DRN-4250439

The complaint

The trustees of the E trust, represented by Mr E, complain about how ReAssure Limited have administered a reviewable whole of life (RWOL) policy they hold. They're unhappy with the outcome of the 2020 policy review which said that the premiums would have to significantly increase in the future to maintain the level of cover.

What happened

The policy was taken out in 2002 for the purpose of mitigating inheritance tax (IHT) on a joint life, second death basis with a sum assured of £145,916.50 and annual premiums of £4,787. It was reviewable after the first 10 years and yearly thereafter.

Following the 2020 review, ReAssure wrote to the trustees and said that while no immediate changes were required, the premiums being paid would only support the sum assured for another year. And if the trustees wanted to maintain cover for a further five years, the yearly premiums would have to increase from £6,371.50 to £23,162.98. Alternatively, they could reduce the sum assured from £194,213 to £83,324.

The trustees complained to ReAssure and raised concerns about the outcome of the review. They said, in summary, that when they took out the policy it had been projected to last for 36 years and only 18 had passed. They thought that ReAssure had changed their mortality calculations without warning and were trying to make the policy unattractive in an attempt to encourage cancellation.

ReAssure looked into the trustees' concerns but didn't uphold the complaint. They explained that while they had provided a projection of how long the policy was expected to last, they hadn't provided any guarantees. And their initial projections had been impacted by the policy's underlying fund not performing as well as expected.

The trustees didn't accept ReAssure's findings and asked for our help with the matter. The complaint was considered by one of our investigators who didn't think it should be upheld. He didn't think ReAssure had given any guarantees about how long the policy would last and instead had only provided a projection. However, he thought that some of ReAssure's communications hadn't met the required standards. Prior to 2016, the review letters ReAssure sent the trustees didn't contain an adequate warning of the size of changes that might be needed in the future.

However, after 2016, their letters had provided clear information about the status of the policy and the changes that might be needed in the future in order to maintain the level of cover. He thought that while ReAssure hadn't provided sufficient information prior to 2016, even if they had done so, the trustees wouldn't have taken a different course of action. This was because no changes had been made to the policy before it was surrendered in 2021 despite letters in 2018 and 2019 providing clear information about how long it was expected to last.

The trustees didn't agree with the investigator's findings. The made the following points, in summary:

- The policy was chosen as it was deemed to be the most risk free that could be expected. However, their calculations had shown that if both lives assured had lived for the 36 years originally projected, then the premiums would have increased to a level that would have been impossible to pay.

- There was no evidence why the significant increase in premiums had happened and ReAssure shouldn't be able to increase their insurance costs to unsustainable levels without showing clear evidence for the reason for the increase and evidence supported by similar increases from other insurance providers. They'd obtained quotes from other providers as a benchmark which had shown that cover could be sourced for around £450 per month.

- It was unreasonable for ReAssure to say that cover would last for 36 years but then say that an extra million pounds in premiums would be required to make the policy last for that amount of time.

- The documentation that had been provided at the time of the sale didn't show any examples of joint life, second death policies and didn't explain that when one party passed away then the cost of the policy would escalate.

- They thought that the reason for the increased premiums wasn't to do with the return on the underlying investments, it was to do with the unfair changes ReAssure had made to the cost of providing cover.

- They thought that Mrs E who was in her nineties when she received the 2018 and 2019 review letters from ReAssure couldn't have been expected to understand the level of premium increases nor have sufficient knowledge and actual understanding to cancel the policy – which was taken out to last for life.

The investigator wasn't persuaded to change his opinion, so the complaint 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.

Having done so, I don't think this complaint should be upheld and I will go on to explain why. I'd firstly like to say I'm sorry to hear of the difficult circumstances the trustees have faced over last few years due to the passing of Mr E's father and Mrs E's poor health. I'd like to reassure them that I've carefully considered all the submissions they've made in coming to my decision.

The first point I've considered is relating to the information that was provided at the time of the sale. I'd like to point out that I'm not considering any allegations that the policy was mis-sold by ReAssure as they weren't responsible for giving the advice to take out the policy. However, they did have a responsibility to ensure that the information they provided at the time of the sale was clear, fair and not misleading.

I can see that the trustees were provided with a projection that the life cover was expected to last for 36 years based on the cost of life cover at the time and projected growth of 6% per year. However, I'm satisfied that this was just a projection and not a guarantee. The projections were based on factors which could change and ReAssure have provided evidence to show that the assumed growth of 6% hasn't been achieved across the policy's lifetime.

The only guarantee that was provided was a guarantee that the original sum assured wouldn't change for the first ten years of the policy, provided that contributions and benefits were maintained at the original level. After this period regular reviews would take place and changes could be made to either the sum assured or premiums. So, I don't think ReAssure acted inappropriately by subsequently reviewing the policy and changing their initial projections.

It may be helpful if I firstly explain how these polices broadly work in practice. A key feature of these policies is the variable nature of the cost of providing cover. This cost isn't a fixed amount across the lifetime of the policy but instead increases over time.

At the outset, when charges are relatively low, the difference between the premiums being paid and the charges results in an investment pot being built up. As the life assured gets older, the cost of providing cover increases and can exceed the premiums being paid in, but this can be offset by selling the accrued funds, or using the return from the investment pot.

Businesses will undertake reviews to ensure that the policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy isn't sustainable at its current premium, the consumer will usually be offered the option of reducing the sum assured or increasing the premium.

What has happened in the case of the trustees' policy is that because the investment pot hasn't grown as much as initially assumed, the sum at risk – the difference between the pot and the sum assured – is larger than expected. The sum at risk plays a major role in the cost of cover as the bigger this figure is, the higher the cost of providing cover. What can happen is that the cost of providing cover is higher than the premiums being paid and the return from the investment pot isn't sufficient to meet this difference. In this scenario, the funds in the pot start being used to offset this difference and the pot itself will start to decline, leading to an increase in the sum at risk and higher charges for providing cover.

I fully appreciate the trustees' concerns at how ReAssure's charges for providing cover. But this service isn't the industry regulator, and we are therefore unable to tell an insurer how much to charge their policyholders for the life cover they provide. An insurer will set their charges based on a number of factors and provided they treat customers fairly; they are entitled to make a commercial decision on the level of charges to apply to their policies.

However, what ReAssure needed to do was to ensure that the trustees were in an informed position about potential changes that the policy would need in the future. This is because the earlier changes are made to the policy, the more beneficial it will be to consumers as the changes will have a smoothing effect over time and potentially prevent the need for drastic changes later down the line. For example, a small increase in premium at an earlier date will result in a larger pot being built up which will in turn reduce the sum at risk and the need for increased premiums.

The table below shows the costs of the trustees' policy versus the premiums that were being paid.

Year	Cost of Cover	Premiums paid	Value of underlying fund
2002	£18.86	£4,787.00	
2003	£143.87	£4,787.00	£1,961.90
2004	£331.76	£4,787.00	£6,732.47
2005	£541.16	£4,787.00	£12,524.23
2006	£774.53	£4,787.00	£18,945.86

2007	£1,036.22	£4,787.00	£22,957.28
2008	£1,382.73	£4,787.00	£20,635.17
2009	£1,763.29	£4,787.00	£24,789.71
2010	£2,142.74	£5,265.70	£31,264.07
2011	£2,803.09	£5,265.70	£34,282.47
2012	£3,374.80	£5,792.27	£38,639.44
2013	£4,251.88	£5,792.27	£44,961.86
2014	£4,912.11	£5,792.27	£46,588.90
2015	£5,687.91	£5,792.27	£46,168.94
2016	£6,928.14	£6,371.50	£47,524.19
2017	£8,542.31	£6,371.50	£48,970.68
2018	£10,630.92	£6,371.50	£43,441.57
2019	£16,303.63	£6,371.50	£36,969.89
2020	£20,327.31	£6,371.50	£22,104.96

What the table illustrates is that by the policy year ending 31 October 2016, the policy had reached an important tipping point where its costs had overtaken the premiums being paid. This meant that the underlying mechanics of the policy had changed, from that point onwards the underlying fund would start being utilised to offset the cost of cover. This was a key moment in the lifecycle of the policy and one that ReAssure needed to communicate to the trustees.

Therefore, I've considered ReAssure's communications with the trustees taking this into account. In considering what is fair and reasonable in all the circumstances of this complaint, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice; and what I consider to have been good industry practice at the relevant time. Having taken all these elements into account, I've set out below what I consider to be the key factors:

Relevant considerations

I think the FCA's Principles for Businesses ("the Principles") are relevant to this complaint. They are set out in the FCA's Handbook as "a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). Particularly relevant are Principles 6 and 7 which say:

- Principle 6 – *"A firm must pay due regard to the interests of its customers and treat them fairly."*

- Principle 7 – *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

Principle 6 and 7 have applied unchanged since 1 December 2001.

The Conduct of Business Sourcebook (COBS) sets out further relevant regulatory obligations. I consider the most relevant obligations here are:

- COBS 2.1.1R (1) – *"A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)."*

- COBS 4.2.1R (1) – *"A firm must ensure that a communication or a financial* *promotion is fair, clear and not misleading."*

These obligations were in place at the time of each of the relevant policy reviews I have set out in the background section above and since 1 November 2007 when COBS came into force.

FG 16/8 Fair treatment of long-standing customers in the life insurance sector

In 2016, the FCA published a guidance note – *"FG 16/8 Fair treatment of long-standing customers in the life insurance sector"* – which I think is also a relevant consideration. It was published in December 2016, following a Thematic Review and a period of consultation. The guidance was provided in four high level outcomes (with fourteen sub-outcomes). The four high level outcomes were:

1. *The firm's strategy and governance framework results in the fair treatment of closed-book customers.*
2. *The firm's closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle to enable them to make informed decisions.*
3. *The firm gives adequate consideration to, and takes proper account of, fund performance and policy values in a way that ensures it treats its closed-book customers fairly and proportionately.*
4. *The firm's closed-book customers are able to move from products that are no longer meeting their needs in a fair and reasonable manner.*

Also of particular importance is the note's clarification that:

1.14 The requirements on firms have not changed; they reflect the Principles and certain other rules. Some of the detailed expectations have also previously been set out in:

- *formal guidance in the form of Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) Regulatory Guide*
- *other communications such as a previous With-Profits Regime Review Report and various Treating Customers Fairly (TCF) communications as referred to in Chapter 2 of TR16/2; and*
- *senior management speeches*

The relevant sections of the finalised guidance, in my opinion, are:

Outcome 1: The firm's strategy and governance framework results in the fair treatment of closed-book customers.

Sub-outcome 1.2: The firm checks, through periodic product reviews, that closed-book products remain fit for purpose and continue to meet the general needs of the target audience for whom they were designed.

Finalised Guidance: Our expectations

As stated in the RPPD, and in line with Principle 6, we expect firms to review a product periodically to check whether it continues to meet the general needs of the target audience for whom it was designed at the point of sale or after any subsequent changes are *communicated between the firm and customers. To do this, firms that have closed-book customers should have well-defined and effective processes to ensure that products continue to meet customers' reasonable expectations. Firms should also have in place adequate risk management systems to ensure that they can identify where poor outcomes may be occurring, and take appropriate action.…*

Firms should ensure that closed-book products are delivering fair outcomes for customers. Although we recognise that T&Cs should be taken into account when reviewing a product, this should not detract from the need to focus on achieving fair outcomes for customers. Firms will be aware that some products were manufactured and sold in a different era – where, for example, economic conditions may have been fundamentally different. The risk that the passage of time could adversely impact on the outcome the customer receives is something that firms should be aware of, and their processes should take this into consideration.…

We expect firms to consider whether a product continues to provide a fair outcome to the customer. This may include assessing whether customers have received the investment return that they could reasonably expect, or whether product charges consistently outweigh the performance being produced.

When considering outcomes that closed-book customers may be experiencing, the firm should take into consideration all the relevant factors that could affect the product's performance. For example, value for money, and product performance (including the impact of charges, contractual obligations, communications to customers and complaints data) are all likely to be relevant factors to assess. However, this is by no means an exhaustive or definitive list. Firms should be able to articulate clearly the criteria that they assess products against and be able to explain what a fair outcome should be for each product (or group of products). This should take into account what a reasonable customer expectation should be, based on what the customer is likely to have understood by the information given to them at point of sale.

Where firms identify issues, they should take appropriate and timely action to address them in line with the fair treatment of affected customers….

Outcome 2: The firm's closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle that enable them to make informed decisions.

Sub-outcome 2.1: Regular communications to customers provide them with sufficient information to make informed decisions.

Finalised Guidance: Our expectations

We expect firms to ensure that they meet the information needs of all their customers, including closed-book customers, on an ongoing basis.

Principle 7 of our Principles for Businesses requires firms to have due regard to the information needs of their customers. As such, firms should have appropriate mechanisms in place to assess these information needs and ensure their communications meet these needs. To do this, firms should provide their closed-book customers with regular communications regarding their policies. We would expect this communication to be issued at least annually, unless the firm is able to justify how it is otherwise meeting the information needs of its customers.

In line with Principle 7, firms should also ensure the content of these regular communications *is consistent with their customers' information needs. In their communications, firms should include, for example, sufficient and clearly explained details regarding the performance of the product, its value, and the impact of fees and charges.*

Principle 7 also requires communications to be fair, clear and not misleading.

Therefore, reflecting the nature of the policy sold, firms should consider including the following in the communication (as relevant or appropriate to customers' information needs):

- *The current value of the policy. The policy value may be different, due to charges or policy conditions, from the transfer or surrender value. Where this is the case, firms should provide both the current and the surrender value of the policy. For whole-of-life policies with cash-in-value, we expect this to be included as the current value. For conventional with-profits policies, the current value may be challenging to calculate; in such cases, firms should explain the impact of any likely terminal bonus on the current value and any reductions in asset share that will reduce the current value on surrender.*

- *The value at the previous communication date and the value of any premiums paid in over that period. This facilitates a broad comparison of the performance of the policy with reference to the current year's value.*

- *For unit-linked (non-profit) policies, charges incurred over the period in monetary figures. This includes setting out, in addition to the aggregate charge, a breakdown of the major components and the charge to the customer for benefits such as life cover and guarantees.*

- *For unitised and conventional with-profit policies, an explanation of the charges being deducted – for example, the guarantees that incur a charge and policy fees – and an indicative level of charge (in monetary terms) applicable to the policy.*

- *Where customers have specific options and benefits associated with a policy – for example, life cover or a guaranteed minimum death benefit – a reminder of this should be in regular communications.*

Sub-outcomes 2.2 and 2.3: Communications to customers at the time of key policy events are clear, accurate and enable them to make informed decisions; and communications with customers make them aware of guarantees or options (whether time-critical or not).

Finalised Guidance: Our expectations

Principle 7 of our Principles for Businesses requires firms to have due regard to the information needs of their customers and communicate in a way which is clear, fair and not misleading.

In line with this, we expect firms to ensure that closed-book customers are fully informed of the various options, features and guarantees that form part of their policies – both on an ongoing basis and in the lead up to policy events. Firms should undertake an assessment of the products' benefits and determine how to ensure customers are kept informed.

In line with our requirement that firms' communications should be clear, fair and not misleading, we expect firms to be specific when setting out guarantees or benefits that are available to closed-book customers and avoid language that is ambiguous. For example, it *would not be appropriate simply to provide statements such as 'you may have life cover as part of your policy'. Instead, firms should state the level of cover provided as a monetary amount. Furthermore, firms should also not 'cherry pick' which benefits are to be disclosed. The needs of customers vary, and benefits that are not of significance to one customer may be valuable to others.*

In communications with customers regarding a policy event, firms should highlight the benefits (plus any associated costs) that are likely to be impacted by the event in a sufficiently prominent and specific manner.

Additionally, to be clear, fair and not misleading, we expect any communication surrounding a key event to:

- *set out clearly all options available to the customer in a balanced manner including the risks, costs and potential benefits of each option*

- *set out clearly any charges that may apply (exit and/or paid-up charges should, where possible, be presented as monetary figures so that the impact is clear)*

- *provide sufficient notice to customers and provide clear time lines for when a decision is needed*

- *highlight where there may be a need for the customer to seek advice; and*

- *provide alternative options to incurring a paid-up/exit charge (for example, indicate if a customer could delay surrendering a policy so that a charge would not apply or would not apply at that time)*

…

Firms should carefully consider the layout and structure of event-driven communications to ensure that information is easily accessible and key information is sufficiently prominent. Consumer testing is one approach to assessing the quality of communications; proactively engaging with consumers both during the initial development of communications and afterwards will help ensure all communications remain fit for purpose. Firms should also take both the quality and contents of event-driven communications into consideration in the course of product reviews.

I think it's important to reiterate that even though the Finalised Guidance was published in December 2016, the examples of good practice it gave were based on actions the FCA reasonably expected from firms before that time based on rules and Principles that were in existence throughout the period in question.

FG 16/18 contains explicit statements regarding this point:

- Feedback statement 2.9 – *"Our existing rules and Handbook guidance, together with this guidance, are sufficient for firms to understand our requirements in this area and to make any changes necessary to comply with our expectations. The guidance simply adds an extra level of detail about our expectations to improve customer outcomes. These are not new expectations and are reasonably predictable from the Principles and relevant rules."*

- Feedback statement 2.99 – *"The guidance is not intended to create any new requirements but to remind firms of our expectations in relation to existing requirements contained in COBS rules and elsewhere."*

Taking both of these statements into account, I think it is reasonable to use FG 16/18 as not only a relevant consideration, but also as what the FCA would consider to be good industry practice. With this in mind, I think that once the policy had reached its tipping point then it was incumbent on ReAssure to provide the trustees with the information I've set out below in a clear fair and not misleading way to enable them to make an informed decision. They needed to provide this information within twelve months of the tipping point being reached, so by 31 October 2017:

- A clear outline of the existing cover – including the sum assured and premiums.
- The current surrender value.
- The life cover costs (including administration charge).
- A clear explanation that the costs were no longer being met by premiums and that units in the investment fund needed to be sold.
- A clear explanation of how long the policy was likely to be sustainable on its existing terms (reasonable approximations would suffice).
- Estimates of what the policy might cost at the point when the policy was likely to cease to be sustainable on its existing terms in order to give the trustees information that would allow them to fully appreciate the risks and consequences of not taking any action.
- A clear explanation of the poor outcomes a consumer might face at the point the policy became unsustainable on its existing terms. This should include a clear outline of the levels by which premiums would need to increase (or the sum assured would need to decrease) in order to maintain the policy at that point (reasonable approximations or illustrative examples would suffice).
- A clear explanation of the options available to a consumer that were aimed at mitigating that outcome, together with the costs and benefits of each option (including increases in premium levels, decreases in the sum assured or surrender of the policy).

I've considered the communications ReAssure sent the trustees after 2016 and I don't think that their information needs were being met until the July 2018 review letter. However, I appreciate that while the information should have been provided by October 2017, I don't think any options that would have been presented then would have been materially different to the options presented in the July 2018 review letter. Therefore, I've carefully considered the content of the 2018 review letter and the trustees' response to it as it gives some insight into what may have happened if the information had been provided earlier.

What would the trustees have done differently?

I've considered what, if anything, the trustees would have done differently if they'd been provided with all the information I've set out above after the tipping point was reached. It's important to also take into account that from 2010 onwards, ReAssure were providing projections around how long they expected the policy to last. The 2010 review letter said:

"We expect this premium to be sufficient to provide cover for a further 10 years. The above premium and cover have been calculated assuming average fund growth before charges of

6% per annum. We cannot guarantee that the cover will continue to be supported by this premium for the full 10 years. If the specified growth rate is not achieved by the funds you have selected, you may need to increase your premiums before the 10th year."

The 2012 review letter said:

"We expect this premium to be sufficient to provide this cover for a further 5 years. The above premium and cover have been calculated using rates of growth specific to the funds you have selected. The projections for individual funds are added together to produce the values used. In this case the growth rates used were equivalent to overall growth of investments of 4.43% each year. More information on the growth rates used by Skandia for projections is available from the Skandia website: www.skandia.co.uk/funds/fund-information. We cannot guarantee that the cover will continue to be supported by this premium for the full 5 years. If the specified growth rate is not achieved by the funds you have selected, you may need to increase your premium before the 5th year."

The 2016 review letter said:

"We expect this premium to be sufficient to provide this cover for a further 5 years. The above premium and cover have been calculated using rates of growth specific to the funds you have selected. The projections for individual funds are added together to produce the values used. In this case the growth rates used were equivalent to overall growth of investments of 4.50% each year. More information on the growth rates we use for projections is available from our website: www.oldmutualwealth.co.uk/funds/fund-information. We cannot guarantee that the cover will continue to be supported by this premium for the full 5 years. If the specified growth rate is not achieved by the funds you have selected, you may need to increase your premium before the 5th year."

So, it is evident that some warnings were given around the fact that changes would be needed to be policy in the near future. However, there was no context given around the scale of the changes that would be required.

It was only in the 2018 review letter that this context was provided. The letter said that charges for cover had been revised and the total charge for the next five years would be £100,298.59. It also said that the current premiums would only support the policy for the next three years, but an increase to annual premiums of £11,781.12 would support the policy for another five years. A projection was provided which highlighted that yearly premiums would increase from £6,371.50 to £29,447.71 in 2021, £58,127.55 in 2026, £81,774.59 in 2031 and £99,720.79 in 2036.

The July 2019 review letter provided similar warnings and projections. It said that the current premium would only support the policy for another two years but an increase to £16,326.84 would provide cover for another five years. Premiums were projected to increase to £54,860 by 2036 if no changes were made. The July 2020 review letter provided similar commentary and it was after receiving this letter that the trustees made their complaint and subsequently surrendered the policy in 2021.

I've considered what, if anything, the trustees would have done differently if ReAssure had provided all the information I set out above. I've considered the trustees' actions following the 2018 and 2019 review letters. I don't think it's unreasonable to suggest that the fact that no action was taken until 2021 is indicative of what would have happened if more information had been provided at an earlier date.

However, I must take a couple of factors into account as potential mitigation. Mr E's father unfortunately passed away in 2018, so I wouldn't expect any action to have been taken at the time as the trustees would rightly have more important issues to deal with. Mrs E would have been receiving the review letters after 2018 but she was in her nineties and in ill health, so I wouldn't expect her to have been fully engaging with the policy at that time.

But I must also take into account the fact that the trustees were acting on advice from their financial adviser. They've explained that their previous financial adviser missed the 2019 review letter, and it was only when they moved to a new financial adviser in 2021 that they were advised to surrender the policy.

I don't think it's reasonable to hold ReAssure to fault for the financial adviser missing the 2019 review letter which gave the trustees another opportunity to fully appreciate the sustainability of the policy. Furthermore, the 2020 review also outlined the relevant information and the policy wasn't surrendered at that time despite a complaint being raised and rejected by ReAssure. So while I accept that there were mitigating factors, on balance, I don't think that any changes would have been made to the policy prior to the new adviser's advice to surrender the policy in 2021.

I think it's clear that ReAssure ought to have sent the information contained in the July 2018 letter earlier, by October 2017 at the latest. But given the opportunities the trustees had to surrender the policy or make changes to it in subsequent years, I'm not persuaded on balance that this is what they would've done any earlier than they did. Taking everything into account and weighing up all the evidence, I think it's more likely than not that the trustees would've chosen to keep the policy on its existing terms until they were advised, in 2021, to surrender it.

So, in summary, I don't think that ReAssure gave any guarantees around how long the cover would last, only a projection. I also don't think they acted unfairly in increasing their life cover charges over time as this was how the policy was designed to work. They clearly didn't provide the trustees with enough information about the policy when they should have done, but I don't think the lack of information would have made the trustees surrender the policy any earlier than they did.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E and Mr E as trustees of the E Trust to accept or reject my decision before 15 April 2025.

Marc Purnell
Ombudsman