

## **The complaint**

Mrs S complains that Openwork Limited trading as Owl Financial (Owl) mis-sold her an income protection insurance policy.

## **What happened**

The background to this complaint is well-known to both parties. So I've simply set out a summary of what I think are the key events.

In June 2023, Mrs S and her husband met with Owl's adviser at their home to discuss their protection needs. Mrs S decided to take up the adviser's recommendation to take out a personal income protection insurance policy with an insurer I'll call A.

Unfortunately, Mrs S became unwell and was unable to work. So she made a claim on her policy. However, A turned down Mrs S' claim and cancelled her policy. That's because it said that at application, it hadn't been provided with accurate information about Mrs S' occupation(s) and medical symptoms she'd experienced. It said if it had been given the right information at application, it wouldn't have offered Mrs S an income protection insurance policy. It refunded the premiums Mrs S had paid for the contract.

Mrs S was unhappy with the way Owl's adviser had sold the policy to her. She said she'd given them accurate information about her jobs and about her health. But she said the adviser had recorded her occupations wrongly. And that they hadn't passed on her medical information to A. Mrs S also noted that the fact-find the adviser had completed referred to the wrong nationality. She said the adviser had told her not to read the policy documents.

Owl acknowledged that the adviser had wrongly recorded Mrs S' nationality on the paperwork and it apologised. But it felt the adviser had made it clear that Mrs S would need to check the policy documentation for errors. And it didn't conclude that the adviser had mis-sold the policy.

Mrs S remained unhappy with Owl's position and she asked us to look into her complaint.

Our investigator didn't think Mrs S' complaint should be upheld. She considered the fact-find information and reasons-why letter from the time of sale and she thought these documents made it clear that Mrs S needed to check the accuracy of the information the adviser had recorded. She also felt the policy documents Mrs S had been sent afterwards by A clearly set out the terms on which it had set-up cover. On balance, she thought Mrs S had been made aware that the policy hadn't been set-up using all of the correct medical information and that she ought to have raised this with the adviser or with A.

Mrs S disagreed. In summary, she said that the adviser had highlighted many times that she didn't need to read anything, as they'd collected all necessary facts for the insurance application. Mrs S considered the adviser had failed to do so. And that they'd taken advantage of her by selling her the wrong product in order to gain commission. She also told us that she was unable to take out any other income protection policies due to her medical situation.

I issued a provisional decision on 21 June 2024 which explained why I thought Owl should pay Mrs S £500 compensation. I said:

*'Both Mrs S and Owl agree that Owl's adviser recommended that Mrs S should take out the income protection insurance policy. This means the adviser needed to carry out an assessment of Mrs S' demands and needs and to recommend a product that was suitable for her identified needs. Owl also needed to give Mrs S enough clear, fair and not misleading information so that she could decide whether the policy was right for her.*

*The evidence I've seen shows that A declined Mrs S' claim and cancelled her policy because it said that it hadn't been given accurate information about Mrs S' occupation(s) and about her health. Taking those non-disclosures in conjunction, A said it wouldn't have offered her a policy. Mrs S maintains that she disclosed accurate information about her job roles and about her medical history during the sales meeting. So she feels that the adviser failed to accurately record what she said and failed to pass on the correct information to A. She also maintains that Owl's adviser told her repeatedly that she didn't need to check the policy documentation. Therefore, she feels Owl is responsible for A's decision to cancel her policy.*

*On the other hand, Owl says that sale was conducted properly and that the post-meeting documentation made it clear to Mrs S that a) she needed to check the paperwork and b) the terms on which A had offered insurance cover.*

*As the policy sale took place in a face-to-face meeting between Mrs S and Owl's adviser, it's impossible for me to conclude with certainty what was said or done. Where there's a dispute about what happened, I need to make my decision based on the balance of probabilities – in other words, what I think is most likely to have happened, given the available evidence and the circumstances. In doing so, I've carefully considered Mrs S' testimony, as well as records from the time of sale and the post-sale documentation.*

*Both Mrs S and Owl have provided us with a copy of the 'fact-find' the adviser carried out to identify Mrs S' demands and needs. It's clear that the adviser did wrongly record Mrs S' nationality. The fact find records Mrs S as having two jobs – one, in an employed manual role and the second, in a self-employed non manual role. The evidence does indicate then that Mrs S told the adviser about her employed, manual role and that this was recorded on the fact-find.*

*There's no reference to Mrs S' medical history on the fact-find at all, so I can't determine what, if anything, was most likely discussed about Mrs S' medical conditions or the symptoms she'd experienced. Nor is there any reference to what sick pay entitlement she might have had from her employed role, which would generally be taken into account when considering an appropriate deferred period. Neither can I see that policy affordability was discussed. In the absence of such information, it's difficult to know on what basis the adviser reached their recommendation.*

*I've looked carefully at the 'reasons-why' letter the adviser sent Mrs S on 15 June 2023. Again, there's no reference to Mrs S' existing sick pay provision (if any) and nor is there any reference to her job roles. The reason given for the recommendation seems to have been because it met Mrs S' need for short-term benefit if she became unable to work due to accident or sickness.*

*Owl has provided us with a copy of the application summary prepared by A following the policy application. This doesn't list Mrs S' employed role in a manual occupation or reflect the fact-find. Instead, it states that Mrs S was self-employed in a non-manual role – a role to which an insurer is likely to attach less risk. Several medical questions have been completed*

*on Mrs S' behalf which indicate that Mrs S didn't have any medical conditions and hadn't been experiencing any of the symptoms A wanted to know about. I can't safely say where or when the adviser obtained this information, given there's simply no reference to it on the fact-find. It's entirely possible that the adviser did run through A's questions with Mrs S and that she answered them incorrectly. It's equally possible though that Mrs S did answer the questions accurately and that the adviser working on her behalf simply failed to pass on the right information to A.*

*In the round though, I think the evidence points to Owl's adviser having made clear errors during this sales process. It seems they provided A with incorrect information about Mrs S' occupation, to her detriment, and nor can I see that relevant concerns such as affordability or existing sick pay provisions were discussed. It's clear too that the adviser got Mrs S' nationality wrong, which is a concern, given they were conducting the sales meeting in Mrs S' first language. So I need to now consider what I think fair compensation should be.*

*A told Mrs S that it was the discrepancy between her occupation and her medical conditions which led to its decision to cancel the policy. I can't say with certainty whether if it had been given accurate information about Mrs S' employed role, it would have offered a policy but simply on different terms. Nor can I say whether or not Mrs S' claim would have been covered in any event. I'd also add that I've seen no compelling evidence that Mrs S would have been able to find an alternative income protection policy which would have offered cover for her existing medical conditions.*

*And I also need to bear in mind that following the sale and application, Mrs S was sent information by both Owl's adviser and A. The reasons-why letter said:*

*'The recommendations that follow are based on my understanding of your current financial position and objectives. If this letter or the content of any supporting documentation does not coincide with your view of the situation please contact me immediately.'*

*Mrs S says that the adviser told her not to read any of the policy paperwork. But I think this letter ought to have reasonably put her on notice that she did need to both read and check both the letter and other policy information and to get in touch with the adviser if any information was wrong.*

*The application summary I've referred to above clearly states that Mrs S is self-employed in a non-manual role. It also sets out the detailed medical information A wanted to know and the answers which had been submitted to it. I can see from A's claim decline letter that it says a copy of the application summary was sent to Mrs S for checking before it was sent to it. And the policy schedule Mrs S was sent after the sale also clearly stated that she was self-employed in a non-manual occupation.*

*Given I think the reasons-why letter made it clear that Mrs S needed to check the policy documents, I currently think she ought reasonably have done so ahead of the policy being set-up. It seems Mrs S has a good grasp of the English language and I think the post-sale documents were clearly worded. Had Mrs S checked the application summary, she'd have noted that her occupation had been wrongly entered and that the medical information didn't reflect the information she says she gave Owl's adviser. At that point, she'd have been in a position to confirm with the adviser that the information A had been given was wrong and the application could have been accordingly amended. This would have enabled A to assess whether it was prepared to offer cover and, if so, on what terms. So I do think Mrs S bears some responsibility here for the failure to set-up the policy correctly and for A's eventual decision to cancel her policy. Again then, I don't find it would be fair or reasonable to direct Owl to pay compensation to the value of Mrs S' claim in these particular circumstances.*

*As such, I currently find that the fair and reasonable outcome to this complaint is for Owl to pay Mrs S compensation for the distress and inconvenience I think she was likely caused by its failure to properly record information about her occupation and its seeming lack of assessment of relevant demands and needs. And I'm presently persuaded that an award of £500 is fair, reasonable and proportionate to reflect the material distress and inconvenience I think Owl's errors at the point of sale caused her. So I plan to tell Owl to pay Mrs S £500 compensation.'*

I asked both parties to send me any further evidence or comments they wanted me to consider.

Owl said it had nothing further to add.

Mrs S didn't accept my provisional decision. She said that the compensation I proposed to award was insufficient to cover even a small portion of the expenses she'd incurred to return to work. She said she'd find compensation of £30,000 to be satisfactory. She considered this was supported by the fact that due to the negligence and lack of professionalism of Owl's adviser, she'd lost the opportunity for financial support. She felt this was not solely due to her oversight. Mrs S said the errors which had taken place during the signing of the contract were mistakes she was unaware of. She maintained that she'd given Owl's adviser truthful information during the sales meeting. So she said she'd signed the documents believing in their accuracy. Mrs S also told us that A had recordings of calls which highlighted the errors made by the adviser which had been ignored. She added that her partner had witnessed the incident and was prepared to testify in court.

### **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, whilst I'm sorry to disappoint Mrs S, my final decision is the same as my provisional decision and for the same reasons.

As I explained in my provisional decision, I accept that Owl's adviser clearly made errors at the point of sale. It seems Mrs S did provide Owl with accurate information about her occupations which wasn't passed on to A. Instead, the adviser seems to have given A inaccurate information about Mrs S' occupation.

But it remains the case that I think Owl's adviser's post-meeting communications made it sufficiently clear that Mrs S should check the policy paperwork and that if it didn't coincide with her view of the situation, she should get in touch. So I still think she ought reasonably to have been put on notice that she needed to check the policy paperwork to ensure it accurately reflected the information she says she gave the adviser. And I remain satisfied that the application summary Mrs S appears to have been sent by A clearly explains on what terms the policy had been set-up, including the occupation and medical details it had been given by Owl.

So I still find that if Mrs S had checked the policy paperwork prior to the policy being set-up, she'd have been in a position to note that the adviser had wrongly entered her occupation and, potentially, entered incorrect medical information. And therefore, she'd have been able to let the adviser know about the errors ahead of the set-up, meaning the application to A could have been accordingly amended. A could then have assessed whether or not it was still prepared to offer Mrs S cover and if so, on what terms. This means I still think Mrs S bears some responsibility for the policy being set-up on the wrong terms, which resulted in A's eventual decision to turn down the claim and cancel the policy. As such, I'm still not

persuaded that it would be fair or reasonable for me to direct Owl to pay Mrs S compensation to the value of her claim.

Mrs S has referred to recordings of her calls with A in which she says she highlighted Owl's adviser's errors. However, this complaint concerns Owl's actions. If Mrs S feels that A failed to act on information she gave it about Owl's adviser's errors, it would seem to me that this would be a potential concern about A rather than Owl.

I appreciate Mrs S says her partner was a witness to what happened at the point of sale. But as I've said, the fact-find indicates that Mrs S gave the adviser accurate information about her occupations. And the evidence shows that Owl's adviser made an error when they gave A information about Mrs S' occupations and potentially about her medical situation too. I've borne this in mind carefully when deciding what fair compensation should be. In all the circumstances of this complaint, I'm still satisfied that total compensation of £500 to reflect the impact of Owl's errors on Mrs S is fair, reasonable and proportionate. And therefore, I'm directing Owl to pay Mrs S £500 compensation.

### **My final decision**

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint in part.

I direct Openwork Ltd trading as Owl Financial to pay Mrs S £500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 6 August 2024.

Lisa Barham  
**Ombudsman**