complaint

Mr and Mrs D have complained that advice they received from Legal & General Assurance Society Limited ("Legal & General") in June 1997 to take out a 'reviewable' whole life policy providing life cover of £32,880 at a monthly premium of £18.00 was unsuitable for them.

They are represented by a third party adviser, which has said that:

- the adviser did not establish their attitude to risk;
- they did not have any other investment or life cover experience;
- they were not told about the reviews on the policy;
- they were led to believe that the policy would produce a significant lump sum;
- the adviser did not discuss any other, more affordable life cover;

The policy was 'reviewed' unfavourably in April 2007 and Mr and Mrs D did not follow the recommendation to take out an additional policy for £10,478 at a monthly premium of £13.11 to maintain the sum assured at £32,880. They retained the original policy which provided a reduced sum assured of £22,402 for their monthly premium of £18.00.

When the policy was reviewed again in April 2012, Mr and Mrs D surrendered it and received a cash value of £432.54.

background

I issued a provisional decision on this complaint in November 2014 in which I set out the reasons why I considered Mr and Mrs D's complaint should be upheld and invited both Mr and Mrs D and Legal & General to respond to it. A copy of my provisional decision is attached and forms part of this final decision.

Briefly, I considered that it would have been more appropriate for Mr and Mrs D to have been recommended a 20-year, 'non-reviewable' level term assurance (LTA) policy given their circumstances at the time.

Mr and Mrs D's representative confirmed that it was satisfied with the decision and had no further points to add at this stage.

In response, Legal & General asked me to consider the following points before I issued my final decision, as follows:

- the whole life policy provided Mr and Mrs D the flexibility to allow them to review the policy in line with their objectives throughout the life of the policy;
- Mr and Mrs D do not appear to have disclosed to the adviser the existence of life assurance benefits within their respective occupational pension scheme, either because they may not have been aware that these benefits existed within their schemes or because they did not wish to include these benefits in consideration of their life cover needs;
- Mr and Mrs D had only been employed with their employer for a short period in 1997 and would not have accrued much in the way of pension benefits at the point of sale. Even generous death-in-service benefits would not have covered the loss of a partner's income;

- there was no guarantee that they would continue with the same employer and life assurance benefits would expire whenever they ceased to be members of their respective pension schemes;
- there was no guarantee that their youngest child would be financially independent in 20 years' times for several different reasons. As such, it does not agree that a 20-year term assurance policy would provide fully comprehensive benefits, especially if they had more children;
- while Mr and Mrs D may have a need for less life cover on retirement, when they might have repaid their liabilities and their children were financially independent, a whole life policy is suitable to provide funds for funeral expenses or to provide financial support in older age.

my findings

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

I fully understand and appreciate the points made by Legal & General in response to my provisional decision.

However, when assessing Mr and Mrs D's complaint against the evidence that existed at the point of sale, I had regard for their personal and financial circumstances at the time (in particular, their ages and employment), their existing life assurance provision and the 'reviewable' nature of the policy they were recommended.

Specifically, at the point of sale, Mr and Mrs D were in their mid-30s and members of their respective public sector occupational pension schemes.

I can appreciate that it may not have occurred to Mr and Mrs D to disclose the existence of life assurance benefits within their respective pension schemes, and that they would lose these life assurance benefits if they did not remain a member of their scheme.

Nevertheless, I would have expected the adviser to have recorded the amount of life assurance benefits their pension schemes provided as the existence and nature of these benefits were relevant to the assessment of their life cover needs at the time.

Given their respective ages and the number of 'reviews' the whole life policy would undergo throughout their lifetime, it was likely that the monthly premium required to maintain the sum assured at £32,880 would increase, and substantially so, through successive reviews as they grew older. Even at the first review in 2007, the monthly premium needed to increase to £31.11 to maintain the sum assured at £32,880; otherwise, the sum assured reduced to £22,402 while Mr and Mrs D were still only in their early-to-mid-40s.

If the intention of the adviser was for Mr and Mrs D to hold cover under this policy for life, the monthly premium would need to increase significantly to prevent the level of life becoming negligible over the long term.

Also, the sum assured of £32,880 appears to be an arbitrary figure, set according to the monthly premium they were prepared to pay at the time. It does not seem to correspond with any particular need or remotely cover the capital required to make-up any shortfall in income for the surviving spouse whenever one of them died.

I also appreciate that, even though Mr and Mrs D's existing life cover through their mortgage policies and membership of their respective pension schemes would cease at a fixed date, I am not persuaded why they required a further policy that provided 'reviewable' cover for life.

I agree that it is difficult to be precise about the term over which life cover ought to have been provided. However, given Mr and Mrs D's personal and financial circumstances at the point of sale, I consider that cover provided by a 'non-reviewable' policy over 20 years would have been more appropriate.

In the event that both Mr and Mrs D did survive the term of the temporary assurances within their mortgage and pension arrangements, and life cover they provided ceased, I have also taken into account that Mr and Mrs D owned a property each, the value of which would provide the surviving spouse a worthwhile capital sum or a source of income if either one of them died at any time. I, therefore, do not consider that longer term life assurance needs; for example, to cover funeral costs, would have been an overriding consideration in their circumstances.

my final decision

My final decision is that I uphold Mr and Mrs D's complaint.

As I set out in my provisional decision, I require Legal & General Assurance Society Limited to pay Mr and Mrs D redress, if any, of 'D' + 'E', where:

- A = the total of each monthly premium paid to the whole life policy to the date it was surrendered (less each monthly premium that would have been payable to a 20-year, joint life first death level term assurance policy for a sum assured of £32,880);
- B = interest at 8% per annum simple from time-time on each net premium in 'A' from the start date of the whole life policy to the date it was surrendered;
- C = the surrender value of the whole life policy;
- D = A + B - C = the premium loss at the date of surrender;
- E = interest on 'D' at 8% per annum simple from the date of surrender to the date of payment.

If Legal & General Assurance Society Limited considers that it is legally obliged to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr and Mrs D may reclaim any tax overpaid from HM Revenue and Customs, if their circumstances allow them to do so.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs D to accept or reject my decision before 12 January 2015.

Kim Davenport
ombudsman

COPY OF PROVISIONAL DECISION

summary of complaint

Mr and Mrs D have complained that advice they received from Legal & General Assurance Society Limited (“Legal & General”) in June 1997 to take out a ‘reviewable’ whole life policy providing life cover of £32,880 at a monthly premium of £18.00 was unsuitable for them.

They are represented by a third party adviser, which has said:

- the adviser did not establish their attitude to risk;
- they did not have any other investment or life cover experience;
- they were not told about the reviews on the policy;
- they were led to believe that the policy would produce a significant lump sum;
- the adviser did not discuss any other, more affordable life cover;

The policy was ‘reviewed’ unfavourably in April 2007 and Mr and Mrs D did not follow the recommendation to take out an additional policy for £10,478 at a monthly premium of £13.11 to maintain the sum assured at £32,880. They retained the original policy which provided a reduced sum assured of £22,402 for their monthly premium of £18.00.

When the policy was reviewed again in April 2012, Mr and Mrs D surrendered it and received a cash value of £432.54.

background to complaint

Mr and Mrs D’s complaint was investigated by one of our adjudicators, who concluded that it should be upheld.

While she agreed with Legal & General that, based on the documentation surrounding the sale of this policy, Mr and Mrs D ought reasonably to have been aware of the reviewable nature of the policy, she questioned the suitability of a policy which provided cover for life.

Specifically, Mr and Mrs D’s requirement for significant amount of cover was unlikely to continue for the whole of their lives. For example, before they approached retirement, their major financial liabilities; in particular, their mortgage loans, would be repaid and their children are likely to have become financially independent of them.

She also considered the ongoing affordability of this policy, given life cover was set up on a maximum sum assured (minimum premium) basis at outset which means that premium increases at future policy reviews were always likely in order to sustain the original sum assured.

In conclusion, the adjudicator believed that Mr and Mrs D should have been advised to take out a ‘non-reviewable’ temporary assurance policy providing life cover that was fixed over a term to Mr D’s retirement. Accordingly, she recommended that Legal and General should pay Mr and Mrs D redress, if any, calculated as:

- the total of each monthly premium paid to the whole life policy to the date it was surrendered (less each monthly premium that would have been payable to a level term assurance policy for the same sum assured with a term to Mr D’s retirement);
- plus interest at 8% per annum simple on each net premium above from time-time from the start date of the whole life policy to the date it was surrendered;
- less the surrender value of the whole life policy;
- plus interest on the balance at 8% per annum simple from the date of surrender to the date of payment.

In response, Legal & General disagreed with the adjudicator's assessment and said that:

- the adviser took account of Mr and Mrs D's income and expenditure and noted their healthy disposable income;
- the adviser fully explained the need for cover and why the recommendation was being made. The policy was recommended to provide Mr and Mrs D's dependents with funds for their immediate needs and to support them in the future. Mr and Mrs D signed the 'factfind' to this effect;
- there was no evidence to suggest that Mr and Mrs D wanted life cover to end on retirement.
- there is no information to believe that the policy was unaffordable. Mr and Mrs D's disposable income at the time was given as almost £800 per month and, as their mortgage loans were due to be repaid from 2016, this income was likely to increase from that date and any increased policy premium at future reviews ought to be affordable;
- a whole life policy set up on a maximum basis was suitable as it provided a higher level of cover at the lowest possible cost in the first ten years;
- thereafter, the first review took place when their children were aged 16 and 11 respectively. At the policy review in 2012, Mr and Mrs D's oldest child would be 21 and possibly financially independent. As such, they could review the life cover under the policy and decide whether to keep the sum assured at its existing level (and pay an additional premium) or reduce the cover needed. Again, at the next review in 2017, their youngest child would then be 21 and they could assess their life cover requirement again.

As agreement has not 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.

First, it is important to clarify that this complaint has been brought by Mr *and* Mrs D as the whole life policy recommended to them was set up to provide a capital sum of £32,880 if either one of them died or suffered a terminal illness.

Therefore, my assessment of Mr and Mrs D's complaint takes into account their individual and collective circumstances at the point of sale.

Having said that, there are significant omissions in the information recorded by the adviser of Mr and Mrs D's personal and financial circumstances in June 1997 which has made it difficult to assess the merits of the advice they received.

Based on the information provided in the 'Personal Financial Review' ("factfind") Mr and Mrs D completed with the advisor and signed in June 1997, my understanding is that they were in their early-30s and mid-30s respectively at the time. The factfind records that they had two sons, aged 14 and one (although both Legal & General and Mr and Mrs D's representative have quoted different ages for them). Mr D had worked for his current employer for just over one year, earning around £975 per month after tax, and Mrs D been in her current employment for approximately three and a half years, earning a net income of around £825 per month, which gave them a total net disposable income of just under £800 per month. (This information presupposes that Mrs D had returned to work even though she had a one-year-old son to care for.)

At that time, Mr and Mrs D were funding a mortgage loan each, both of which were arranged on an interest-only basis, which were due to be repaid in 18 years and 22 years' time from the maturity proceeds of a mortgage endowment policy they each held. (The adviser also set up single life term assurance policies for Mr and Mrs D to ensure that *both* mortgages were repaid if one of them died.) Otherwise, there is no confirmation on the factfind whether the mortgage endowment policies were 'on target' to repay these loans at maturity to know whether Mr and Mrs D were likely to be free of these debts by then.

Likewise, no details are recorded of any retirement provision Mr D or Mrs D held even though it was likely that they would have been members of a company pension scheme given their occupations. They have since confirmed that they were members of the occupational pension scheme offered by their respective employers. In my view, it was essential, when considering Mr and Mrs D's life cover requirements, that the benefits available on death before, or after, retirement from an occupational pension scheme were recorded. As it was, they were members of different public sector pension schemes, which provided specific levels of death benefits that ought to have been well-known to an adviser at the time.

Also, the adviser identified the shortfall in income Mr D or Mrs D would suffer respectively if one of them died and the capital sum required to provide that additional income. It is not evident to me how these figures were determined; especially as the extent of any spouse's pension that would have been available from their current, and any previous, occupational pension scheme had not been documented. Also, the purchase price of this income was calculated on the assumption that Mr D or Mrs D died at the point of sale.

I accept that Mr and Mrs D ought to have known that the policy was 'reviewable' from the key features document they were provided at outset and the risk warnings set out by the adviser in the 'recommendations' section of the factfind.

However, I agree with the adjudicator that provision of this risk warning alone does not enable Legal & General to conclude that the policy was suitable for them. There must be a specific need for life cover that policy they were recommended met.

Notwithstanding that Mr and Mrs D's financial circumstances in June 1997 do not appear to be fully documented, there is reason to believe that they did require additional life cover at that time.

While their representative has pointed out that they already held life cover through their mortgage endowment policies if one of them died before the capital was due to be repaid, their circumstances had changed appreciably (with the birth of another son) since they took out these policies in 1991. They were also taken out for the specific purpose of repaying a debt, rather than to provide capital or income for family dependents.

On the other hand, they would have been eligible for a spouse's pension on death before or after retirement, plus a capital sum on death before retirement, which the adviser does not appear to have taken into account.

It is somewhat surprising, given the capital sum required to provide their shortfall in income and their monthly disposable income, that Mr and Mrs D were only willing to pay a premium of £12 per month for life cover. This may explain why the policy was set up to maximise the sum assured at £32,880 in the first ten years for the monthly premium they were prepared to pay. Thereafter, given their respective ages at outset, it was likely that the policy would undergo several reviews which could increase the monthly premium substantially over time just to maintain the sum assured at £32,880.

Mr D, in particular, had more than 30 years to go to his likely retirement at age 65. In the longer term, on the assumption that their mortgages had been repaid and both Mr and Mrs D had retained the life cover and built up pension income within their respective pension schemes, the need for this policy becomes less apparent once their children ceased to be financially dependent on them. In my view, given the age of their youngest child, this point would be reached after 20 years when the whole life policy is likely to have become progressively more expensive to continue providing a modest level of life cover they increasing would not require.

I, therefore, consider that Mr and Mrs D could have been more appropriately advised in June 1997 to take out a 'non-reviewable' 20-year level term assurance providing a sum assured of £32,880. Furthermore, this policy could have provided Mr and Mrs D a greater sum assured for a monthly premium of £18.00, which would remain fixed over the 20 year term.

However, it is the need for life cover after 20 years, as well as whether Mr and Mrs D could have continued to afford the premium to the whole life policy I have considered.

my provisional decision

My provisional decision is that I uphold Mr and Mrs D's complaint.

I require Legal & General Assurance Society Limited to pay Mr and Mrs D redress, if any, of 'D' + 'E', where:

- A = the total of each monthly premium paid to the whole life policy to the date it was surrendered (less each monthly premium that would have been payable to a 20-year, joint life first death level term assurance policy for a sum assured of £32,880);
- B = interest at 8% per annum simple from time-time on each net premium in 'A' from the start date of the whole life policy to the date it was surrendered;
- C = the surrender value of the whole life policy;
- D = A + B - C = the premium loss at the date of surrender;
- E = interest on 'D' at 8% per annum simple from the date of surrender to the date of payment.

If Legal & General Assurance Society Limited considers that it is legally obliged to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mr and Mrs D may reclaim any tax overpaid from HM Revenue and Customs, if their circumstances allow them to do so.

Kim Davenport
ombudsman