DRN-4835522

The complaint

Mr and Mrs W have complained about the mis-sale and the increase in the premiums of a Whole of Life policy they took out on the advice of Wesleyan Assurance Society, trading as Wesleyan ('WAS'). They say the plan was mis-sold to them as the premium increase is unreasonable and would leave them without cover.

Mr and Mrs W would either like for the premiums to be limited to an increase of a maximum of 50% every five years or have the premiums they have paid refunded to them.

What happened

Mr and Mrs W took out a reviewable Whole of Life ('WOL') policy on the advice of WAS in 2002. The plan provided Life and Critical Illness Cover ('CIC'). Mr and Mrs W say they were told it would also provide the opportunity to save via investment into a savings plan. They were made aware there would be reviews – and a potential for an increase in the premium – but say they were told these would be reasonable.

On 7 July 2022 WAS informed Mr and Mrs W their investment value had fallen to £489.90, and they were given three options for the premiums. They could keep paying the same monthly premium, but the cover would be reduced, pay the increase in premiums from £65 per month to £139 or cash in the plan and receive £489.90.

Mr and Mrs W say the premium increase was unaffordable for them which would mean they'd need to find new Life and CIC which would be more expensive. Mr and Mrs W raised their concerns with WAS. It responded on 30 January 2023 and didn't uphold the complaint. It said;

- Mr and Mrs W were supplied with the plan's terms and conditions at the time of the advice which would have explained how the plan worked. It was only at the point of review that WAS would be able to determine if there was any need to increase the premiums to maintain the cover.
- Mr and Mrs W had received premium reviews so would have been aware the plan was subject to reviews.
- It explained how it calculated the maximum of life assurance protection it believed could be supported by the account until the next review, the value of the account and its growth expectations of the underlying investments.
- If it determined the current level of cover couldn't be supported, it would reduce the cover, or the customer could increase the contributions to support the current level of cover.
- The premiums couldn't remain constant for a WOL plan because of the term of the plan was unknown and the mortality rate increases as the life assured ages.
- It explained the factors applying to the mortality charge that would generally increase as the life assured aged plus WAS' view on the likely future cost of providing the cover.

- Throughout the life of the plan the policyholder could decrease the premiums paid but this would reduce the life cover. As the plan was primarily for life cover the investment element was only to support that life cover and this was highlighted to Mr and Mrs W in the plan documents.

Mr and Mrs W didn't agree with the outcome. So, they brought their complaint to the Financial Ombudsman Service.

Our investigator who considered the complaint didn't think it should be upheld. She said;

- Evidence was missing – the copy of the sales documentation and initial advice letter – but the rules allowed her to issue her opinion despite that. There was a time bar issue because of the time since the sale and the premium increase but WAS consented to this service's consideration of the complaint.
- At the time of the advice WAS had to make sure the recommendation was suitable but because of the lack of documents available from the time of the sale the investigator couldn't reach a conclusion.
- But she went onto consider the information provided in the terms and conditions about the cover and the premium increases. Those terms explained how the policy would be reviewed but there wasn't any evidence to show they would be reasonable or unreasonable.
- The brochure Mr and Mrs W had provided explained the mechanics of how the policy worked about the investment fund and the costs that would be deducted from that fund.
- The policy was on a maximum basis so the maximum amount of cover possible for the premiums being paid, the costs for which had taken up most of the monthly premiums as explained in the brochure.

Mr and Mrs W didn't agree with the investigator. They said;

- WAS' lack of records shouldn't be the basis of the mis-sale as the evidence of Mr and Mrs W should be placed in higher regard.
- The investigator had concluded WAS had free rein to increase policy premiums which was unequal and unfair. There was no recourse for the policyholder.
- 'WOL' wasn't a reasonable definition as it was only there until it became unaffordable, or the cover was reduced.
- They questioned whether it was reasonable to include the statement 'Protection that pays out even if you don't make a claim' for the policy.
- The premiums would continue to rise, and they questioned whether policyholders achieved the objective of the policy.

Mr and Mrs W referred to media articles about mis-selling and how this service had decided on a similar complaint.

As the complaint couldn't be resolved, it has been passed to me for decision in my role as 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.

This decision is looking at the potential mis-sale of the policy. I'm not considering whether the policy reviews were correctly carried out or whether the policy itself was appropriately managed. That is being dealt with separately.

Mr and Mrs C's circumstances

While there is limited information from the point of sale in 2002 WAS has been able to provide the insurance/underwriting/medical notes and part of the application form. The application form shows that Mr and Mrs W were both employed, Mr W was aged 26 years and Mrs W was 23 years. Notes confirm;

> '[Mr and Mrs W] are engaged, living together and both of their income is essential for their mortgage and bill payments. They are marrying next year.'

There is a phone message asking WAS for a decision about acceptance of Mr and Mrs W;

> 'Decision req'd ASAP. Other cover elsewhere to be cancelled when new cover issued. Please phone.'

But there is limited other point of sale documents available such as the recommendation letter. But I should say I don't find this unusual bearing in mind the time since the sale and businesses aren't obliged to keep documents indefinitely. At the time of the initial advice, WAS had a regulatory obligation to ensure its recommendation for Mr and Mrs W to take the WOL policy was suitable for them.

Was the policy suitable

I appreciate that the recommendation letter from the time of the sale isn't available, and Mr and Mrs W say that in its absence their testimony should be placed in higher regard. But I have to decide the complaint based on the information presented to me. And when I am presented with lack of evidence or conflicting testimony, I have to base my decision on the balance of probabilities and on what I think most likely happened. And I must reach my decision based on what I consider to be fair and reasonable in the individual circumstances of the complaint.

It's not in dispute that as a result of the recommendation by WAS Mr and Mrs W took the WOL policy – the Wesleyan Lifetime Account Plus from Medical Sickness – on a maximum basis. The sum assured was £200,000 for a monthly premium of £40. The initial ten-year review of the policy was in 2012 and at that time Mr and Mrs W chose to increase their premiums from £40 to £65 to maintain the cover of £200,000. In June 2017 they kept their premiums the same and the amount of cover was reduced but the 2022 increase was too much and gave rise to their complaint about whether the policy was suitable for them, so I've looked at what we know from the time of the sale.

I understand that Mr and Mrs W had a choice about the level of cover they wanted to take at the time they took the plan – maximum, standard or minimum. By taking the policy on the maximum cover basis this provided them with the highest level of cover for the chosen premium. This suggests to me that, despite their joint salaries being needed for their 'mortgage and bills payments', indicating they didn't have much in the way of excess income over expenditure each month, Mr and Mrs W wanted to protect their long-term security if something unexpected was to happen.

While there is limited information available, this doesn't seem unreasonable bearing in mind their evident mortgage liability, they were getting married the following year and were no doubt planning for their future together. And clearly, as evidenced by the above phone note,

they already had some protection in place but by them proactively looking for alternative cover suggests to me they weren't happy with what was already in place, perhaps prompted by their upcoming change in circumstances and future plans and were looking to replace it. But by taking maximum cover with the new policy, it meant most of the premium they paid went towards the cost of paying for the life cover and so a smaller portion of the premium was left over as savings to be invested.

Mr and Mr W say they were told a savings vehicle would be created which would grow over time but that WAS' unfair practices changed the value taken from the savings to pay for the premiums thereby reducing the savings without their consent. They were looking forward to a pot of money as they got older. Mr and Mrs W say they were duped as a young couple. They referred to the Lifetime Account Plus document they were given which says;

> 'Protection that pays out even if you don't make a claim.
> …
>
> Not only does it give you life assurance and critical illness cover, it could also pay out if you don't claim.'

But the document goes on to explain that for 'savings';

> 'You can use Lifetime Account Plus as a way to save too. Your money buys units in one or more of the Wesleyan's Life Funds. Depending upon how much life assurance or critical illness cover you need, some of these units are then cashed in to pay for your cover. So, your contributions have to be enough to pay for the cover you need. Whatever's left over can be used as savings.'

It follows, the higher the cover, the higher the costs would be which would impact on the amount left over which could be used for savings and investment purposes. And I see that Mr and Mrs W were informed the deductions that could impact on the policy would;

> '…include the cost of life cover, critical illness cover, commissions, expenses, charges, any surrender penalties and other adjustments.'

In my experience of these policies and knowing how they were sold I think it's very likely the adviser would have explained to Mr and Mrs W that the policy was a reviewable one and what that could mean in the future. And this is supported by the fact Mr and Mr W have said they knew the premiums could increase but were told that any increases would be reasonable.

But it's important for Mr and Mrs W to understand that there is no way the adviser could have been able to quantify those changes in premiums at the time of the sale. That could only be established at the point of review. And them being informed this could happen – which they say they were – is in my view enough to make them aware changes to the policy could be a possibility in the future.

I've reviewed the terms and conditions of the policy which contain information about the reviews so I think this is something Mr and Mrs W should have been aware of as it was their responsibility to read these and ensure they understood them. Those terms say;

> '10. Account Maintenance
>
> Account Reviews

10.1 From time to time the Society will review the amounts of Cover, if any, being provided by the Account in relation to the Account Value.

10.2 The purpose of the review is to determine whether or not the Account Value plus the Contributions, if any, being paid to the Account will sustain the then current level of Covers until the next regular review having regard to the costs of provided the Covers and the Account charges.

10.3 The first review will be ten years after the Commencement Date (five years if a Life Assured was aged 70 years or older at the Commencement Date). The second and subsequent reviews, if any, will be notified to the Policy Owner immediately after the first review is completed.

…

10.5 Where the Society has determined that the then current levels of Cover cannot be sustained until the new review date, the Society will notify the Policy Owner, who may then choose to;

10.5.1 increase regular Contributions to the Account or pay a single Contribution; or

10.5.2 reduce or remove an existing Cover from the Account.

10.6 The Society will determine the amounts of any additional Contributions, the level of Cover which are sustainable without any changes to Contributions, and the reduction in /covers described in Condition 10.5.'

While Mr and Mrs W have said their recollection is that they were told any premium increases would be 'reasonable' it's clear from the above the amount of any increase would be dependent upon the premiums' ability to sustain the cover provided by the plan until the next five-year review.

And Mr and Mrs W took the policy on a maximum cover basis, so the focus was on the provision of life cover and the majority of the premium paid went toward this 'cover charge'. But inevitably as Mr and Mrs W got older the premiums would increase, primarily because of an increase in the cover charge as the potential for a payout on the policy became more of a reality.

WAS has provided details of the cover charge – from £229.81 in 2003 to £973 in 2024. And as the cost increased over time the cover charge absorbed most of the premiums paid, so there was less to invest which had a two-fold impact. There was less savings to absorb the increase in the cover charge over the years, hence the need for the increase in premium, and also Mr and Mrs W didn't benefit from the investment element of the plan they had hoped for as the costs absorbed most of the premium.

And I note the policy document Mr and Mrs W provided does show estimated benefits that could be received after ten years – at growth rates as stipulated by regulator – but I note these were not guaranteed and 'what you will get back depends on how your investments grow. You could get back more or less than this.'

I'm satisfied the reviewable nature of the plan was explained in the terms and conditions and was also discussed with the adviser. It was Mr and Mrs W's responsibility to have read and understand the documents provided and if there were concerns, they should have questioned it. The mechanics of how this policy worked is simply how reviewable whole of

life policies work industry wide. And while I appreciate Mr and Mrs W's recollection they were told the premium increases would be reasonable, there is sufficient alternative evidence to show that how those increases would be assessed should have made Mr and Mrs W aware this was a possibility.

From the limited information available, I haven't seen anything to show – on the balance of probabilities – that the policy was unsuitable for Mr and Mrs W. And again, from the information and evidence I do have, there's insufficient for me to safely conclude that the policy was mis-sold to them.

Mr and Mrs W have referred to another ombudsman's decision under similar circumstances where the complaint was upheld. However, another ombudsman's decision doesn't set a precedent, and I am not obliged to reach the same conclusion. Each case I decide is considered on the individual merits and circumstances of that particular complaint which is what I have done here.

Taking all the above into account, and for the reasons given, I don't uphold Mr and Mrs W's complaint. I appreciate this will come as a disappointment. It's clear from their submissions how strongly they feel, and I'd like to thank them for the time and trouble they've taken in bringing their complaint. But I hope I have been above to explain how and why I have reached the decision that I have.

My final decision

For the reasons given, I don't uphold Mr and Mrs W's complaint about Wesleyan Assurance Society trading as Wesleyan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 7 March 2025.

Catherine Langley
Ombudsman