

## **complaint**

Mr and Mrs R have complained that they were mis-sold income protection insurance for Mrs R by Aviva Life Services UK Limited in 2005.

## **background**

Mr and Mrs R purchased mortgage protection insurance from Aviva in 2005. The insurance included income protection for Mrs R which was intended to provide a monthly payment if she was unable to work due to illness or injury for more than six months.

In 2013, Mr and Mrs R complained to Aviva that the income protection insurance was mis-sold. They said they would have been able to cover the mortgage payments from Mr R's income.

Aviva did not agree that the insurance had been mis-sold, so Mr and Mrs R referred their complaint to this service. Mr and Mrs R said that the insurance was also unsuitable because Mrs R's circumstances changed in 2007 when she had a baby and returned to work part-time. Because of the reduction in her earnings, Mrs R could not have received the full amount for which she was covered.

## **our initial conclusions**

Our adjudicator was satisfied that the insurance was suitable for Mr and Mrs R's circumstances at the time of sale. However, she thought it was likely that Mrs R had been over-insured since her circumstances changed in 2007.

Our adjudicator recommended that, subject to Mrs R providing evidence of her actual earnings, Aviva should refund some of the premiums paid by Mr and Mrs R. The amount to be refunded would be the difference between the premiums Mrs R has paid since 2007 and what she would have paid for the cover she could have received, based on her earnings. She also thought Aviva should pay simple interest at 8% per year on the amount refunded.

Aviva agreed to the refund but did not agree that interest should be added as it says it was not at fault for the over insurance.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I have noted Mr and Mrs R's statement that the loss of Mrs R's earnings would not have had an effect on their ability to pay the mortgage. But Mr and Mrs R would have suffered a loss of income if Mrs R was unable to work. I think it was reasonable for Aviva to recommend insurance to replace that lost income.

It is not in dispute that Mrs R has been over-insured since 2007. The maximum benefit that she could receive from the insurance was a proportion of her income before she became unable to work. Consequently, when her earnings reduced, she could not have received the full amount of cover. I am satisfied that it is reasonable for Aviva to refund the proportion of the premium that Mr and Mrs R have paid for insurance from which they could not benefit.

I note that Aviva does not think it should pay interest on the amount refunded because it was not to blame for the over-insurance. However, the purpose of awarding interest is not to punish Aviva but to try to put the parties in the position they would have been in if there had not been any over-insurance. Aviva has had the benefit of money that Mr and Mrs R have paid in error. In those circumstances, I think it is reasonable for Aviva to pay interest to compensate Mr and Mrs R for being deprived of that money.

**my final decision**

For the reasons given above, my final decision is that I uphold this complaint, in part. Subject to Mrs R providing evidence of her earnings since 2007, I require Aviva Life Services UK Limited to:

1. refund the difference between the premiums paid by Mr and Mrs R and what they would have paid for the maximum income protection cover available to Mrs R, based on her actual earnings; and
2. pay Mr and Mrs R simple interest at 8% per year on the amount refunded for the period from when the premiums were paid to the date of settlement.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs R to accept or reject my decision before 30 October 2015.

Charles Bacon  
**ombudsman**