

The complaint

Mr W complains that Legal and General Assurance Society Limited mis-sold a decreasing term assurance policy (DTA) to him.

What happened

Mr W took out a life cover policy (the 2002 policy) with Legal & General to provide cover for a mortgage, on the advice of another firm. The policy provided a sum assured of £200,000 and critical illness cover (CIC) at a premium of £121.88. This policy was cancelled in 2008 and has been the subject of a separate mis-selling complaint to the other firm.

The 2002 policy was replaced in 2008 by the DTA the subject of this complaint. This provided the same initial sum assured of £200,000 as the 2002 policy but didn't include CIC. Mr W redeemed his mortgage in 2022 and it was at this point that he says he became aware of issues with the life policies taken out with Legal & General which led to him raising this complaint.

Legal & General didn't uphold the complaint about the mis-sale of the DTA. It said that that direct sales team that sold the DTA could only sell products on a non-advised basis and as such it could only provide information about the products available for Mr W to decide what best suited his needs. Legal & General said that he was sent the policy documents which made clear the type and amount of cover and that it had provided the cover that Mr W had applied for.

Mr W referred his complaint to us and it was considered by one of our investigators who wasn't satisfied on the information available that Legal & General had done anything wrong. He said that it had explained that the sale was by its direct sales team who at that time could only make non-advised sales and that he can't say that what is shown on the Legal & General website in 2023 - about life assurance being sold by an adviser - reflects what happened in 2008.

He said based on the available information from the time of sale it was most likely there was a conversation with the direct sales team with it providing information about policies and cover amounts and that £200,000 was the amount Mr W selected. He said that the amount of cover was shown on the policy documents sent to Mr W and if this wasn't right he had the opportunity of raising it with Legal & General at the time. The investigator said that it still had to present information that was clear, fair, and not misleading but that he thought it had done so.

Mr W didn't agree with the investigator. He referred to his detailed explanation of his complaint provided to us at the outset and provided a further detailed response setting out his arguments. He also made comments on the investigator's findings, which I summarise below.

- The investigator has referred to the policy being taken out over the phone in 2008 but

not said which telephone call. He spoke to Legal & General in January 2008 about removing CIC from the 2002 policy and the call that took place in July 2008 was to ask why direct debit payments weren't being taken for the revised policy.

- Even if the sale was non-advised, allowing him to take out a DTA for more than the mortgage amount he needed to cover was acting in an unfair, unclear, and misleading way.
- He was unaware he had taken out a new policy until discussions in 2022.
- At no time was he aware that he was taking out a new policy until 2022 and the investigator appears to agree he wasn't seeking a new policy in which case why was he transferred to a department that deals with new sales?
- He agrees that documents signed by him in 2008 show the initial amount of cover and how this reduces over time but there was no reason for him to query this as it provided the same cover as the previous policy with only the CIC element removed.
- He wasn't aware he didn't need £200,000 of cover because this was the amount he had been advised by the other firm that he needed when he took out the 2002 policy.
- He agrees that it is difficult to apply statements on Legal & General's website in 2023 to 2008 but it hasn't provided evidence that in 2008 sales of term assurance were on a non-advised basis.

As Mr W didn't agree with the investigator the matter has been referred 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.

My role is to determine this complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case based on the information provided by the parties and taking into account relevant: law and regulations; regulator's rules, guidance and standards; codes of practice; good industry practice at the time - where I consider it appropriate to do so. My findings of fact are made on a balance of probabilities – what is more likely than not – and it is for me to decide how much weight to give to evidence provided by the parties.

I note that the firm that sold the 2002 policy to Mr W agreed that policy had been mis-sold, because it provided more cover than he needed for the repayment part of his mortgage. However, I have to consider this complaint on its own facts and having considered the limited evidence available I am not persuaded that it is more likely than not Legal & General did something wrong when selling the DTA to Mr W.

I have come to the same conclusions as the investigator as to the DTA being the result of a non-advised sale and Legal & General not being in breach of its obligations to provide clear, fair, and not misleading information to Mr W at the time of sale. I explain why I have come to those conclusions below.

From the limited evidence available it appears Mr W initially contacted Legal & General on or around 25 January 2008. He says this was to cancel the CIC on the 2002 policy and not to take out a new policy. There is no documentary evidence that supports this being the reason he contacted Legal & General in January 2008 and his recollection from so long ago is

unlikely to be reliable.

In any event, even if that was the reason he initially contacted Legal & General, there is nothing to suggest that his subsequent decision to then take out a new policy was the result of something that Legal & General did wrong. In saying that I note that Mr W has suggested in his response to the investigator that he wasn't even aware that he had taken out a new policy until 2022.

This conflicts with arguments he put when he first referred his complaint to our service. In his detailed letter to us he refers to a letter from Legal & General dated 28 February 2008 regarding the cancellation of the 2002 policy. He also refers to receiving a series of documents and forms which included a summary document that included the start date of the DTA (stated to be 25 January 2008) and the term of 15 years. He was also required to provide medical detail and undergo a medical examination. I am satisfied in the circumstances that Mr W was aware that he was taking out a new policy when he took out the DTA in 2008, contrary to what he has now argued.

There appears to be no question that the DTA policy provided too much cover for the repayment part of Mr W's mortgage in 2008, which he puts at £120,000. If he had been advised to take out £200,000 cover for that part of the mortgage then I think this would likely to have been unsuitable advice. However, the limited evidence that I have seen doesn't support a finding that advice was given.

Mr W's argument that advice was given seems to be based on what the Legal & General website currently shows about the sale of 'life assurance' through an adviser. However, the process in place in 2023 provides no evidence as to what happened in 2008. He also appears to have misunderstood what the current website shows in any event. From what I have seen (using the web address he provided) the reference to the sale of a policy by an adviser is in respect of 'whole of life' policies not term assurance policies such as his DTA.

Legal & General has said that the sale was carried out by its direct sales team who do not offer financial advice and there is no evidence that indicates that advice was given. I also note that the system notes from the time of sale refer to the 'sale agent' as 'Direct' - which more likely than not is a reference to the direct sales team - and has 'N' next to 'Basis of Advice' - which is probably a reference to 'No' in terms of Mr W having been advised.

I am satisfied on the available evidence that the sale of the DTA in 2008 was a non-advised sale by Legal & General's direct sales team, as it has said is the case. As the sale wasn't the result of advice what I need to consider is whether Mr W was provided with information that was clear, fair, and not misleading by the sales team before he took out the DTA.

There is no persuasive evidence that Mr W cancelled the 2002 policy and took out the DTA as a result of anything that Legal & General did wrong. It has said that the direct sales team would have been limited to stating that it could only sell Legal & General products, explain what products were available and ask the client what they wanted in terms of product, amount of cover, and term.

The fact that the policy he took out provided an initial £200,000 of life cover for the repayment part of the mortgage when this was only £120,000 isn't evidence Legal & General didn't comply with its obligations in providing information to Mr W, as he has suggested is the case. It wasn't for Legal & General to specify what level of cover he should have and there is no basis for thinking it did so. It is far more likely that it was Mr W that chose to take out a new policy and specified the level of cover and the term of the policy that he wanted.

I think his own arguments support the finding that he chose the level of cover. He has said

he wasn't aware he didn't need £200,000 of cover - because this was the amount he had been advised by the other firm that he needed when he took out the 2002 policy. If he thought, as he said he did, that he needed £200,000 it follows that this is the amount of cover he would have asked Legal & General to provide.

I note Mr W has queried why Legal & General required him to attend a medical examination before agreeing to the DTA. He has suggested that this may have been because there was concern over his reasons for wanting more cover than he needed for the repayment part of his mortgage. Even if that was the reason – and I have seen no evidence to suggest it was – as with other arguments Mr W has made, it doesn't establish that Legal & General did anything wrong. I have already found this was a non-advised sale and as such it wasn't for Legal & General to advise Mr W to take out less cover than he said he wanted to repay his mortgage.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 6 December 2023.

Philip Gibbons
Ombudsman