

complaint

Mr S and Mrs M (the consumers) complain they were mis-sold a decreasing term assurance policy by Legal and General Assurance Society Limited (the business). They say they've paid for life cover they didn't need.

They're also unhappy about the service they've received from the business.

background

I issued my provisional decision in May 2019. I explained that I was minded to uphold the complaint, and invited both parties to respond. A copy of that provisional decision is attached and forms part of this final decision.

The consumers responded and accepted my decision.

The business replied but didn't agree with my provisional decision. In summary, it said the complaint should be rejected for the following reasons:

- The provisional decision solely focuses on the decreasing term assurance even though the consumers were sold a level term assurance policy, providing cover of £240,000 matching the 15 years term. By doing so, the ombudsman hasn't taken a holistic approach.
- The ombudsman's decision appears to be driven by the completion of the application on page 12 – which says the level term assurance policy was for family protection and decreasing term assurance for mortgage protection. The adviser could've confused the purposes of the policies, or because two separate policies were being applied for one had to be completed on the form marked 'Personal/Family Protection'. Subsequent correspondence suggests two policies were taken out to cover two mortgages rather than family protection.
- There's no evidence the adviser told the consumers life cover was mandatory in order to obtain their mortgage. The 2003 mortgage offer confirms *"The Company strongly recommends that adequate life cover should be arranged to cover the mortgage to ensure that in the event of your death during the mortgage term the mortgage debt is repaid."*
- They wouldn't have breached their agreement by cancelling the direct debit payments.
- They weren't told life cover was mandatory, only that they wouldn't have adequate cover in the event of death.
- When the policies started in August 2003, one of the plans was amended and cover reduced to £93,000. This wasn't indicative of someone who didn't want life cover.
- Mr S wasn't a naïve first time buyer.
- Evidently there was discussion and the customers were looking to cover their mortgage on the most cost effective manner.
- It doesn't think the refund proposed by the ombudsman is fair. The focus of the complaint was that a level term assurance policy would've been fair. It isn't fair that they had the benefit of cover for 15 years and pay nothing for it.
- The customers haven't suffered a financial loss as they would've paid more for a level term assurance policy.

The consumers disagreed with the business's submissions and made the following key points:

- They weren't experienced home buyers. Mr S was a first time buyer and Mrs M had purchased a property 20 years earlier. The 2003 home was their first purchase together.
- They were told that in order to get the mortgage they had to get the cover. The 11 page terms and conditions did nothing to undermine their reliance on what they were told by the adviser.
- The ombudsman's decision doesn't rely on the consumers being told it was a condition, which is why its complaint in relation to the level term assurance wasn't upheld.
- The inference that they cancelled the direct debit payments in 2006 because they knew from the outset the cover wasn't needed is unfounded. After they cancelled the direct debit payments they were contacted by the adviser and told they had to reinstate the policy.
- Whatever the adviser's motivation, they were persuaded that the mortgage would be compromised and felt they had no choice but to reinstate the direct debit payments.
- It's not true that they decided to keep the decreasing term policy over the level term assurance policy when presented with other options and monthly costs. They cancelled the policy to reduce costs and the options suggested by the adviser would've made them worse off.
- The ombudsman was right to say that the business sold something that fell short of what it was meant to do.
- The business seems to suggest the decreasing term assurance policy was their idea which is wrong. And certainly inaccurate to conclude this from a change in the level of cover in 2003.
- In terms of the redress they were paying for cover they didn't seek, want, or could afford and it wasn't even suitable mortgage protection. So they agree with the ombudsman's proposed redress.
- As they haven't had a pay-out they don't need to pay the insurer anything. Asking the business to repay the premiums the consumers have paid will leave it in the position it should've been in but for the error it made. By not awarding a full refund would mean the business is profiting from its mis-sale.
- They hope the ombudsman will not change the provisional decision.

my findings

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

Having reconsidered the case, including all responses to my provisional decision, my conclusion on balance remains as set out previously, for principally the same reasons.

The key points that I consider relevant to this decision have been covered. But in light of the additional points made by the business I would say the following:

I don't think there's anything wrong with taking a holistic approach, circumstances permitting, but in this case it doesn't change my decision. I still don't think a decreasing term assurance policy in respect of an interest only mortgage is suitable, notwithstanding the level term assurance policy the consumers had.

The application referred to by the business is only one part of the evidence I considered and wasn't the focus of my decision. I acknowledge the theory put forward by the business, but

other than what it says I've seen no other evidence that it might have been a possible oversight by the adviser, or that the second application had to be put on the form entitled family protection. I appreciate the business says subsequent correspondence suggests the policies were for mortgage protection but I'm unable to safely conclude this was the case. In any case, I've taken into account all of the available evidence and my conclusion remains the same.

For clarity, I'm not considering the position the business would be in if it hadn't made the error. My consideration is to return the consumers to the position they would be in but for the business' error, or as close to it as possible. I can't say that they would've opted for cover. That's why I think the business should refund the premiums paid for the decreasing term assurance policy, with interest.

Whilst the consumers may have had the '*benefit*' of the £240,000 level term assurance policy, in respect of the buy-to-let mortgage, they were running the risk of being considerably out of pocket in respect of the £340,000 mortgage covered only by a decreasing term assurance. So, overall I think the proposed redress, taking a holistic approach, addresses this imbalance, and offsets the risk that the business was also on.

I appreciate the point the business makes, but in this instance on balance I don't think it would be fair to deduct anything from the refund.

I've already explained that I don't think a change in the level of cover in this case suggests that the consumers knew what they wanted, or that they elected to maintain cover they didn't need. It may be that Mr S didn't know what he was doing but this wasn't the deciding factor in my decision.

I'm mindful the consumers were given the option to re-write the decreasing term assurance policy – if the business got it wrong – and whilst they wouldn't have to pay any back dated premiums they would have to pay a much higher premium moving forward, but the consumers disagreed.

As I've said in my provisional decision, in this instance I can't blame the consumers for refusing to do so. They were sold a product which simply didn't do what it was meant to, and they remained on risk and liable to pay back a large mortgage, despite paying for cover which was of very limited help.

Finally despite what the business says, on the face of the evidence, and on balance, I'm satisfied that the consumers only reinstated the direct debit payments based on what they were told by the adviser. On balance I think it's unlikely to be any other reason given that they'd taken the step to cancel the payments in the first place.

my final decision

For the reasons set out above, and in my provisional decision, I uphold this complaint.

Legal and General Assurance Society Limited should in respect of the decreasing term assurance policy:

- Refund the premiums paid, with 8% simple interest from the date of payment of each premium, to the date of settlement.

- Pay £150 compensation for the distress and inconvenience caused as a result of providing incorrect information regarding which business was responsible for the sale of the policy.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S and Mrs M to accept or reject my decision before 21 July 2019.

Dara Islam
ombudsman

COPY OF MY PROVISIONAL DECISION

complaint

Mr S and Mrs M (the consumers) complain they were mis-sold a decreasing term assurance policy by Legal and General Assurance Society Limited (the business). They say they've paid for life cover they didn't need.

They're also unhappy about the service they've received from the business.

background

One of our investigators considered the complaint but didn't think the policies were mis-sold. In summary, he said:

- Kingswood Law Partnership (KLP) Ltd – acting as an agent of the business – had made the recommendations, so the business was ultimately responsible for the sale of the policies.
- In recognition of the incorrect information – that it wasn't responsible for the sale of the policies – the business offered £150 compensation for the trouble and upset caused, which is fair and reasonable.
- If the consumers weren't told that the adviser was a tied adviser – in other words that he could only advise on the business' products – this could mean the cover was mis-sold. However, he was unable to determine whether or not the consumers were told the adviser was a tied agent, and therefore was unable to conclude if the business had made a mistake in this instance.
- The consumers maintain it was recorded – on the 2003 mortgage application form – that they didn't want cover because they answered “no” to the question of whether they required “*mortgage protection insurance*”. But the question was ambiguous, because it wasn't referring to life cover. Unhelpfully it also didn't mention the specific type of cover it was referring to, so he could appreciate why the consumers thought the question was about life cover.
- Despite what the consumers say, he wasn't satisfied that this was evidence that they only took two term assurance policies because they were told they had to.
- In terms of suitability, the advice was suitable. The consumers had two policies with two purposes.
- The policies were set up to pay out in the event of a valid claim during the term of the policy.
- Although the consumers say they were told they had to take out the policy covering the mortgage, he'd seen no other evidence that this was the case, so was unable to conclude that they were told they had to apply for and maintain the policy.
- The mortgage offer letters makes clear that only buildings insurance was a condition of the loan – as shown in the mortgage offer letter in 2005.
- Point three of the correspondence dated 24 August 2018 – that the consumers refer to – should be looked at in conjunction with point two of the email. The business accepts that the recommendations weren't the most suitable. But given the consumers' circumstances the recommendations were nevertheless suitable.
- Whilst it would've been an option to have a single policy covering the combined mortgage balance he doesn't agree this was suitable. It would've been cheaper but as there were two separate mortgages, it was reasonable to have separate policies covering them.
- It's not entirely clear why a decreasing term assurance policy was recommended. Affordability was identified as an issue, and it's possible this was the reason. Nevertheless it was still appropriate to recommend life cover.
- To clarify the consumers weren't over insured, they were underinsured. But this didn't of itself mean the recommendation was unsuitable.
- Whilst the adviser would have been in receipt of commission he's unable to say that this was the adviser's sole motivation. If it was, then it's likely he'd have recommended two level term assurance policies and required the consumers to increase their level of cover in 2005. The

consumers have declined the business' offer to re write the policies as level term assurance policies from 2003 and 2005.

- In 2006 the consumers cancelled the direct debit payments but the investigator can't say that they reinstated the payments because they were told they had to. The consumers had a choice about whether or not to reinstate their direct debit payments. A call note suggests that the consumers were enquiring if they could reinstate their direct debit payments after they (or the bank cancelled) by mistake.
- It's likely there was discussion about increasing the sum assured and that's why the consumers were told their premiums were likely to increase by 70%.

The consumers disagreed with the investigator's view. They maintain the recommendations were unsuitable and the investigator has given more weight to what's been said by the business than their recollection of events.

As no agreement has been reached the matter has been passed to me for review.

my provisional findings

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, and subject to any further submissions, I'm provisionally minded to uphold this complaint. On the face of the evidence and on balance, I'm not persuaded that the recommendation to take out a decreasing term assurance policy in respect of an interest only mortgage is suitable.

In 2003, the consumers took out an interest only mortgage. It seems they had no cover in place at the time to cover this balance. The policy matched the term of 15 years. But it only provided £240,000 of initial life cover. The amount of cover wasn't the same as the actual mortgage amount which was much higher. And the provided benefit would decrease during the policy term. It's not clear how this has come about. But it seems there must have been a change since the application for cover was made.

But the main question is whether or not the recommendation was suitable in the circumstances, given the consumers were sold a decreasing term assurance policy.

In this instance, the level of cover would go down. But the mortgage amount would remain the same. In the event of a valid claim the consumers would be left with having to pay the outstanding (and much higher) mortgage amount. In my opinion this defeats the purpose of the term assurance protection. I'm mindful that they would have been liable to this risk through the life of their mortgage.

A level term assurance policy, in respect of an interest only mortgage (that matched the term and amount of the outstanding mortgage) would be suitable, because the level of cover stays the same as the outstanding mortgage for the duration of the repayment period.

I don't accept the business' argument that just because there was a *more suitable* option this doesn't mean its recommendation was unsuitable. The point is that level term assurance policy in respect of an interest only mortgage is suitable and a decreasing term assurance policy, unless there's a good reason – which I've seen no evidence of – isn't.

I'm aware that costs were possibly an issue. According to the business a decreasing term assurance policy appears to have been a compromise – to have some cover in place rather than having no cover at all. But I don't think that analogy applies in this case and it's no justification for selling something that's unsuitable.

If costs were an issue, as suggested, having taken out a level term assurance policy in the sum of £240,000 for family protection, and separate cover wasn't a condition of their mortgage, I don't think

there was any need to sell them something that fell considerably short of the cover it was meant to provide.

I appreciate what the consumers say about being told that cover was a condition of their mortgage, it's possible that they were, but regardless of this, the decreasing term assurance policy was unsuitable anyway.

I know they had an existing mortgage at the time that they were changing to a buy-to-let mortgage, which they didn't take any cover for. In my opinion this was an existing mortgage, and a different type of mortgage to their residential mortgage, which is likely to have different conditions.

I note the business said life cover wasn't a condition and the mortgage offer letter made this clear that only buildings insurance was the only insurance necessary. In this instance, I note the 2005 mortgage offer letter made this clear. But I think it's more likely than not the consumers simply relied on the advice they were given rather than the documentation provided.

I'm mindful in 2005, when the consumers increased their mortgage term and amount, the cover remained the same, and no additional cover was advised. I think this rang alarm bells for the consumers and that's why they cancelled the direct debit payments in 2006.

But having cancelled the direct debit, they reinstated it. They say this was because they were told they had to continue to maintain the policy. Whilst I'm unable to say what they were told, I can't see that having taken the step to cancel the direct debit, they would reinstate these, without being advised to do so. And certainly not for a 2003 policy that neither matched the mortgage amount, term or type.

I'm conscious they had a choice, and their bank wouldn't have been able to collect the payments without their authority. But I think it's more likely than not, they'd have relied on what they were advised. I'm not satisfied that the payments were cancelled by mistake and they reinstated these of their own accord.

I appreciate what the consumers say about the adviser's motivation, but I don't need to decide whether the adviser was motivated by commission in order to make my decision.

I note that the consumers were given the option to re-write the decreasing term assurance policy – if the business got it wrong – and whilst they wouldn't have to pay any back dated premiums they would have to pay a much higher premium moving forward, but the consumers disagreed. In this instance I can't blame the consumers for refusing to do so. They were sold a product which simply didn't do what it was meant to, and they remained on risk and liable to pay back a large mortgage, despite paying for cover which was of very limited help.

In the circumstances, in respect of the decreasing term assurance policy, I think the business should refund the premiums paid, with 8% simple interest from the date of payment of each premium, to the date of settlement.

The business should also pay £150 compensation for any distress and inconvenience caused as a result of providing incorrect information regarding which business was responsible for the sale of the policy. I think this is fair and reasonable in the circumstances.

my provisional decision

For the reasons set out above, subject to any further submissions, provisionally I'm minded to uphold this complaint.

Legal and General Assurance Society Limited should pay redress as set out above.

Dara Islam
ombudsman