

The complaint

Mr T complains that Magus Private Wealth Limited failed to give him appropriate advice regarding his protection insurance cover.

What happened

In 2013, Mr T took out income protection cover on Magus's advice. This was taken out on a 'working tasks' incapacity definition, due to Mr T's working hours at the time.

Several years later, Mr T was sadly diagnosed with cancer. He didn't meet the requirements for a claim to be paid under his income protection cover, and thought Magus ought to have changed his cover to 'own occupation' after he had changed jobs in 2016. He also thought Magus ought to have recommended critical illness cover. He brought a complaint to this service on that basis, and cancelled his income protection cover.

Magus told this service it hadn't been aware that Mr T's working hours had reduced in 2016, and it didn't think critical illness was a priority for Mr T (or affordable). However, based on information that had come to light about Mr T's occupation when the policy was taken out, Magus thought he wouldn't have been offered any income protection cover if the insurer had known about this. It therefore offered to refund the premiums paid, which came to £23,163.12.

Our investigator recommended the complaint be upheld. He thought Magus had been aware of Mr T's occupation when the policy was sold, and that Magus should return the premiums paid, as it had already offered to do. However, he didn't think the evidence after 2016 supported that Magus was aware Mr T had reduced his working hours. The investigator didn't think Magus had acted unreasonably by not recommending that Mr T take out critical illness cover.

Mr T did not accept our investigator's findings, and so the matter has been passed to me for a 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.

Income protection – was the policy mis-sold?

When Mr T applied for the income protection policy in 2013, he answered on his application form that he had no intention of leaving the UK, apart from going on holiday. However, Mr T worked abroad for around a week every month in a conflict zone. Magus thinks it's unlikely Mr T could have obtained income protection cover at the time if the insurer had known about his occupation. I would agree with this.

Although Magus says it wasn't aware that Mr T regularly worked in a conflict zone when the policy was taken out, I agree with our investigator that it's more likely than not that Magus

was aware of this. I've seen email correspondence sent between Magus and Mr T's wife in October 2013 where they were discussing some exclusions added by the insurer. Mrs T made it clear her husband worked in a conflict zone, and Magus didn't query this.

I therefore find that the policy was mis-sold, as Magus should not have recommended income protection cover to Mr T, given his occupation. If a claim had been made, it's highly unlikely this would have been accepted by the insurer.

Mr T changed jobs in 2016, and no longer worked in a conflict zone at that time. If he'd made a claim after this, it's unlikely this would have been turned down by the insurer due to his occupation. Though the insurer may well have voided the policy from the start, due to misrepresentation about Mr T's occupation when the policy was taken out. So I think the fairest outcome would be for Magus to refund all the premiums paid for the policy, as it has already offered to do. Though I also require Magus to pay interest on this.

Income protection – should Magus have changed the cover to 'own occupation' at a later review

Magus initially recommended that Mr T take out 'own occupation' cover in 2013. This would pay benefit if he couldn't work in his occupation due to illness or injury. However, the insurer wouldn't offer him this level of cover, and instead offered him 'working tasks' cover. This would pay benefit if Mr T couldn't do certain tasks due to illness or injury. The reason the insurer wouldn't offer Mr T own occupation cover was because he worked 60 hours per week.

Mr T's representative has explained to this service that Mr T was only working 60 hours a week when he was abroad (for around a week per month). Though the application form completed by Mr T does say he worked 60 hours a week on average, with no mention of this only being one week a month.

Magus made Mr T aware of the reason why the insurer wouldn't offer him own occupation cover. Magus was of the view that other insurers would likely take the same position, which I think was a reasonable assumption. Mr T was happy to go ahead with the income protection cover with a working tasks incapacity definition.

Mr T started a new role in 2016. He had a review with Magus in November 2016. The notes from this meeting state that Mr T had started in the new role with the same salary as previously, and the job *'takes up a great deal of time and attention'*. The meeting notes stated that Mr T and his wife had sufficient protection in place, including income protection for Mr T.

Magus says that, although Mr T was in a new role at this time, it understood that he continued to work similar hours to his previous role, as well as abroad. I can't be sure that Mr T's working hours were discussed. However, we do know Mr T had said that his new role took up a great deal of time and attention, which would appear to support Magus's recollections. Based on this, it seems Mr T's existing cover remained appropriate for him at this time.

Magus had an annual review meeting with Mr T and his wife in May 2018, and this focused on cash flow. It was noted that Mr T was looking to secure another role.

In September 2018, Mr T's wife contacted Magus as Mr T had received renewal documents for his insurance policies. She queried whether Mr T needed to have the cover in place, including income protection. She made the point that they were all set up when Mr T was in a previous role which had no employee benefits. Mr T then confirmed that he was about to

contract a HR company to go through the employment contracts, and would '*throw everything into the mix*'. I assume from this that Mr T intended to arrange for the HR company to look at employee benefits too.

Magus responded to Mr T and his wife and recommended that Mr T hold onto the policies for the moment, until things were organised with his new company, to see if they would set up employee benefits. It said it would review them then.

In October 2018, Mr T spoke with Magus about his life cover options, to see if the premiums could be reduced.

In June 2019, Mr T met with Magus, but a full review didn't take place. The meeting notes say that Mr T and his wife's financial forecast was reviewed, as well as their ongoing concerns about the levels of cash they were needing from their investments and pension. I see that Magus had agreed to contact the insurer of Mr T's income protection cover and life cover to investigate reducing the level of premium.

A later review in 2020 said that Magus had previously reviewed Mr T and his wife's family and life cover and there was no need for any changes at that stage. It didn't mention Mr T's income protection cover.

Given that Mr T had changed jobs again in 2018, I think it would have been prudent for Magus to check that his existing income protection cover remained appropriate for him. However, it's also the case that Magus intended to review Mr T's cover once he knew more about his employee benefits through his company. I haven't seen any correspondence to suggest that Mr T or his wife got in touch with Magus again about this.

I don't know what Mr T's working hours were in his new role. If they were less than 60 hours per week, then he may well have been able to take out income protection cover on an own occupation basis. Though I note that Mr T and his wife were trying to reduce their outgoings (including insurance premiums) in 2018 and 2019. Income protection with an own occupation incapacity definition is the most comprehensive cover available, and would have likely been more expensive than what Mr T was paying for the working tasks definition. So he may not have wanted or been able to afford the more expensive cover, even if this had been an option.

Should Magus have recommended that Mr T take out critical illness cover?

Mr T and his wife owned a number of mortgaged properties (some of which were rented out) and so he did have large liabilities. Critical illness cover could have therefore provided a valuable benefit to Mr T. Though it's also the case that one or more of these properties could be sold if needed.

I understand that Mr T did have critical illness cover in place, and this lapsed in 2010. The insurer was asked to reinstate the cover in 2011, but refused to do so because of where Mr T travelled for work (as the policy included total and permanent disability cover).

I've read an email chain between Mr T and Magus in 2012. I understand Mr T was leaving his employment and would therefore lose his employee benefits. Magus gave Mr T some quotes for life insurance, as well as combined life and critical illness cover (where the premium was over £1,000 per month). Mr T asked Magus to arrange life cover only. This suggests that either critical illness cover wasn't a priority for him, or the amount of cover he would need to cover his liabilities was unaffordable.

It's also the case that, given Mr T worked in a conflict zone in 2013, it's unlikely he could have taken out critical illness cover. For the same reason that the insurer refused to reinstate his previous cover in 2011.

After Mr T changed jobs in 2016, Magus recorded that based on Mr T and his wife's circumstances at that time, they would be able to meet their regular expenses in 2017, but would have a shortfall from 2018 onwards. A discussion took place about selling one of their properties in 2018. It therefore seems unlikely that Mr T would have been able to afford the cost of critical illness to cover his liabilities at this time.

Mr T's representative makes the point that the working tasks definition of incapacity under the income protection cover was restrictive, and says Magus ought to have instead recommended that Mr T use that premium for critical illness cover.

I agree that the working tasks definition is far more restrictive than own occupation cover. Though Magus did explain to Mr T exactly what criteria he would need to meet in order to make a successful claim under the income protection policy. Mr T was happy to go ahead with the working tasks incapacity definition. It's also the case that critical illness cover is restrictive. It's only with the benefit of hindsight that we know Mr T likely could have made a successful claim under a critical illness policy.

I've already concluded that Magus mis-sold the income protection policy to Mr T in 2013. But as I've said, I think it's unlikely Mr T could have obtained critical illness at this time either. He may have been able to take it out after 2016 once he'd changed jobs, but I think affordability would have been an issue after this. Arguably he could have taken out some critical illness cover as an alternative to the working tasks income protection cover, but this wasn't recorded in any of the meeting notes as a priority for him.

On balance, I don't think Magus did anything wrong by not recommending that Mr T take out critical illness cover.

My final decision

My final decision is that I uphold this complaint. I require Magus Private Wealth Limited to refund Mr T the premiums paid for his income protection cover. Interest should be added to this at the rate of 8% simple per annum, from the date each premium was paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 20 June 2023.

Chantelle Hurn-Ryan
Ombudsman