

complaint

Mrs M complains she was mis-sold a whole of life policy by Zurich Assurance Ltd.

She says she wasn't made aware of the Guaranteed Insurability option (GIO). She thought the policy was index-linked.

She wasn't aware of the requirement to notify Zurich in order to increase the sum assured.

background

The policy was set up by Mrs M's ex-husband, Mr M, in 1986 following their legal separation. He was the life assured and Mrs M was the beneficiary.

I understand the policy was set up to specifically comply with the terms of their Legal Separation Agreement (LSA). And the purpose was to pay her the equivalent of Mr M's employer pension, in the event of his death.

The policy had a £130,000 sum assured and £112 monthly premium.

One of our adjudicators investigated Mrs M's complaint and recommended it shouldn't be upheld. In short the adjudicator found:

- Because the policy started before the Financial Services Act came into force in 1988 the recommendation had to be appropriate or a reasonable fit for the circumstances at the time. The rules have to be applied as they were then and not as they are now.
- The policy with GIO was an appropriate recommendation. It provided a set sum assured with the option to increase in line with Mrs M's requirement.
- The signed application form stated she wanted the GIO, and the policy schedule provided confirmed GIO was added as a special option.
- Whilst the documentation could have been clearer by today's standards, the GIO was nevertheless explained.
- Within the paperwork there was no suggestion the policy was index-linked.
- Zurich has confirmed reminder letters at the 3 year point would have been sent, giving Mrs M the option to increase the sum assured. Although they don't have copies, it was standard practice. There was no reason to doubt its account.
- Mrs M would have been sent annual statements- albeit from 2007-which reasonably ought to have drawn Mrs M's attention to the sum assured not increasing since the policy started.

Mrs M disagreed with the adjudicator's view. She didn't disagree GIO might have been seen as a reasonable fit for her circumstances. But she says it was only reasonable if she was made aware of the requirement to notify Zurich if she wanted to increase the sum assured. By not telling her this she thinks Zurich has acted unfairly.

As no agreement has been reached the complaint was referred to an ombudsman for review.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the adjudicator's conclusion and broadly for the same reasons. I'm not upholding the complaint.

Because Mrs M took out this policy in 1986, before the Financial Services Act 1986 came into force in April 1988, there were different requirements when giving advice. The common law duty to act with reasonable skill and care when making a recommendation applied, rather than the suitability requirement which applied afterwards. Therefore I have to consider this complaint in relation to the rules and regulations as they were in 1986.

Mrs M was legally separated from Mr M at the time. As part of the LSA they were due to officially divorce a few years later. And the purpose of the policy was to ensure Mrs M received the equivalent of the pension she would have received if they had been together. In the circumstances I think the policy was an appropriate recommendation and a reasonable fit for what Mrs M wanted.

I appreciate Mrs M and Mr M had a very specific purpose for the policy. But the need to comply with the LSA was broadly fulfilled by either the GIO or the index-linked option; in my view both options generally allowed for the policy to be indexed to the pension.

If Mr or Mrs M had any concerns as to whether or not the policy complied with the LSA, it would have been reasonable for them to discuss this with their legal representatives. I don't think Zurich were responsible for ensuring the policy met the requirement of the LSA.

I've taken account of what Mrs M says she was (and wasn't) told. But having considered everything she and Zurich have said, I don't think her comments are enough for me to say the policy was mis-sold. I must also take account of the explanatory literature Zurich says she was given when the policy started.

This explained the policy was with GIO and Mrs M had the opportunity to increase the sum assured every three years. On the contrary, I've not seen evidence to suggest this policy was specifically index-linked.

The application form, signed by Mr M also showed the GIO option was specifically selected out of a number of options, including the index-linked option.

The policy schedule made clear the GIO applied to this policy. And page one of the policy provisions, explained various terms including the following:

““Option Date”

...is the third Policy Anniversary and if there is more than one Option Dare, the succeeding Option Dates occur on succeeding third Policy Anniversaries thereafter”

and

““Option Amount”

...is the maximum increase in the original Sum Assured available on the exercise of the Guaranteed Insurability Option...on any Option Date and Option Amount is shown in the schedule.”

Furthermore, page six of the policy document states:

“If this option applies to your policy, you will be able to increase the level of protection on your plan every three years, subject to a maximum amount and maximum number of options.”

It seems to me it's not a case that Mrs M got something she *didn't* want, but on the face of the evidence, she got what she wanted, albeit applied on her behalf by Mr M.

I note Mrs M's comments about the information not being more prominent. But bearing in mind the rules that applied at the time, I'm satisfied this information was reasonably clear. I'm conscious Mrs M was able to find it when she read through the documentation. Even *if* the information wasn't as clear by today's standards, I don't think this would render the policy mis-sold.

But given Mrs M's comments about the documentation provided, if she chose not to read through the documentation provided at the time-and I appreciate a lot of people don't-I don't think Zurich can be held responsible for that.

I note Mrs M maintains she didn't receive any notification she could increase the sum assured. Zurich however says it was standard procedure to send out letters about this but heard nothing back from Mrs M. Unfortunately it doesn't have a record of any of the letters sent out. But on balance I think it's more likely than not these letters would have been sent. It's possible Mrs M may not have received them but if that was the case I don't think I can blame Zurich for that.

I note Mrs M has raised the point of a letter wrongly addressed to her in 1995. But I also have to consider Zurich did hold her correct contact details and has subsequently, successfully, sent out letters to her. And this incident alone doesn't allow me to safely conclude all the notification letters would have been incorrectly addressed.

I'm aware that Zurich started to send out annual statements from 2007 – this made clear the sum assured hadn't increased since the start of the policy. I appreciate Mrs M maintains if she'd been aware she'd have complained then rather than now. But in the circumstances, I'm not sure what more the Zurich could have done to draw her attention to this issue.

I'm mindful of Mr M's comments with regards to information being altered, but I'm afraid I've not seen any evidence that this was the case. I'm aware there was *an* amendment but it

was initialled. In the circumstances I think it was unlikely that details would have been altered without Mr M's authority.

In general in my view, I'm satisfied the material operation of the plan was disclosed to Mrs M and the policy wasn't inappropriate in the circumstances.

my final decision

For the reasons above I don't uphold this complaint or make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 11 April 2016.

Dara Islam
ombudsman