complaint

Mr G has complained through a third party representative that he was persuaded by Lloyds TSB Bank Plc ("the business") to effect a long-term endowment savings plan by exaggerated claims made by the adviser for the eventual value he would receive at maturity.

Specifically, the adviser failed to provide an illustration of the policy values after 10 years, and at maturity, at a lower prescribed growth rate of 7% per annum and Mr G proceeded with the policy on the strength of an exceptional return of 76% he was quoted for the policy over a three year period. The illustration also included a handwritten comment that the policy was effected "*to provide for large tax free cash in the future*".

Mr G has requested the business to refund all the premiums he paid to the policy, plus interest.

background

Mr G's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld because he decided that the handwritten notes on the illustration were insufficient for him to believe that Mr G had been unfairly persuaded to effect this policy. While he acknowledged that future projected values using a return of 7% per annum were not given, and return of 76% over three years was quoted, formal risk warnings were also included which confirmed that any figures quoted were not guaranteed.

Furthermore, the policy provisions make it clear how its ongoing value is determined.

In response, Mr G's representative disagreed with the adjudicator's view and maintained that, notwithstanding the risk warnings that existed within the policy literature, the overwhelming factor in Mr G's decision to effect the policy was the handwritten note confirming growth of 76% in 3 years. Also, the absence of policy values on the lower growth rate of 7% per annum, in conjunction with the handwritten notes, strongly suggested that the policy would produce a highly favourable return.

The adjudicator noted that Mr G contacted the business four times in 2007 and received variable policy values which must have indicated to him that rate of return he may have been anticipating was unlikely to be achieved and that the ongoing value of the policy could go up or down.

Mr G's representative replied that the initial conversation Mr G had with the adviser persuaded him to effect the policy and, thereafter, he felt little need to read the risk warnings contained within the policy literature. In 2007, Mr G did contact the provider as he was looking to build an extension which was eventually funded from other sources of capital. Mr G could not recall why he did not query the value at that time other than to suggest that "*his mind may have been on other things*."

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

As Mr G took out the policy in 1986, before the Financial Services Act 1986 came into force on 29 April 1988, there was no regulatory requirement for the firm to give advice or to ensure that the policy was appropriate for him.

However, if Lloyds TSB Bank Plc did give advice, it had a legal duty to advise him with reasonable care and skill. On the evidence that is available from the business's file, I think it more likely than not that it did give Mr G advice at the time, and I have therefore based my decision on the assumption that advice was given.

In order for me to uphold this complaint, I must be satisfied that the policy was inappropriate for Mr G's circumstances and objectives when it was arranged, taking into account the information that is available from the time.

The policy arranged by the business was an endowment savings plan, designed to provide a tax-free capital sum over the long term over and above the returns Mr G could have expected if he paid his regular premiums to deposit-based accounts.

I have, therefore, considered whether it is likely that Mr G would knowingly have taken a degree of risk with the modest monthly premium he paid to achieve an objective of receiving a capital sum over the long term.

The sale of this policy took place more than 27 years ago and, inevitably, the evidence is likely to be incomplete as businesses were not required to keep records for more than six years and the record keeping requirements generally were much less prescriptive than they are today.

I have considered the information Mr G's representative has submitted in support of his complaint and, while I accept that there are some obvious shortcomings in the presentation of the information he received, I cannot be certain what return Mr G was expecting over the 27 year term of the policy – 10% per annum, the equivalent of 76% over three years or a "*large tax free cash sum in the future"*. It is not clear either whether the return of 76% was prospective or retrospective, or the three year period to which this figure related.

In reality, as the risk warning on the very same page confirms, none of these figures is guaranteed and I am inclined to believe that Mr G would have been advised to read this warning and the accompanying notes to which it refers.

Accordingly, having taken into account all the information he received at the point of sale, I am not sufficiently persuaded that Mr G could believe that he had received any sort of binding guarantee of the capital sum he could expect to receive at maturity that unfairly encouraged him to effect this policy.

On balance, I believe that Mr G, in his circumstances, might have been prepared to take some risk with his long term savings in return for the prospect of the policy providing a favourable return at maturity.

Therefore, I cannot safely conclude that the policy was inappropriate for Mr G or that the level of return he might receive from it was so obviously misrepresented to him.

my final decision

My final decision is that I do not uphold Mr G’s complaint.

Kim Davenport
ombudsman