

The complaint

Mrs K complains that Openwork Limited trading as Owl Financial mis-sold her a personal accident insurance policy.

Mrs K's husband, Mr K, has brought this complaint on her behalf but I've referred only to Mrs K throughout this provisional decision.

What happened

In March 2018, Openwork sold Mrs K two units of 'MultiProtect' insurance cover. The policy was sold during a meeting, on an advised basis.

The insurance cost £16 per month and Mrs K says she was told the units she bought would cover accidents, hospital stays, funeral costs and some serious illnesses such as Hepatitis B and Hepatitis C. Mrs K says she cancelled an existing personal accident policy which had been taken out in 2013 and cost £7.99 per month, because of the higher level of protection offered by the 'MultiProtect' insurance at double the cost.

Unfortunately, Mrs K was subsequently diagnosed with both Hepatitis B and Hepatitis C. The insurer who provides the 'MultiProtect' policy said Mrs K wouldn't be covered for these diagnoses as she hadn't bought extra, optional units of cover from Openwork.

Mrs K complained to Openwork, who said its adviser would usually have recommended the most comprehensive level of cover available, but that Mrs K didn't have a sufficient budget to purchase this when the policy was bought in 2018. Openwork said it could find no evidence to suggest the policy had been mis-sold to Mrs K.

Unhappy, Mrs K brought the matter to the attention of our service. One of our investigators looked into what had happened and said she thought Openwork had complied with industry rules when selling the policy to Mrs K. Mrs K didn't agree with our investigator's opinion, so the complaint was referred to me.

I made my provisional decision about Mrs K's complaint earlier this month. In it, I said:

'I'm really sorry to hear about Mrs K's illnesses, and that she is going through such a difficult time.'

Openwork is a separate and distinct business to the insurer who provides the benefits under this policy. Openwork is regulated by the Financial Conduct Authority in its own right and wasn't acting as an agent of the insurer when selling this policy. So, the insurer isn't responsible for anything Openwork – as an independent broker - did. When making my provisional decision about this complaint, I can only comment on the regulated activities which Openwork is responsible for – and that is the sale of this policy. If Mrs K wishes to pursue a complaint about the clarity of the welcome pack she was sent or about the decision to decline her claim, then this would need to be addressed in a separate complaint against the insurer. If Mrs K wants our service to look into a complaint about the insurer, she should let our investigator know when responding to this provisional decision.

This policy was sold on an advised basis. This means the principles set out in relevant industry rules (the Financial Conduct Authority's 'Insurance: Conduct of Business Sourcebook') apply. Under these rules, Openwork needed to make sure this insurance policy was suitable for Mrs K and met her demands and needs at the time – this included taking into account the level of cover recommended, and its cost. Openwork also needed to provide Mrs K with information about the policy that was clear, fair and not misleading so she could make an informed choice about whether to buy it.

I have no way of knowing for certain exactly what was said during the meeting when this policy was sold. So, I must base my decision on the available evidence to decide on the balance of probabilities, what I think is more likely than not to have happened in the circumstances.

Was the policy suitable for Mrs K?

Openwork says a recommendation letter was sent to Mrs K on 13 March 2018, following the meeting in which the policy was sold.

I've seen a copy of the recommendation letter. This lists Mrs K's priorities as follows:

- Priority 1 – provide a lump sum in the event of an accident*
- Priority 2 – provide for dependents in the event of death*
- Priority 3 – provide for funeral expenses in the event of death*
- Priority 4 – protect income in the event of long term sickness*
- Priority 5 – provide a lump sum in the event of serious ill health*

The recommendation letter says that two units of 'MultiProtect' cover were recommended to Mrs K to address Priority 1, but that Priorities 2 – 5 inclusive could not be met due to insufficient budget, although a need was identified and a potential shortfall in protection would therefore exist.

This recommendation letter was based on a fact-find completed by Openwork which set out Mrs K's monthly net income as £1,000, her total monthly outgoings as £400 and her net monthly surplus as £600. Mrs K says her and Mr K's joint annual income was, at that time, in the region of £37,000 to over £50,000. But, even accepting that Mrs K's total monthly surplus was the lower amount stated in the fact-find, I don't think the recommendations Openwork made were suitable for her demands and needs at the time.

Mrs K had a clearly identified need to protect Priorities 4 and 5. Additional healthcare cover – providing cover for certain specified illnesses – would only have cost Mrs K an additional £1 per unit per month (£17 per month instead of £16 per month).

I understand the recommendation letter says that Mrs K was prepared to allocate a monthly budget of £16 to the insurance. Mrs K says this wasn't the case, and that she was simply told what the cost would be for two units of cover. But, regardless of which party set £16 as a budget, there's no indication from the documentation that Openwork ever explored or discussed Mrs K extending her cover to fully protect her demands and needs for what I think would have been a very minimal additional cost.

I understand Openwork says its adviser would have had nothing to gain by failing to sell additional benefits to Mrs K. However, I see no reason why Mrs K would have cancelled an existing personal accident insurance costing half the price if she had known the two units she was sold didn't offer a more comprehensive level of cover.

So, I don't think Openwork's recommendations that Mrs K didn't have sufficient budget to protect her demands and needs in full were suitable, or fair and reasonable in the circumstances.

Was Mrs K given information about the policy that was clear, fair and not misleading?

Mrs K has, I think, been consistent and plausible in her testimony that she didn't receive a copy of the recommendation letter from Openwork.

Openwork hasn't been able to provide any evidence, such as a screenshot from its internal systems, showing that this recommendation letter was sent. While Openwork has provided evidence demonstrating that a fact-find was uploaded onto its internal systems, there is no record of any suitability report or other additional documents being uploaded. So, based on all the available evidence, I'm not satisfied that it's more likely than not that the recommendation letter was sent to Mrs K.

So, I also don't think Openreach gave Mrs K enough information about the policy to allow her to make an informed choice about whether to buy it.

It isn't in dispute that Mrs K received a welcome pack from the insurer, but the content of the welcome pack doesn't correct what I think were failings in the sales process by Openwork. And I'm satisfied from Mrs K's testimony that she placed more weight on the information she was given at the time the policy was sold than on the content of any policy documentation.

What should Openwork do to put things right?

As I think Openwork mis-sold Mrs K this policy, it needs to put her back into the position which I think she would have been if the error had never happened.

I'm satisfied that, were it not for Openwork's failings, Mrs K would still have bought the basic two units of the policy. And, Mrs K would have been able to benefit from the policy if she'd needed to make a claim which was covered under these two units. So, I don't think the policy as sold was of no use to her. This means it wouldn't be fair or reasonable to ask Openreach to refund the premiums which Mrs K has paid for this cover since 2018.

However, I'm also satisfied that, were it not for Openwork's failings, that Mrs K would also have bought additional units of cover. But this doesn't mean it would be fair and reasonable to require Openwork to pay compensation to what a successful claim for Hepatitis B and/or Hepatitis C might have amounted to. I say this because there's no guarantee that a claim for these illnesses would have been successful under any additional units purchased, as the healthcare cover only covers illnesses which are contracted after the policy start date.

Having said that, I'm satisfied that Mrs K has experienced distress and inconvenience at a level which I think is substantial because of how this policy was sold. And, I think Mrs K has also experienced a loss of expectation, because of Openwork's actions, when she came to make a claim. I therefore intend to direct Openwork to pay Mrs K £1,000 compensation for the impact of this matter on her.

As a final point, Mrs K has queried whether funeral benefit is provided under the policy she holds. Mrs K's policy schedule says that she does hold this cover but she may wish to contact the insurer to confirm this.'

Openwork didn't accept my provisional decision and provided evidence showing that the recommendation letter was sent to Mrs K by email on 13 March 2018.

Mrs K asked that I reconsider my compensation award to take account of her medical situation and to reflect the fact that she has lost £20,000 worth of cover.

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 accept that Openwork has now evidenced that the recommendation letter was sent to Mrs K, but this doesn't change my findings that Openwork's recommendations were not suitable for Mrs K and didn't meet her demands and needs at the time.

For the reason set out in my provisional decision, I can't fairly conclude that a claim for Mrs K's medical conditions is likely to have been successful under any additional units of cover. So, it wouldn't be reasonable to direct Openwork to pay compensation to the value of what a claim payment would have amounted to. I've taken all of Mrs K's circumstances into account when making the compensation award. I don't doubt the seriousness of her illnesses or the effect which these have had on her life. But, having taken into account our published guidance on the payment of compensation for distress and inconvenience, I'm satisfied that an award of £1,000 is fair for the impact of Openwork's actions on Mrs K.

Putting things right

Openwork Limited trading as Owl Financial must put things right by paying Mrs K £1,000 compensation for the distress and inconvenience she experienced.

Openwork Limited trading as Owl Financial must pay the compensation within 28 days of the date on which we tell it Mrs K accepts my final decision. If it pays later than this it must also pay interest on the compensation from the deadline date for settlement to the date of payment at 8% a year simple.

My final decision

I'm upholding Mrs K's complaint against Openwork Limited trading as Owl Financial and I direct it to put things right in the way I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 22 September 2023.

Leah Nagle
Ombudsman