

complaint

Mr and Mrs G have complained about three endowment policies which they were advised to take out by Sun Life Assurance Company of Canada (U.K.) Limited in 1993, 1997 and 2000. They say that all three policies are unsuitable for them because:

- They were not made fully aware of the risks.
- No alternatives were offered to the endowment policies.
- They do not believe their attitude to risk matched with the funds selected.

background

The background to the complaint is contained within my provisional decision (attached). In that decision I essentially said that Sun Life's offer was reasonable in the circumstances and set out how redress should be calculated.

Mr and Mrs G responded to my provisional decision. They indicated that they felt pressurised by Sun Life's financial adviser into purchasing the endowment policies. This adviser also arranged all of their mortgages, seeking only Mr and Mrs G's signatures for the paperwork for these applications. It would appear that this adviser returned on a number of other occasions in an attempt to sell additional endowments which were declined by Mr and Mrs G.

Mr and Mrs G say that, at the start, they accepted the advice from the adviser as they were not experienced in investment matters. However, once they became aware of the difference in cost between repayment and interest only mortgages, they began to switch their mortgages to repayment only, having no further contact with the financial adviser who sold the endowment mortgage policies.

They did not agree that the third endowment was suitable, as it simply followed the first two. The interest rate on any loss, that I suggested, was also queried Sun Life offered no additional comments.

my findings

I have reviewed all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, my view of the complaint remains as set out in the provisional decision.

With respect to the third policy, I set out why I did not believe redress should be awarded. I felt that clear explanations had been given at that point as to the risks and the options regarding mortgage repayment. I appreciate Mr and Mrs G say that other repayment methods were not explained but the evidence available from 2000 does not tend to support that. The evidence would indicate that Mr and Mrs G could make an informed decision at that point.

I note that Mr and Mrs G say that they had to cash in one policy as they did not have a deposit to fund another property they were buying. I cannot say that Sun Life acted incorrectly here because it would be for Mr and Mrs G to decide if they wanted to do that so that they could make another property purchase.

Mr and Mrs G have raised issues about the mortgages the adviser arranged, but they are not part of this complaint; if they do have concerns about the lending itself then they should raise that with the party responsible for that lending.

I have noted Mr and Mrs G have said that they were contacted about the adviser by a third party. However there is no further information which would add any context to that or lead me to the conclusion that my decision should change (bearing in mind that I believe the risks and options were explained). I would also note that the contact was made approximately 8 years after the advice was given about the third endowment.

As to the interest to be applied to any loss amount, as discussed in the provisional decision, I did consider a reasonable rate to apply, bearing in mind we do not know to exactly what purpose the money would have been put. Each case will be treated on its own merits and I felt that, given the length of time interest would be applied, that the rate I suggested was reasonable. I remain of that view.

my final decision

My final decision is that Sun Life Assurance Company of Canada (U.K.) Limited's offer is a reasonable resolution to the complaint, bearing in mind the calculation and detail I set out in the provisional decision. Sun Life should calculate and pay redress as set out in the attached provisional decision.

David Bird
ombudsman

COPY OF PROVISIONAL DECISION

complaint

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background

One of our adjudicator's assessed the complaint and upheld it. He said that all three policies were unsuitable.

Sun Life agreed that the complaint about the first two policies should be upheld but not the third. It also believed any redress should be capped in 2000 because by then Mr and Mrs G were aware how the policies operated.

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Sun Life has agreed to uphold the complaint about the first two endowment policies. However it has not agreed to uphold the third (advice provided in 2000) and it also believes any redress calculations with respect to the first two policies should be 'capped' in 2000.

Consequently I have considered the matters still at issue, which are; the suitability of the third policy and what redress would be fair and reasonable in the circumstances. I may, however, refer to evidence relating to earlier sales where that is relevant to the advice provided in 2000.

All the endowment sales were, at least initially, for buy-to-let properties. I understand that Mr and Mrs G were living with family in the period 1993 to 2003 and all the properties they purchased were, up until 2003, rented out. Therefore there was a commercial aspect to the properties and this was not simply a situation where the consumer was buying one property as their main residence.

In 2000 Mr and Mrs G were recorded as willing to accept some risk with mortgage repayment. Such 'risk gradings' are not conclusive, especially where there is no detailed explanation of what those gradings mean, but it is evidence that I will take into account.

What will carry more weight in my view is what Mr and Mrs G were told by the adviser. I have read the letter that the adviser sent to Mr and Mrs G in 2000, which set out why the endowment method had been chosen and recommended. It does set out in some detail all the main methods of repaying a mortgage. It does set out that the endowment method is not guaranteed to repay the mortgage, only a repayment method would. It is difficult to arrive at the conclusion that Mr and Mrs G could read that and still be of the view that they were not taking risk with mortgage repayment. There does not seem any particular reason why they could not take the risk of a unit-linked equity based fund in 2000.

I also note that a relatively short time before the 2000 sale, one endowment mortgage was converted to repayment. It is not clear why this happened but the shift from one repayment method to another would tend to indicate some appreciation of the different methods around 2000.

Based on what I have seen, I do not believe it has been established as more likely that the advice given in 2000 was unsuitable. Mr and Mrs G had been given information about the repayment types and the risks and they were recorded on the financial planning documentation as willing to accept that risk.

Consequently I am not presently minded to uphold the complaint about the 2000 policy. Given the very particular circumstances of this case and bearing in mind that Mr and Mrs G seem to have been aware in 2000 of the risk of this mortgage repayment approach, I also believe Sun Life's submission that redress should be 'capped' at this point is reasonable [it does seem that all the mortgage(s) were converted to repayment in 2003 in any event].

my provisional decision

In my view Sun Life's offer to carry out a redress calculation on the first and second policies to the point of the third sale is fair and reasonable in the circumstances. I do not intend to make any award in respect of the 2000 endowment sale.

Sun Life did not set out how it would calculate redress but I assume it would follow usual practice for this type of complaint and policy.

To confirm, the financial regulator, the Financial Conduct Authority (FCA), has laid down a standard approach for calculating compensation in cases such as this in its guidance, "Handling Mortgage Endowment Complaints" (sometimes referred to as a Regulatory Update 89 or RU89 calculation). The guidance can be found in the FCA's handbook at DISP Appendix 1 or on its website.

In effect the guidance provides that Mr and Mrs G are entitled to be put in the position they would have been in, so far as is possible, had Sun Life not recommended the first and second policies. In other words, in this case, in the position they would have been in if the mortgage(s) had been arranged on a repayment basis in 1993 and 1997. I am satisfied that compensation calculated in accordance with this guidance is the appropriate redress to apply in this case.

With respect to the first and second policies, Sun Life Assurance Company of Canada (U.K.) Limited should pay Mr and Mrs G, A + B where:

A = the loss (if any) identified by carrying out a loss calculation in accordance with the FCA's guidance "Handling Mortgage Endowment Complaints" to the date of the third sale using the actual surrender value(s) at the time.

B = interest on any loss identified in part A from the date of the third sale to the date redress is paid. Interest is to be calculated at Bank of England Base rate, compounded yearly.

Total redress should therefore be calculated as A + B.

If Sun Life considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr and Mrs G can reclaim the tax from HM Revenue and Customs if appropriate.

I would confirm that I have considered what interest rate to use in the circumstances of this case on the loss amount. Given that approximately 14 years has passed since the date the RU89 calculation will be run to, I believe the rate set out above is fair and reasonable in the circumstances.