

The complaint

Ms A complains that Legal and General Assurance Society Limited (L&G) mis-sold a level term assurance policy to her.

What happened

In 1999 Ms A met with an adviser who worked for Edward James Financial Services, who was an appointed representative of L&G at that time. She was sold a level term assurance policy (LTA) which provided both life and critical illness cover (CIC) and it began towards the beginning of 2000. The premium was £30.35 per month, the term was 25 years, with a sum assured £141,200. It also included waiver of premium benefit, which had a six-month deferred period and cost £0.67 per month, included in the overall premium.

In 2019 Ms A raised a complaint about the policy, in summary saying that it wasn't appropriate for her, that fees and commission weren't explained or disclosed, and they didn't check it was affordable for her. She added that PPI had been mis-sold. L&G replied and explained no PPI had been sold. However, they upheld the complaint about the LTA policy, as they felt that the life cover element of the policy wasn't suitable for Ms A. They calculated that the life cover cost £4.34 per month and so offered to refund that amount, plus interest at 8% per year.

Ms A rejected the offer and brought her complaint to our service, saying that L&G ought to provide a full refund as they had found the policy to be mis-sold. An investigator at our service found that L&G's offer was fair – he said that there was evidence that the policy was sold to protect a buy-to-let mortgage and generally, having cover in case of a critical illness is not unsuitable protection to have. He had no evidence of whether the mortgage was interest only or repayment basis from L&G or Ms A, so he didn't have a reason to say that a decreasing policy ought to have been sold, rather than a level policy.

Ms A disagreed – she said that there wasn't proof that she asked for, needed, or had to take out the policy, as a whole. She disputed that she'd been advised, as she feels that advice can only be given if it's impartial, and here the adviser was tied just to L&G. She didn't think the policy had been sold to protect a mortgage, especially as L&G had provided no evidence of the mortgage itself. As no agreement could be reached, the case was passed to me for a decision. I issued a provisional decision, and said in summary:

- I was persuaded that Ms A was sold the LTA to protect her buy-to-let mortgages, as there were references to a mortgage in the application form.
- I had found evidence that the mortgages were on a repayment basis, rather than interest only.
- The CIC element of the policy was suitable but ought to have been on a decreasing term basis, to match the type of mortgage sold.
- The waiver of premium benefit was suitable, provided L&G could confirm Ms A was eligible for it.
- I agreed with L&G and the investigator that the life cover element of the policy was unsuitable.

- Regarding affordability, I had minimal evidence of Ms A's income and outgoings from 1999. However, given Ms A had paid for the policy for 20 years, and I was satisfied she knew what the policy was for, I found it to be affordable.
- The fees and commission were clearly explained and would likely have been set out several times in the point-of-sale documents.

To put things right, I said L&G should refund the difference between the policy Ms A had paid for, and one on a decreasing basis, without life cover, plus interest.

Responses to my provisional decision

Ms A disagreed entirely with the findings I'd come to. Broadly, she felt what I'd proposed within my provisional decision was unfair and biased toward L&G.

L&G replied and also rejected my decision. They confirmed that Ms A had stopped paying premiums toward the policy in April 2022. They provided the fact find from the sale of the policy in 1999, and a recommendation letter from a sale of different products in November 2000. They said:

- The 1999 fact find showed that Ms A wanted the level cover as she (or her family) would benefit from the surplus paid over and above the mortgage debt.
- The recommendation letter from November 2000 showed that she wanted life cover at that time to protect any future dependants.

On the basis of this additional evidence, L&G no longer felt the complaint should be upheld and withdrew the offer they originally made.

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'd like to begin by saying that it's very disappointing that L&G has produced this new evidence at such a late stage of our investigation. As we are an informal service, given it's been provided, I can't ignore it and must take it into account. However, having done so, my decision remains the same as set out in my provisional decision - I'll explain why.

From the fact find that's now been provided, I can confirm that the policy was sold to protect Ms A's buy-to-let mortgages. I can also see that the total amount borrowed under the mortgages, and their term, matched the sum assured and term of the policy. I've gone on to set out my findings on each element of the policy, and Ms A's complaint points, separately for clarity.

The life cover

I've carefully considered the 1999 fact find and the comments from November 2000 to decide whether it was suitable for the life cover element of the policy to be included. Having done so, my opinion hasn't changed – I'm not persuaded that the inclusion of life cover in 1999 was suitable. Advice should be given based on a customer's circumstances at the point of sale – not some unknown future point in time. In 1999 Ms A had no dependants. L&G has also said the notes the adviser wrote on the 1999 fact find show Ms A wanted life cover. The notes say:

"Client has just arranged 2 buy to let mortgages via Bank of Scotland with a joint advance of £141,200. Therefore to pay off your mortgage should you die before the end of the mortgage

term. The sum payable on a claim arising is fixed, whereas the outstanding balance of your repayment mortgages should reduce! Any surplus provides additional financial security for your family. Also there is a good possibility that you will change the "buy to let portfolio" and level term assurance best suits this need."

Although those comments are written under the heading of "Your priorities" I'm satisfied they are a reflection of the adviser's recommendation – not a reflection of Ms A's thoughts on the type of cover she wanted. There's no evidence of Ms A being aware of the different options in terms of price of the policy with or without life cover so that she could make an informed choice. Nor is there specific family mentioned or any reason recorded as to why they wouldn't want to sell these buy-to-let properties, or wouldn't be able to continue the mortgage payments, if Ms A were to pass away during the mortgage term. So, I don't think the brief second sentence in the above quote is enough to show that the inclusion of life cover was suitable for Ms A.

This is further supported by the contradictory information within the fact find about having level rather than decreasing cover. When asked about needs *other than* for mortgage protection in 1999, Ms A answered that she 'never' wanted to talk about life cover. So, the fact the adviser noted it was a priority for her to have level rather than decreasing life cover doesn't make sense, when read alongside the rest of the fact find.

If she had wanted to talk about life cover for family protection purposes, I would have expected the adviser to consider that specific objective separately, which they didn't here. Given the adviser's notes contradict the clear answers Ms A had previously given, I think it's more likely that the notes are a reflection of the adviser's recommendations.

I note the adviser mentioned potential changes in Ms A's buy-to-let portfolio, but again merely because there may be an unspecified future need for more (or less) cover, is not a good reason to sell a policy that was unsuitable at that point in time. So, I'm still persuaded the life cover element of this policy was unsuitable.

The critical illness cover

In general, it's not unsuitable for anyone taking out a large debt such as a mortgage, to protect it with CIC. If they are then diagnosed with one of the illnesses covered by the policy, the debt can be paid off and they wouldn't need to worry about being able to continue paying that debt – especially if they aren't able to work due to that illness. I note the properties were buy-to-let, so Ms A might argue that the mortgage would continue to be paid when they are occupied. However, in the event she was critically ill, she may not be able to continue her employment – so may need to rely on the income from the properties for living costs. So, there would still be a benefit to having this protection.

I appreciate Ms A feels strongly that because part of the policy was unsuitable, that the whole amount she's paid ought to be refunded. However, I don't consider that to be a fair approach. My aim is to put Ms A back in the position she'd be in now, had she not been given unsuitable advice. If that had happened, I'm satisfied she'd still have been sold a policy providing CIC. So, I don't think the whole premium ought to be refunded simply because the life cover part of the policy was unsuitable.

L&G's arguments haven't changed my findings that Ms A ought to have been sold a decreasing policy rather than a level one. As I've set out above, Ms A was asked in 1999 if she wanted to discuss protection other than for mortgages. As well as saying 'never' in reply to life assurance, she also said 'never' in reply to critical illness cover and income protection. This is clear evidence of Ms A not having a desire for protection beyond that for the mortgages. So, I find the adviser's recommendation for have a surplus to provide for family

protection to be unsuitable and unnecessary. I'm satisfied that Ms A should have been sold a decreasing policy and not a level policy.

I've set below how L&G should go about putting this right.

Waiver of premium benefit

If Ms A had been unable to work during the term of the policy due to incapacitation, she could have claimed on this part of the policy. L&G would then have waived the premiums for the policy, for the time Ms A was not able to work. It had a six-month deferral period – which means Ms A would need to be unable to work for six months before L&G would begin to waive any premiums. The six-month deferral period is commonly chosen because many employers pay sick pay for the first six months employees are off work – so this benefit would start after the employer's sick pay ends.

A description of this benefit is given in the application form for the policy, and it includes that the benefit would be paid, provided the insured isn't "*following any other gainful employment*". L&G have confirmed that the income Ms A received from the buy-to-let properties wouldn't have prevented a successful claim on this element of the policy – so she was eligible for this protection.

As she would have been able to benefit from this, had she needed to, I'm satisfied this part of the policy was suitable for Ms A. This is for similar reasons to why critical illness cover isn't unsuitable generally – it's a helpful protection element for people to have in case of illness. This benefit is usually payable in more circumstances than CIC, as it doesn't appear to be restricted to just certain illnesses – merely incapacity to work.

Was the policy affordable?

Ms A has mentioned that the adviser didn't make sure the policy was affordable, and she remembers missing premiums for the policy at certain times over the last 23 years. However, L&G has confirmed that none were missed.

Now that I have the fact find from 1999, I can see that after an approximate expenditure calculation was completed, Ms A had £1,500 disposable income per month. Although the expenditure details that the adviser recorded weren't particularly detailed, I'm satisfied the amount of disposable income provides for a sufficient margin for error.

Ms A has said nothing specific in her reply to my provisional decision regarding this point. So, especially given the further evidence I now have, I don't think it would be fair to say the adviser sold a policy to Ms A that they knew would have been unaffordable.

Were the fees and commission clearly explained?

The only paperwork I have from the sale is the fact find, the application form, the illustration, and an acceptance letter from L&G to Ms A dated 17 January 2000. I'm persuaded the fees and commission were clearly explained to Ms A in the illustration. It's likely that they were also set out in any product documents she would have received in 1999/2000, like the policy schedule, key features and the terms and conditions, as that information is commonly found in those documents.

Ms A hasn't provided any specific comments about this in reply to my provisional decision. Having reconsidered the evidence, I see no reason to change my findings on this point. So, I don't uphold Ms A's complaint point about the way the fees and commission were explained.

Putting things right

L&G has confirmed that a decreasing CIC policy, with waiver of premium benefit, would have cost £25.14, which is £5.21 per month less than Ms A has paid.

L&G should refund that difference. Simple interest at the rate of 8% per year should be added to the difference from the date each premium was paid to the date of settlement.

If L&G considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms A how much it's taken off. It should also give Ms A a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold the complaint. My final decision is that Legal and General Assurance Society Limited should pay Ms A the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms A to accept or reject my decision before 17 August 2023.

Katie Haywood
Ombudsman