

The complaint

Mrs M is unhappy that Mortgage Connect (N.I) Limited mis-sold her an income protection policy ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my 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.

Mortgage Connect recommended the policy to Mrs M. So, it had a regulatory obligation to ensure that the policy was suitable for her needs. It also had to provide her with clear, fair and not misleading information about the key features of the policy.

In its final response letter dated May 2023, Mortgage Connect accepts that its advisor made an error on Mrs M's application form. This resulted in Mrs M being sold a policy which wasn't suitable for her.

That's because when she subsequently sought to make a claim on the policy, it was declined by the insurer due to a question having been answered incorrectly. The insurer said if it had been answered accurately, it wouldn't have offered the policy to Mrs M. The insurer cancelled the policy and refunded the premiums paid for the policy to Mrs M.

Mortgage Connect offered Mrs M £1,500 compensation for the impact of its error. However, it said that it's unlikely that the condition which its advisor had failed to disclose on the application form (anxiety) would've been covered by another insurer. It subsequently followed this up with an increased offer of £4,000, which Mrs M didn't think was fair.

The crux of the issue I have to therefore decide is whether £4,000 compensation is fair and reasonable to put things right for Mrs M. For the reasons set out below I don't think it is.

- Even though Mrs M had experienced anxiety in the past, and had attended several counselling sessions, Mortgage Connect hasn't provided any evidence to support that there weren't other income protection policies available with other insurers.
- Although all insurers have different underwriting guidance and different attitudes towards risk, in my experience, declaring anxiety wouldn't necessarily preclude all insurers offering an income protection insurance policy. In my experience it's more likely that this condition or anything related to it would be excluded from cover. I'll refer to this as "the exclusion".
- So, based on what I've seen to date, I think Mortgage Connect most likely would've been able to source another income protection policy for Mrs M had it accurately completed her application based on the information she provided to it. And in the

absence of any information to the contrary, I think it's fair and reasonable to assume that the alternative policy would've also had a waiting period of a week, a similar monthly cost and a similar monthly benefit comparable with the policy she ended up with at the time (albeit probably with the exclusion).

- I'm satisfied from the medical evidence that Mrs M broke her elbow in April 2023 following a fall and underwent surgery around a week later. As a result, she says that she wasn't able to carry out any work in her capacity as a beautician.
- Mrs M says that she'd initially hoped to be able to return to work after around three months. However, she says the healing process has taken a lot longer than anticipated due to the nature of the break. Not only did she break her elbow, but she also says the bone that broke "ended up popping out"; it was a very rare break which she's been told "will forever give me bother".
- Mrs M's GP has provided a letter dated November 2023 which reflects that following the few months after surgery on her elbow she "continued to attend the fracture clinic and physiotherapy where it was suggested that it could take approximately 6-12 months for her to regain full function". However, I'm not persuaded that's conclusive evidence that Mrs M was incapacitated to the extent that she wasn't able to work for this period of time. And I haven't been provided with any other medical evidence reflecting how the injury impacted Mrs M and her ability to carry out the substantial duties of her role.
- Information from the NHS reflects that the recovery time for this type of fracture depends on the extent of the injury. It also says that many people with elbow breaks can return to normal activities in about four months, though full healing can take a year, or longer.
- Mrs M has said that she returned to work one day per week doing lighter duties from the end of July 2023. That's around 15 weeks after her surgery. She also says that although she was still in pain, she returned to work full time around 13 weeks after that - at the end of October 2023 - because she needed an income. So, 28 weeks in total after surgery.
- However, I've also seen a letter from the fracture clinic Mrs M was receiving treatment from. The letter is dated August 2023 but, importantly in this case, says it was dictated at the end of June 2023. This letter reflects that Mrs M was being discharged from the fracture clinic because "she's almost got full range of motion of her elbow, only lacking about the last 10 degrees extension. She is much better than the last time I saw her. She can continue her outpatient rehab". It doesn't mention that Mrs M was still in pain.
- So, on the balance of probabilities and based on the limited medical information available I'm satisfied that (at the latest), Mrs M would no longer be incapacitated and unable to carry out her role as a beautician 12 weeks after injuring her elbow.

Distress and inconvenience

I'm satisfied that Mrs M would've been upset and frustrated by finding out after breaking her elbow and making a claim under the policy, that the claim would be declined, and the policy cancelled. I think this would've been exacerbated by the call Mrs M had with Mortgage Connect very shortly after her surgery and could've been handled better by Mortgage Connect. Mrs M says that she's been prescribed anxiety medication due to worrying about her business and not receiving an income when she'd chosen to take out income protection.

I haven't been provided with medical evidence which persuades me that it was Mortgage Connect's wrongdoings in this case which caused Mrs M's anxiety. But I do accept that Mrs

M would've been worried about being without a regular income whilst she was recovering from surgery on her elbow. And this would've been avoided if Mortgage Connect had sold her a policy which was suitable and on which she could've successfully claimed.

I think £500 fairly reflects the distress and inconvenience she experienced as a result.

Putting things right

I direct Mortgage Connect to pay Mrs M:

- A. financial compensation representing the following the monthly benefit of £2,000 per month from 17 April 2023 (a week after Mrs M broke her elbow – which is the waiting period she'd initially opted for) to 3 July 2023*. That works out to be around £5,077. It can deduct from the total benefit payable the sum of £4,000 offered to Mrs M if this has already been paid.
- B. simple interest at a rate of 8% per year on the total benefit payable** from the date on which each monthly payment is likely to have been paid to Mrs M by the insurer, at the end of each month to the date on which the total benefit payable is settled.
- C. £500 compensation for distress and inconvenience.

*From the total benefit payable to Mrs M, I think it would be fair and reasonable for Mortgage Connect to deduct the premium refund Mrs M received from the insurer as if she had been sold an alternative policy with another insurance provider, she would've needed to pay for that policy, at least up until the point of claim.

**If Mortgage Connect considers it's required by HM Revenue & Customs to take off income tax from any interest paid, it should tell Mrs M how much it's taken off. It should also give her a certificate showing this if she asks for one. That way she can reclaim the tax from HM Revenue & Customs, if appropriate.

My final decision

I uphold this complaint and direct Mortgage Connect (N.I) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 30 April 2024.

David Curtis-Johnson
Ombudsman