

## The complaint

Mr and Mrs S complain that they were mis-sold a decreasing term assurance (DTA) policy – with critical illness cover (CIC) and total and permanent disability (TPD), referred to as “*the policy*” – by Aviva Life Services UK Limited, referred to as “the business” or “Aviva”.

They say Mr S had employee benefits that would’ve paid out in the event he suffered ill-health or death, so they didn’t need the policy.

To put things right, Mr and Mrs S would like a refund of all premium and compensation for loss of interest and distress and inconvenience.

## What happened

Avia didn’t uphold the complaint. In summary, it said:

- In late 2002, Mr and Mrs S were advised to take out the policy.
- At the time they were re-mortgaging on a repayment basis and borrowing an additional £4,000 for home improvements, on top of their existing £60,000 loan.
- It was recorded that Mr S was in fulltime employment and Mrs S was a housewife. The information recorded was signed off by them as being correct.
- Their objective was to ensure that their mortgage would be repaid in the event of death or diagnosis of a critical illness. They had no cover in place at the time.
- The policy was recommended for a term of 21 years, with a £64,000 sum assured that would go down in line with the mortgage. In other words, the policy was designed to protect a repayment mortgage by mirroring the outstanding balance that would reduce over the same term.
- The policy schedule was also provided which made clear the nature and operation of the policy.
- Despite what they say about being taken advantage of, they would’ve been aware of how the policy worked as a result of having been recommended a similar policy two years earlier which they declined.
- If they felt like they didn’t need the policy, they could’ve cancelled it within the cooling off period – but they didn’t.

One of our investigators considered the complaint but didn’t think it should be upheld. In summary, he said:

- Despite having similarities with Mr S’s employee benefits, the policy wasn’t unsuitable.
- Although Mrs S is unhappy about being recorded as a “housewife”, it’s likely the adviser would’ve recorded what they were told.
- It was recorded that Mrs S had no life cover or CIC in place. Although Mr S had employee benefits, including death in service cover, he had no CIC.
- It was recorded in the fact find that Mr and Mrs S specifically wanted to protect their mortgage. They were also looking to obtain a further advance which would increase their mortgage borrowing to £64,000.

- Aviva recommended a joint DTA policy, which was the cheapest form of cover protecting a repayment mortgage with life and CIC.
- The life cover matched the mortgage and term.
- The documentation provided made clear the benefits provided. Mr and Mrs S had the option to cancel the policy if it wasn't what they wanted but they didn't, suggesting that they wanted it.
- Overall, and on balance, Mr and Mrs S were given suitable advice that met their needs.

Mr and Mrs S disagreed with the investigator's view and asked for an ombudsman's decision. In summary, they made the following points:

- Mr S had existing life cover in place.
- The investigator suggested that they were recommended the DTA policy because they requested a further advance of £4,000. If they knew they couldn't afford to repay the advance, why would they add a further increase of £29.48 for cover and to their outgoings.
- The recommendation wasn't based on sound financial advice.
- They attached information about Mr S's employee benefits.
- They were misled and decided to take out the policy based on the way the information was presented to them.
- Not everything discussed was documented.
- They were made to feel foolish if they didn't take out the policy, so they did.

The investigator having considered Mr and Mrs S's response, wasn't persuaded to change his mind. In summary, he said the adviser was supplied with this information. It was made clear in the suitability letter. He wasn't persuaded to change his mind based on the attachments provided.

Mr and Mrs S wanted us to investigate whether or not the adviser's mother did in fact suffer from a critical illness prior to him advising them, and whether others have taken out policies based on the same script. They also said that because their lender worked with the policy provider, they assumed they needed the policy.

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

### **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, I agree with the investigator's conclusion for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what Mr and Mrs S say, I'm not persuaded that a joint DTA policy with CIC and TPD – that matched the amount and term of their repayment mortgage – was unsuitable.

Before I explain why this is the case, it's important for me to note I recognise Mr and Mrs S's strength of feeling about this matter. They've provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope they won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by them and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case.

In deciding what's fair and reasonable, I must take into account the relevant law, regulation and best industry practice but I'm not bound by this. But it's for me to decide, based on the information I've been given, what's more likely than not to have happened.

I don't uphold this complaint, in brief for the following reasons:

- I note that Mr and Mrs S didn't have any mortgage cover in place, therefore there was a need to protect their mortgage which the policy met.
- Even if Mr S had (additional) life cover, it doesn't mean that the recommendation was unsuitable in respect of a repayment mortgage on a decreasing basis.
- These policies were also cheaper than a level term assurance policy and were considered suitable because they decreased in line with the repayment mortgage.
- Despite what Mr and Mrs S say, the adviser can only advise based on the information available. I think it's more likely than not they described Mrs S as a "house wife", hence it was recorded as such. I'm aware that she was on leave from work at the time and considering whether or not to get back to work.
- On balance, I'm satisfied that Mr and Mrs S were supplied documentation that made clear the nature and operation of the plan. I can't say that the information was unclear, unfair or misleading.
- I appreciate that Mr and Mrs S thought that they had to take out the policy. But despite what they say, I can't say that they were told this or led to believe this to be the case by the business. I note they assumed that they needed the DTA policy because their lender worked closer with the insurer. Having refused to take out mortgage cover previously, I think they knew it wasn't compulsory for them to do so.
- Despite what Mr and Mrs S say, I don't need any further information to decide this case. It's not necessary for me to establish whether or not the adviser's mother had suffered a critical illness in order to decide this case.
- I note Mr and Mrs S say that the adviser should've considered Mr S's employee benefits when making the recommendation. But employee benefits are not generally regarded as adequate replacement for life cover, because those benefits aren't guaranteed.
- It would've been the case that employee benefits (such as death in service benefits or sickness benefits) would have only been available for the duration that the life assured remained in that particular employment, whereas the policy would continue to run as long as the premiums were paid.
- I appreciate that if the life assured left the employment, they could still obtain insurance elsewhere, but the recommended policy provided immediate cover for as long as the premiums were paid.
- I appreciate Mr S had a steady job, but if anything happened to him – either by way of death or serious illness – Mrs S might have trouble paying off the mortgage – or potentially vice versa. But there was also no guarantee that their financial situation wouldn't change over time, and at some point, they wouldn't be able to deal with the mortgage.
- The policy was designed to remove the necessity for the survivor to rely upon other sources to repay the borrowing and to ensure the retention of the family home. I'm therefore satisfied that the policy was a suitable recommendation for Mr and Mrs S.
- I should also clarify that despite what Mr and Mrs S say about cost, a policy set up on a decreasing term assurance basis would've meant that the level of benefit would've reduced in line with the mortgage until the end of the term.
- In the event of a valid claim the policy would've paid out. In other words, the business

has been on risk since the policy was taken out. So, in the circumstances I don't think there's any justification for the business to refund the premiums, and I can't say it has done anything wrong by refusing to do so.

- Despite the points made by Mr and Mrs S, I don't agree that the recommendation was unsuitable for them.

I appreciate Mr and Mrs S's concerns with the situation and recognise they will be disappointed I've reached the same conclusion as the investigator. But having given the matter careful consideration, I don't feel able to conclude that this complaint should be upheld.

### **My final decision**

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs S to accept or reject my decision before 7 September 2023.

Dara Islam  
**Ombudsman**