

The complaint

Mr and Mrs A have complained about the life assurance policies they took out through Kerland Pitman Ltd ('Kerland Pitman') when taking out a new interest only mortgage.

What happened

In 2005 Mr and Mrs A took out an interest only mortgage. Mr and Mrs A were informed they both needed life insurance which they took out upon the advice of Kerland Pitman. In 2022 they discovered one of the policies – for Mr A – was set up with a decreasing sum assured rather than them both being level term assurance policies.

Mr and Mrs A had paid a lot of money over 17 years for the policies – a monthly premium of £208.30 for Mr A's policy – which in the event of his death wouldn't have covered the mortgage. Mr A was the main income earner, and the knowledge that the policy wouldn't have paid off the mortgage in the event of his death caused them considerable stress. They complained to Kerland Pitman.

Mr and Mrs A didn't receive a reply, so they brought their complaint to the Financial Ombudsman Service. Our investigator who considered the complaint thought it should be upheld. He said;

- There was little information available from the time of the sale and Kerland Pitman hadn't engaged with the investigator, but he didn't think the correct level of cover had been provided.
- To put the matter right Kerland Pitman should provide a like for like quote on what a level term policy would have cost Mr and Mrs A over the time the policy was active. If the level term policy would have cost less, the difference should be refunded to Mr and Mrs A plus 8% interest per year.
- Mr and Mrs A should also be paid £300 for the stress and worry they have been caused.

Kerland Pitman replied to say it no longer carried out this type of business and all of its files have been shredded. But it did say it didn't agree with the complaint that was made.

Mr and Mrs A would have been given a key features document and a quote at the point of sale and this would have been explained to them.

As the issued couldn't be resolved, it was passed to me to decide. I was thinking of coming to a different conclusion that the investigator and wanted to allow the parties to provide anything further they wanted me to consider so issued my provisional decision. Here's what I said;

'I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.'

As there is little available evidence, I've based my decision on what Mr and Mrs A have told us about the time of the sale, normal industry practice and on the balance of probabilities of what I think more likely happened.

Mr and Mrs A say they were told they needed to have life insurance in place to obtain a mortgage and they were advised to purchase two separate policies, insuring the life of the other spouse for the interest only mortgage. It would be normal for both borrowers to be sold life assurance policies that would repay all or a specific proportion of the mortgage on death, and for the amount of life cover to remain the same throughout the term.

I've seen copies of both of the life assurance policies. The plan providing life assurance for Mrs A was set up with a life cover benefit of £356,600 on a level basis costing £40.51 each month.

The life assurance plan for Mr A would provide life cover starting at £356,600 on a decreasing basis at a monthly cost of £208.30. This type of policy pays out less as time goes on. Mr A was a smoker and four years older than Mrs A.

Kerland Pitman has said that Mr and Mrs A would have been given a key features document and the policies explained to them at the point of sale. But it hasn't advanced any suggestion or reasoning for Mr and Mrs A being sold different policies when they have told us they wanted the same.

I've considered the impact of Mr and Mrs A having two different types of policy. I've done this because on the face of it, Mr and Mrs A should have had the same level term assurance as this was the most suitable vehicle for paying off the mortgage for the surviving borrower in the event of the death of the other spouse. And it doesn't seem unreasonable to assume that the policy cover they wanted would provide for this requirement, be that as two policies that mirrored each other or a joint policy.

If Mrs A had died during the mortgage term, Mr A, as the surviving borrower, would have been able to have paid the mortgage in full because a level term assurance policy was taken for her. But if Mr A were to have died – and depending on when this was during the term of the mortgage – Mrs A wouldn't have been able to pay off the mortgage in full. This suggests that Mr A's policy wasn't right for them and not what they told us they wanted to achieve.

Because of this, and bearing in mind the limited information I do have, I've gone on to consider the possibilities of how it came about that Mr and Mrs A were sold different policies. Either by Mr and Mrs A choosing the two different type of policy, and not remembering, or whether the Mr A's policy was in fact mis-sold to them. And I've further gone on to consider the impact this has had on them.

As referred to above, the premiums paid by Mr and Mrs A for their respective policies were markedly different – £40.51 for Mrs A's life assured compared to £208.30 for Mr A.

The crucial difference is that Mr A was a smoker and was four years older than his wife. Decreasing term life insurance is usually cheaper than level term assurance because the death benefit decreases each year. This is because with each decrease, the life insurance provider is exposed to a lower risk as a lower death benefit would be payable if the life assured were to die.

So, bearing in mind the significant difference in the cost of the two policies and the

inevitability that the level term life assurance for Mr A would have been considerably higher again – because of his personal circumstances and term assurance being more expensive – I am of the opinion that it is more likely Mr and Mrs A chose the cheaper option because either they couldn't afford the significant additional premium amount or just weren't willing to pay it.

There was another option open to Mr and Mrs A and that was taking a joint term assurance policy. These tend to be more affordable than two separate identical policies and can be helpful if one of the spouses is more expensive to insure, because they are a smoker as an example, and which applies in this case for Mr A. A joint policy would only pay out the chosen amount of cover if and when the first person was to die during the length of the policy.

That being said, looking at what is known, there would be no reason for the adviser to have sold Mr and Mrs A a decreasing term assurance policy rather than a level term assurance policy unless there were affordability issues. And I think it's clear that Mr A was considered an impaired life – because he was a smoker and four years older than Mrs A – and so the cost of insuring him would have been high.

So, on the balance of probabilities, and based on the limited information, I do think it is most likely the adviser sold Mrs and Mrs A full cover for Mrs A because it was cheap, and the best type of cover they could afford for Mr A.

Because of this, I don't intend on upholding Mr and Mrs A's complaint about the mis-sale of the life assurance policy for Mr A.

That being said, the end date for both policies was after 17 years – the same as the mortgage term – and ended in December 2022 for Mr A's policy. Clearly during the term of the mortgage Mrs A didn't need to make a claim on the policy. So, Mr and Mrs A haven't suffered any detriment as that potential detriment would have only crystallised in the event of Mr A's death and Mrs A having to make a claim on the policy.

So, taking this into account, Mr and Mrs A haven't suffered any loss. They both needed to take a life assurance policy, which they both did, albeit with different policies. But over the 17-year term of the policy they have actually benefitted as they haven't incurred the significantly higher premiums they would have had to pay for level term assurance for Mr A that they would have otherwise had to pay if that type of policy – either jointly or solely – had been taken.

I've reached the provisional conclusion that I have on the presumption that the correct policy would have been level term assurance for Mr A. But in Mr A's case the decreasing term policy was chosen by them because of an affordability in them paying the increased premiums for a level term policy.

But the outcome is that Mr and Mrs A have actually benefitted over the term as they have been paying lower monthly premiums than they would otherwise have done. They needed life assurance, which they obtained, but paid lower premiums than they would otherwise have done – so they haven't suffered a financial loss.'

I concluded by saying that I thought Mr and Mrs A chose the policies they did because of their affordability and Mr A costing a significant higher amount to cover than Mrs A and so I didn't intend on upholding the complaint.

In response Mr and Mrs A say they didn't agree with the decision but weren't in the position to find further information to support their claim. But while they were lucky they hadn't needed to claim on the policy, it left an 'aftertaste' and they had not confidence in the system.

Kerland Pitman didn't respond to my provision 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.

I've thought about Mr and Mrs A's comments that they aren't in the position to find further information to support their claim. But bearing in mind how long ago the sale was, and the limited information and evidence provided by either party so far, it is difficult to see what additional information Mr and Mrs A could provide at this stage.

That being said, as neither party has given me anything further for me to consider in response to my provisional decision, I see no reason to depart from my provisional decision. So, I confirm those findings and I don't uphold Mr and Mrs A's complaint.

My final decision

For the reasons given above, I don't uphold Mr and Mrs A's complaint about Kerland Pitman Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 19 April 2024.

Catherine Langley
Ombudsman