

## **complaint**

Mr S complains, through a claims management company (CMC), he was mis-sold a whole-of-life policy (WOL) by Abbey Life Assurance Company Limited because he only wanted critical illness cover (CIC). And Abbey didn't discuss alternatives, establish his attitude to risk or tell him the policy was reviewable.

## **background**

I issued a provisional decision in November 2015 (copy attached). I didn't think the complaint should be upheld as I was not satisfied there was an alternative policy which would have been suitable for Mr S's needs.

I gave both parties the opportunity of providing further information to me. Abbey said it had nothing further to add. The CMC did not provide any new evidence about the sale of the policy but said:

- They were concerned I thought it appropriate for a firm to recommend the client take out a plan that includes a feature they did not want.
- They thought the previous decision they had referred to was clear that standalone cover was available at the time of the sale.
- They also thought the decision in that case that Abbey should have made it clear it could not provide the cover the customer wanted, so he had the option of proceeding or trying elsewhere, indicated a lack of consistency.
- They referred to another decision where Abbey had said CIC was not available with a term policy until 1990. When it now says it was only available with a WOL policy.

## **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 note the various points made by the CMC. But what they all really come down to is whether a standalone policy was available and was Mr S aware he was taking out life cover when he only wanted CIC.

The CMC thinks the previous decision of ours they have referred to is clear about the existence of standalone CIC at the time of the sale of Mr S's policy. But they have simply set out parts of the decision I had already considered before my provisional decision. I don't know whether it was available at the time but Abbey have said it was not, and I have seen nothing that indicates it was. So I am not satisfied on the information I have that it was available.

The CMC are concerned that I thought it appropriate Abbey recommended a policy which included something Mr S didn't want. But where that was the only way to provide him with the cover he did want I don't think it does make the recommendation inappropriate as long as Mr S was made aware of this.

I said in my provisional decision I didn't know what had been discussed with Mr S at the time of sale. But I had seen nothing that indicated Mr S was unaware he had taken out life cover as well. And he would have received the policy documents which would have made clear life cover was included.

I would add that although I don't know what the adviser said to Mr S, I don't think it's likely he did not discuss the life cover with him. So I think he was aware of this and chose to take out the policy knowing it included life cover.

I note what the CMC has said about a previous decision where Abbey said CIC with term assurance was not available until 1990. This contrasts with what it has said in this complaint about CIC only being available with WOL in 1990. I have considered whether this means Abbey could also be wrong about when standalone cover became available. I accept that is a possibility but it is not persuasive evidence such cover did exist at the time.

**my final decision**

For the reasons I have set out above I do not uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 4 January 2016.

Philip Gibbons  
**ombudsman**

## **Copy of Provisional decision**

### **complaint**

Mr S complains, through a claims management company (CMC), he was mis-sold a whole-of-life policy (WOL) by Abbey Life Assurance Company Limited because he only wanted critical illness cover (CIC). And Abbey didn't discuss alternatives, establish his attitude to risk or tell him the policy was reviewable.

### **background**

Abbey didn't uphold the complaint. It said it wasn't possible to get stand-alone CIC at the time. As Mr S wanted CIC the only way this could be provided was by providing it with WOL.

One of our adjudicators reviewed the complaint. But he didn't think it should succeed. He didn't think stand-alone CIC would have been available in 1990, when Mr S took out the policy.

The CMC didn't agree. It said it would have been possible to have such a policy. It commented this had been accepted by this service in relation to another complaint.

The adjudicator reviewed the matter, and thought he should change his opinion. So he wrote to Abbey saying he appreciated a stand-alone CIC policy would have been rare in 1990. But that didn't mean it was impossible to obtain one. And it would have been reasonable for Abbey to tell Mr S it couldn't provide a stand-alone policy. He could then have decided whether to take out the policy or approach an independent financial adviser to try and obtain a stand-alone policy.

Abbey didn't agree with the adjudicator. It said it was one of the first businesses in the UK to introduce CIC, but not on a stand-alone basis. Such policies didn't exist in 1990.

As agreement has not been reached the matter has been referred 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.

I have set out above the adjudicator's view to the business. But it's not clear if this was sent to the CMC. I therefore think it would be appropriate for me to review the matter afresh in this provisional decision.

It's clear from the fact find completed by the adviser in 1990 that Mr S's only priority was protection against long term illness. Abbey accept Mr S didn't ask for life cover and only wanted CIC. But it says a policy only providing CIC was not available in 1990. So the only way to obtain this was if Mr S took out a policy with life cover.

So the first issue I need to decide is whether a stand-alone CIC policy was available at the time. This is not the first time we have had to consider this, and both parties have referred to previous decisions we have made to support what they have said. Although it is important we are consistent I would remind both parties that each complaint is considered on its own merits.

Abbey has said CIC was a fairly new concept in the UK in 1990 and it was one of the first to introduce this - but not on a stand-alone basis. And this was not available from anyone else at the time. The CMC has said it was not impossible to find this through an IFA and suggested this was accepted by us in a previous decision. Having considered that decision I don't think it does make it clear stand-alone cover was available. I am not satisfied from what I have seen that it was available.

The CMC say that in any event Abbey should have made Mr S fully aware if it could not provide exactly what he wanted. He could then have chosen to proceed or possibly looked for cover elsewhere.

I don't know what the adviser told Mr S. But I have seen nothing that suggests he was not aware he was taking out life cover as well as CIC. The policy documents he would have received, such as the policy schedule and brochure, would have made it clear life cover was included.

So I think it's likely Mr S knew the policy he had been sold included cover he had not asked for. And if he was not happy with that he could have chosen not to take out the policy or gone elsewhere if he wanted.

I also note that although Mr S did not identify life cover as a priority, it was not necessarily unsuitable for him. He was married with a dependent child. So his family would have the benefit of receiving the sum assured if he died.

I also think it's likely that the cost of life cover would be much less than the CIC. So I don't think he has been disadvantaged financially to any real extent by the inclusion of life cover.

The CMC has said Mr S's attitude to risk was not established. I don't know if this was discussed but investment was not the main purpose of the policy and I don't think it was unsuitable because it had an investment element.

The CMC has also said Mr S was not told policy was reviewable. Abbey say the policy was reviewed in 2004 when there was reduction in cover as a result of the review. I think if Mr S was not aware of the fact the policy was reviewable he would have contacted Abbey at the time to say he didn't know about the reviews. So I think he was aware the policy was reviewable.

#### **my provisional decision**

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

P Gibbons

**ombudsman**