

complaint

Mr and Mrs H have complained that their mortgage endowment policy has been mis-sold to them. They feel Standard Life Assurance Limited, the policy provider, is responsible for the sale and that it mis-represented the risk associated with the policy.

background

Mr and Mrs H complained to Standard Life about what they say is the mis-selling of their endowment policy in 1988. They felt Standard life are responsible for the sale and have mis-represented the product and the risk it carried. Standard life has explained that it is simply the policy provider. It was not party to the sale and as such it could not give any advice as to the suitability of the product or the risks attached to it.

The adjudicator that reviewed the complaint found that Standard Life has had no hand in the sale of this policy, and as such cannot be responsible for any possible mis-selling. Mr and Mrs H did not agree and feel Standard life should be held responsible for what they say is the mis-selling of its product.

As Mr and Mrs H did not agree the case has been referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so I have come to the same conclusions as the adjudicator before me. I do not uphold this complaint. I appreciate this will disappoint Mr and Mrs H. I do not doubt their strength of feeling about this or that it matters a great deal to them. In effect there are two parts to this complaint.

the sale of the policy

As regards the sale of the policy I cannot hold business "A" responsible for something business "B" did (or did not do). Here, the legal and regulatory framework set up at the time of the sale of this policy means that the business here was simply providing a product for another business to sell.

The business here was entitled to assume the other business acting on behalf of Mr and Mrs H had done its job. That job was to sell a suitable product to Mr and Mrs H and explain the main features of that product. This business had no obligation to ensure a suitable sale was made or that risks were explained.

It is not for this business to keep records of the advice given. In fact without the express permission of Mr and Mrs H the business would have no right to any such confidential client information.

If Mr and Mrs H feel they were misled by the Independent Financial Advisor selling the policy-perhaps by not having that business' status properly disclosed-then they must take that up with the IFA business. It is not the fault of the business here if another business failed in its obligations to explain things properly.

This business here has an obligation to carry out the terms of the contract as set out in that contract document. Broadly the obligation is to take the premiums paid and, after costs and charges, invest the remaining premium to achieve growth. That growth, if it reached the levels required for this policy, was intended to produce enough value at the end of the life of the policy in order to at least repay the mortgage concerned. The growth rates used in illustrations were set down and controlled by the regulator at the time the policy was taken out. All businesses had to use those rates at the time of the sale.

It seems to me the business here has explained the position in respect of this complaint on a number of occasions. I understand it is difficult and can be confusing but I do not take the view the business here has got anything wrong in the way it has dealt with the complaint.

I entirely understand business' position-it had explained the situation-it was not responsible for the sale-and given referral rights to this service-that is all it was required to do.

the policy documentation

From so long ago (over 25 years) it is perhaps surprising that any documentation from the time survives. Of course any such documentation will be old, probably incomplete and possibly contradictory. Further I must look at any such documentation and evidence in the context of the time.

I cannot use hindsight in making a decision. The economic outlook and the prospects for policies such as this are very different from when this policy was sold. I cannot hold this business responsible for failing to anticipate any such changes.

I have seen nothing directly relating to this specific sale. That is hardly surprising. What I have seen (product literature which is dated May 1988) explains that bonuses are not guaranteed and that they may increase or decrease depending on economic circumstances. Both illustrative maturity values have "NOT GUARANTEED" printed above them.

Note 1 states (where relevant)

"if current rates of bonuses were reduced during the term of the policy to such an extent that the total maturity value would be insufficient to repay the outstanding loan, you would be required to pay the balance from your own resources,"

I am not suggesting for one moment that such warnings would be considered sufficient today. However the fact is information about a possible shortfall (and therefore a risk) is in the documentation. It was for the selling business to explain that and ensure Mr and Mrs H were aware of and happy with the non guaranteed nature of the policy sold, not this business.

I am aware Mr and Mrs H says they received nothing from the advisor who sold the policy. However I have to ask how likely it is they received absolutely nothing for a product they were relying on to repay their mortgage and into which they paid for 25 years. In any event if the advisor failed to pass on the documentation then it is hardly the responsibility of this business.

Mr and Mrs H have been asked to produce anything they may have which illustrates that this business misled them about the policy in question. I have seen nothing to support their arguments. That of course does not mean they are mistaken. They must understand however that from over 25 years ago I cannot simply uphold a complaint, especially when another advisor has responsibility for the sale-without at least something to support those conclusions.

I appreciate Mr and Mrs H will be unhappy with this. However this is not a technicality. If I look at and uphold a complaint with a final decision-and the consumer accepts that decision-the business has no choice-then the decision becomes legally binding with no right of appeal to the courts. In short it must be made against the right business. I simply cannot make an order against one business for something another business is responsible for.

I have looked at the other questions Mr and Mrs H have asked. While I do not wish to appear unhelpful this is not a service which provides information or advice. This service is here simply to look at individual complaints on their own merits and try and resolve those complaints.

I do not think there is anything further I can usefully add. This business was not responsible for the sale of, the suitability of, or explaining this policy. I have seen no evidence this business misled Mr and Mrs H either at the point of sale or later.

my final decision

My final decision is I do not uphold this complaint. Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs H to accept or reject my decision before 19 January 2015.

Mike Boyall
ombudsman