

The complaint

Mrs P and Mr P are represented by a claims management company ('CMC') in bringing their complaint. They say that an adviser - for which St. James's Place Wealth Management Plc ('SJP') takes responsibility – mis-sold them an assurance policy in April 1993 that they didn't want or need.

To resolve the complaint, the CMC says Mrs P and Mr P ought to receive a full return of premiums, along with a payment for the distress and inconvenience they've been caused.

What happened

I'll hereafter refer to Mr P and Mrs P as 'Mr and Mrs P' for ease of reading.

Mr and Mrs P took out a J Rothschild Renewable Assurance Plan (the policy) in June 1993, following advice from an independent financial advice business in April 1993, which now acts as an appointed representative of SJP.

In June 2024, the CMC complained to SJP on Mr and Mrs P's behalf. It said that the advice they had received was unsuitable because:

- The recommendations made weren't supported by any appropriate fact find information (such as expenditure, assets, or liabilities) gathered by the adviser.
- Mr P had death in service benefits in place through his employment at the time of the advice, and Mrs P had a legacy decreasing term assurance policy that she held with a former partner.
- No reasons for the length of the term assurance were given.
- Though they had one dependant, they had paid off their mortgage at the time of the advice – so Mr P's death in service benefit would be sufficient for life cover.
- As a professional, the adviser should have given the best advice for Mr and Mrs P's circumstances, and this didn't happen.

SJP did not provide a final response letter to Mr and Mrs P's complaint within eight weeks, so the CMC lodged it with this service. In the interim, it also made a subject access request on Mr and Mrs P's behalf, and this was completed by SJP.

However, SJP did not produce a final response letter or any evidence for this service to consider, despite repeated requests over several months.

An investigator thereafter reviewed the complaint on the information which had been provided from the CMC, including the subject access request. She concluded that despite SJP's failure to provide any substantive answer to the complaint, there was no evidence that the policy had been mis-sold.

The CMC disagreed. It said the investigator was free to speak with Mr and Mrs P directly if she required. The CMC felt there was enough evidence within the documentation obtained from the subject access request to be able to conclude that Mr and Mrs P were misadvised;

it was for this reason that it was able to itemise the various grounds of complaint. The CMC also confirmed that Mr P still held his policy.

Our investigator thereafter spoke with Mr P directly regarding his recollections from the time of the sale, to which he was able to provide some policy documentation. He also confirmed he had now cancelled the policy and intended to invest his proceeds in a stocks and shares ISA instead.

The CMC also said that given Mr P felt the cover was unnecessary, it took the view that the burden of proof rested with SJP to show it didn't mis-sell the policy in 1993. Otherwise, the CMC said it believed the full policy premiums should be returned with interest.

Our investigator then issued a second view on the complaint. She disagreed with the CMC's contention regarding the burden of proof. She also noted how Mr P had explained that at the time of the sale that he and Mrs P did in fact have an endowment mortgage. And though she noted that this type of mortgage would likely include an endowment savings plan running alongside, she didn't believe this rendered the recommendation from 1993 wholly unsuitable.

SJP didn't reply to our investigator. And though it didn't make any further submissions, the CMC said it wanted the complaint to be referred to an ombudsman based on the comments it had previously made on Mr and Mrs P's behalf.

The complaint has now been passed to me.

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 thank Mr and Mrs P for their patience whilst this matter has awaited an ombudsman's decision. I'm sorry that my decision won't be what Mr and Mrs P have hoped for. But having reviewed this complaint carefully, I am also of the view that it should not be upheld.

Given my remit to make findings on what I believe to be fair and reasonable in the circumstances, I am not required to address each point raised. Instead, I will set out what I determine are the central issues in this complaint. Our rules permit me to take that approach.

I also note the CMC has referred to SJP's requirements under the Financial Conduct Authority's Treating Customers Fairly Principles including those set out at Principle 12, the Consumer Duty. I've carefully considered the detail of those obligations but for the reasons I'll go on to explain, I haven't seen objective evidence that SJP has behaved unfairly in the circumstances. So, I can't ask it to do anything further to resolve the complaint.

In summary, my findings are:

- There is limited information from the time of the sale, though some fact find documentation was obtained through the subject access request.
- Consequently, there is no confirmed evidence of the advice and recommendations made by the adviser in the form of 'reasons why' documentation, other than what is set out within the fact find notes from the time of the sale.
- Nonetheless, there is some evidence available in the form of recollections from Mr P alongside the handwritten fact find documentation – though I note the CMC originally set out that fact find documentation didn't exist.

- At that time, businesses were required to produce fact find documentation showing that any recommendations made were supported by evidence of the customer's needs and priorities, and that a suitable product had been recommended in the context of what was known about the customer's personal circumstances.
- Where there is conflicting evidence, such as between the documentary evidence and what is being said by the parties now, I will determine what I believe is most likely to have happened at the time, that is, on the balance of probabilities.
- That SJP has failed to take an active part in this complaint does not mean that I cannot reach a fair and reasonable conclusion based on the information before me.
- And the rules set out for this service by the FCA are clear that I am able to reach my decision on the basis of what has been supplied, including taking account of the failure by a party to provide information requested.
- The fact find documentation shows that Mr P had an existing protection policy in his sole name, and Mrs P had a joint decreasing term policy with a former partner.
- They were recorded as wanting joint cover for family protection, specifically the event that a death benefit payment would be made to the surviving partner in the event either of them was to pass away.
- The adviser's notes say "*[Mrs P] asked me to visit her. At meeting she said her husband only had £5,000 life cover, could I include him in her policy. I told her [they] would have to have a joint policy [to include Mr P] and she said £20/pm was all that was available. I gave her the quotes, which she said were OK*".
- To that end, the adviser proposed a unit-linked renewable protection plan, which comprised ten policies, each with a sum assured of £2,220 and an initial monthly premium of £2.01 per month for an initial ten year term. The contributions were split across two managed investment funds.
- The CMC has correctly set out that without any written evidence of the reasons for the recommendation, it cannot be said exactly why a term of (an initial) ten years was chosen for the policy. However, I don't find that renders the advice unsuitable.
- Mr P said the endowment mortgage account was closed in November 2003, which may indicate why a ten year initial term was likely chosen.
- At the time of the advice, Mr and Mrs P had one dependant child, as well as an outstanding endowment mortgage of £30,000 – which had begun in 1988 (and was not settled until November 2003).
- Though the mortgage likely had (but we have not seen evidence of) an endowment saving policy running alongside it, the proposal for additional life cover on the basis sought by Mrs P was not an unreasonable objective. She wished to have additional security in the event either she or Mr P died, which is a prudent step to take.
- Further, the policy Mrs P had was jointly held with a former partner. That policy did not provide cover for Mr P. It may have been possible to sever the policy or seek to ensure the proceeds would be payable to Mr P and not Mrs P's former partner (such as by placing it in trust) but that would require consent of the other policyholder.
- And, though Mr P had death in service benefits, these were not guaranteed; employment can be involuntarily lost, such as by means of redundancy.
- Taking all of the information in the round, I am satisfied that this policy was within the range of reasonable recommendations that the adviser could have proposed to Mr and Mrs P in 1993 in order to meet their recorded protection objective.
- That Mr P has now gone on to cancel the policy and opt for an ISA wrapped investment savings plan is said with the benefit of hindsight and does not determine that the 1993 advice was unsuitable. I believe the recommendation for the policy was a fair proposal based on the information before the adviser.
- I consider on balance that Mr and Mrs P likely wanted to go ahead with the policy, and that on the information I've seen, the advice was suitable for their circumstances.

- I note that the policy was affordable based on Mr and Mrs P's documented income and expenditure. It was sufficient to meet their recorded protection objectives given they had a dependant and no existing joint cover with a specific budget in mind to address that need (which was broadly met; the premium was £22.20 rather than £20 per month).
- I do not therefore think this complaint should succeed or find that the policy was mis-sold.

My final decision

For the reasons set out above, I do not uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P and Mr P to accept or reject my decision before 30 September 2025.

Jo Storey
Ombudsman