

The complaint

Mr R complains that Sun Life Assurance Company of Canada (U.K.) Limited, trading as Sun Life Financial of Canada ('SLFC') mis-sold him a whole of life policy in 1993.

What happened

At the time the whole of life policy was sold Mr R was single and had no dependents. Mr R took out a mortgage in 1994 and the whole of life policy was assigned to the lender for two years. Mr R believes he took out another policy around this time to protect his mortgage. After the whole of life policy benefits were re-assigned to Mr R he continued with monthly payments and over the years the level of cover and premiums increased in line with national average earnings.

Mr R's representative, a Claims Management Company ('CMC'), complained to SLFC 2020 that the whole of life policy was unsuitable at the time of the sale and that it had been mis-sold. SLFC accepted Mr R was single, had no dependents when the policy was sold and that the life cover recommended was to provide a guaranteed insurability for future commitments. SLFC partially upheld the complaint because the policy was recommended to meet a future need and not a need Mr R had when the policy was sold. SLFC said that because Mr R had assigned the policy to his mortgage between 1994 and 1996, this demonstrated he had a need for it during this time. SLFC also said Mr R had met with an adviser again in 1999 and because he was then married there was a need for the policy at that time. So, SLFC offered to refund the premiums from 1993 until 1999, less the cost of life cover between 1994 and 1996, plus interest, less the value of the policy in 1999.

Mr R's didn't agree with the outcome proposed by SLFC and he brought his complaint to the Financial Ombudsman Service and is represented by the CMC.

One of our Investigators looked into things and thought that the offer made by SLFC was unreasonable in the circumstances. The Investigator thought SLFC's existing offer puts things right between 1993 and July 1999. However, in addition to the original offer, the Investigator thought SLFC should also refund the premiums paid from July 1999 to the date of settlement, along with 8% interest.

SLFC didn't respond to the Investigator so 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.

The crux of the complaint is the mis-selling of the whole of life policy in 1993. I think it may help if I break down my decision using the key periods in the life of the policy.

Between 1993 and 1994

There may well have been a need for life cover later in Mr R's life, but what I have to

consider is was there a need when the policy was sold. In the circumstances of this case SLFC have already accepted there wasn't an identified need for protection when the policy was sold. So, what I need to consider is what happened after the policy was sold and how this may impact any redress that may be payable.

Between June 1994 and July 1996

Although Mr R's representative suggested Mr R arranged a separate policy in 1994 to provide life cover for his mortgage, Mr R hasn't been able to provide any evidence this was the case. As I've seen evidence the whole of life policy with SLFC was assigned to the mortgage company, I consider it's unlikely Mr R used another policy to provide the required life cover for the mortgage between June 1994 and July 1996. I've decided the SLFC policy was used in this regard, and Mr R derived some benefit of the policy between June 1994 and July 1996. I consider this should be taken into account when considering any redress.

From August 1996 until present

SLFC say Mr R met with one of their advisers in 1999 and say that as Mr R was married at the time there was a need for protection. Unfortunately, I've not been provided with any evidence from the business to show me an assessment of needs was carried out in 1999. Regardless of this both parties have already agreed there was no need for protection at the time of the sale. So, I consider it's a moot point whether it was suitable in 1999 as it shouldn't have been sold in the first place. It failed the suitability test in 1993 and simply because it may have become suitable at a later point is not the test here.

Putting things right

I considered asking SLFC to refund the premiums from the start of the policy. This is our typical response to a mis-sale complaint, but Mr R did use the policy between June 1994 and July 1996 to protect his mortgage. I've decided that when Mr R did this, he derived some benefit from the policy during this period. If he had died SLFC would likely have dealt with a claim on the policy. So, I consider it would be fair and reasonable to deduct the cost of life cover Mr R paid between June 1994 and July 1996 from any redress I direct.

SLFC's view that any remedy should limited to 1999 doesn't feel fair to me, especially as there is nothing to persuade me the policy and Mr R's circumstances were reviewed at the time. And, Mr R has continued to pay the premiums on a policy SLFC have already agreed they mis-sold. So, as the policy was mis-sold in 1993, I see no reason to divert from our typical approach for a mis-sale of a whole of life policy albeit that a deduction is made for the cost of the life cover Mr R the policy provided when he assigned it to his mortgage. I'm satisfied for this period of time Mr R did derive a benefit from the policy whether it was mis-sold or not.

So, I've decided that SLFC should update its redress calculation and pay the total of the following calculation to Mr R:

That calculation is $A + B - C$ where:

A. = the return of premiums paid from 1993 to the date the settlement date – less the cost of life cover paid between June 1994 and July 1996

B. = 8% simple interest on the premiums to the date of settlement

C. = the whole of life policy's value at the date of settlement.

If SLFC considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr R may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

I uphold this complaint. Sun Life Assurance Company of Canada (U.K.) Limited, trading as Sun Life Financial of Canada should undertake the redress calculation set out above and pay any resulting balance, if any, to Mr R. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 23 November 2022.

Paul Lawton
Ombudsman