

The complaint

The estate of Mr T complains that Essential Risk Solutions Limited trading as Waddle Insurance mis-sold Mr T two protection insurance policies.

Mr T's estate is represented by Ms D.

What happened

In 2018, Waddle had sold Mr T two life assurance policies. One policy which was underwritten by an insurer I'll call A and a life assurance policy with critical illness cover which was underwritten by an insurer I'll call Z.

In May 2022, Waddle's adviser called Mr T to review his protection needs. During the call, Mr T advised that his outstanding mortgage balance was significantly lower than at the last review. The adviser went on to recommend that Mr T should replace his existing policies with a life assurance policy with critical illness cover and a life assurance policy which were both underwritten by A. Mr T accepted the adviser's recommendation and his previous policies were cancelled. The new policies with A were set-up.

Unfortunately, in 2023, Mr T was diagnosed with cancer and so he made a critical illness claim on the policy. Sadly, Mr T subsequently passed away.

A looked into Mr T's claim and it turned it down. It concluded that Mr T had made a qualifying misrepresentation under relevant law when he applied for the policies. And it said it would never have offered the policies to Mr T if he'd answered its questions about alcohol and drug use correctly. So it turned down Mr T's claim, cancelled his policies and refunded the premiums he'd paid.

Mr T's estate complained to Waddle about the way the policies had been sold to Mr T. In particular, Ms D considered that Mr T hadn't answered one of A's questions in the way the adviser had recorded. And she also felt that Waddle shouldn't have been allowed to cold call Mr T to sell new cover.

Waddle didn't think the policies had been mis-sold to Mr T, so Mr T's estate asked us to look into this complaint.

Our investigator didn't think this complaint should be upheld. Overall, she thought the adviser's recommendations had been suitable for Mr T. And she thought he'd been given enough information to check the answers Waddle's adviser had recorded and correct them if they'd been wrong.

Ms D disagreed and so the complaint's been passed to me to decide.

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.

Having done so, whilst I'm very sorry to disappoint Ms D and Mr T's representatives, I don't think Waddle treated Mr T unfairly and I'll explain why.

First, I'd like to offer Ms D and Mr T's family my sincere condolences for the sad loss of Mr T. It's clear what a very difficult and upsetting time this has been for them.

I must make it clear at the outset that this decision will only consider whether I think Waddle mis-sold these policies to Mr T. I've issued a separate final decision about A's decision to turn down the critical illness claim and cancel the policies.

Both parties agree that Waddle recommended that Mr T should cancel his existing cover with A and Z and take out two new policies with A. That means that the adviser needed to carry out an assessment of Mr T's demands and needs and to recommend cover which was suitable for him. Waddle also needed to provide Mr T with enough clear, fair and not misleading information about the policies so that he could decide if they were right for him.

I've listened carefully to the sales calls between Mr T and Waddle's adviser, which took place in May 2022. It's clear that the adviser called Mr T to carry out a review of his existing cover, as the adviser explained it was Waddle's policy to do so every two years to ensure cover remained suitable. During the first call, the adviser established that Mr T no longer had a main mortgage, he simply had a buy-to-let mortgage on another property. However, he held total life cover of over £300,000 across the two policies, which was significantly more than he needed. It also seems Mr T was interested in taking-up critical illness cover which provided an enhanced level of cover than the policy he had with Z.

So the adviser recommended that Mr T take out two new policies with A – which provided around £200,000 of total life cover and enhanced critical illness benefits. The policies appeared to have been broadly affordable for Mr T. And it appeared that the recommendation the adviser made was suitable given Mr T's identified objectives of paying off his mortgage and leaving a residual balance to his estate. This means I don't think it was unfair or unreasonable for the adviser to have recommended that Mr T replace his existing cover with policies which matched his identified needs.

During the second call, the adviser ran through A's medical screening questions with Mr T. Prior to asking the medical questions, the adviser said:

'It is your responsibility to provide complete and accurate information in relation to this application as any missing or incomplete information, it could result to the policy being cancelled, or a claim not being paid. So if you are unsure [sic] to disclose something to me, then please just let me know. Okay?'

As such, I think the adviser gave a clear warning about the potential implications of failing to answer all of the questions accurately.

In my view, the following two questions were of particular relevance and, based on the available medical evidence, A concluded that Mr T had answered them incorrectly:

'In the last 10 years have you reduced the amount of alcohol you drink for any of the following reasons:

*You were advised to by a medical professional
Alcohol was causing or contributing to health problems
Alcohol impacted your work or ability to carry out day to day activities*

You have had alcohol dependency, alcohol addiction or alcoholism

Have you taken any non-prescription drugs in the last 10 years? (e.g. cannabis, ecstasy, cocaine, heroin, anabolic steroids)

(You do not need to disclose medication bought from a chemist without the need for a prescription).'

Waddle's adviser recorded an answer of 'no' to each question.

I think the adviser asked both of these questions (and indeed, all of the medical questions) in a clear and understandable way. I think Mr T would likely have understood the questions and the information Waddle and A wanted to know.

Mr T did answer no to the question about alcohol, so I'm satisfied Waddle's adviser recorded this answer correctly. But Mr T *didn't* answer the question about drug use – the adviser moved quickly on to the next question and appears to have simply assumed the answer to this question was 'no'. I think the adviser should have waited for an answer to this question, so they could ensure the answer was recorded accurately. This does appear to have been an error on the adviser's part, so I've considered this very carefully.

Had A known about Mr T's drug use shortly before the policy began, it wouldn't have offered him any cover. So I've considered whether it would be fair to say that Waddle's mistake here led to Mr T cancelling existing cover which would have paid out and that it should therefore pay compensation for its mistake to the value of a critical illness claim under his old policy.

Based on the totality of the evidence I've seen; I don't think it would. It seems to me that Mr T had a reasonable opportunity to interject when the adviser skipped over this question, explain that he hadn't provided an answer and to provide the correct answer. But he didn't do so. After the policy had been sold, Waddle sent Mr T a welcome pack, which included the policy documentation, in line with its regulatory obligations. The policy document it sent out highlighted the importance of ensuring that Mr T had provided A with accurate information.

And A also sent Mr T a policy pack, around the time he applied for the policy. This pack included a copy of the application questions Mr T had answered – including the alcohol and drug questions. It included an amendment form too in case any of the recorded information was wrong. So I think Mr T had another chance to check the information Waddle had passed on to A. I think he ought reasonably have let Waddle know that he hadn't answered 'no' to the drugs question and to update both Waddle and A with the relevant answer to this question.

In the round then, while I do think Waddle's adviser made a minor mistake when completing the application form, I think Mr T had reasonable chances to correct that mistake ahead of the policies going live.

I'd also add that A didn't only turn down Mr T's claim and cancel his policies because of the answer Waddle recorded in respect of the drug use question. It also concluded Mr T had incorrectly answered the alcohol reduction question. And one of its underwriters said that if Mr T had answered this question accurately, given Mr T's recorded alcohol intake in January 2022, it would have refused to offer him the new policies. So I don't think I can fairly find that but for any error here by Waddle, Mr T would most likely have had valid cover in place which would have paid out a critical illness claim.

Overall then, whilst I sympathise with Ms D and Mr T's family, I don't think it would be fair or reasonable for me to tell Waddle to pay compensation for its mistake.

My final decision

For the reasons I've given above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr T to accept or reject my decision before 15 April 2025.

Lisa Barham
Ombudsman