I don't agree that case means I'm unable to award interest on the money award here. In Bunney the court concluded that, on reading all the statutory provisions as a whole, the Ombudsman's power to make a direction cannot be used to circumvent the monetary cap. The court didn't direct its mind to the application of the money limit to an award of interest. In my view, I'm not using a direction to circumvent the money limit. As I've set out above, I have the clear power to award pre-determination interest on the money award, and the provisions in DISP make it plain that that interest doesn't form part of the money award itself. So, I don't believe the case Parallel has raised supports its argument here.

To be clear I consider that Parallel should pay Mr M £1,500 for the distress and inconvenience this issue has caused at a time where he has already suffered from a serious medical condition and surgery. I've also considered the fact that when Mr M thought he was making a claim he was told about fabricated conversations with the insurer. Finding that out, on top of the fact no policy existed, at such a difficult time would've caused considerable distress. But as the award cap is set at £160,000, my award cannot include this. However, I recommend Parallel make this payment when reaching a fair decision about its handling of the complaint.

I'm not awarding Mr M any compensation for the legal fees he has claimed as it was his decision to seek that legal advice at the time.

Decision and award – I uphold the complaint. I think that fair compensation should be calculated as follows £172,999.80 plus 8% simple interest per year and £1,500 for the distress and inconvenience Mr M has suffered. My decision is that Parallel Financial Limited should pay Mr M the amount produced by that calculation – up to a maximum of £160,000 and add 8% simple interest per year to this amount from the date the claim should've been paid to the date of settlement.

Recommendation: As the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Parallel Financial Limited pays Mr M the difference between the two calculations. The interest award is not to be taken into account when applying the money limit of £160K.

This recommendation is not part of my determination or award. Parallel Financial Limited doesn't have to do what I recommend. It's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to get independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Parallel Financial Limited to pay compensation to Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 November 2022.

Mark Dobson
Ombudsman