complaint

Mr M has complained about a level term assurance (LTA) policy he was required to take out by The Royal Bank of Scotland Plc ("RBS") in 1997 to cover the maximum allowable advance of £20,000 he could take under an Education Expenses Plan over 20 years.

Specifically, Mr M says that he thought the policy was a savings policy with life cover that would repay the debt he'd accrued under the Plan in 2017. He now appreciates that the policy provides life cover only and it was therefore mis-sold to him.

To settle his complaint, Mr M has requested RBS to write-off 50 per cent of the interest he has been charged from time-to-time on the outstanding debt over the full term of the Plan and to refund all the policy premiums to him.

background

Mr M and his then wife took out the Education Expenses Plan in 1997.

RBS required them each to take out life cover of £20,000 over 20 years through an individual level term assurance policy that would repay the amount owed up to a facility limit of £20,000 if either one of them died before the debt was due to be repaid.

It seems that Mr M's wife also took out an investment to repay the outstanding debt if neither of them had died when the Plan matured in 2017. In the meantime, Mr M paid the ongoing interest due on the outstanding amount they owed.

However, in 2005, Mr M agreed to take responsibility for repaying the amount advanced under the Plan. Also, RBS has confirmed that the term assurance policy and the investment taken out by Mr M's wife were cancelled some time ago.

When the total amount advanced was due for repayment in July 2017, RBS wrote to Mr M to inform him that his term assurance policy document would be sent to the insurer which will send the policy proceeds to RBS to clear the outstanding balance under the Plan. This was incorrect information as the term assurance policy didn't provide a maturity value - Mr M needed to repay the outstanding debt from his own resources.

Accordingly, Mr M raised a separate complaint that RBS had misinformed him when the Plan was due to mature that the term assurance policy would repay his debt. He continued to pay interest on the outstanding balance while RBS investigated this complaint.

The complaint made by Mr M about the sale of the policy in 1997 was investigated by one of our adjudicators, who didn't think she could uphold it.

Briefly, she concluded that, based on the limited evidence that exists, Mr M would have known from the policy schedule he received that the policy provided life cover of £20,000 over 20 years. It was not a savings plan, or a policy that was intended to repay a debt that could be outstanding in 20 years' time.

She added that, as Mr M was married at the time, it was appropriate for him to have taken out a policy that would repay the debt if he died before it was due to be repaid. Also, RBS was entitled to set its own conditions of lending and required Mr M to take out life assurance through this policy which was assigned to the bank as security.

All things considered, she was satisfied that the policy was suitable as protection for Mr M and it hadn't been sold to him as a savings plan that would repay the debt in 20 years' time.

In response, Mr M disagreed with the adjudicator's assessment. He said that:

- the policy turned out to be a form of payment protection insurance (PPI) that gave him no value for the total premiums he paid of more than £2,000;
- RBS sent the policies for encashment to the insurer and wrote to him advising that the facility would be repaid from the proceeds. So, the bank must have viewed the policy in the same light as he did; i.e. as a means of repaying the debt;
- the Plan facility limit of £20,000 was unsecured lending. He asked whether or not the policy was a product that was regulated at the time as he couldn't recall meeting a representative of RBS to complete a 'factfind' to evidence that advice was given. Neither did the process of approving the facility show any discussions took place about this policy and the need for it;
- he asks for the two complaints he's made to be reviewed as one to decide whether the offer already made by RBS for the mis-information it provided when the Plan matured was fair and reasonable in settling his two complaints.

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

findings

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

Mr M has asked for the two issues he's complained about - that the policy was mis-sold to him as a savings plan in 1997 and the cost in interest he's incurred on the outstanding debt since July 2017 while RBS investigated the incorrect information it provided in its maturity letter - to be reviewed as one by an ombudsman.

But, while I acknowledge that the two complaints both relate to misrepresentation of the term assurance policy, they concern two different events. So, I'm satisfied that they should be addressed separately. And, in any event, Mr M has agreed a settlement with RBS over his complaint about the interest he paid since he could have repaid the debt in July 2017 while RBS investigated it.

This leaves me to consider his complaint about the original sale of the policy in 1997.

RBS has been unable to provide documentation which explains precisely how an Education Expenses Plan operates, or what it provides. But Mr M has confirmed that, although it is not strictly a loan, it operates as a quasi-overdraft over 20 years with a facility limit of £20,000.

As such, RBS is legitimately entitled to set its conditions of lending, overdraft facilities or any other forms of borrowing taken by its clients. If, as part of the Education Expenses Plan, it required Mr M to take out life cover that would repay an amount up to the facility limit of £20,000, it could do so and I can't intervene in that commercial decision. It was for Mr M to decide whether or not he was prepared to pay for a policy that provided this benefit within the ongoing cost of the Plan.

Having said that, I appreciate that Mr M agreed to take out the policy because he claims he was led to believe it was a savings plan that would repay the debt in 20 years' time.

But, having accepted that the policy provides life cover only, Mr M says it's comparable with payment protection insurance (PPI) which, by implication, I assume he believes has proved to be inappropriate for most borrowers.

A term assurance policy is not PPI, and the considerations for assessing the merits of PPI are not relevant to the advice Mr M received to take out the term assurance policy.

Briefly, a PPI policy would pay an *income benefit*, equivalent to the monthly costs of a loan, if Mr M was ever made unemployed or suffered long term incapacity that prevented him working. And, given the outstanding capital debt under the Plan would vary from time-to-time as Mr M's borrowing requirement changed, it would be difficult to set a fixed level of benefit that would always cover the interest charges.

On the other hand, a term assurance policy pays a *capital sum* in the event of his death *at any time* during the policy term, equivalent to the maximum outstanding balance under the Plan. So, Mr M would never be under-insured and the outstanding debt would always be repaid in full.

Mr M has also questioned whether the policy was a regulated product in 1997 as he doesn't recall agreeing to take it out following a formal sales process.

All complaints about term assurance policies sold on or after 14 January 2005 can be considered against independent financial advisers (IFAs) and intermediaries because IFAs and intermediaries became regulated from that date and so were covered by our compulsory jurisdiction.

A term assurance policy sold before 14 January 2005 by businesses covered by the mortgage code falls within our jurisdiction where the policy is sold in connection with the arrangement of a mortgage, overdraft or any other form of borrowing facility and the complaint is that the consumer was incorrectly told that they had to have the policy to secure the lending, the policy was misrepresented or it was unsuitable.

But the timing of the sale of the policy to Mr M determines our jurisdiction to consider his complaint - it doesn't decide whether it was inappropriate of RBS to require him to take out the policy as condition of the Plan.

I, therefore, need to consider whether there's a case for Mr M being led to believe in 1997 that the policy was one that would repay his debt in 20 years' time.

As the adjudicator has previously pointed out, the policy document Mr M received confirmed that the policy would pay £20,000 if he died before 1 August 2017, for which he paid a monthly premium of £8.74. I would also ask Mr M to consider that it's most unlikely that a premium of £8.74 per month would repay a debt of up to £20,000 in 20 years' time *and* fund life cover of £20,000 in the meantime.

Mr M also seems to recall that his wife took out an investment expressly to repay the debt when the Plan matured, which I understand she subsequently cancelled. So he ought to have known from this that the policy he was required to take out as a condition of the Plan

wasn't intended to repay the debt, and there was no longer any provision to repay the debt, unless he died before the Plan matured.

decision

My final decision is that I don't uphold Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 October 2019.

Kim Davenport
ombudsman