

complaint

Mr and Mrs A have complained through a claims management company that advice they received from Liverpool Victoria Financial Advice Services Limited (“Liverpool Victoria”) in January 1996 to take out a with-profit endowment savings policy was unsuitable for them.

Specifically, the annual premium to the policy was partially funded by annuity instalments Mr A purchased from a lump sum benefit he received from his pension scheme when he retired.

Also, their representative has said that:

- the ten year term gave the policy little flexibility for Mr and Mrs A to access the proceeds whenever they chose; they had shorter term requirements for this money;
- no alternative, risk-free products were discussed and they had no need for the life cover provided by the policy;
- Mr and Mrs A’s attitude to risk was not established in any meaningful way and did not reflect their approach to investment. Their savings had previously been held in deposit-based accounts;
- a ‘review of these “back-to-back” arrangements was carried out in 2001 at the insistence of the industry regulator and Mr and Mrs A received compensation at the time;
- Mr and Mrs A sold the policy in January 2003 to a third party at a price that was considerably less than the premiums they had paid.

background

Mr and Mrs A’s complaint was considered by one of our adjudicators.

Although Liverpool Victoria initially submitted that Mr and Mrs A were not eligible to complain because they had sold the policy to a third party in 2003 and that, in any event, the complaint was time-barred, it accepted the adjudicator’s view that Mr and Mrs A were eligible complainants and that their complaint was not time-barred.

With regard to the merits of the complaint, the adjudicator was not persuaded that Mr and Mrs A had received unsuitable advice based on the very limited evidence available from the point of sale.

In response, Mr and Mrs A’s representative did not accept the adjudicator’s conclusion and said that:

- while it appreciated that little documentation exists from the point of sale by way of a ‘factfind’ or a ‘suitability letter’, it would be unfair to disadvantage Mr and Mrs A if the decision was based on the lack of paperwork from January 1996;
- Mr and Mrs A had retained other documentation, including policy value illustrations (which it enclosed for the adjudicator’s consideration);
- the advice is questionable because both Mr and Mrs A were both retired and Mrs A was in receipt of her state pension which made the sale of a ten year endowment policy inappropriate;
- the policy was sold was as part of a “back-to-back” arrangement whereby a lump sum from Mr A’s pension was invested to produce a regular income which, in turn, funded the endowment policy premiums.

As the adjudicator was not inclined to change his view, the complaint has been referred to me for review.

my findings

I have considered all of the evidence and arguments provided by both parties in order to decide what is fair and reasonable in the individual circumstances of this complaint.

My understanding is that, in January 1996, Mr and Mrs A were advised to purchase an annuity with Mr A's pension lump sum and then to use this income to partially fund the annual premium to a ten year with-profit endowment policy.

This funding arrangement formed part of a regulatory review in 2001, following which Mr and Mrs A received a refund of some of the commission earned by the business on the sale of the annuity and the endowment policy. As such, I consider that the method of funding the endowment policy has already been settled and I have not considered this aspect of the advice in this decision. Therefore, I have restricted my consideration to whether, from the evidence available, the advice Mr and Mrs A received to take out the endowment policy was suitable or not.

It is evident that the advice Mr and Mrs A received was given over 18 years ago and little documentation remains with regard to the discussions that took place between the adviser and them over the sale of the policy. The application form is available, which records their ages and occupations. Otherwise, there is no evidence that might provide details of Mr and Mrs A's circumstances and financial needs and objectives at the time. Their representative has confirmed that Mr A had recently taken early retirement and was looking to invest his pension lump sum. It added that any investment needed to be flexible and capable of being accessed at any time during their retirement.

The absence of any meaningful documentation from the point of sale means that it is difficult for me to know with much certainty what was discussed between the adviser and Mr and Mrs A in relation to their needs and why it was decided that the policy met those needs. Given, therefore, the onus lies with Mr and Mrs A to prove their case on the balance of probabilities and, while I do not disregard what they, and their representative, have said, there is little evidence to substantiate their claim that the advice they received was unsuitable. Certainly, I cannot conclude that a lack of documentation surrounding the advice given in January 1996 means that Mr and Mrs A's complaint should inevitably succeed.

Mr and Mrs A's representative has also submitted that no evidence exists to confirm that alternatives to the policy they were recommended were discussed.

However, there was no requirement for the adviser to have discussed a number of different products, and to record that he had done so, with reasons for rejecting these alternatives. The adviser was required to make a suitable recommendation based on Mr and Mrs A's circumstances and financial objectives at the point of sale, and I have seen no evidence to suggest the policy recommended was unsuitable.

It is not possible for me to be certain what Mr and Mrs A understood at the point of sale, or what the adviser told them about the benefits and potential drawbacks associated with the policy.

However, reference to the nature of the policy would have been set out in the policy documentation (which I consider, on balance, it is likely Mr and Mrs A were provided, which would have included the provision of life cover, the risk that the eventual value at maturity was not guaranteed and that early surrender may result in receiving a sum less than the premiums paid).

This complaint is not easy to determine owing to the time that has elapsed since the sale and the lack of detailed contemporaneous evidence available.

However, I have seen little to suggest that a ten year term with-profit endowment savings policy, intended for an investor willing to take a low level of risk, was unsuitable for Mr and Mrs A.

my final decision

My final decision is that I do not uphold Mr and Mrs A's complaint.

Kim Davenport
ombudsman