

The complaint

Mrs M complains that she was mis-sold a whole-of-life policy by St James's Place Wealth Management Plc ("SJP"). Specifically, she's unhappy that she wasn't told it was reviewable.

What happened

In 2011, Mrs M sought advice from SJP. She says her husband had taken an Equity Release mortgage on their home before he'd passed away. As such, the home has an increasing mortgage on it and she says she hadn't fully understood this until around the time she chose to get some advice. Mrs M was 77 years old and wanted to find out if there was a way to have that mortgage paid off in the event of her death so her daughters could continue to live in the house.

SJP recommended a whole-of-life policy which had a sum assured of around £132,000 – which broadly matched the mortgage balance at the time – and was set to increase in line with indexation. The initial premiums, also set to increase annually with indexation, were around £525 per month. The suitability letter says the policy contribution was affordable at the time and *"is maintainable for the future"*.

In 2021, Mrs M received her first policy review which said the cover would need to drop to around £79,000 or the premiums would need to increase to around £1,600 per month. Mrs M complained as she couldn't afford the increase in premiums. She explained that she wasn't aware this could happen and believed she had a policy that would only increase in line with indexation. The policy is written into trust and we have the trustees, Ms H'S and Ms M's, consent to consider this complaint.

SJP said that the policy was suitable for Mrs M's circumstances at the time. It said that it therefore hadn't mis-sold the policy. It did offer Mrs M £250 for the delays in answering her complaint. Unhappy with this response, Mrs M and the trustees referred the complaint to the Financial Ombudsman Service.

Our Investigator felt the complaint should be upheld. She explained that it was clear from the correspondence that SJP hadn't realised the policy it sold Mrs M was reviewable. She said that Mrs M had business assets available for her daughters to sell if she passed away which could've been used to reduce the debt on the house. She felt that had Mrs M been told the policy would only operate in the way she believed for ten years, she wouldn't have taken a policy out. She recommended SJP refunds Mrs M's premiums plus interest. She also recommended it pays Mrs M £500 for the distress and inconvenience caused.

SJP disagreed with our investigator. It said the advice was suitable and it was the only viable option at the time for Mrs M. It said it felt the redress suggestion was "over generous" as Mrs M *"cannot have the benefit of ten years of cover which would have paid out on her death in that period for free"*. It asked for an Ombudsman to reach a decision.

What I've decided – and why

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 our Investigator for broadly the same reasons. I'm upholding this complaint and I'll explain why.

Was the policy mis-sold?

The first issue to be decided is whether SJP mis-sold Mrs M the policy, and I think that it did. I agree with SJP that a whole-of-life policy would provide an option to Mrs M to protect her children from having to repay the equity release mortgage on the home they live in. But I'm conscious on this occasion that Mrs M wasn't told about the key risk with this type of policy. The evidence suggests she was led to believe this policy would be sustainable for the rest of her life, regardless of how long that would be and this wasn't the case.

I've considered the suitability letter and the fact find completed in 2011 carefully and thought about what Mrs M has told us about her recollections. It's clear that the advice was sought after she discovered how the equity release mortgage worked. Mrs M has told us she didn't think she'd manage to get a policy that did what she needed to at her age – which was 77 at the time. And I'm persuaded she was looking at options and wasn't going to spend a significant amount of money on something unless it fully addressed her objective.

SJP, in its suitability letter to Mrs M, says:

“There are a number of alternative actions and products I did not recommend for the following reasons ... We were able to source a plan that was not only cheaper than the other providers but had a surrender value as well.”

The suitability letter doesn't actually outline the alternative actions and products that weren't recommended. SJP has told us that the non-reviewable policy available at the time was over £1,400 per month which wasn't affordable – but it gives no mention that this was discussed. The suitability letter indicates that this policy was recommended as it was cheaper and had a surrender value.

The suitability letter goes on to say that the *“contribution level is affordable now and is maintainable in the future.”* The suitability letter makes no mention that the policy is reviewable.

Looking at the comments from the adviser, it appears he wasn't aware the policy was reviewable and has acknowledged that he wouldn't have told Mrs M about the risks because he didn't know. He goes on to say that it was suitable however. So, I'm persuaded that the risk the policy would only be affordable for ten years was not explained to Mrs M. She was under the impression that she had a policy which would increase annually in line with indexation but that no changes beyond that would be made. It was SJP who gave her that impression. I'm not persuaded that she'd have taken the policy out – given the monthly cost – if she was told that after ten years, the premiums would likely rise significantly. And, I think that would've been an obvious risk the adviser should've been aware of as the first review would take place when Mrs M was 87 years old.

I've noted that SJP strongly believe that this policy was the only viable option, and believe that it is suitable for Mrs M's circumstances. But with the obvious risk of unsustainable premiums, and given I haven't seen anything to suggest Mrs M thought she'd only need a ten year policy, I'm persuaded she wouldn't have taken this policy out at all had SJP advised her correctly about the risks. As Mrs M took this policy out without being fully informed, I agree with our Investigator that it was mis-sold.

I have noted that SJP said it sent out documents after Mrs M accepted the advice which had information about the policy on it. I can see that the application form hasn't selected an option for the basis of cover (maximum or standard) and SJP hasn't been able to provide us with a copy of the policy illustration it says it provided Mrs M at the time. The key features document has been given to SJP recently from the policy provider. There's nothing to show what Mrs M was given in terms of how the policy worked. And in any event I think it was right for Mrs M to trust what SJP was telling her and it's very clear it didn't explain how the policy worked correctly and it didn't explain the risks – because the adviser himself has said he wasn't aware of the reviewable nature of the policy.

Trouble and Upset

SJP already offered Mrs M £250 compensation for its delay in dealing with her complaint. It said it wouldn't increase this as it hadn't mis-sold the policy. The investigator recommended it pay a total of £500.

I've already concluded that I think SJP did mis-sell this policy to Mrs M. And I'll set out what I think SJP should do to put things right for that below. But I also need to consider the impact its error has had on Mrs M.

Mrs M was led to believe she was getting a policy that would pay out on death – and that it would do so as long as she paid her premiums that she expected to rise annually with indexation. So, I think it would've been a considerable shock to her when she found out that to maintain her sum assured she'd have to pay an additional £1,000 per month – essentially a 200% increase on her original premiums. Mrs M had been paying her premiums for ten years – these had steadily increased from £525 to over £600 per month. This was a significant monthly payment for Mrs M, who was retired, and represented a large amount of her disposable income. I think, therefore, that the shock that this policy didn't operate in the way she was led to believe would've caused a great level of upset.

It's clear Mrs M only spent the premiums and took the policy to ensure her children could stay in the house that they have lived in their whole lives. So, to realise that this policy would no longer be able to do that for them, despite having paid a significant sum of money and having not been told that this was a risk, would've been distressing for her. She is essentially back in the position she was when she originally sought the advice – in 2011 – when there were potentially other things her and her children could think about at the time had they been aware this policy wasn't what they were looking for. So, I think SJP's error in not explaining the risks and therefore mis-selling this policy has caused Mrs M significant trouble and upset. SJP should pay her £500 to compensate her for this.

Putting things right

Had SJP explained the risks to Mrs M about this policy I don't think she'd have taken it out. I understand SJP don't think Mrs M should be able to have the benefit of life cover over the last ten years for free, but I don't think she'd have taken any policy out if she was told the policy was reviewable. I think she and her family would've explored other options or made alternative plans. So, Mrs M should be put back into the position she'd have been in had she not taken out this life assurance cover.

To put things right St James's Place Wealth Management Plc must do the following:

- Refund the premiums Mrs M has paid for the policy less the surrender value.
- Add interest* at 8% simple per annum from the date the premiums were paid to the date of settlement.

- Pay Mrs M £500 compensation for the distress and inconvenience.

*If St James's Place Wealth management Plc considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs M how much it's taken off. It should also give Mrs M a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold this complaint. St James's Place Wealth Management Plc must pay redress in line with the instructions set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H, Ms M and Mrs M to accept or reject my decision before 26 July 2022.

Charlotte Wilson
Ombudsman