

## The complaint

Mrs K and Mr K complain that Wise One (UK) Ltd mis-sold them insufficient term assurance cover, meaning they now have a shortfall of £17,803 after making a critical illness claim.

## What happened

For ease of reading, I'll hereafter refer to Mrs K and Mr K as 'Mr and Mrs K'.

Mr and Mrs K's term assurance policy comprised joint life and critical illness cover for the purpose of providing insurance protection alongside their capital repayment mortgage. They had been receiving ongoing advice from a Wise One adviser since December 2004 relating to both the mortgage and the insurance cover. The policy began in February 2005, had an initial sum assured of £110,000 with a £49 monthly premium and a 25-year term. The policy was also subject to five-yearly premium reviews.

In 2022, Mr and Mrs K made a claim to the insurer for critical illness benefit after Mrs K was sadly diagnosed with a serious illness. A claim was paid by the insurer at the value of £51,208 and the policy then ceased.

Mr and Mrs K initially complained to the insurer, because at that time, the outstanding balance on the mortgage was £76,511 – and they'd expected the term assurance claim to clear the mortgage balance. The insurer identified that Mr and Mrs K had taken £7,500 of payment holidays from the mortgage (which would extend the term) but also that the term assurance policy of 25 years was not the same as their capital repayment mortgage borrowing – which was taken out over a 35-year term.

The insurer then forwarded the complaint on Mr and Mrs K's behalf to Wise One on 28 February 2023. By that time, Mr and Mrs K contended that they had unfairly suffered a shortfall in a claim payment of £17,803 (the difference between the mortgage less the payment holidays and the claim settlement value), after accounting for the payment holidays.

On 4 April 2023, Wise One rejected the complaint. It said its adviser would have advised to match the lending amount and the term assured where possible as a bare minimum. However, the documentation from the time of the sale showed how Mr and Mrs K had an overall budget for the mortgage and protection policy together of £600, which left them approximately £50 per month for the insurance.

Wise One also set out how its records showed that Mrs K had contacted the adviser again on 1 March 2005 to explain that they hadn't received the final policy documents from the insurer. On that basis, the adviser contacted the insurer and the documents were reissued. Wise One concluded that Mr and Mrs K would have checked to ensure the documents they received, which showed that the policy taken out had a 25-year term, not a 35-year term.

Overall, Wise One believed its adviser had acted in a compliant manner by assisting Mr and Mrs K in setting up affordable cover at the time, in keeping with their recorded objectives. It did not agree that the adviser ought to have done anything differently.

A representative for Mr and Mrs K then referred their complaint to this service. He made three points when doing so, noting:

1. The version of events laid out by Wise One in the response to the complaint do not accord with their recollections – Mr and Mrs K were adamant they'd never have accepted an insurance term that was shorter than their mortgage term. Wise One had merely given verbal evidence to date, but it should provide documentation.
2. It is unclear whether the insurer has been involved in the investigation of the complaint undertaken by Wise One, but this ought to be fairly corroborated to avoid fabrication.
3. Wise One also referred to ongoing reviews every five years for critical illness by the insurer, which might mean there is a complaint to be made about the insurer.

Wise One initially contended that the complaint was made outside of the six year and three year time limits applying to this service. It said it would not consent to it proceeding further. An investigator reviewed the jurisdiction of the complaint and concluded Mr and Mrs K only became aware of their cause for complaint at the time they pursued a claim to the insurer.

Wise One did not agree. It said both Mr and Mrs K had set up online accounts with the insurer back in 2016 and therefore they'd have known every time they access their online accounts (which had happened several times for each of them) that the policy had an insufficient term and a potential claim shortfall. On that basis, Wise One believed Mr and Mrs K acquired knowledge for the reason for their complaint in 2016.

An ombudsman from this service reviewed the complaint specifically in relation to whether it fell within our jurisdiction or not. And she gave reasons as to why she concluded the complaint had been made within time as she believed Mr and Mrs K were not aware that there was a difference between the level of cover the policy provided and the balance outstanding on their mortgage until they had come to pursue a claim in 2022. This was since they hadn't likely reviewed it online as had been suggested.

Another of our investigators then reviewed the merits of the complaint, but he did not think it ought to succeed. He was not persuaded that Wise One had made a mistake such that he could ask it to pay the shortfall in the critical illness claim payment now. He felt, on balance, that the maximum term available to Mr and Mrs K in 2005 would have been 25 years – not 35 years. And the documentation sent to Mr and Mrs K by the insurer on 14 February 2005 demonstrated what the term was. He believed the documentation was likely received by Mr and Mrs K at the time.

Further, the investigator agreed with Wise One that it would not have been in the adviser's interests to sell Mr and Mrs K less cover than they needed – that was because Wise One was paid on a commission basis, and a longer policy with greater premiums would have provided additional commission for the adviser. Our investigator believed that the most likely consideration at the time of the sale had been affordability for Mr and Mrs K – and this was borne out by completion of a maximum £600 budget on the mortgage enquiry form.

Mr K said he and Mrs K disagreed. Mr K spoke with another investigator to discuss the complaint further. It was agreed that the complaint would be passed to an ombudsman. Mr K explained how he and Mrs K would never have taken out a policy that would not cover the entire term or balance of their mortgage. To do so did not make any sense; it would not allow them to clear their mortgage if the worst happened – which it has.

Wise One didn't have any other comments to make. The complaint has now been referred to

me.

### **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.

Before I go any further, I'd like to send my best wishes to Mr and Mrs K and their family at what I appreciate is an incredibly difficult time. I would like to assure Mr and Mrs K I have reviewed everything they've told us with careful consideration. I'm very sorry to disappoint them but I cannot uphold this complaint. For the reasons I'll go on to explain, I am not persuaded that Wise One acted unfairly in 2005. Accordingly, I am not able to direct that Wise One makes up the £17,803 shortfall for the critical illness claim payment now.

We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The Financial Ombudsman Service provides informal dispute resolution. My remit is to make findings on what I believe to be fair and reasonable to both parties in the circumstances and this does not follow a prescribed format. Instead, I will set out my reasons for my findings on what I consider to be the central issues in this complaint, based on the evidence before me.

To be clear, this complaint rests solely against Wise One as the business that gave advice to Mr and Mrs K in 2005 in respect of this policy, taken out alongside their mortgage lending. I cannot review any concerns that Mr and Mrs K have against the insurer, such as the point made by the representative about the five-yearly reviews.

The crux of this complaint is that Mr and Mrs K say they would not have taken out the cover if they'd have known the term was shorter than their mortgage debt, because by 2030 their cover would have reduced to zero. Further, Mr K says affordability was of no concern to them as they were both employed without dependants at the time.

Both Mr K and the adviser have made detailed submissions verbally to our investigator, and I've reviewed these in full. The adviser's position is that Mr and Mrs K knew they were taking out a 25-year policy, and the primary driver for this was based on their budget.

I hope the parties can appreciate that I cannot make conclusive findings about what was or wasn't said when the advice was given – because the meetings weren't recorded. However, in addition to the recollections from both parties, there is some contemporaneous evidence available for me to consider; including, but not limited to, documentation from the time of the sale with the insurer, a written chronology of events from the adviser, and fact find information.

Where there is conflicting evidence, such as between the documentary evidence and what is being said by the parties now, I will determine what I believe is most likely on the balance of probabilities. And in this case, I place greater reliance on the documentary evidence. I say that because the sale took place over 19 years ago; and understandably, recollections will change over time and may also be influenced with the benefit of hindsight.

At the time of seeking their mortgage, a 'mortgage enquiry form' was completed and this records that Mr and Mrs K had a "**£600pm MAX**" budget. I believe this is most likely the reason why the mortgage (at £556) and the term assurance (at £49) came in at a total of £605 per month. I realise Mr and Mrs K dispute that now, but even if they hadn't wished to limit their term assurance expenditure to fall within a recorded budget, I do not believe they

could have taken out the cover they say they would have wanted in any event.

The evidence I've seen shows that the adviser undertook a search of the market for the most affordable cover for a term of 25 years. The insurer that Mr and Mrs K proceeded with has informed us that 25 years was the maximum term open to any prospective applicant for term assurance at that time. Similarly, other insurers searched by Wise One did not offer cover beyond 25-year terms either. Insurers have increased maximum terms in recent years, but on the evidence I've seen I do not believe Mr and Mrs K could have taken cover out for any longer than they did.

Furthermore, I agree with our investigator where he has explained how Wise One received commission for recommending the cover to Mr and Mrs K – which was disclosed to them by the insurer. If it had been possible to provide them more cover at an additional (affordable) cost, I see no objective reason why he wouldn't have proposed this at the time.

I've therefore gone on to determine whether I believe Mr and Mrs K knew or reasonably ought to have known about the length of the policy at the time. I have given that consideration because Mr and Mrs K say they only discovered the shortfall in term now, and if they'd had been informed in 2005 that they could not take out cover to match the length of their mortgage lending, they'd have taken some other action instead.

As I've noted above, I don't believe it would likely have been possible for Mr and Mrs K to obtain a 35-year policy. Another option would have been to begin a 25-year policy with a higher sum assured to broadly decrease in line with the later years of the mortgage – though Mr and Mrs K would have been over insured in the early 10 years of the policy. But even if that was the case, I am of the view that Mr and Mrs K were given sufficient information at the time of the sale to identify that they took out a 25-year policy.

We don't have documentary evidence of the recommendation confirming the length of the term assurance cover. However, once the cover was sought the insurer wrote to both Mr K and Mrs K (who at that time resided at different addresses) informing them that it would only accept the insurance on special terms. Each letter required Mr K and Mrs K to review the new offer, the revised terms and provide specific acceptance of those terms.

In each letter, on the first page of the key information for the policy, it is set out:

***“YOUR PLAN SUMMARY***

*Plan term: 25 years*  
*Life insurance amount in year 1: £111,000*  
*This reduces each year.”*

Mr K and Mrs K were required to accept these new amended terms via Wise One – and the documentary evidence from the diary entries recorded by the adviser confirms they did so. Thereafter, the policy went on risk. Mrs K also called the adviser on 1 March 2005 to chase the policy documents for the newly agreed terms. I believe that both Mr K and Mrs K likely received the reissued paperwork, else they'd have informed the adviser about it in a similar way. And that paperwork expressly set out details of the cover, including the 25-year term.

In my view, it is not a fair and reasonable conclusion that Wise One ought to be held liable for the mismatch in cover, such that it should now pay the unfortunate shortfall that Mr and Mrs K encountered when they came to pursue a claim to the insurer in 2022. To have determined that, I'd have to be satisfied that it was primarily liable for the wrong cover being in place from the outset. And on the information I've set out above, I don't find that an incorrect recommendation was made or that Wise One misled Mr and Mrs K in 2005.

From the evidence I've seen, Mr and Mrs K took out mortgage lending which was longer than the 'standard' 25 year term that insurers were offering for term assurance mortgage protection policies. To that end, any cover that would have likely been taken out at the time would not have matched the lending exactly should a claim need to be pursued.

I am satisfied that Mr and Mrs K were reasonably aware of the term, as it was referenced in various documentation both from the adviser and the insurer. If they hadn't wanted to proceed, they were issued cancellation rights with the cover. Given Mr and Mrs K also had this balance of responsibility, I don't find it equitable to conclude that Wise One has caused the loss set out for the perceived shortfall when I cannot find it at fault for the recommendation or the advice in the specific circumstances.

### **My final decision**

Despite my considerable empathy for Mr and Mrs K's position, I do not agree that this complaint should succeed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and Mr K to accept or reject my decision before 17 June 2024.

Jo Storey  
**Ombudsman**