

The complaint

Mrs U and Mr U complained they were mis-sold a whole of life policy from Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life).

They said they were told by Sun Life, that the policy would provide £60,000 worth of cover. They said they have since found out the cover is a lot less than this. They would like Sun Life to provide the level of cover they thought they were getting.

What happened

Mrs U and Mr U took out an index linked reviewable whole of life policy after meeting a representative from Sun Life in 1981. Mrs U and Mr U have been paying a regular monthly premium for this policy. They said they were told at the time that in the future the policy would provide £60,000 worth of life cover.

Mrs U and Mr U said they recently found out in a statement that the cover the policy provided was around £37,158. They said they weren't aware that the cover provided was linked to performance of investments. They said they should receive what was promised by Sun Life, and they should receive £60,000 of cover. They said they do not want Sun Life to refund the premiums as they would be left without cover. They complained to Sun Life about this.

Sun Life responded and said the policy was designed primarily to provide life cover in the event of death. It said the meeting between the parties took place a long time ago, so it didn't have documentation about this from the time. It said even though it didn't have any sales documents to rely on, it thinks it would have made Mrs U and Mr U aware of the nature of the plan. It said they would have been provided with annual statements and so would have seen how the policy worked and how much cover they had each year.

Sun Life said the amount of payments, along with performance of their chosen investment fund, determines the level of overall benefits payable. It said there was no guarantee against market fluctuations.

Mrs U and Mr U remained unhappy so brought their complaint to our service where one of our investigators looked into what happened. He didn't uphold the complaint saying he was satisfied the policy was suitable. He said Sun Life explained why the policy has been affected by fluctuations in the stock market. He said that based on what he had in front of him, he saw that Mrs U and Mr U had a need for the policy, so couldn't safely say it was mis-sold.

Mrs U and Mr U disagreed. They said they were not happy with the outcome. They said up to recently they were happy with the policy but were not now as the amount of benefit payable was almost half what they had been promised. They said they took out this policy at the time because they were struggling on low wages, and it was more affordable. They said it was not right that the level of benefit had dropped so much.

So as Mrs U and Mr U's complaint hasn't been resolved between the parties, it has come to me for 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.

I think it is worth mentioning from the outset that the sale of this policy happened many years ago. Sun Life has mentioned that it was not under the same obligations that it is now in how it sold the policy to Mrs U and Mr U. It added that it also is under no requirement to keep records that go back to then.

I acknowledge what Sun Life is saying about how long ago the meeting took place and its responsibilities at the time it sold the policy to Mrs U and Mr U. I am aware its representative at the time would have had a duty to give advice with reasonable care and skill, and I have taken this into consideration when looking at what the parties have said about this.

In addition, given that the policy was sold in 1981, I don't think it's unreasonable that Sun Life doesn't hold the sales documentation from the time of sale. It's not unusual for some of the paperwork to no longer be available. In this particular case, the meeting occurred around 43 years ago and so it is understandable that Sun Life holds no records about this now. In these circumstances it wouldn't be fair of me to decide that Sun Life had done something wrong simply because they were unable to provide certain documentation about how the policy worked or what was recorded down on the day.

When I don't have records to help piece together what happened in the meeting, I need to rely on what the parties have said, and then consider on the balance of probabilities what more likely than not happened. I have done this here and considered what Mrs U and Mr U have told our service and what Sun Life think ought to have happened.

Mrs U and Mr U have told our service that they were looking for life cover, to give them peace of mind that the other would be able to cover the mortgage and bills if anything were to happen to either of them. I am satisfied after reading what they have said that they wanted the cover the policy provided them.

Mrs U and Mr U said they had a mortgage at the time and were struggling as Mrs U was working on low wages whilst Mr U was unemployed. They said they have been happy up to now with the policy but recently they were not because the amount of cover had gone down. It seems to me, on reading what Mrs U and Mr U have said, on balance, that they chose the lower monthly premium that the index linked reviewable whole of life policy offered, as it was more affordable for them. The nature of the policy is such, that they would pay a lower monthly premium than say a non-reviewable policy which would have ensured they received the cover they had originally agreed upon.

I can't be sure what was said in the meeting and it's completely understandable that there aren't detailed recollections of the nature of the discussion by the parties. But it looks like a conversation, on balance, would have been had about how affordable the premium was and what could be achieved within the budget that Mrs U and Mr U had at that time. Mrs U and Mr U also said they were happy with the policy all the while it was meeting their expectations about the amount of cover provided. So, I am satisfied they were happy with the policy, the premium they were paying and the nature of it. Up to the point when the cover reduced in value.

Sun life has explained how the policy works in that it is unit linked and the amount of benefit provided to Mrs U and Mr U is reliant on performance of investments. It said poor performance of these investments has affected the amount of cover the policy has provided.

I can't be sure if the workings of the policy were explained to Mrs U and Mr U at the time, but as I have already said Mrs U and Mr U have told our service that they have been happy with the policy, so I think on balance, how the policy worked was explained to them at the time. According to Sun Life they have received regular annual statements, so if they were unsure of anything I would have expected them to have raised this before now.

It seems to me that the issue here, is more about the performance of the policy and how this has affected the amount of benefit that is currently being provided. Mrs U and Mr U have said as much, and their complaint is that the level of benefit provided has significantly reduced. Sun Life has provided an explanation as to why this is currently the case, and that it is down to fluctuations in the market and poor performance of some of its investments. I can see that this is something that can happen with the type of policy Mrs U and Mr U took out, with investment performance being linked to how much benefit they are likely to receive. To uphold this complaint though and say that policy was mis-sold I would need to be persuaded that Sun Life didn't exercise due care and skill when it arranged with Mrs U and Mr U to take the policy. And I haven't seen any persuasive evidence to show that's the case, based on what I have found.

The policy was seemingly what Mrs U and Mr U wanted at the time. Having carefully considered everything I conclude, on balance, the policy wasn't mis-sold, and Sun Life doesn't need to do anything further.

My final decision

For the reasons I've explained above, my decision is that I do not uphold Mrs U and Mr U's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr U and Mrs U to accept or reject my decision before 21 March 2024.

Mark Richardson
Ombudsman