

complaint

Mr and Mrs M complained that Aviva Life & Pensions UK Limited (previously AXA) mis-sold them a mortgage endowment policy. Their complaint was originally made through a claims management company (CMC), who said, amongst others, the policy was mis-sold as they weren't made aware of the risk of investing and their attitude to risk wasn't established, they weren't warned of a possible shortfall and were told the policy would repay their mortgage, and they were told they had to have it.

Since the complaint has been considered here, the CMC is no longer representing them.

background

In 1998, Mr and Mrs M contacted an office of AXA to take out an endowment policy. They didn't receive any advice, even though it was offered. Paperwork was sent out to them, including an application form, an illustration of the policy, which included information about the fees and charges, and an execution only form. They completed the application and direct debit mandate on 10 December 1998 and the execution only form four days later.

In July 2018, they complained, via their CMC, about the sale of the policy. Aviva considered the complaint but didn't uphold it; it said no advice was provided and therefore it wasn't responsible for establishing the suitability of the policy. Not happy with that the CMC asked us to look into the complaint. Although it was brought outside of the six-month referral period, Aviva consented to our consideration of the complaint.

Our investigator didn't uphold the complaint. She was also satisfied that as the sale was execution only – that no advice was given – Aviva wasn't responsible for ensuring the suitability of the policy.

Mr and Mrs M asked for the matter to be referred to an ombudsman. In summary, they say:

- They were pressured into having the insurance despite having sufficient cover for their monthly commitments.
- They were told not taking out the insurance would affect the lending decision.
- They asked how long they were off for before making a claim and was told 90 days. They question the need to take out a policy if they aren't going to get help for three months.
- They didn't need protection given the existing sickness benefits they had through work.

The matter was referred to me. I noted that the arguments Mr and Mrs M made against the sale of the policy were relevant to payment protection not an endowment policy. But they still want a decision as they say they were led to believe this policy would cover their mortgage repayments.

my findings

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 have reached the same overall conclusion as the investigator and for much the same reasons.

There has clearly been some confusion over this case. When the CMC initially made the complaint, the complaint letter was at pains to point out the complaint related to an endowment policy and not PPI – this was written in bold. And most of the complaint points made were of the nature I would expect to see about the sale of an endowment policy for mortgage repayment purposes. Hence my clarification to Mr and Mrs M.

They still consider they were led to believe this policy was some form of payment protection insurance (PPI). I know Mr and Mrs M have made other PPI complaints so it perhaps understandable they have got this policy confused with PPI. But there is no contemporaneous evidence that the policy was supposed to be PPI rather than an endowment.

The note the staff member made in 1998 confirmed Mr and Mrs M had called the office to arrange for an endowment policy to be sent up for £42,500 over a term of 18 years. They were sent an application form; an illustration and an execution only form to sign. The application, which Mr and Mrs M signed on 10 December 1998, applies for an endowment policy with the sum assured and term referred to above. The policy was to be invested into the with profits fund at an assumed rate of growth of 7%. The illustration they were sent provided information about the policy, the fees and charges and projected what the policy would achieve at four rates of growth 5, 7, 7.5 and 10%. At the 5% rate the policy was projected to have a shortfall, but it was projected to meet or exceed the sum assured at the others.

The paperwork was very clear that it was an endowment policy applied for. If Mr and Mrs M thought it was something different, then I would question why they didn't query this at the time. Instead, they signed the execution only form on 14 December 1998, to say they hadn't requested, nor had they received, investment advice from AXA. On that basis, AXA wasn't required to ensure the policy was suitable or that it met their needs and circumstances – that was something Mr and Mrs M needed to do themselves. And I'm satisfied the information provided was clear, such that they could make an informed decision.

Having considered the matter carefully, I'm satisfied the policy applied for was an endowment and this was clear from the paperwork at the time. The paperwork showed it wasn't a guaranteed investment and was something Mr and Mrs M had requested rather than was told they had to have. They freely signed the execution only form confirming they didn't ask for nor were they given investment advice. I therefore don't uphold this complaint.

my final decision

For the reasons given, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs M to accept or reject my decision before 23 January 2020.

Claire Hopkins

ombudsman