DRN-4100069

The complaint

Mr J complains that a PruProtect plan was mis-sold to him by a financial advisor acting as an approved representative for Sesame Limited. To keep things simple for this decision, I'll use "Sesame" to mean them and their approved representative.

What happened

Mr J raised his complaint after a new adviser reviewed his plan. He realised it provided serious illness cover, rather than the critical illness cover Sesame had recommended. And Mr J felt more should have been done to highlight some of the options the plan offered around cover levels and how claims would affect what cover remained. He also complained that the income protection part of the plan wasn't index linked, even though Sesame had recommended it should be.

In response to the complaint, Sesame said they felt the plan sold to Mr J was appropriate to meet his needs. They felt serious illness cover was another term for critical illness cover, achieving the same thing for Mr J – a payment if he developed a covered condition.

Sesame also felt it was reasonable their recommendation letter hadn't discussed the difference between cover levels. They felt it was for Mr J to have reviewed the full plan details he was given and raise any issues or questions about extra options at the time.

Unsatisfied with this response, Mr J came to us. Sesame questioned whether the complaint met our time limits. But I can see another ombudsman has explained that it does.

I made a provisional decision in March explaining why I intended to uphold Mr J's complaint. I felt Sesame's suitability letter hadn't explained why "primary" level cover was chosen over "comprehensive". I said this didn't appear to affect the complaint around critical illness cover, but did impact on the income protection Mr J took out.

To put things right, I put forward that Sesame should pay £1,000 compensation to Mr J. But I didn't direct any other steps to put right financial losses that might arise.

I also contacted the plan provider about the income protection not being indexed linked. They responded indicating that it should have been, but there'd been a technical error. I had our investigator pass the details we received on to Mr J, as they showed that part of the complaint didn't sit against Sesame.

Sesame replied saying they didn't feel any payment to acknowledge distress or inconvenience was justified in this case. They again felt Mr J could have raised an issue at the time, if he wasn't happy with what he'd been sold.

Mr J also wasn't happy with the remedy I put forward, feeling it didn't go far enough to put right what he sees as financial losses. He said he'd have taken comprehensive serious illness cover if he'd understood what it allowed him to claim for. And he said he'd have increased his income protection cover to its maximum, each time the opportunity to do so arose. He also felt having comprehensive income protection would have meant he had to have comprehensive serious illness cover.

The issue with the index linking of the income protection part of the plan seems to be accepted as an error by the plan provider, not Sesame. So I'm not going to mention it again in this decision. I've considered the comments from both sides, and I'm now able to make a final decision for this case.

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, my decision hasn't changed from last time. So I'm going to repeat the key details. But I'll add to what I wrote last time to show how I've considered the latest comments from both side when making my decision.

Part of Mr J's initial complaint was that he felt a critical illness policy would have covered more conditions than a serious illness policy would have. But looking at his plan, it appears to cover at least as many conditions as a typical critical illness cover policy would. Its chief difference is that it provides partial payments for less severe stages of the conditions that are covered. A critical illness policy would typically only make one payment, in line with the most severe levels of illness.

As I wrote last time, that leads me to conclude there isn't a detriment to Mr J from having this serious illness policy instead of the critical illness one Sesame recommended.

Mr J's latest comments point to the fact he has a "primary" level policy. This differs to a "comprehensive" policy, in that it begins paying a benefit at lower severity levels. Mr J believes he's had an illness that would have qualified for a payment at the lowest severity level. He regards the payment he wasn't able to claim as a financial loss.

I can see Sesame failed to highlight this part of the plan to Mr J, or to explain in their recommendation letter why the primary level was chosen. Either option could have suited Mr J's circumstances, though there'd likely have been a difference in the cost of the plan.

Looking at the plan details, the primary level of cover is closest to a critical illness policy. It would pay out only for the most severe levels of illness. As I've noted above, a critical illness policy would typically only make one payment, in line with the most severe levels of illness.

And the loss Mr J has referred to isn't a certainty in this case. From reading the plan's terms – particularly section "A" that explains the "plan account", and the flowcharts in appendix three – if Mr J's condition develops to the higher severity levels – or if he dies – he may receive as much as he would have received if he'd had comprehensive cover. The difference will be he'll get fewer – but larger – payments.

It's true other options of the plan could affect that. But I feel there's too much scope for hindsight to influence any speculation now about what would have been chosen, had Sesame fully explained how flexible this plan seems to be.

So I come back to Sesame's initial recommendation being for life and critical illness cover, not serious illness cover. That sort of protection wasn't unsuitable for Mr J. It would provide financial support for him and his family, if the worst happened. The recommendation didn't hold out that this plan would pay interim amounts, or pay on less critical levels of illness. And Mr J was happy to accept that recommendation at the time.

That, together with the absence of a confirmed loss, and the fact primary cover is the closer match to the critical illness cover recommended, satisfies me no specific remedy is needed for Sesame's failings in explaining exactly what illness-cover product had been sold to Mr J.

The income protection part of the plan also had an option over cover level. Despite what Mr J has suggested, that doesn't seem to be affected by the choice of cover level for serious illness. That seems to be specifically confirmed in section "A2" of the plan terms.

In their recommendation letter Sesame said the following when summarising the features of the income protection cover:

> "The plan has a guaranteed insurability option so that you are able to increase it in the future as your earnings increase. This means that you can increase the amount of benefit without underwriting in the event of increased earnings."

Looking at the plan provisions, this isn't the case. For both primary and comprehensive levels of cover, Mr J could use the guaranteed insurability option if his salary increased due to specific events – a promotion or a change in job. But Mr J's work is such that his salary could simply increase due to his gaining experience and expertise. He wouldn't be promoted or change his job, but could expect his charging rate to increase over time.

The primary level of cover doesn't offer Mr J an opportunity to adjust the amount of income protected if that happens. But the comprehensive level of cover would let Mr J adjust things every third plan anniversary. That seems much more suitable for his job, and more in keeping with how Sesame's recommendation letter said the plan would work.

So I find Sesame overstated Mr J's ability to change the level of income protection when selling him this plan. If they'd more accurately explained how it worked, it seems likely Mr J would have seen the comprehensive level of income protection as better suited to his needs.

With my last decision, I was able to share details of what Mr J's plan would now cover if the provider had correctly applied index linking. I asked Mr J to consider whether that meets his needs. Mr J has responded indicating it wouldn't, and he would have chosen to increase his cover level at the earliest opportunity he could, and by the maximum amount available.

While I appreciate this may match with Mr J's level of earnings, I'm not entirely convinced that's how things would have been, if Sesame had provided a more reasonable level of service. I say this because it's a little at odds with what Mr J actually did.

I can't see he looked to increase his level of income protection cover for about 12 years after Sesame sold him this plan. He seems not to have even noticed that the index linking wasn't being applied, even though Sesame had said it would be.

That tells me Mr J wasn't of a mind to review and change his income protection in the way he now says he would have. I find it more likely he'd have left the cover at the level it was until his earnings were significantly different to his level of cover.

With that said, comprehensive cover would still have allowed him to change his cover in a way he now can't. Mr J's subsequent health makes getting a top up policy too expensive, or possibly not an option.

He'll instead likely need to invest against the possibility of losing his income – rather than insuring against it. I can see he's got a significant income, so to some extent that'll make saving and investing a little less of a burden than it could be for some. But it's an inconvenience that Mr J could have avoided if Sesame had fully considered the suitability of the comprehensive level of income protection cover.

Again though, whether there's going to be a financial loss here is uncertain. If Mr J has to make a claim against the plan, he may receive less than he would have done if he'd had a comprehensive plan and chosen at some point to increase its sum assured. But if he never makes a claim against the plan, he gains by not having spent as much on the premiums.

In his complaint to Sesame, Mr J wanted a six-figure payment to compensate him for the possible loss here. But given it's possible there won't be a loss, and given Mr J can act to mitigate some of the impact by saving and investing his money, I'm not going to agree with the loss claim he's raised.

Instead, I've decided to direct compensation for the inconvenience and the upset caused for Mr J by Sesame's failings when selling him this plan.

How much is a matter of opinion. But I've factored in that this plan was meant to provide reassurance for Mr J about his family's finances. And that Mr J's circumstances make it difficult and expensive to now try to change his plan.

I've decided £1,000 compensation suitably balances the distress of this situation with the fact there are parts of Mr J's complaint that I haven't upheld. Some of his upset comes from not having a critical illness policy, but his serious illness cover seems just as beneficial. And part of his upset stems from possible losses Mr J feels he'll incur, rather than actual losses that have been incurred.

My final decision

I've decided to uphold part of Mr J's complaint about Sesame Limited. To acknowledge the emotional impact on Mr J, I direct Sesame pay him £1,000 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 15 June 2023.

Paul Mellor
Ombudsman