

complaint

Mr K complains Bank of Scotland plc mis-sold him a decreasing term assurance plan (DTA) as he never agreed to take this out. He thought he was getting a home and contents insurance policy. And he didn't need the plan as he had existing life cover and employment benefits.

background

Mr K took out a mortgage in 2010 for £127,500. He was sold the DTA to provide life cover for the mortgage at the same time. The DTA was part of what was known as a Total Mortgage Protection Policy. This could provide life cover, mortgage payment protection and critical illness cover. But Mr K only took out the life cover part of the policy.

BOS didn't uphold the complaint. It said it was clear the plan was recommended and Mr K made an informed decision to take it out. He was provided with all the relevant paperwork at the time of the sale. It said it had found no issues which would suggest the plan was not suitable.

BOS said his existing life cover was noted but the term was different from the mortgage term. So the adviser was right to recommend a new policy that would run for the full term of the mortgage. It also said employment benefits and not suitable as cover because there was no guarantee someone would stay in the same employment or the benefits continue for the full mortgage term.

Mr K didn't agree with BOS and referred the matter to us. One of our adjudicators considered the complaint but didn't uphold it. She said the plan matched the amount and term of Mr K's mortgage. And it was suitable as there was not sufficient cover in place. She said he could have cancelled the plan if he didn't want it.

The adjudicator also said he would not have received any documentation apart from when the plan was taken out as there were no annual reviews. And although she noted Mr K said he didn't receive the documents she was satisfied BOS had sent it to him.

Mr K didn't agree with the adjudicator. He said:

- He didn't need the cover as he already had enough.
- When his existing life cover came to an end he would have taken out another plan to cover the balance of the mortgage at that time.
- He didn't understand our position on employment benefits as he would not have moved jobs. And his contract of employment was for a minimum term of 22 years.
- He did not receive any documents until he made the complaint and didn't sign any paperwork for the plan.
- He could not cancel the plan if he was not aware of it.

As agreement has not been reached the matter has been referred to me for review.

my findings

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

I have noted what Mr K has said about not signing anything when he took out the DTA. And I understand why he thinks this means he never agreed to the plan. But it was not necessary for him to sign anything in order to take it out.

The adviser discussed the plan with him over the phone in June 2010. The notes made by the adviser state:

"I have discussed TMPP with the applicant. I have not identified a need for MRC because cannot be made redundant and will get full pay indefinitely. I have identified a need for life a need for life because £100k....until 2026"

The notes also record:

"The customer has accepted my recommendation"

It's clear there was a discussion about protecting the mortgage. And I think it's unlikely the adviser recorded Mr K's agreement to the recommendation if he had not agreed to take out the DTA. Its possible Mr K does not recall agreeing to take it out because he was also arranging the mortgage at the same time.

Mr K has said he never received any documents. But I have seen two letters BOS said were sent to him enclosing the plan documents. The first is dated June 2010 addressed to where he was living when he spoke to the adviser. The second is dated August 2010 and was sent to the address he had moved to at the time the plan started.

Mr K says there is no evidence the letters were sent. But it would have been part of the normal process for BOS to send out the documents. And I have no reason to think the letters were not sent as it has said.

And BOS had no reason to think he had not received the documents. He paid the premium until he cancelled the plan recently. It had no way of knowing he misunderstood what he was paying for-and thought he was paying one premium for buildings insurance and one for contents.

I have also considered whether the plan was suitable for Mr K's needs. Taking out life cover for a mortgage is generally considered advisable where there are dependents, as in Mr K's case.

Mr K already had life cover which he says could have protected the mortgage. But the policy cover was for less than the total mortgage amount-and a shorter term. Mr K says when the policy ended he could have taken out a new policy if he needed to.

I understand the point he is making. The amount of life cover he needed at the time his existing cover ended would be a lot lower as the mortgage would have reduced. But the adviser could not have known what was going to happen in the future when his existing policy ended. There is no guarantee he would be able to get further life cover at that time.

So I don't think it would have been appropriate for the adviser to recommend he use his existing policy-which was for the wrong amount and wrong term-to protect the mortgage. And the existing policy did not make the recommendation to take out the DTA unsuitable.

Mr K has also referred to his employment benefits and the fact he had a minimum term of employment. The adjudicator explained we don't generally consider employment benefits as suitable protection for a mortgage.

I also note the minimum term of employment was shorter than the mortgage-and will have started some time before it anyway. And although Mr K has referred to a minimum term, it would have been possible for him to leave earlier. So I don't think it would have been appropriate for the adviser to take his employment benefits into account.

I note what Mr K has said about his inability to cancel when he was unaware of the plan. But I am unable to say that is down to anything BOS has done wrong. As I have said, it had no reason to think he had not received the documents it had sent him.

In the circumstances I don't think BOS did anything wrong when it sold the DTA to Mr K.

my final decision

For the reason I have set out above I don't uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 April 2016.

Philip Gibbons
ombudsman