DRN-3546407

The complaint

Mr and Mrs P complain Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) mis-sold a unit linked whole of life policy because it was unsuitable based on their needs, objectives and attitude to risk.

What happened

Mr and Mrs P met with an advisor from Sun Life in November 1988. Based on the recommendation, they took out a unit linked whole of life policy for the dual purpose of providing family protection and saving to fund their children's future education. It provided a sum assured of £129,480 payable on a first death basis. The premium was initially £40 per month which was set to increase 10% each year for the first five years. The policy also provided additional death benefit (ADB) of £64,740 and waiver of premium benefit (WOP).

In 2021, Mr and Mrs P's representative complained to Sun Life that the policy was mis-sold. The representative said the adviser did not assess Mr and Mrs P's attitude to risk but recommended they invest in funds which were too high risk. They also stated it was never viable that the plan would enable them to pay for the education of their children and that Sun Life didn't discuss other options.

Sun Life responded in May 2021. They upheld the complaint explaining they couldn't see the adviser had explained the risks associated with the investment element and hadn't discussed other options for saving. Also, that Mr and Mrs P didn't have sufficient emergency savings. However, they said Mr and Mrs P did have a need for the life cover, the ADB and WOP. They offered to refund the premiums minus the cost of the suitable benefits and add interest.

Mr and Mrs P remained unhappy and their representative asked our service to investigate the complaint. They didn't agree there was a need for life cover and so felt the offer made by Sun Life wasn't reasonable. The Investigator issued her view and explained why she felt Sun Life's offer was fair and reasonable in the circumstances.

The representative didn't agree with the Investigator's findings. In summary, he said the offer wasn't reasonable as Sun Life intended to deduct the cost of benefits to date. The fact find said very clearly the life cover was required to protect the children who at the time were aged two and five. Therefore, deducting the cost of cover over 33 years wouldn't be fair or reasonable as the youngest child would be independent after 16 years. Sun Life should only deduct the cost of the cover for 16 years and make a full refund beyond this time.

As Mr and Mrs P didn't agree, the case has been passed to me to decide.

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.

Sun Life have already accepted the evidence doesn't demonstrate the recommendation to invest in the unit linked policy was suitable for Mr and Mrs P's objective to save money. This was in respect of their attitude to risk, alternative lower risk saving options and having sufficient emergency funds in place. I note this hasn't been disputed by Mr and Mrs P's representative.

I'm in agreement with what has been said about the recommendation to take out a unit linked whole of life policy being unsuitable. Sun Life made an offer to put things right but said they would deduct life cover, ADP and WOP from the refund of premiums.

The representative disputes that Mr and Mrs P had a need for indefinite life cover. He said the fact find clearly showed they wanted protection for their dependants. So, he argues they only needed the cover to run for the period in which their children were likely to be dependent.

I should say that this policy was sold in 1988 and there is limited paperwork given the amount of time which has now passed. Sun Life have also confirmed they have provided us with paperwork in the best condition they can. Unfortunately, this includes handwritten documents which have faded and some of the information has become illegible. Therefore, I have based my decision on the information I do have and what I'm persuaded is more likely in the circumstances.

I've reviewed the fact find and I can see the advisor made a record of Mr and Mrs P's circumstances including income and expenditure, as well as liabilities (mortgage and credit). The advisor also recorded information about Mr and Mrs P's objectives and needs. In respect of Mr and Mrs P's priorities, the advisor noted they wanted protection for their dependants. This is reiterated in the additional information section.

However, I've also considered the recommendation form and what I can read of its contents. I can see the advisor confirmed Mr and Mrs P wanted to provide an amount of life cover:

> *"…to protect himself, his wife and family in the event of either of their deaths together with investment throughout the whole of life…"*

Although it seems protection for dependants was a key priority for Mr and Mrs P, it doesn't exclude that they may also have wanted cover for the duration of their life. And it seems from the advisor's recommendation that the duration of the policy was discussed, and Mr and Mrs P did want cover indefinitely.

I do have limited information about the reasons why Mr and Mrs P may have wanted cover for life on a first death basis. There are parts in the recommendation section I'm unable to read. However, I do have to bear in mind that they were married, and the policy would enable provision for the surviving spouse.

Additionally, Mr and Mrs P kept the policy in place for at least 33 years. This indicates they wanted the protection for a longer period of time and that it was affordable. They could have surrendered it sooner if they felt there was no need for the policy, and they would have received a surrender value. I understand Mr and Mrs P also had concerns about the surrender value. However, I would say the surrender value is usually less than the amount of premiums paid in because it is the amount paid when the policy is terminated and isn't the same as a cash value.

The ADB and WOP were also benefits attached to the life cover. As mentioned, I can't read the full recommendation section. But the evidence I've seen doesn't persuade me these options were unsuitable. Like the life cover, the ADB provided protection in the event of accidental death and WOP provided cover in the event Mr and Mrs P were unable to pay premiums. And they've had the benefit of knowing they had this protection in place for the duration of the policy.

Overall, the recommendation for the unit linked whole of life policy wasn't suitable in the circumstances. Sun Life should put this right. However, it seems there was a need for life cover, ADB and WOP and Mr and Mrs P have had the benefit of knowing they've had protection for the duration of the policy. Also, they were covered during this period if it was necessary to make a claim.

Putting things right

The recommendation to invest in unit linked funds was not suitable. In light of this, I've considered what's been said by the parties and the evidence provided and I'm content Sun Life's offer is a fair and reasonable one.

Therefore, Sun Life should:

- Refund the premiums Mr and Mrs P have paid on the plan so far minus the cost of suitable benefits (life cover, ADB and WOP).
- Add 15% simple interest per year until 1 April 1993.
- Add 8% simple interest thereafter and up to the date of settlement.
- Sun Life may also be obliged to deduct income tax from the final interest award. If this is the case, Sun Life will need to provide a Certificate of Tax Deducted to Mr and Mrs P.

I'm satisfied this offer is fair and reasonable in all the circumstances and I won't be asking Sun Life to do anything further.

This is because I've concluded the life cover, ADB and WOP were suitable, and Mr and Mrs P have had the benefit of this protection. Therefore, its reasonable for the cost of this cover to be deducted from the refund of premiums.

Also, Mr and Mrs P confirmed they would have saved for their children. But I can't be certain from the evidence I've seen what exactly they would have done differently had they had the funds or what might have been recommended to them. However, I can say they've been deprived of these funds and the interest added to the settlement payment suitably reflects their loss of opportunity here.

It's unclear whether Mr and Mrs P have already cancelled the policy. However, Sun Life provided the option of keeping the policy in place until the next review date. If Mr and Mrs P did want to keep the policy in place, then it's reasonable for the surrender value to be deducted from the settlement.

My final decision

I'm upholding this complaint and Sun Life Assurance Company of Canada (U.K.) Limited should put things right in the way described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P and Mrs P to accept or reject my decision before 26 July 2022.

Laura Dean
Ombudsman