complaint

Mrs S complains that she was mis-sold a reviewable whole of life policy by Lloyds Bank PLC.

She says she wasn't advised about the reviewable nature of the policy and thought her premiums and sum assured were fixed. She says she was given unsuitable advice.

To put things right Mrs S would like the sum assured to be restored to as it was in 2001.

background

I issued my provisional decision in November 2015. A copy is attached and forms part of this final decision. I said I was minded not to uphold the complaint, I don't think the reviewable whole of life policy was mis-sold.

Lloyds hasn't responded.

Mrs S didn't accept my decision and in summary makes the following points:

- She was approached by Lloyds and sold what she thought was a life insurance policy with an agreed premium and this would rise as would the cover provided. She was told she could freeze the premium and level of cover once they had reached a level she was happy with. She trusted what the adviser told her, without the need to read the "technical" fine print detail.
- She's not complaining about the reviewable nature of the policy.
- The policy wasn't put in place to provide cover until her children were dependant on her. The policy was for her life insurance and, to her mind, part of her estate when she died.
- The ombudsman's view of what was clear is subjective and dependant on the understanding of the technical literature against what she was told by the adviser.

She would like the following explained:

- "How on one day my level of cover is £110,796, then the next day the value is £50,295 – a 55% reduction".

- "How for eleven years between 2002 and 2013 there was no need for change (as expected), then in 2013 an ultimatum to either increase my premiums from £45.05 to £95 or take the reduced level of cover".

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 feel the majority points made by Mrs S have been considered in my provisional decision. However, below I've considered the main points made by Mrs S that she feels are relevant to this complaint and which I think need to be addressed by me.

I should clarify my role is to consider the evidence presented by Mrs S and Lloyds and reach what I think is an independent, fair and reasonable decision based on the facts of the case. In this instance Lloyds haven't supplied new evidence since the adjudicator's view.

It's for me to decide, based on the information I've been given, what's more likely than not to have happened. As a fresh pair of eyes looking at the complaint, I'm entitled to agree or disagree with the adjudicator's recommendation; I'm not bound by it. Sometimes ombudsmen take a different view to the adjudicators.

The type of policy Mrs S is complaining about is known as a 'reviewable' whole-of-life insurance. It's not set up for a specific term, but is instead designed to pay out on death whenever it occurs. At the start, the amount of cover and monthly premium are based on assumptions about a number of different factors, including the future cost of life cover and investment performance, that aren't known at the start.

In simple terms, each premium paid into the policy is split two ways. The first part is used to pay for the cost of cover in that month. The remainder is invested into a fund or funds. The cost of the cover is not fixed and actually increases with age. The hope is that the investment element will grow enough to fund the shortfall when the policy reaches the point that the cost of cover becomes greater than the premium.

Policies are reviewed regularly to check how they're performing against the original assumptions. I appreciate why Mrs S might feel her sum assured was £110,796 one day and £50,295 the next. But at each review, the insurer also needs to make new assumptions about the cost of cover and investment performance in the future.

Once these calculations are completed, the insurer can determine whether the policy has 'passed' the review, usually meaning no changes to cover or premium are required. Or 'failed', usually meaning the policyholder will be offered the choice of either paying a higher premium to maintain the same level of cover or accepting reduced cover for the same premium.

Some insurers have offered non-reviewable whole-of-life insurance policies over the years, where the cover and premium are fixed from the start. But the premium for this type of policy was usually much more expensive.

I appreciate Mrs S is unhappy because she thought the premiums wouldn't increase in future once she'd stopped the annual increase in 2002. But the annual increases were always separate to the review. I don't think Lloyds were obliged to remind her at that point, the level of cover could go down unless she paid a higher premium at some point in the future. And not doing so certainly didn't mean the policy was unsuitable in 1994.

I'm conscious Mrs S says she was advised she could freeze the premium and sum assured once they had reached a level she was happy with. In my view this is very much at the heart of the complaint and it's related to the reviewable nature of the policy.

I've taken account of what Mrs S says she was (and wasn't) told. But having considered everything Mrs S and Lloyds have said, I don't think her comments are enough for me to say the policy was mis-sold. I must also take account of the explanatory literature Lloyds says she was given when the policy started. This explains the policy would be reviewed and that the terms might need to change. So on balance, I'm satisfied the policy allows Lloyds to do what it's doing and that it didn't mislead her about how it would work. The policy has always been subject to regular reviews, separate from the annual increase.

This doesn't imply I thought Mrs S was anything other than open and honest when providing details of her complaint and her level of knowledge, I apologise if that was that impression she got from my provisional decision. That was certainly not my intention.

I'm conscious Mrs S doesn't feel the literature was clear, and that she trusted the adviser without the need to read the fine print detail. But if Mrs S decided not to read the documentation, and I accept many people don't, I don't think Lloyds can be held responsible.

A reviewable whole of life policy does offer flexibility in the sense that Mrs S was able to reduce the sum assured to maintain an affordable level of premium. Or indeed choose to pay a higher premium to maintain a higher sum assured. And I'm conscious in 2013 she chose to reduce the sum assured, irrespective of any caveats attached to it.

The policy was set up on a maximum cover basis which meant she received a high level of cover for a low premium, guaranteed for 10 to 15 years – whilst her children were dependent and most needed cover. Her children were only a feature of the policy. I don't think the policy was just put in place to provide cover until her children were no longer dependant on her.

I'm mindful Mrs S said at the time of being sold the policy she wanted a life insurance policy that would provide her young family with the appropriate cover given her circumstances at that time and going forward. I also note Mrs S wanted a lump sum to be paid on death. A whole of life policy would have paid out on death irrespective of her age.

I'm mindful of her comment that Lloyds approached her and arranged for an adviser to visit her and that she first complained to Lloyds in 2013 not 2014. Neither of those points have made a material difference to my overall decision not to uphold this complaint.

I accept that Mrs S may be disappointed with the outcome. But for all the reasons set out above my provisional decision remains unchanged.

my final decision

For the reasons given, my final decision is that I don't uphold this complaint or make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 5 February 2016.

Dara Islam
ombudsman

COPY OF MY PROVISIONAL DECISION

complaint

Mrs S complains that she was mis-sold a reviewable whole of life policy by Lloyds Bank PLC.

She says she wasn't advised about the reviewable nature of the policy and thought her premiums and sum assured were fixed. She says she was given unsuitable advice.

To put things right Mrs S would like the sum assured to be restored to as it was in 2001.

background

Mrs S approached Lloyds in 1994, to arrange life cover. She was recommended a whole of life policy set up on a maximum cover basis, with an initial £15 monthly premium and £66,780 sum assured.

At the time she had two financially dependent children. She was employed on a contract basis and had no existing life cover.

She agreed the policy should be on an increasing basis so that each year the sum assured increased to keep the value in line with inflation. The level of cover was based on the premiums Mrs S wanted to pay.

By 2001 the premiums had increased to £40.05 per month, and the sum assured to £110,796. In 2002, on her request, Lloyds converted her policy to remove the annual increase.

In 2013, following a review of the policy, Mrs S was informed that if she wanted to maintain her current level of benefits, she would have to increase her premiums or alternatively reduce her sum assured. She reduced the sum assured to £50,295 and maintained the premium.

In 2014 Mrs S complained to Lloyds that the policy was mis-sold.

Lloyds rejected the complaint. In a final response letter it said the policy was suitable and it had provided sufficient product literature that made clear the reviewable nature of the policy. It offered £100 compensation for any frustration caused in dealing with the complaint.

Mrs S was dissatisfied with the response and complained to our service.

One of our adjudicators investigated her complaint and recommended that it should be upheld. In short, the adjudicator said:

- Mrs S needed life cover.
- Affordability was a consideration at the time the advice was provided.
- The adjudicator wasn't satisfied that the implications of the review were explained to Mrs S by the adviser, especially the impact of cover set up on a maximum cover basis.
- She wasn't satisfied Mrs S would have appreciated the difference between a maximum and standard cover policy. Namely, that standard cover was less likely to increase in cost after review.

Lloyds disagreed with the adjudicator's conclusion. In short it said:

- It believed, given her circumstances, Mrs S's objective was to provide financial protection for her children up to the point they were no longer financially dependent, rather than for the whole of her life.
- It provided the product literature that contained a clear written description of the plan review process.

As no agreement could be reached the complaint has been passed to me for review.

my provisional findings

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

Because Mrs S wanted a policy that would pay her family a lump sum on her death, I'm satisfied that a whole of life policy in the circumstances was a suitable recommendation.

I'm mindful that she didn't have any life cover in place at the time and didn't want a policy that ended after a fixed term. She was also employed on a contract basis and had two dependants. In those circumstances, on balance, I'm satisfied the whole of life policy also met her needs.

On the face of the evidence, I'm satisfied it's more likely than not that Mrs S was aware of the reviewable nature of the policy at the point of sale. I'm satisfied she was supplied with sufficient product literature that made clear the nature of the policy.

I note Mrs S was written to in 2008 and informed that the policy was reviewed and no increase was required. I think it is likely Mrs S would have complained then if she wasn't aware the policy was reviewable.

As to the question of whether a whole of life policy set up on a maximum cover basis was suitable given her long term objectives; I'm mindful that a reviewable whole of life policy, set up on a standard cover basis, would have been more expensive for less cover, and still subject to reviews.

I also note that a non-reviewable whole of life policy wasn't available from Lloyds at the time. Notwithstanding the significantly higher cost implications, I think it's fair to say that Mrs S could have chosen to go elsewhere if the plan she was looking for wasn't available. Instead she chose to follow the advice.

I appreciate Mrs S is unhappy because when she stopped the annual increase in 2002 she thought that the premiums wouldn't increase in future. What's important to note is that the policy has always been subject to regular reviews, separate from the annual increase in sum assured. In my view, the product literature made this reasonably clear at the point of sale. Therefore even if Mrs S has misunderstood the effect of stopping the annual increase in 2002, it doesn't mean the policy was mis-sold in 1994.

Lloyds says it was expected that no increase in premium would be required for the first 10-15 years, but after that Mrs S may need to increase her premiums if she wanted to keep her sum assured at the same level. I'm mindful that it is over 25 years since the policy began and 2013 was the first time an increase was required to maintain the sum assured.

Whilst I can understand why Mrs S feels unhappy about the reduced sum assured, I'm not satisfied the policy was mis-sold.

my provisional decision

For the reasons above, but subject to any further submissions I may receive, I'm provisionally minded not to uphold the complaint or make an award.

Dara Islam
ombudsman