DRN-3676205

The complaint

Mr and Mrs T complain that Sun Life Assurance Company of Canada (U.K.) Limited ("Sun Life") mis-sold them a reviewable whole-of-life policy.

What happened

Mr and Mrs T were sold a reviewable whole-of-life policy by Sun Life in 1995 to satisfy a condition of their mortgage. The policy had a sum assured of £91,000 which matched their mortgage borrowing and the premium was around £33 per month. The policy was set up on a maximum cover basis – that means Mr and Mrs T were getting as much cover as possible for their premium. The policy would be reviewed after ten years and every five years thereafter until they reach a certain age when it would be more frequent.

In 2005, at the first review, Mr and Mrs T were told their sum assured had to decrease to around £57,000. The sum assured continued to decrease at each review. Mr and Mrs T complained. They said they wanted to either have cover for the original sum assured, or have the policy sum assured frozen at around £13,000 with no additional contributions, or have a full refund and cancel the policy.

Sun Life agreed that a reviewable whole-of-life policy wasn't appropriate to protect mortgage borrowing but concluded that Mr and Mrs T hadn't lost out financially as they hadn't made a claim whilst they still had their mortgage. Sun Life also said as the policy was still maintained after Mr and Mrs T repaid their mortgage it was clearly needed. It confirmed it didn't offer decreasing term plans at the time.

Our Investigator upheld the complaint. She agreed with Sun Life that a whole-of-life policy, particularly set up on a maximum basis, wasn't suitable to protect a mortgage – this is because it's very likely the sum assured would reduce after ten years – which is what happened in this case. She didn't think it was right for Sun Life to say there hadn't been a financial loss as no claim was made. She said that Mr and Mrs T may have paid less if they had been sold a term assurance policy matching the mortgage. As Sun Life didn't sell these, she recommended that it refunded Mr and Mrs T their premiums less the cost of life cover (plus interest) to fairly reflect the position they'd have been in had they not received unsuitable advice.

Sun Life didn't make any further comments but asked for an Ombudsman to reach a decision, so the complaint has been passed 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.

Having done so I've reached the same outcome as the Investigator for similar reasons, I'll explain why.

It's not disputed that a reviewable whole-of-life policy set up on a maximum basis wasn't suitable for Mr and Mrs T's circumstances here. They needed life cover as it was a condition of their mortgage but the policy they were sold would only provide them with the right level of cover for ten years – at which point it was likely to decrease. In Mr and Mrs T's case that's what happened. Their life cover had to drop significantly at the first review at which point, it's unlikely it covered their mortgage.

Sun Life has said that Mr and Mrs T haven't lost out as they didn't need to claim whilst their mortgage was in force. It went on to say that the policy has remained in force demonstrating that Mr and Mrs T needed it. Specifically, Sun Life's representative said:

"If we had been able to offer a decreasing term plan then they would not have had the life cover for the years since the repayment of their mortgage, so I do not believe that a decreasing term plan would have been suitable."

I disagree with Sun Life here. Mr and Mrs T only needed this life cover for the mortgage at the point of sale – and Sun Life sold them something that wasn't suitable. The fact that Mr and Mrs T kept the policy beyond repaying their mortgage doesn't make the recommendation suitable. And, in any event, Mr and Mrs T have said they continue to pay for this policy to ensure they don't lose out. And given they're willing to cancel it if they receive a refund of premiums I think that demonstrates that they no longer need the cover. I can't agree with Sun Life's argument that a decreasing term plan wouldn't have been suitable. This is because Mr and Mrs T's objectives were to cover their repayment mortgage – for which a decreasing term plan would've been suitable.

It is clear to me that the policy Sun Life recommended wasn't suitable for Mr and Mrs T's objective of covering the mortgage. I've seen no evidence showing they needed the cover for anything else or that there was any reason why Mr and Mrs T wanted a reviewable whole-of-life policy which was likely to need significant changes after ten years.

I do note that Mr and Mrs T's mortgage required them to have life cover in place, so I can't say it would be fair to fully refund their premiums. They'd have always needed some cover. But suitable cover in this case was a decreasing term assurance policy. Sun Life says it didn't sell these – so Sun Life can't do a comparison for premiums. Instead, I've thought carefully about what would be fair and reasonable in this case. Our Investigator felt fair redress would be to refund Mr and Mrs T their premiums less the cost of life cover as it wouldn't be right for Sun Life to have received plan charges for something that it shouldn't have sold. I think this is the fairest way to put things right for Mr and Mrs T. We know they would've needed to pay for life cover, but this policy wasn't suitable – and Sun Life didn't offer a suitable alternative to compare the cost. So, I think the redress the Investigator suggested is fair and reasonable in this particular case.

Putting things right

Sun Life Assurance Company of Canada (U.K.) Limited must do the following:

- Refund Mr and Mrs T's premiums paid to the date of this decision less the cost of life cover.
- To the loss, it must add 8% simple interest* per annum from the date the premiums were paid to the date of settlement.

*If Sun Life Assurance Company of Canada (U.K.) Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr and Mrs T how much it's taken off. It should also give them a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold this complaint. Sun Life Assurance Company of Canada (U.K.) Limited must follow the instructions above to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T and Mr T to accept or reject my decision before 31 January 2023.

Charlotte Wilson
Ombudsman