

complaint

Ms E has complained that advice she received from Abbey Life Assurance Company Limited ("Abbey Life") in May 1974 to take out a 35-year endowment savings plan was inappropriate.

She is represented by a third party adviser, who has said that, as Ms E was aged 17 and single with no dependents at the time, the advice she received to take out this policy, which included life cover, was questionable.

Furthermore, Ms E had no previous investment experience to justify making monthly premium payments to a risk-based product.

background

I issued a provisional decision on this complaint on 13 January 2015, a copy of which is attached and forms the basis of this final decision to which I invited both Abbey Life and Ms E's representative to respond.

Briefly, the policy was taken out by Ms E before the introduction of the Financial Services Act, and I was satisfied that Abbey Life had exercised its legal duty to advise her with reasonable care and skill by providing information on the product that was "*clear, fair and not misleading*". Both Ms E and her father had signed a declaration at the time to confirm that they fully understood the nature and terms of the policy and that they were satisfied it was an appropriate investment for her.

Furthermore, the modest monthly premium of £5.26 included minimal deductions for life cover and accidental death benefit that did not unduly compromise the final return Ms E received when she surrendered the policy around 28½ years later. Moreover, she received life assurance premium relief (LAPR) on her contributions and the surrender proceeds were paid to her tax-free. I could not envisage Ms E otherwise adopting such a disciplined approach to saving £4.34 over such a long term but for the decision she made to take out this policy. When she surrendered the policy, she had paid total premiums of £1,598.68 and received back almost £4,000.

Accordingly, I was not persuaded that she had been financial disadvantaged by agreeing to take out this policy.

developments

In response to my provisional decision, Abbey Life confirmed that it had no additional comments to make.

However, Ms E's representative disagreed with my provisional conclusions and said that:

- the plan could not be considered suitable for Ms E without carrying out any calculations. Even if it is assumed that Ms E received a return on her premiums at the equivalent of Bank of England base rate, there is likely to be a financial loss.
- there is no justification in recommending a 35-year plan to a 17 year old student. At this point in her life, the focus would surely be on short term aims such as buying a property and settling down within a few years;
- there was no reason why Ms E would be prompted to complain when she surrendered the policy because the policy had realised a gain. However, she would not have known at the time that she would have been better investing the premiums

in a deposit account. She would have received statements each year and put the eventual performance down to the stock market. This does not make the advice suitable;

- it does not matter if the cost of the life cover was one pence or one pound, this benefit was not needed by someone of Ms E's age;
- a decision was made by this service to uphold a complaint over the sale of a similar policy to a consumer of the same age.

As agreement has not been reached on the matter, it has been referred to me for review.

my findings

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

The comments made by Ms E's representative do not, on balance, cause me to alter the conclusions I reached in my provisional decision.

In my view, it is not sufficient to argue that Ms E's complaint should be upheld because it can be shown that she has suffered a financial loss compared to the return she would have received from a deposit account offering a return at Bank of England base rate.

As I set out in my provisional decision, I am not persuaded that Ms E would have otherwise adopted a disciplined approach to saving a modest sum of £4.34 every month for more than 28 years but for the decision she made to take out this policy. When she surrendered the policy, she had paid total premiums of £1,598.68 on which she received a return of more than £2,300.

That Ms E paid such a modest premium of £4.34 to a savings policy she retained for more than 28 years does not support her representative's point that her focus would have been to adopt shorter term objectives at her age.

With regard to the cost of unnecessary protection benefits within the policy, I do believe that the minimal deductions from the premium to provide life cover and accidental death benefit at her age are entirely relevant to her aim of achieving a worthwhile return from a long term savings plan.

Furthermore, Ms E initially received LAPR on her premiums of £0.92 per month, which more than offset the cost of these ancillary benefits.

On the other hand, a deposit-based account would not have offered tax relief on her contributions and interest would be subject to deduction of tax at her highest possible rate (on the reasonable assumption that she would have become a taxpayer when she came to take the proceeds of any such savings account).

While Ms E's representative has quoted a similar complaint that was upheld by this service, notwithstanding that each complaint we received is resolved on its individual merits, this earlier complaint concerned the sale of a life assurance policy to a consumer with significantly different personal and financial circumstances.

On balance, my view remains that Ms E has not been disadvantaged financially by this policy when I consider how alternatively she might have spent a sum of £4.34 per month over more than 28 years.

my final decision

My final decision is that I do not uphold Ms E's complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms E to accept or reject my decision before 2 March 2015.

Kim Davenport
ombudsman

COPY OF PROVISIONAL DECISION

summary of complaint

Ms E has complained that advice she received from Abbey Life Assurance Company Limited ("Abbey Life") in May 1974 to take out a 35-year endowment savings plan was inappropriate for her.

She is represented by a third party adviser, who has said that Ms E was single with no dependents which would call into question the sale of a 35-year policy. Also, she was 17 years old at the time, with no previous investment experience and no need for the life cover provided by the policy.

background to complaint

Ms E's complaint was investigated by one of our adjudicators, who concluded that it should not be upheld. She pointed out that the policy was sold in 1974, before the Financial Services Act 1986 came into force on 29 April 1988, when there was no regulatory requirement for Abbey Life to give advice or to ensure that the policy was appropriate for her.

However, if Abbey Life did give Ms E advice, it had a legal duty to advise her with reasonable care and skill.

The adjudicator stated that, if Ms E did receive advice, although it appears that the policy may not have been suitable for her, she does not appear to have suffered a financial loss when she surrendered the policy in November 2002.

In response, Ms E's representative disagreed with the adjudicator's assessment and said that she had provided no calculations to support her conclusion that the advice had not given rise to a financial loss. If the complaint was upheld, the surrender value Ms E received in November 2002 should be compared to the premiums she paid, plus interest at court rates of 15% per annum to March 1993 and 8% per annum thereafter. This would give a financial loss at the date of surrender.

Her representative added that, as the policy had been taken out for savings, any loss assessment should alternatively be based on a return on her premiums of 1% above Bank of England base rate and this, too, was likely to give a financial loss when she surrendered the policy.

In reply, Abbey Life referred to a declaration signed by both Ms E and her father when she applied for the policy which confirmed that they were both satisfied the nature and terms of the policy had been fully explained to Ms E at the time and that it was in her best interest to take out this policy. As such, the adviser had met his responsibility to ensure that Ms E had made a fully informed decision to take out this policy.

As no agreement has been reached on the matter, 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.

As Ms E took out the policy in May 1974, before the Financial Services Act 1986 came into force on 29 April 1988, there was no regulatory requirement for Abbey Life to give advice or to ensure that the policy was appropriate for her.

However, if Abbey Life did give advice, it had a legal duty to advise her with reasonable care and skill by providing information on the product that was "*clear, fair and not misleading*". On the evidence that is available from Abbey Life's file, I think it more likely than not that that Abbey Life did give Ms E advice in May 1974, and I have therefore based my decision on the assumption that it did give advice.

Therefore, in order for me to uphold this complaint, I must be satisfied that the policy was inappropriate for Ms E's circumstances and objectives when it was arranged, taking into account the information available to Abbey Life at the time.

I am inclined to accept that Ms E agreed to take out the policy in May 1974 in order to save a small regular sum for a worthwhile capital sum over the long term. The policy she applied for was an endowment savings plan, to which she agreed to pay a gross premium of £5.26 per month over 35 years, invested in a property fund. The policy provided life cover of £2,000 to enable the proceeds at maturity or surrender to be paid tax-free. These life cover costs at her age would have been so minimal that they would not have compromised the long term return she might expect to receive from the policy. Also, the premium included a very modest 20 pence per month for an accidental death benefit of £2,000.

While it is not immediately apparent why, at her age and with no previous investment experience, Ms E would embark on a savings policy over 35 years in a property fund, it is evident from the documentation completed at outset that both she and her father were satisfied that the nature and terms of the policy had been clearly explained and that it was appropriate for her.

The monthly premium Ms E paid to the policy attracted Life Assurance Premium Relief (LAPR) of, initially 17.5%, such that she only paid a monthly premium of £4.34 from outset.

By November 2002, when she surrendered the policy for a cash value of £3,898.87, having held the policy for approximately 28½ years, she had paid in total net premiums of £1,598.68. I am mindful also that she then did not raise a complaint about this policy for more than 11 years since she surrendered it.

I appreciate that, if Ms E had received a return on her premiums at 1% above Bank of England base rate, for example, she may have made a financial loss when compared with the surrender value she received in November 2002.

However, I am not persuaded that Ms E would have considered saving a modest sum of £4.34 every month for approximately 28½ years but for the decision she made to take out this policy. In May 1974, it is difficult to imagine what alternative forms of long term savings she might have considered that would have been more appropriate for such a small regular premium.

As it is, while there are certain elements of the policy that might be questionable when judged by current advice guidelines, when she surrendered this policy in November 2002, Ms E made a gain of £2,300.19 on total premiums she paid to this policy of £1,598.68.

In the circumstances, and given the passage of time, I do not consider that Ms E has been unduly disadvantaged financially by this policy when I imagine how otherwise she might have utilised a sum of £4.34 per month.

my provisional decision

My provisional decision is that I do not uphold Ms E's complaint.

Kim Davenport
ombudsman