DRN-3781483

The complaint

Mr and Mrs S complain that Coloma Wealth Management LLP ("Coloma") didn't make their fee options clear when arranging a life assurance policy. They also complain that Coloma didn't tell them the policy wasn't correctly set up in a trust.

What happened

Mr and Mrs S paid for Coloma's work through commission. That means part of the annual premium they pay for their policy goes to Coloma, rather than paying for life assurance. Coloma have confirmed this method of paying meant that if they hadn't been able to find a life policy for Mr and Mrs S, they wouldn't have charged for their work. Coloma have said this is why they felt this charging method was best to use.

Mr and Mrs S later spoke to a different financial adviser. They said it would probably have cost Mr and Mrs S less to have paid a fixed fee for the work, given the size of the policy's sum assured. Mr and Mrs S checked this with the policy provider. It confirmed the annual cost of a new policy without commission would be about £1,500 less.

Mr and Mrs S complained, but Coloma pointed out a fixed fee option had been mentioned in a leaflet at the time. They also felt it had been clear they'd be paid through commission, and noted the premium for the policy had been made clear and accepted by Mr and Mrs S.

While looking into this issue, the policy provider told Mr and Mrs S that Coloma had made an error in some trust documents that went with the policy. Mr and Mrs S noted they hadn't been told about this by Coloma.

On this point, Coloma said they initially contacted the policy provider about an error in how the trust document said to handle terminal illness benefits. But they realised within a few days that the policy didn't include terminal illness cover. So it didn't really matter what the trust document said about how to handle the non-existent benefit – the policy and its trust could have continued without a change.

Unresolved, the complaint came to us. I wrote a provisional decision last time setting out my view. I found Coloma should have explained the fee options to Mr and Mrs S, so they could make an informed decision about how to pay. I concluded that if that'd been done, Mr and Mrs S would probably have chosen a fixed fee option, rather than a commission-based fee.

Coloma and Mr and Mrs S have sent me some more details. I've read these, and I'll pick up on the key points in this, my final decision for the complaint.

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'm still of the view this complaint should be upheld. I'll explain why, and what Coloma must do next, if this decision is accepted by Mr and Mrs S.

I've started here by reading Coloma's fee leaflet. I view this as a reliable explanation of the way Coloma would generally charge for the type of work they did here.

Page five of that leaflet explained they'd usually use a commission-based fee. It said the size of that depended on *"…the type of contract, term of the cover and the premium amount"*. But the leaflet mentioned another option – a fee agreed before any insurance was arranged, based on *"…the amount and complexity of the work required"*. Coloma confirm this sort of fee would be charged regardless of whether a policy was taken out at the end of the work.

The explanations in the leaflet are generally fine, but Mr and Mrs S should also have been told how this related to them specifically. Coloma's response to my provisional decision confirms a specific discussion about fixed fees didn't happen.

While I appreciate Coloma's concern about not finding a policy, it should have been Mr and Mrs S who decided how to pay. They could only make that decision fairly if Coloma had given them a reasonable understanding of the fee options as they applied to their work.

I'd expect Coloma to have seen the high sum assured being discussed – £1 million in this case – would lead to a relatively high payment if a policy was arranged with a commission-based fee. For the fee discussion to be fair, Coloma should have made sure Mr and Mrs S appreciated how this could compare to a pre-agreed fee.

Before I get to how Coloma should put this right, I've also considered the complaint about there being a fault with the trust document Coloma produced.

I explained last time how the evidence I've seen – particularly some internal emails from Coloma – showed there wasn't a significant error in the trust documents. They'd apparently referred to a benefit the policy didn't include being payable to Mr or Mrs S.

As such, I can understand why Coloma didn't mention this to Mr and Mrs S. It wasn't actually an issue, even though Coloma briefly thought it was. I currently find nothing's needed from Coloma to remedy this bit of the complaint.

Putting things right

Coloma should have done more to allow Mr and Mrs S to make an informed choice about how to pay for this work. If they had, one of two things could have happened. Mr and Mrs S could have chosen the commission-based fee, and things would have been as they actually were. Or they could have chosen the pre-agreed fee.

I wrote last time that I wanted to know what the fixed fee offer would have been in 2019.

Concerned that Coloma would exaggerate its size, Mr S has sought quotes for obtaining a similar life policy from other financial advisers. He's found six quotes, ranging from £1,500 to £3,000, which have an average cost of just over £2,000. That's notably the current price, rather than the 2019 price. Given the current state of inflation – albeit driven more by fuel and food costs than financial services – I'd expect the cost to have been lower in 2019.

Coloma's response to my provisional decision says the cost of the work would have been around £7,500. They referred to the work that was actually done when justifying that amount.

I see this'll be a point of dispute, so I've thought about what a reasonable fee would have been. I've returned to Coloma's fee leaflet to get a feel for what would have been offered in 2019. Again, I see this as a reliable explanation of Coloma's charges.

Pages three and four of the leaflet refer to a similar service they offer – investigating and advising on pensions and investments. It's similar work in that Coloma would have to get to know their clients, research available products, and then prepare a report considering the suitability of those products for the client's circumstances.

The leaflet says the typical fee for this sort of work would be £950 to £2,000. I find that's notably in line with the quotes Mr S has found. It leads me to believe if Coloma had discussed a fixed fee with Mr and Mrs S in 2019, the figure they'd have discussed would have been closer to the amounts Mr S has found.

While I appreciate Coloma may be telling me what the work actually cost, I don't consider it reasonable to use that in my decision. A pre-agreed fixed fee is fair because it has a balance of risk for both sides. For Mr and Mrs S, there was the risk they'd pay the fee but not be able to get the life policy they wanted. For Coloma, there was the risk the work they did would end up being more complicated and costly than they'd anticipated when agreeing to the fee.

There's also the realistic possibility that if Coloma had told Mr and Mrs S their fixed fee was £7,500, Mr and Mrs S would have gone elsewhere and found a fee more in line with what they've now been quoted. There was nothing tying Mr and Mrs S to Coloma at that point.

So I've decided to treat the fixed fee as £1,500. That's in line with the sort of fees Coloma would typically charge for similar pensions and investments advice. And it's in line with the lower end of the quotes Mr S has found more recently, and where the average would have been three years ago.

I'm satisfied that if Mr and Mrs S had been told they had an option to pay this sort of fee upfront, rather than paying an ongoing commission-based fee, they'd have chosen the fixed fee option. They had this money available to them, and the difference it made to the premium would have seen Mr and Mrs S incurring less overall expense within a couple of years. That possibility would likely have been seen by Mr and Mrs S to balance out the risk that no policy would be found.

Another piece of information I asked for last time was about reworking the policy so it didn't include a charge for commission. Coloma haven't responded to that request. But I can cover the gap with some directions for the remedy.

If the service had been reasonable, Mr and Mrs S would have taken out a policy that didn't include a commission cost in the annual premium. The best indication I have of what that would have cost is a quote Mr S got from the policy provider on 7 December 2020. It tells me the annual cost of Mr and Mrs S's policy with no commission charge would be £18,208.52.

That's a quote from a year later than it should be. Mr and Mrs S were after a policy in 2019. Assuming prices would probably rise as Mr and Mrs S get older, I'm going to treat this as the upper limit for the annual premium. If Coloma can get a quote for the annual cost of the policy in 2019 that is lower than this amount, the following remedy should use that. But I won't accept any higher quotes for the premium.

To put things right, Coloma should make it so Mr and Mrs S pay no more than £18,208.52 per year for their life assurance. That could mean going back to the policy provider and reverting the policy to what it would have been in 2019, if the work had been done for a fixed fee. If that's not possible, Coloma should reimburse Mr and Mrs S for the extra premium they'll pay each year, on proof that it's been paid.

At the moment, that means an annual payment from Coloma to Mr and Mrs S of £1,481.17. That's the difference between the figure quoted above, and the premium quoted on

20 January 2020, which I understand is the one Mr and Mrs S continue to pay.

I appreciate Mr and Mrs S have already paid some of the higher premiums. Coloma need to refund that over-payment, less what their fixed fee would have cost. As I've said above, that should be treated as £1,500. Not the £7,500 Coloma put forward in response to my provisional decision. Any refund should also include interest at 8%, to reflect that Mr and Mrs S have been without the use of that money, due to Coloma's failing.

In my provisional decision, I asked for details about other work Coloma had done without charge at the time. Their reasoning for making no charge appeared to be that they'd received such a large commission payment for the life cover work, they felt they could do extra for free. But Mr S doesn't agree he asked for that work to be done. I can appreciate he might have chosen not to go ahead with it, if Coloma had said they intended to charge.

As such, I'm not going to factor that work in to my remedy here. It would be to create a new dispute, where currently there isn't one. Coloma may choose whether to go back and reassess the cost of that work and bill it to Mr and Mrs S. That may prompt a new complaint, which could then come to us as a separate matter if not resolved.

But on the matter of the cost information for the life policy work, I'm satisfied the remedy above puts right the financial impact the lack of full cost details had on Mr and Mrs S. The only matter left is the emotional impact.

On that point, I said last time how I felt a payment of £250 from Coloma to Mr and Mrs S would acknowledge the upset caused by the issue. It reflects that Mr and Mrs S weren't being asked to pay more than they budgeted for. But rather that they later found out there had been a better option Coloma hadn't fully made them aware of. The financial cost of that will be put right with the remedy above. And the additional £250 acknowledges the emotional impact on Mr and Mrs S.

My final decision

I've decided to uphold Mr and Mrs S's complaint about Coloma Wealth Management LLP. To put things right, Coloma should now:

- Ensure Mr and Mrs S pay the annual premium that would have applied if they'd agreed a fixed fee for the work in 2019. This should be no more than £18,208.52 per year. I will leave it open for Coloma to achieve this by either annually refunding Mr and Mrs S's payments of higher premiums, or by arranging a change to the policy's premium with its provider.

- Refund the over-payments already made by Mr and Mrs S for the policy, less £1,500 for the fixed fee that would likely have been paid if the service had been reasonable.

- Pay interest of 8% per annum on that refund, from the date Mr and Mrs S made the over-payment to the date Coloma give them the refund.

- Pay £250 compensation to Mr and Mrs S to acknowledge the trouble and upset caused by the failing in this case.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S and Mrs S to accept or reject my decision before 20 December 2022. I’ve made this a five-week response time – rather than our usual four weeks – to reflect what Mr and Mrs S have told us about their availability during the period.

Paul Mellor
Ombudsman