

The complaint

This complaint is about three mortgage endowment policies Mr C had with Sun Life Assurance Company of Canada (U.K.) Limited. He has complained that they were not suitable for his circumstances at the times of the sales.

Mr C is represented in his complaint by a claims management company, but for ease, I will refer to all comments as being his.

What happened

Mr C has told us he took his first endowment policy with Sun Life in 1987. No details of this policy have been provided to either Sun Life or this service and Sun Life has no record of its existence. In 1989 he took a further endowment policy. It had a term of 25 years and a target value of £36,000. It was invested in a managed fund. The application form recorded that Mr C was 31 years old and employed as a design draughtsman. The mortgage being arranged at that time was for £74,000 over 25 years.

Mr C took a top-up policy in 1990. It had a target value of £12,622 and a term of 22 years. It was again invested in a managed fund. This was followed by another top-up policy in 1993. It had a sum assured of £9,303 and had a term of 19 years. The policy was again invested in a managed fund.

All three policies being complained about were surrendered on 26 September 1997. How much Mr C received for each policy is not known.

Sun Life has confirmed that no other information is available about the policies due to the amount of time that has passed since they were surrendered.

Mr C complained to Sun Life that there was no evidence of any meaningful assessment of his attitude toward risk or evidence of other mortgage repayment vehicles being discussed to ensure the advice he received was suitable. In relation to the second and third endowment policies, he also said he couldn't recollect whether the policies were taken for mortgage purposes.

Sun Life wrote to Mr C on 20 March 2023. It highlighted that he had made the same complaint in October 2021 at which time it had asked him to complete a questionnaire for each policy. He didn't do so and so it had closed his complaint. It was not willing to reopen the complaint.

Mr C was not happy with this and informed Sun Life that the questionnaire had been returned in March 2022. The questionnaire completed provided very little information, other than what Mr C had been employed as, an approximate income, that he was married, had life cover provided by his employer and his employer didn't offer a pension. The occupation Mr C recorded was different from that recorded on the application form from 1989, but matched that detailed on a fact find from 1998. The income detailed in the questionnaire was approximately double that which Mr C was earning in 1998.

Sun Life reopened the complaint and provided a final response letter on 9 May 2023. It explained that due to the amount of time since the policies had been surrendered – 26 years – it didn't have sufficient information to investigate Mr C's concerns. However, if Mr C had any documentation about the policies, it would review its decision.

Mr C was not happy with Sun Life's response and referred the complaint to this Service.

One of our Investigators considered the complaint, but she didn't recommend it be upheld. She explained that in order to uphold the complaint and provide the redress Mr C had asked for, we would need to be persuaded that Sun Life had provided unsuitable advice. However, because of the passage of time and the resultant lack of information, she couldn't reach that conclusion.

Mr C didn't accept the Investigator's conclusions. He said that he understood the lack of paperwork for the three policies, but that cases had been upheld in the past where there was no original paperwork. As such, he asked that the complaint be referred to an Ombudsman.

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.

I would initially confirm that financial services businesses are required to keep records of policies and the advice provided while a policy is active, and for six years after it ends. Once it reaches that point, a business is entitled to dispose of the information and under data protection requirements, it may consider that it is required to do so. As such, the fact that Sun Life has very little information about the sale of the endowment policies is not something I can criticise it for. Nor is it reason for the complaint to be upheld. The simple fact is that given that it took Mr C more than 25 years to raise concerns about the sales means that documentation has long ago been destroyed.

Mr C has highlighted that complaints about mortgage endowment policies sold in the 1980s and 1990s have been upheld by this service in the past. He is correct. However, as the Investigator explained, in order to uphold a mis-selling complaint we need evidence to show that the policy was not suitable for the policyholder. That information can come from sources other than the point-of-sale documentation, including the policyholder's recollections about their situation at the time of the sale and the discussions that took place. This is why complainants are asked to complete a questionnaire. Unfortunately, in this case Mr C's recollections were very limited and what he was able to provide was clearly incorrect. As such, in this case, all we know about his circumstances in 1989 is that he had an existing mortgage and probably an endowment policy to go with it, and his occupation. This is not sufficient to complete an assessment of the suitability of the policies.

I would also explain that even if there had been sufficient information for me to form the conclusion that the policies were unsuitable for Mr C, there would not have been sufficient information to complete a loss assessment. Mr C has been unable to provide any recollections about the mortgages he had, but even if we were to make some assumptions on that front, any loss could not be established without knowing what the surrender values were.

While it is possible that the endowment policies that were sold to Mr C in 1989, 1990 and 1993 weren't suitable, I don't have sufficient information to be satisfied that is the case. I know this will come as a disappointment to Mr C, but I can only reach a conclusion based on the evidence I have before me and in this case it is not sufficient to conclude Sun Life did anything wrong.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C to accept or reject my decision before 15 March 2024.

Derry Baxter
Ombudsman