complaint

Mr and Mrs H have complained that advice they received from a predecessor firm of Chase de Vere Independent Financial Advisers Limited ("Chase de Vere") in April 1993 to take out a 'reviewable' whole life policy was unsuitable for them.

Specifically, they say they requested a savings plan at the time as they already held sufficient life cover through Mr H's employer's pension scheme and other joint-life policies. They were led to believe that the policy was a long term savings plan with a "target amount" of £40,000, as it referred to the investment premium being paid into a with-profits fund. They only realised it was a policy providing life cover of £40,000 when they received the outcome of an unfavourable 'plan review' in 2013.

Mr and Mrs H surrendered the policy in March 2013 for almost £5,000 and have requested compensation over this surrender value based on a return they could have reasonably obtained on the total premiums they paid of £8,400.

background

I issued a second provisional decision on 27 August 2015.

As in my first provisional decision dated 14 April 2015, I found insufficient evidence to show the policy Mr and Mrs H were advised to take out in April 1993 was unsuitable. A copy of my provisional decisions is attached and they form part of this final decision.

I invited both Mr and Mrs H and Chase de Vere to respond to my second provisional view before 28 September 2015.

developments

In reply, Chase de Vere said that it had nothing further to add and it accepted my provision decision.

On the other hand, Mr and Mrs H did not respond at all before 28 September 2015.

findings

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

As Mr and Mrs H have not contested my second provisional decision, I see no reason to change this view of their complaint.

Therefore, my second provisional decision now becomes my final decision.

final decision

My final decision is that Mr and Mrs H did have a requirement for additional joint life cover. This need could have been more effectively met by taking out the life assurance arrangement offered by Mr H's employer outside his pension scheme.

Mr H had taken out accident cover on his own life under this arrangement for three years from June 1993.

Therefore, I require Chase de Vere Independent Financial Advisers Limited to pay Mr and Mrs H redress, if any, of ‘F’ + ‘G’, where:

- A = the total monthly premiums of £35.00 Mr and Mrs H paid from time-to-time to the whole life policy;
- B = the cost of the alternative arrangement offered by Mr H’s employer that provided equivalent benefits at £18.80 per month from the start date of the whole life policy to the date they surrendered the whole life policy, less £8.50 per month Mr H paid for this cover for the period June 1993 to May 1996 inclusive;
- C = A – B per month;
- D = interest at the rate of 8% per annum simple on each net premium in ‘C’ from time-to-time from the start date of the policy to the date of surrender;
- E = the cash value of the whole life policy at the date of surrender;
- F = C + D - E = their loss at the date of surrender;
- G = interest at the rate of 8% per annum simple on ‘F’ from the date of surrender to the date of settlement.

If Chase de Vere Independent Financial Advisers Limited considers that it is legally obliged to deduct income tax from the interest calculated in ‘D’ and ‘G’, it must send a tax deduction certificate with the payment.

Mr and Mrs H may reclaim any tax overpaid from Her Majesty’s Revenue & Customs (HMRC) if their circumstances permit them to do so.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs H to accept or reject my decision before 2 November 2015.

Kim Davenport
ombudsman

COPY OF SECOND PROVISIONAL DECISION

complaint

Mr and Mrs H have complained that advice they received from a predecessor firm of Chase de Vere Independent Financial Advisers Limited ("Chase de Vere") in April 1993 to take out a 'reviewable' whole life policy was unsuitable for them.

Specifically, they say they requested a savings plan at the time as they already held sufficient life cover through Mr H's employer's pension scheme and other joint-life policies. They were led to believe that the policy was a long term savings plan with a "target amount" of £40,000, as it referred to the *investment premium* being paid into a w*ith-profits fund.* They only realised it was a policy providing life cover of £40,000 when they received the outcome of an unfavourable 'plan review' in 2013.

Mr and Mrs H surrendered the policy in March 2013 for almost £5,000 and have requested compensation over this surrender value based on a return they could have reasonably obtained on the total premiums they paid of £8,400.

background

I issued a provisional decision on 14 April 2015 in which I concluded that there was insufficient evidence to show the policy Mr and Mrs H were advised in April 1993 was unsuitable. A copy of my provisional decision is attached and forms part of this decision.

Briefly, for the reasons given, my view was that Mr and Mrs H ought to have known that the policy they were recommended was a whole life plan, and not a savings policy.

However, due to the absence of any documentation setting out their personal and financial circumstances at the point of sale, the question whether this policy was suitable for their financial needs was much more difficult to answer.

As Mr and Mrs H confirmed that, in April 1993, they had an infant child, Mrs H was not working and they held a capital repayment mortgage of £41,000 without dedicated life cover in place for this loan, I was inclined to believe that they were under-insured for life cover (especially after 2011 when all their savings plan would mature). Therefore, I was not convinced that the recommendation they received to take out further life cover was inappropriate.

Mr H, however, did refer to a special arrangement that was available to him through his employer which paid a lump sum benefit on death as a result of an accident or from natural causes. This cover could be extended to spouse and children under the 'Family Plan'. The total cost of this cover was fixed, regardless of age or seniority, and was payable on an annual renewable basis but did not acquire a cash value.

I was inclined to believe that, if the advisor held himself out as an 'expert' in the requirements of a client in Mr H's profession, I would expect him to have drawn Mr H's attention to the benefits available under this employer arrangement as an alternative to the advice he gave.

To provide the same level of benefits as the whole life policy, Mr and Mrs H could have taken out this protection cover at a discounted premium of £18.80 per month, compared to the monthly premium to the whole life policy of £35.00 per month.

All things considered, I was inclined to believe that a protection need existed and this could have been satisfied more economically through Mr H's employer arrangement.

I, therefore, concluded that Chase de Vere should offer Mr and Mrs H a refund of the excess premiums they had paid to the whole life policy over the premiums they would have paid to the

'Family Plan' under Mr H's employer's scheme, plus interest, less the surrender value of the whole life policy.

I invited both Mr and Mrs H and Chase de Vere to respond to this provisional view.

developments

In reply, Chase de Vere confirmed that it had no further comments to make at this stage.

Mr and Mrs H disagreed with my provisional view and maintained that they had requested, and required, a savings policy, and not a whole life protection plan. They added that:

- they were not financially knowledgeable in 1993 to appreciate that they had been recommended a whole life policy;
- they did not fully read the original paperwork and only realised the nature of the policy when they received the first unfavourable 'review' in 2013;
- at previous reviews, the correspondence explained the ongoing value of the policy and the bonuses available from the with-profit funds, which led them to believe that it was 'targeting' a specific amount after a fixed term;
- their existing endowment policies in April 1993 provided sufficient life cover to repay their outstanding mortgage at the time;
- they took out a further endowment policy in April 1999 providing life cover of £50,000 which gave them total joint life cover of £100,000 without the whole life policy. By 2011, they still had the life cover from the policy they took out in 1999;
- Mrs H would have resumed full-time employment and they had other savings and shares;
- had they invested £35.00 per month in a savings policy, they would have seen a return on their premiums of £12,000 to £15,000;
- they suspect that the basis of redress I proposed would give them no compensation;
- they would not have consciously paid to a policy at that time which gave them no return. As their lives changed, so they would insure themselves as required but always with investment in mind;
- Mr H has provided evidence that he did contribute to his employer's protection scheme of £8.50 per month to insure his life only from June 1993 to June 1996.

my further provisional findings

I've considered all the additional evidence and arguments provided by Mr and Mrs H to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons I gave in my first provisional decision, on balance, Mr and Mrs H ought to have appreciated that the policy they were recommended in April 1993 was a whole life protection policy, and not an endowment savings plan.

As I also commented previously, the difficult question to answer is whether the whole life policy was suitable for them given the absence of any documentation which confirms their personal and financial position at the time and the reasons for the adviser recommending this policy.

Mr and Mrs H have said that they had sufficient life cover in April 1993 through the life cover provided by their existing endowment policies and from Mr H's occupational pension scheme. Although they have also referred to the life cover of £50,000 provided by an endowment policy they took out in April 1999, this was six years after the advice in question and is, therefore, largely immaterial to the outcome of their complaint.

I do note that Mr H says he accepted the same adviser's recommendation to take out accident protection through his employer's scheme in June 1993 for three years, until June 1996. Although this advice was also given after Mr and Mrs H took out the whole life policy, it does indicate that they appreciated the need for protection (albeit in exceptional circumstances and only on Mr H's life) at that time.

In April 1993, Mr H's occupation presented an above-average risk to death and permanent disability. Mrs H had given up work to bring up their infant son and they say they were relying on the life cover of £50,000 within three endowment policies to repay their mortgage.

Other than the death-in-service benefits from Mr H's occupational pension scheme, they held no other life cover which would maintain their respective standard of living if either one of them died after April 1993 as they were relying on the life cover within their existing endowment policies to repay their mortgage.

That Mr H has provided details of a policy he surrendered after ten years is not in itself sufficient evidence that they always wished to take out savings plans.

Indeed, Mr H has confirmed that he agreed in June 1993 to take out accident cover of £50,000 provided by his employer at a discounted premium of £8.50 per month. It is not clear how Mr H came to decide on this level of cover other than it coincided with the life cover he already held within his existing endowment policies. This, and life cover, could have been extended to provide equal cover for Mrs H (with children included free of charge) under the 'Family Plan'.

Given I believe that a life cover need existed for Mr and Mrs H, and the adviser knew of the benefits provided by Mr H's employer (because he recommended them to him in June 1993), he should have advised the 'Family Plan' to Mr and Mrs H in April 1993 rather than the whole life policy. The comparative cost of life cover and accidental cover for £40,000 was £18.80 per month.

Therefore, although I believe advice they received in April 1993 to increase their life cover provision may not have been unsuitable, this need could have been met more cost-effectively through Mr H's employer. I am not sufficiently persuaded that Mr and Mrs H's financial need at that time was exclusively to take out savings plans.

my further provisional decision

My provisional decision now is that Mr and Mrs H did have a requirement for additional joint life cover and that this need could have been more effectively met by taking out the life assurance arrangement offered by Mr H's employer outside his pension scheme.

Mr H had taken out accident cover on his own life under this arrangement for three years from June 1993.

Therefore, I require Chase de Vere Independent Financial Advisers Limited to pay Mr and Mrs H redress, if any, of 'F' + 'G', where:

- A = the total monthly premiums of £35.00 Mr and Mrs H paid from time-to-time to the whole life policy;
- B = the cost of the alternative arrangement offered by Mr H's employer that provided equivalent benefits at £18.80 per month from the start date of the whole life policy to the date they surrendered the whole life policy, less £8.50 per month Mr H paid for this cover for the period June 1993 to May 1996 inclusive;
- C = A – B per month;
- D = interest at the rate of 8% per annum simple on each net premium in 'C' from time-to-time from the start date of the policy to the date of surrender;
- E = the cash value of the whole life policy at the date of surrender;

- F = C + D - E = their loss at the date of surrender;
- G = interest at the rate of 8% per annum simple on ‘F’ from the date of surrender to the date of settlement.

If Chase de Vere Independent Financial Advisers Limited considers that it is legally obliged to deduct income tax from the interest calculated in ‘D’ and ‘G’, it must send a tax deduction certificate with the payment.

Mr and Mrs H may reclaim any tax overpaid from Her Majesty’s Revenue & Customs (HMRC) if their circumstances permit them to do so.

Kim Davenport
ombudsman

COPY OF FIRST PROVISIONAL DECISION

complaint

Mr and Mrs H have complained that advice they received from a predecessor firm of Chase de Vere Independent Financial Advisers Limited ("Chase de Vere") in 1993 to take out a 'reviewable' whole life policy was unsuitable for them.

Specifically, they say they requested a savings plan at the time as they already held sufficient life cover through Mr H's employer's pension scheme and other joint-life policies. They were led to believe that the policy was a long term savings plan with a "target amount" of £40,000, as it referred to the *investment premium* being paid into a w*ith-profits fund.* They only realised it was a policy providing life cover of £40,000 when they received the outcome of an unfavourable 'plan review' in 2013.

Mr and Mrs H surrendered the policy in March 2013 for almost £5,000 and have requested compensation over this surrender value based on a return they could have reasonably obtained on the total premiums they paid of £8,400.

background

In response, Chase de Vere argued that there was no reason for Mr and Mrs H to believe that the policy was a savings plan as no fixed policy term or a "target" maturity value of £40,000 was quoted. The policy documentation clearly stated the policy provided joint life cover of £40,000, payable whenever Mr *or* Mrs H died.

Although documentation surrounding the sale of this policy no longer exists, Chase de Vere suggested that the policy would have provided valuable benefits for a married couple who were financially dependent on each other.

However, as it was unable to produce little evidence which justified the sale of a policy providing life cover indefinitely, it agreed to assess whether Mr and Mrs H had suffered a financial loss by not being advised to take out a level term assurance (LTA) policy instead. It calculated Mr and Mrs H's loss as the difference between the monthly cost of the whole life policy they were recommended and the premiums that would have been payable to a 25-year level term assurance policy from 1993, plus interest, to the date they surrendered the whole life policy, less the surrender value of the whole life policy.

This calculation revealed that Mr and Mrs H had made no financial loss and, therefore, Chase de Vere rejected their complaint.

Mr and Mrs H's complaint was investigated by one of our adjudicators, who believed that they had requested a long term savings plan in 1993. On balance, he was not persuaded that a whole of life was suitable for Mr and Mrs H and recommended that the complaint should be upheld.

To resolve their complaint, the adjudicator recommended that Chase de Vere should refund the premiums Mr and Mrs H had paid to the policy, plus gross interest at 8% simple per annum from the start date of the policy to the date the policy was surrendered, less the policy's surrender value. Gross interest at 8% simple per annum should then be added to any loss at the date of the surrender to the date of settlement.

In response, Mr and Mrs H confirmed that:

- they did not need a life assurance policy; they wanted a savings plan over a fixed term with the prospect of receiving a worthwhile return on their premiums at maturity;

- the adviser had not taken into account the life cover they already held within Mr H's pension scheme and three joint life endowment policies, providing total cover of £50,000 which have since matured;
- they also refer to the policy document which confirmed that £34.00 of each monthly premium of £35.00 was *invested* in the with-profits fund and this persuaded them that they had taken out a savings plan;
- Mr H had access to personal accident insurance though his employer which paid a capital sum if he died or was severely injured in the course of his work.

On the other hand, Chase de Vere did not accept the adjudicator's assessment and requested him to review his conclusions after considering the following points:

- Mr and Mrs H would have known that the policy provided life cover and that, in the event of death, the surviving spouse would have benefitted from the claim payment;
- the policy documentation clearly set out the level of life cover offered;
- they were married and were financially interdependent;
- a married couple will often seek life cover beyond the level of benefit offered by Mr H's occupational pension scheme;
- although Mr and Mrs H may not have required life cover indefinitely, there is sufficient reason to believe that they did need further life cover over a fixed term of (say) 25 years. The cost of providing life cover over this fixed term should be taken into account in any loss assessment and the cost of a 25-year term assurance policy providing the same level of cover would have exceeded the cost of the policy they were recommended. Hence, Mr and Mrs H will have suffered no loss to the date they surrendered the whole of life policy.

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

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.

With reference to the very limited documentation that does exist from the point of sale in 1993, I am inclined to agree with Chase de Vere that Mr and Mrs H ought to have known that the policy they were recommended was a whole life plan.

I accept that the policy schedule does confirm that £34.00 of each monthly premium of £35.00 is *invested* in the Managed and With Profit funds from 1 October 1995. However, each premium is invested to build-up an ongoing value in the plan, from which the cost of providing the life cover is deducted before leaving a residual value in the policy which can be paid as a surrender value.

The policy Mr and Mrs H were recommended required the monthly premium of £35.00 to be paid until a life cover or permanent disability claim arises, i.e. the policy has no term or maturity date. Hence, the limited evidence that exists confirms that the policy is a whole life protection plan, and not a fixed term savings plan.

Furthermore, the level of cover provided by the policy was 'reviewable', and Mr and Mrs H were sent 'review letters' in February 2003, February 2008 and February 2013 which quoted the policy value as £2,013 (compared to total premiums of £4,200), £3,784 (compared to total premiums of £6,300) and £4,466 (compared to total premiums of £8,400) respectively. Although the 2003 and 2008 reviews concluded that the existing premium of £35.00 per month was sufficient to sustain the life assurance benefit of £40,000, Mr and Mrs H ought to have realised from these ongoing values alone that the policy was not a savings plan.

While Mr and Mrs H complained about the policy following the 'unfavourable' review in 2013, it is difficult to imagine that they only realised after 20 years that the policy was not a savings plan. It ought to have been apparent to them at the first review in 2003, if not when they received the policy schedule in1993, that the policy was a whole life protection plan that was unlikely to provide an ongoing value greater than the premiums they had paid.

Whether this policy was suitable for their financial needs is a much more difficult question to answer, as neither Chase de Vere nor Mr and Mrs H has been able to provide any evidence of their personal and financial circumstances the adviser ought to have recorded at the point of sale.

I have, therefore, obtained a statement from Mr and Mrs H of their financial position in 1993, as follows:

- they were both in their early 30s;
- Mr H was a member of his occupational pension scheme which would have paid a modest death-in-service lump sum and spouse's pension at that time. He was due to "retire" in January 2000, aged 40, but secured a long service position in June 1999 which he still holds;
- Mrs H worked part-time, but she had given up work temporarily to care for their one-year child and resumed part-time employment in 1994/1995;
- they held a mortgage with an outstanding capital balance at the time of approximately £41,000, although they do not appear to have taken out any life cover if one of them died before the loan was due to be repaid;
- they did hold three endowment policies since 1986, 1987 and 1988 which included total joint life cover of £50,000. These policies have since matured in 2011, 2009 and 2010 respectively and they used the proceeds to purchase a second property;
- otherwise, Mr H was contributing £300 per month to a Personal Equity Plan (PEP);
- an insurance arrangement was available to Mr H through his employer that provided a cash payment on death, permanent disability or serious accident, which could be extended to a spouse, partner and children under a 'family plan'.

I have, therefore, considered whether Mr and Mrs H's existing provision for life cover and disability cover in 1993 was sufficient for their needs given they had an infant child, Mrs H was not working at the time and they held a capital repayment mortgage of £41,000 with no evident life cover in place as security for this loan.

It would appear that Mr and Mrs H held policies which provided total life cover on each of their lives of £50,000, which reduced to £40,000 in 2009, to £30,000 in 2010 and then to zero in 2011 (when their child would be aged 19). In addition, Mr H's pension scheme provided a modest lump sum if he died in service. Also, there was an outstanding capital balance on their mortgage of approximately £41,000 in 1993 and Mrs H had given up working temporarily at that time.

In these circumstances, I am inclined to believe that Mr and Mrs H were under-insured for life cover (especially after 2011) and, therefore, I am not convinced that the recommendation they received to take out further life cover was inappropriate.

However, Mr H has referred to a special arrangement offered to him through his employer which paid a lump sum benefit on death as a result of an accident or from natural causes. This cover could be extended to spouse and children under the 'family plan' and additional cover was available for staff who engaged in particularly hazardous duties. Otherwise, my understanding is that the total cost of cover was fixed, regardless of age or seniority, and was payable on an annual renewable basis. However, the policy did not acquire a surrender value whenever cover was discontinued.

I am inclined to believe that, if the advisory firm held itself out as an 'expert' in the requirements of a client in Mr H's profession, I would expect the adviser to have drawn Mr H's attention to the benefits available under this employer arrangement as an alternative to the advice he gave. Of course, the adviser may have done so and Mr and Mrs H may have opted for the policy he recommended in the belief that it was a savings plan.

Notwithstanding this, according to the premium rates applicable in 1993, this employer arrangement for life cover of £40,000 under the 'family plan' would have cost Mr and Mrs H a discounted premium of £18.80 per month. The 'reviewable' whole life policy they were recommended which provided the same level of benefit cost £35.00 per month.

All things considered, while I believe that the advice they received to increase their life cover provision may not have been unsuitable, I am inclined to believe that this need could have been provided more economically through the arrangement offered by Mr H's employer.

I fully appreciate that Mr and Mrs H have said that they requested an endowment savings plan and that the adviser assured them the policy was a savings plan which would give them a worthwhile return. However, I am not persuaded how they came to believe from the documentation they were provided in 1993 that the policy was a savings plan of the type they already held, given its nature and terms set out in the policy schedule were so obviously different.

On balance, I do not believe either that the adviser would have presented the policy he recommended as a savings plan.

my provisional decision

My provisional decision is that I propose to uphold Mr and Mrs H's complaint but for reasons that are different to those given by the adjudicator.

I am inclined to believe that Mr and Mrs H did have a requirement for additional joint life cover and that this need could have been more effectively met by recommending them to take out the life assurance arrangement offered by Mr H's employer outside the pension scheme.

Therefore, I require Chase de Vere Independent Financial Advisers Limited to pay Mr and Mrs H redress, if any, of 'D' + 'E', where:

- A = the total of the monthly premiums of £35.00 Mr and Mrs H paid from time-to-time to the whole life policy, less the cost of the alternative arrangement offered by Mr H's employer that provided equivalent benefits at £18.80 per month, from the start date of the whole life policy to the date they surrendered it;

- B = interest at the rate of 8% per annum simple on each net premium in 'A' from time-to-time from the start date of the policy to the date of surrender;

- C = the cash value of the whole life policy at the date of surrender;

- D = A + B - C = their loss at the date of surrender;

- E = interest at the rate of 8% per annum simple on 'D' from the date of surrender to the date of settlement.

If Chase de Vere Independent Financial Advisers Limited considers that it is legally obliged to deduct income tax from the interest calculated in 'B' and 'E', it must send a tax deduction certificate with the payment. Mr and Mrs H may reclaim any tax overpaid from Her Majesty's Revenue & Customs (HMRC) if their circumstances permit them to do so.

Kim Davenport
ombudsman