DRN-5164208

The complaint

Ms F, Ms H and Mrs H, as Trustees of the J Trust, complain about a reviewable whole of life policy the trust held with UTMOST LIFE AND PENSIONS LIMITED. They're unhappy with the outcome of the policy review in 2023, which meant that the monthly premiums needed to significantly increase in order to maintain the sum assured.

What happened

For ease of reading I will only refer to Mrs H. She took out the policy in 2001 in order to provide family protection and to mitigate inheritance tax. It initially provided a sum assured of £526,507 for monthly premiums of £146. It would mature after ten years and then would provide an ongoing option to be extended for another ten years at each maturity so it could potentially be maintained for life.

The policy didn't require any changes during the first ten years but at maturity in 2011 changes were needed so Mrs H opted to increase the premium to £378 in order to maintain the sum assured. Utmost's assumptions at the time were that this level of premium would sustain the sum assured for the next ten years but they would continue to review the policy periodically and changes could be required prior to the next maturity date in 2021.

Utmost contacted Mrs H in 2020 about the upcoming maturity and said that she had two options. She could either take the policy's maturity value or extend the policy on its current terms for another ten years. They also explained that if she extended the policy, HMRC had rules in place restricting tax relief unless annual premiums were less than £3,600. However, she could contact them to discuss her options.

She got in touch with them and came to the agreement that 23 of the policy's 100 sub-policies would be made paid up and monthly premiums reduced to £291 which would make the policy qualifying for tax purposes. Utmost then provided Mrs H with a new illustration in January 2021 saying that the policy could be extended for a further ten years with monthly premiums of £291 and a sum assured of £526,507. Based on their assumptions about the policy, they thought that level of cover could be sustained for around seven years and ten months.

The policy was subsequently reviewed in February 2023; the outcome of the review was that cover could no longer be sustained. In order to maintain the cover of £526,507, monthly premiums would have to increase from £291 to £1,004. If premiums weren't increased, then the sum assured would reduce from £526,507 to £134,226. Utmost also explained that they'd made an error in their previous illustration. They should have reduced the sum assured when the 23 sub policies were made paid up in 2021.

Mrs H complained to Utmost about what had happened as she couldn't afford to pay increased premiums and wasn't happy to reduce the sum assured. She also surrendered the policy in February 2023.

Utmost looked into the concerns she'd raised but didn't uphold her complaint. They said, in summary:

- They apologised for not providing her with adequate time to make a decision following the 2022 review, but thought their offer to maintain premiums at their existing level for a further year was a fair compromise.

- They appreciated why their 2020 letter, if read in isolation, would give the impression that the policy could continue unchanged for another ten years. But they pointed to the appendix which gave further detail and said that regular reviews would take place, and they could result in changes.

- They also explained how the review process worked and the reason why the premiums needed to increase. This was because when the premiums had reduced in 2021, they were lower than the cost of providing cover. Therefore, what should have happened is that the sum assured should have been reduced to a level that could have been supported by the premiums being paid. But they thought that even if they had done this then changes to the policy would still have been required at some point.

Mrs H didn't accept their findings and asked for our help with the complaint. It was considered by one of our investigators who thought it should be upheld. In his opinion, Utmost hadn't provided Mrs H with sufficient information to enable her to make an informed decision. If they had done so, then he thought she would have surrendered the policy when it matured in 2021.

In order to put things right, he thought Utmost should pay Mrs H the difference between the surrender value at maturity in 2021 and the surrender value she received in 2023 plus interest. He also thought they should refund all the premiums she'd paid from the maturity date onwards plus interest, and £250 compensation for the inconvenience she'd been caused.

Utmost didn't agree with the investigator's findings. They said that the decision to reduce premiums in 2023 was due to the changes to the rules around qualifying policies. When Mrs H had made the decision to make the sub policies paid up, this was to keep the policy's qualifying status and with a view towards keeping the policy as long as possible. At the time when the changes were made, Mrs H was made aware that the policy would require changes within the next ten years and this would have been the case even if the sum assured had been reduced in 2021.

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 think the complaint should be upheld and I will now explain why. The crux of Mrs H's complaint is around the changes that were required to maintain her policy's sum assured in 2023. I've therefore considered if Utmost acted inappropriately when they reviewed the policy and proposed the changes.

The documentation relating to the policy that I've been provided with, sets out that the sum assured will be reviewed on a regular basis and changes can be made. So, I think that Utmost were within their rights to review the policy and propose the changes that they did.

However, I've also considered if Utmost met any other obligations they had to Mrs H relating to the policy. In making this decision, I've taken into account the following standards:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7;

- The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1)

- The FCA's Final guidance on the "Fair treatment of long-standing customers in the life insurance sector" (FG16/8).

With these standards in mind, I think that Utmost ought to have provided Mrs H with clear, fair and not misleading information about the policy. What I've drawn from the guidance is that their communications to her should have included key details about the policy such as its performance, the value of its underlying fund and any fees and charges that had been applied.

I think some of this information was provided to Mrs H. The historic review letters I've seen only set out whether or not the policy had passed the review. They also provided some context around how Utmost were making their projections for the policy until the next review, and a warning that changes might be required in the future. They also recommended that Mrs H refer to her annual statements which would display the annual life cover charges and asked her to compare this figure with the premiums she was paying in order to give an indication of likely changes in the future.

However, I'm not persuaded that Mrs H's information needs were fully met. I think that the review letters should have been more explicit in providing details around the specific costs of the policy and how they were likely to increase in the future or the level of premium that might then be required to maintain the policy's sum assured. Because this information wasn't provided, I don't think she was put in an informed position about the policy or any possible steps she could take to mitigate future risks.

Despite this I don't think that Mrs H would have done anything different prior to the maturity in 2021. Before this time, the policy was providing her with a high level of cover for a sum assured she could afford, so I don't think that she would have taken a different course of action such as surrendering it.

However, I think Utmost failed to provide Mrs H with clear, fair and not misleading information about her policy in the correspondence they sent her prior to the 2021 maturity date. I say this because their letter clearly gave misleading information. Their projection that the policy would last for seven years ten months was based on a sum assured of £350,000. But at no point did they communicate this to Mrs H. The reality of the situation was that due to their error, the sum assured remained at the previous level of £526,507. Because of this, the policy was subject to higher charges and therefore required changes after around two years which was far sooner than originally projected.

Because I'm satisfied that Utmost made an error, I've then considered Mrs H's likely course of action if she'd been provided with correct information in 2020. What should have happened is that she should have been told that the policy's sum assured would reduce to £350,000 and the premiums would fall to £291. This would then result in the policy potentially not requiring changes for roughly another eight years but then the policy would require further changes which would likely be another reduction in sum assured if Mrs H wanted to keep the policy qualifying.

Mrs H has explained that she wouldn't have continued with the policy if she'd been made aware that the sum assured would have reduced to £350,000 and would then reduce further after around eight years. I appreciate she is making this statement with the benefit of hindsight, but I see no reason to disbelieve her testimony. I note that she surrendered the policy when made aware that it required significant changes. This was despite the original need for the policy, mitigating IHT, still existing. In my opinion this adds weight to what she has said, and leads me to accept that it is more likely than not that she would've surrendered the policy in 2021.

As she would have surrendered the policy in 2021, she wouldn't have continued to pay further premiums, so she is entitled to a refund of all the premiums she's paid since the March 2021 maturity date.

I also think she has been inconvenienced by Utmost's error as she's had to cancel the policy that she thought would have been in place for a few more years. I agree with the investigator's opinion that £250 is fair and reasonable compensation in the circumstances of this complaint.

So, in summary, I uphold this complaint as I think Utmost didn't provide Mrs H with fair, clear and not misleading information about her policy. If they had done so, then she would have surrendered it earlier and I've set out below how they should put things right.

Putting things right

- Utmost should calculate the value of the policy's maturity value from March 2021 plus 8% simple interest from the maturity date until the date when the policy was surrendered in February 2023. They should then subtract the surrender value she received in 2023 from this figure. If this figure is negative, then no further payment is due and this sum can be deducted from the premium refund figure below. If this figure is positive, then they should pay that sum to Mrs H plus 8% simple interest from the 2023 surrender date until the date of settlement.

- They should also refund the premiums Mrs H has paid since the maturity date in March 2021 plus 8% simple interest per year from the date each premium was paid to the date of surrender.

- They should pay her £250 compensation for the inconvenience they've caused.

My final decision

For the reasons I've given above, I uphold this complaint. UTMOST LIFE AND PENSIONS LIMITED should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H, Ms F and Ms H as Trustees of the J Trust to accept or reject my decision before 12 December 2025.

Marc Purnell
Ombudsman