

## The complaint

Mrs W has complained about the sale of a whole of life plan by Liverpool Victoria Financial Services Limited.

## What happened

In 2003 Mr and Mrs W took out plans with an adviser of a firm for which Liverpool Victoria Financial Services now takes responsibility.

This decision concerns only Mrs W's complaint. Mrs W's whole of life plan was taken out on the life of Mr W. Mrs W has complained that the premiums paid in are less than the surrender value.

When Liverpool Victoria didn't uphold the complaint Mrs W referred it here. Our investigator didn't find that the policy had been mis-sold.

Mrs W appealed. She said that as she had finished paying for the plan she looked at the possibility of using the money to pay for a pre-paid funeral plan. At this point she was shocked to see that she had paid into the plan more than she would receive on Mr W's death. She felt it would be reasonable for Liverpool Victoria to return the overpaid sum.

As no agreement was reached the matter was passed to me to determine. I issued a provisional decision and said I'd look at any more comments and evidence that I received. But unless the information changed my mind, my final decision is likely to be along the lines of my provisional decision. I said as follows:

*I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*I'm aware I've summarised the background to this complaint - no discourtesy is intended by this. Instead, I've focused on what I find are the key issues here.*

*The relevant regulations provide that the adviser had to take reasonable care to ensure that the policy was suitable for the customer's demands and needs. So I've looked very carefully at all the documentation and submissions to see whether the policy sold was suitable for Mrs W and whether I find that she was treated fairly. Having done so I'm reaching a different conclusion to our investigator, and I intend to uphold this complaint. I'll explain why:*

- *At the sale the adviser completed a 'factfind' which recorded that Mrs W wished life protection – to provide funds to assist with meeting funeral expenses. She wanted to preserve her capital and didn't wish to be financially disadvantaged. A financial plan summary was also prepared for I've seen a copy of a schedule Mrs W was sent. It shows the sum assured £5000, the premium payable each month £26.75, the payment term - until 14 June 2021 or the previous death of the life assured, and the surrender value. So I find that by doing a mathematical calculation Mrs W could have worked out that if Mr W lived beyond 14 June 2021 she would be paying out more than she had paid in.*

- *But Mrs W had approached the adviser for financial advice. As I've noted above, she had made clear that she wished to preserve her capital and didn't wish to be financially disadvantaged. I'm not persuaded that it was incumbent on Mrs W to start making calculations in order to decide whether the policy was suitable for her. Rather I find that the adviser should have specifically pointed out that she could pay in more than she would get back.*
- *I've also considered the personal illustration that was prepared for Mrs W. This explains that "Contributions cease with the payment due on the plan anniversary before your 85th birthday, or on your earlier death". But again, it doesn't specifically say what happens when the plan holder has paid the guaranteed cash amount in premiums.*
- *Had the adviser, or the documentation (preferably both) made clear that Mrs W could pay more than the guaranteed sum should Mr W live beyond 85 years, she could have then decided whether she wanted to proceed to take out this plan or make other arrangements. I find that she was denied this opportunity.*
- *I understand the plan is still in force and will pay out the guaranteed sum in the event of Mr W's passing, or a lesser sum if Mrs W's decides to cash in earlier. And I haven't disregarded that the underwriter was on risk from the sale of the policy. But I'm provisionally satisfied that a fair and reasonable resolution to this complaint would be for Liverpool Victoria Financial Services Limited to make a payment to Mrs W of £778 – the sum she has paid over the guaranteed amount, with interest.*

So my provisional decision was to require Liverpool Victoria Financial Services Limited to pay Mrs W £778, adding interest of 8% simple per annum from the date each payment was made after 14 June 2021 until settlement.

Mrs W accepted my provisional findings. Liverpool Victoria didn't. To summarise, it made the following points:

- Mrs W had said in an e-mail that she didn't wish to surrender the plans, but it seemed to her that paying in more than was paid out on death was not a good return. Liverpool Victoria stressed that the policy was not a savings plan and could not be compared to a savings plan.
- Liverpool Victoria pointed out that the policy documentation made it very clear that if cashed it in at any time it may have little or no cash value. As the plan was a whole of life policy, Liverpool Victoria questioned why Mrs W would wish to surrender the policy when all the required premiums had been paid.
- Life assurance cover is based on risk and age at inception – some people will pay more in premium than the sum assured and others will pay less. This is the nature of life assurance. Liverpool Victoria made the point that had Mr W passed away following the policy inception, even if only one premium had been paid, Mrs W would have been paid the sum assured.
- It is unreasonable for Liverpool Victoria to be expected to pay the surplus premiums Mrs W has paid because Mr W lived past the break-even point where premiums exceeded the sum assured. Liverpool Victoria said this is not how life assurance works or was designed to as insurers could not offer cover on such terms.

## **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've thought carefully about the representations that Liverpool Victoria has made in response to my provisional decision. I fully accept that the policy Mrs W purchased wasn't a savings plan. It doesn't seem to me to Mrs W thought it was a savings plan, her comment was 'it wasn't a good return'. She said to this service that had she put the same amount of money in a savings account she wouldn't only have the original amount, but interest on it.

My concern, as set out in my provisional findings, was that it wasn't made clear to Mrs W that she could pay in more than the sum assured. I accept that the documentation made it clear there was no, or little, cash in value. But this isn't the same as spelling out that the plan holder could pay in more than the sum assured. Had this been made there wouldn't have been any merit in Mrs W's complaint.

Very often these plans are sold on a non-advised basis, so we look to see if the documentation does make clear that there is a possibility of paying in more than the sum assured. The documentation here failed to specifically alert Mrs W to this possibility. But this was an advised sale, and Mrs W had said she wished to preserve her capital and didn't wish to be financially disadvantaged. I don't find she was advised she could be financially disadvantaged, should Mr W live past a certain date. This is apparent from the complaint Mrs W made. Mrs W was entitled to believe her stated requirements were being met by the recommendation made.

In the specific circumstances here, for the reasons given, I'm not persuaded to change my provisional findings which I adopt here.

## **My final decision**

My final decision is that I uphold this complaint. I require Liverpool Victoria Financial Services Limited to:

- Pay Mrs W £778
- Add interest of 8% simple per annum from the date each payment was made after 14 June 2021 until settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 15 October 2024.

Lindsey Woloski  
**Ombudsman**