

The complaint

Mr T's complaint is about a mortgage endowment policy he took out in 1990 and for which ReAssure Limited is responsible. He believes the policy was mis-sold as at the time of the sale he didn't have a mortgage and had no intention of arranging one in the foreseeable future. In addition, Mr T says that he was reassured by the financial adviser the policy would achieve its target amount, but it didn't do so when it matured in 2015.

In addition, Mr T has highlighted that ReAssure sent the maturity documentation to an incorrect address in 2015, which means he was deprived of the money from the policy

Mr T's policy was sold by a different life assurance company in 1990, but ReAssure is now responsible for the policy and so I will refer to it throughout.

What happened

Mr T took out a mortgage endowment policy in 1990 on the recommendation of a financial adviser working for ReAssure. The policy had a target value of just over £42,000 and a term of 25 years. It was invested in a managed fund. The policy matured in July 2015 with a value of just over £31,000, but the value was not claimed. ReAssure confirmed in 2022, because of some issues with it updating Mr T's address, it would add late payment interest to the maturity value when it was paid.

In 2001 Mr T complained about the level of risk associated with the endowment policy, as he'd asked for a low-risk investment. ReAssure responded to the complaint, and as the policy hadn't been sold for immediate mortgage purposes, upheld it. It offered Mr T a refund of the premiums paid to the policy plus interest, totalling over £11,000. The policy would then be cancelled.

Mr T was not happy with the offer and further correspondence was exchanged. Barclays recalculated the redress following Mr T providing it with details of the mortgage he had linked the endowment policy to in 1991. This resulted in the redress amount reducing £1,254. In addition to this payment, ReAssure offered replacement life cover and the cost of Mr T converting his mortgage to a repayment basis. However, in light of the reduction in the amount in comparison to the previous offer, ReAssure told Mr T it was still willing to pay him redress calculated on the original basis of a refund of premiums.

Mr T remained unhappy with the redress and so he did not accept redress calculated on either basis as he didn't believe either offer was sufficient to place him in the same position as he would have been in had he arranged a repayment mortgage. This was based on his own calculations producing higher figures. He has told us that he decided not to accept redress as ReAssure didn't help him understand its offer or show him how his calculations were flawed. When Mr T expressed his dissatisfaction with the offers made, ReAssure didn't provide referral rights to this service.

In 2022 Mr T complained to ReAssure again about the sale of the policy. He also raised the complaint point about the maturity value of the policy having not been paid to him. It responded by explaining that the complaint about the mis-sale had been raised too late,

based on timescales included in our rules. In relation to the payment of the maturity value, ReAssure provided Mr T with claim forms, apologised and confirmed that late payment interest would be added up to the date the maturity was paid to him. ReAssure sent Mr T a cheque for £100 compensation for the problems relating to the maturity.

Mr T was not satisfied with ReAssure's response and referred his complaint to this service. Our investigator concluded that Mr T's complaint could not be time-barred, due to the complaint having first been raised in 2001. However, he was satisfied the method of calculation ReAssure had used in 2002 when it compared the position he was in with that which he would have been in, had he had a repayment mortgage, was appropriate. In addition, he confirmed that ReAssure should pay Mr T the maturity value plus late payment interest.

Mr T expressed doubt about ReAssure's ability to calculate the redress correctly and asked this service to do so instead. He also asked for some other calculations to be done, to see if an alternative formula for redress would be of more benefit to him. Our Investigator confirmed that we did not complete redress calculations. He didn't change his conclusions about the outcome of the complaint. Mr T asked that it be referred to an Ombudsman for review.

I issued a provisional decision on 14 November 2023, in which I set out my conclusions and reasons for reaching them. Below is an excerpt.

'ReAssure concluded Mr T's endowment policy had been mis-sold to him and that it had made an error with the maturity documentation, so I only need to consider what needs to be done to place him in an appropriate position. When deciding redress this service aims to place a consumer back in the financial position they would have been in, had the error or mistake on the part of the financial business not occurred.'

In this case there were two mistakes relating to the sale of the policy. The first being that a mortgage endowment policy was sold when there was no mortgage in place or being arranged. The second being that Mr T was told the policy would pay out the target value at maturity, which it did not guarantee to do.

ReAssure accepted in 2002 that Mr T shouldn't have been sold the mortgage endowment policy in 1990. It also accepted that in 1991 when he took out a mortgage, he would have done so on a repayment basis, had the endowment policy not existed. Having reviewed the method of calculation, I have identified an error. This being that the premiums paid before the mortgage started were not factored into the loss calculation, as they should have been. As such, I have set out how the calculation should be completed below.

Mr T chose to keep the endowment policy after becoming aware that it was not suitable for him, both when it was sold and when he took out his mortgage. I am satisfied he did so with the full knowledge of the risks associated with it. As such, the loss calculation should be completed to the same date in 2002 that ReAssure used when the complaint was upheld.

The initial part of the calculation will compare the position Mr T was in with that which he would have been in had he not taken out the endowment policy. The next step will assume the mortgage in 1991 would have been taken on a repayment basis. This part of the redress should follow the regulator's guidance, known as RU89. This will compare the position of Mr T's mortgage at the date the complaint was upheld in 2002 with the hypothetical position he would have been in, had he had a repayment mortgage from the outset. As such the loss should be calculated as D minus E where:

A = a refund of premiums paid to the endowment policy before it was used as a repayment

vehicle for his mortgage.

B = interest at 8% simple per year on the premium refund in A from the date the premiums were paid to the date of calculation*

C = the loss identified by carrying out a loss calculation in accordance with the regulator's guidance 'Handling Mortgage Endowment Complaints' (known as RU89), using a nil surrender value. This calculation should be completed from the point the policy was used for Mr T's mortgage until the calculation date in 2002.

D = A + B + C

E = the surrender value of the policy at the calculation date in 2002.

Interest at 8% per year should be added to any loss identified from the date of calculation in 2002 to the date of my final decision.*

If a loss is identified, ReAssure should pay that sum to Mr T.

I note that Mr T has asked us to complete any loss calculations needed. This service doesn't provide that service and so that is not possible. Nor do we provide a checking service for the detail of a calculation. That said, having looked at the calculation ReAssure completed in 2002 for the period the mortgage was in place, I haven't identified any obvious errors.

In relation to the maturity of the policy, ReAssure has again confirmed that it was in error and has paid Mr T £100 compensation for any inconvenience this matter caused him. In the circumstances where Mr T has said he had forgotten the policy existed, it seems unlikely he suffered any significant upset or inconvenience because of this matter. As such, I consider the amount ReAssure paid Mr T was appropriate in the circumstances.

That said, ReAssure has confirmed its late payment interest would be paid at Bank of England base rate plus one percent. In this case it isn't clear what Mr T would have done with the maturity value if he had been in a position to claim it. As such, I consider he should receive interest at 8% simple from maturity to the date the money was paid out. If Mr T has not yet claimed the maturity value, he will need to complete the claim form and provide any necessary identification documents required.*

**If ReAssure considers it is required by HMRC to deduct income tax from any interest paid, it should provide Mr T with evidence of the deduction, which he can use for HMRC purposes if required.'*

ReAssure didn't respond to my provisional decision, but I am satisfied it received it.

Mr T didn't accept my conclusions. He reiterated that he was given a guarantee and set out the investigations he considered we should undertake that would allow me to award the entire shortfall as redress. Mr T also said that he had no choice but to keep the policy after he complained about the mis-sale as he didn't think ReAssure's calculation was correct, which I had confirmed it was not, and he had not been given the answers he had wanted. As such, the calculation date should not be capped at 2002, but rather be the policy maturity date. This would mean the correct redress would be an award of the target value of the policy as at the maturity date, to which simple interest at 8% should be added until the date of settlement.

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.

Mr T has expressed thoughts on further investigations that we should undertake before the complaint is decided. I would firstly explain that we are impartial, and we don't act for either side in a dispute. As such, we also don't take either side's instructions on how we investigate a complaint, or when we have enough information on file to decide it. This case turns on some quite basic facts, and I am satisfied that the complaint can be decided fairly on the evidence available at this time.

I would also confirm at this stage that there was no contractual obligation on ReAssure to pay him the target sum at maturity. The only time that sum was guaranteed to be paid out under the contract was in the event of his death. If he was told by the financial adviser that the policy guaranteed to pay out at least the target sum at maturity, for which there is no supporting evidence for Mr T's recollection, it would be considered a misleading statement. It would not change the contract that was entered into between Mr T and ReAssure.

Where an error or mistake has been made on the part of a financial business, such as providing misleading information, we don't award redress to place the consumer in the position they would be if the misleading information had been correct. Rather we establish what, if the consumer had not been given that information, they would have done. Given Mr T has made much of him wanting a guaranteed sum at the end of the term, that would indicate he would not have taken the endowment policy out at all, and when he took his mortgage, he would have had a repayment arrangement. As such, I remain satisfied the calculation I detailed in my provisional decision is right.

I note that Mr T has said he had no choice but to keep the policy because he didn't get the answers he wanted. That is not the case. Whether he accepted the calculations ReAssure completed, he had the choice to surrender the policy having discovered that he should not have been sold it and there were risks associated with it that he wasn't happy to accept. That would not have prevented him from pursuing the complaint about the policy. As such, I consider the calculation date in 2002 remains the appropriate one to use to calculate the loss in this case.

Putting things right

The loss for the mis-sale of the endowment policy should be calculated as D minus E where:

A = a refund of premiums paid to the endowment policy before it was used as a repayment vehicle for his mortgage.

B = interest* at 8% simple per year on the premium refund in A from the date the premiums were paid to the date of calculation

C = the loss identified by carrying out a loss calculation in accordance with the regulator's guidance 'Handling Mortgage Endowment Complaints' (known as RU89), using a nil surrender value. This calculation should be completed from the point the policy was used for Mr T's mortgage until the calculation date in 2002.

$D = A + B + C$

E = the surrender value of the policy at the calculation date in 2002.

Interest* at 8% per year should be added to any loss identified from the date of calculation in 2002 to the date of my final decision.

If a loss is identified, ReAssure should pay that sum to Mr T.

In relation to the maturity of the policy, ReAssure should add interest* at 8% simple from maturity to the date the money was paid out. If Mr T has not yet claimed the maturity value, he will need to complete the claim form and provide any necessary identification documents required.

*If ReAssure considers it is required by HMRC to deduct income tax from any interest paid, it should provide Mr T with evidence of the deduction, which he can use for HMRC purposes if required.

My final decision

My final decision is that I uphold this complaint. In full and final settlement of the complaint I order ReAssure Limited to settle the complaint as detailed in 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr T to accept or reject my decision before 3 January 2024.

Derry Baxter

Ombudsman