

BRIEFING NOTE: Using life insurance to avoid IHT: Are reviewable premiums a trap for the unwary?



This briefing note, by Bob Moxon Browne KC, offers a detailed and critical look at the financial and legal complexities surrounding whole-of-life insurance policies, serving as a cautionary guide for both policyholders and professionals in the field.

In particular he discusses the use of whole-of-life insurance policies as part of IHT avoidance schemes, and cases of mis-selling of renewable premium insurance to unwary insureds in this lucrative niche market. He examines the reasons for sudden and dramatic increases in the cost of such insurance as the insured's mortality risk increases, and asks if reviewable premium life insurance can ever be appropriate for use in connection with IHT avoidance, and whether legal remedies may now be available to those who now find that their policies have become unaffordable.



Bob Moxon Browne KC
bmxonbrownekc@2tg.co.uk

Life Insurance and Inheritance Tax

The use of whole-of-life insurance policies written in trust is a long-established method of passing family assets to succeeding generations without payment of inheritance tax.

The idea is simple. When the life assured dies, the death benefit from a policy written in trust will be paid to the trustees, and not to the deceased's estate, and hence will escape inheritance tax.

Such schemes are simple, transparent and free from artifice. They seem likely to remain impervious to attack by HMRC, at least absent a wholesale carve-out from basic trust law principles.

Reviewable premiums

However some of these schemes are riskier than they may look. This article focuses on problems which have become increasingly apparent in the last decade, arising when policies for a whole-of-life term are funded by reviewable as opposed to guaranteed fixed premiums.

Reviewable life insurance premiums first became a significant feature in the UK insurance market in the 1980's with the rise in investment linked whole-of-life policies. Such policies offered initially very low premiums, with increases at the insurers' option on pre-set review dates, usually at 5 yearly intervals until the insured reaches 60 or 65 years, and annually thereafter.

With this type of life insurance, the insurer retains the mortality risk. However the investment risk (i.e. the risk that at some point the proceeds from investing the balance of premium income, after paying for annual life cover, might be insufficient

to fund payments to maintain the cover as the insured ages and the mortality risk increases) is effectively passed to the insured. This is a happy position for the insurer to be in.

The same cannot be said for the insured. Many of the insurance-linked IHT avoidance schemes adopted by very wealthy individuals or families involve huge insured sums, measured in millions or even tens of millions of pounds, with commensurately very large premiums. Unexpected hikes in these premiums can quickly turn an expensive tax avoidance ploy into something which is unaffordable, even for the super-rich; or which ceases to be tax-efficient because the aggregated premiums paid and to be paid will exceed the death benefit, which remains fixed.

In this situation many insureds will elect, or be forced, to cancel the policy, thus defeating the objective of the scheme at the cost of years of wasted premiums.

Why do reviewable premiums rise?

As reviewable premium policies taken out in the 1980's and 1990's have matured over time, insureds have been surprised and alarmed to be confronted by sharp rises in premiums, often by 100% or 200% as they reach their mid-sixties, and increasing exponentially thereafter.

How does this come about? Insureds readily understand that the principal factor affecting the amount of their premiums is an actuarial calculation of the mortality risk. It is appreciated that if the insured dies before his time, the insurer will lose out, because the premium income is cut off before a sum sufficient to fund the death benefit has accrued.

Such insureds may also assume that conversely, if they live beyond their expected life span, the insurer will benefit, because the premium income will continue to accrue beyond the time when it was originally assumed it would cease, although the death benefit always remains fixed.

However this latter assumption is false. A failure to understand why that is so is a common feature of insureds' increasing dissatisfaction with this type of life insurance.

There is a widespread belief that life insurance companies fund death benefits directly from their own resources (i.e. from the proceeds of investment of premium income). This is a misconception. In the UK insurance market, all or almost all of the insured mortality risk is borne by reinsurers, who assume that risk on an annual or other periodic basis. The reinsurance premiums are paid for by the insurer out of the proceeds of investment of the premiums paid to it by the insured, thus in effect buying in the life cover they have promised the insured. In the early days of the policy, the reinsurance premiums are cheap, because the insured is not expected to die young. Hence most of the premium income can be invested, creating a pot out of which reinsurance premiums can be paid, in increasing sums as the life insured grows older. The insurer calculates that if the insured lives in accordance with actuarial expectations, there will be enough money in the pot to pay the death benefit, with something left over for the insurer's profit. But if the insured lives for longer than forecast, the reinsurance premiums will rise sharply, as with increasing age, death in any given year becomes more and more likely. The investment pot may quite quickly become insufficient to fund the increases demanded by the reinsurer, leading either to a requirement for swingeing increases in premiums to be paid by the insured, or to an agreement for a drastic reduction in death benefit.

Although life insurance companies are very reticent about the exact basis upon which premiums are reviewed (a failure which is itself frequently the subject of complaints by insureds) it is evident that the most important single factor is the increasing cost of reinsuring the mortality risk if the insured lives beyond their forecast life expectancy. The simple fact is that if an insured lives beyond their expected span, the need to increase premiums will not only be possible, or probable, it will be inevitable, and the amounts of the increases may be surprisingly large.

The *inevitability* of sudden and substantial premium increases in this situation has repeatedly been recognised by the Financial Ombudsman's Service (FOS) when dealing with the numerous complaints currently being made to it alleging mis-selling of life insurance with reviewable premiums. For example in *H v Forester Life* (DRN52704) a decision issued in

March 2025, the Ombudsman described the funding structure of a Forester Life policy thus:

*"The key feature of Mr H's policy is that the premiums he was paying throughout the years were designed to be invested in order to pay for the increasing costs of life cover later on in life. This is because for these types of policies there's an increased likelihood of increasing life cover costs as the policyholder gets older. I've not seen any evidence that Mr H's policy had any specific underwriting criteria to do with his underlying health condition – in my view, the increasing life cover costs are simply an **inevitable** consequence of the policy becoming more expensive as the policyholder gets older. This is very typical for these types of policies. In the early years, when the life cover costs are low, part of the premiums are invested to build up a fund that can be used to help pay for the increasing life cover costs in later years.*

*At this stage, the premiums can meet the costs of the cover on their own. However, if the premiums remain at the same level, there **inevitably** comes a point where the life cover costs will exceed the monthly premium and units in the investment fund need to be sold to meet the shortfall reducing the investment fund value over time – unless the fund's growth outpaces the rise in the costs of cover.*

*Eventually, the regular increases in the cost of life cover will outpace the growth in the fund, so that as units in the fund continue to be sold, it will reach a point where the firm concludes that the premiums being paid and the fund value are no longer enough to pay for the costs of cover. To maintain the policy with its existing life cover, the premiums (if they are still at the level they were when the policy began) will need to increase **suddenly and substantially** and will continue to increase each year as the consumers get older and the life cover costs increase accordingly, unless the sum assured has been substantially reduced. This is what Mr H's complaint is essentially about."* (emphasis added)

Similar descriptions of the funding structure of whole-of-life insurance with reviewable premiums have been given in numerous FOS decisions in recent years. In another very recent FOS decision *Trustees of the J Trust v Countrywide Assured Plc* (DRN 5272437), the Ombudsman took the unusual course of incorporating within his decision a table showing how the proportion of premium used to buy life cover from reinsurers rose over time, until the cost of cover began to exceed the premiums paid by the insured.

In 1995 the insured, who were then in their 50's, were paying a premium of £540 p.a. for £100,000 cover, of which only £67 was being paid to the reinsurer in respect of the mortality risks. By 2015, the cost of cover bought by the reinsurer had risen to £609, thus exceeding the premium of £540. By 2024 the

cost of cover had risen to £2,352 p.a., prompting the insurer to increase the premium to nearly double £540, with further large increases inevitable every year thereafter.

This was a comparatively modest policy. If the sums involved were extrapolated to an IHT scheme involving millions of pounds of cover, and premiums measured in many tens of thousands of pounds, it can be seen how quickly such a scheme might become unaffordable, prompting cancellation.

Guaranteed fixed premiums

Of course the risk of steep increases in premiums if the insured lives for longer than expected can be avoided if the insured chooses a policy with guaranteed fixed premiums, which are usually offered alongside the option for reviewable premiums.

The apparent disadvantage of fixed premium life insurance is that in the early years of the policy, the premiums are much higher than the reviewable premium option, because the insurer has to price in the future investment risk. However unless the insured dies young, fixed premiums will almost always offer better value than reviewable premiums in the long run. In the context of insurance linked to IHT avoidance, fixed premiums also have the essential advantage that there is no risk that premiums will become unaffordable before death occurs, thus defeating the main object of that kind of insurance.

Life insurers' Key Features information

By life insurers' *Key Features* and similar documentation preceding or accompanying the policy, the insurer will typically point out that reviewable premium policies are available (if that is the case); and may also indicate (with varying degrees of emphasis) that while initial premiums may be cheaper than in the case of a guaranteed premium, "*in the end you could be paying a lot more each month*".

However life insurers do not explain that large increases in reviewable premiums are effectively *inevitable* once the insured reaches his 70's, or that in many cases such increases may render the insurance quite uneconomic, leading to cancellation of the policy and thus forfeiture of the prospect of eventual death benefit.

The absence of any such explanation or warning in the case of life insurance written in trust in order to avoid IHT, appears especially unsatisfactory.

In the ordinary case, the principal rationale for life insurance

is to protect the insured's dependents financially in the event of the insured's untimely death. That protection is in itself of obvious value, and if the cover is for a fixed term ending prior to death, or is cancelled before the insured's death, it can hardly be said that the insured has received no benefit in return for their premiums.

By contrast, protection of dependents during the insured's lifetime is usually substantially irrelevant in the case of life insurance linked to IHT avoidance. As explained above, the usual purpose of life insurance written in trust is to provide a lump sum on the insured's death which can be passed on for the benefit of future generations free of tax. If the policy has to be cancelled before the insured's death, the whole purpose of such a scheme will be defeated, and the premiums paid will effectively have been wasted.

This consideration makes life insurance with reviewable premiums unsuitable in the context of IHT avoidance, although policies of this kind continue to be targeted to this lucrative section of the market.

Complaints to the Financial Services Ombudsman

Since the early 2000's, and increasingly in more recent times, complaints have been made to the FSO about life policies with reviewable premiums, which have become unaffordable and/or uneconomic as a result of large premium increases.

Most of these claims have involved apparently unsophisticated insureds with modest policies, who have been taken by surprise by the effects of reviews, which they did not anticipate. These complaints are often linked to complaints that the review process was not transparent, and that no information was made available about the justification for increases.

Most of these complaints are unsuccessful². The FOS tend to focus on whether and to what extent the distinction between fixed and reviewable premiums was pointed out to the insured at the point of sale of the policy (as it almost always is).

In considering industry guidance, the Ombudsman tends to rely on the very general terms of the Financial Conduct Authority's *Handbook*, the *Conduct of Business Sourcebook* (ICOBS), and the FCA's FG 16/8 *Fair Treatment of long-standing customers in the life insurance sector*. None of this guidance deals with warnings about risks of the kind identified in this article, or with the issue of transparency surrounding premium increases. In particular, the Ombudsman does not appear to pay any attention to the insurance industry's own guidance,

¹ See e.g. *Victory Insurance Life Insurance Premiums Explained*, giving a more emphatic warning than is often found.

² See *FOS Decisions database* <https://www.financial-ombudsman.org.uk/decisions-case-studies>. An informal survey of dozens of relevant FOS decisions suggests a success rate of no more than 25%. The volume of complaints, and the low success rate, may be partly due to the effect of claims management firms soliciting complaints from unmeritorious claimants.

including advice from the Association of British Insurers referred to further below³.

The fact that in many cases unaffordable increases in the premiums charged to those in their 70's, and beyond, will be inevitable, and may be unaffordable, has not concerned the FOS, and nor will the FOS consider the actuarial or other justification for the very large increases required. Successful claims are mostly confined to those where the insured claims they were not informed when they took out the policy that premiums were reviewable, and the insurer is unable to locate documentation to prove otherwise.

In cases where the insured has had to cancel the policy, successful claims are sometimes compensated by a return of some or all of the premiums. More often, compensation is limited to a few hundred pounds for *distress and inconvenience* etc, on the basis that even if the insured had been correctly advised, it probably would not have made any difference to their decisions.

One very recent FOS decision is typical of many others. In *D Trust v Zurich Assurance Ltd* (DRH 4922842) the Ombudsman considered a complaint by the trustees of a Zurich policy taken out in 1993 for the purpose of eventually avoiding IHT on the estate of the insured. In 2023 premiums for modest life cover of only £200,000, jumped from £5,562 p.a. to £13,644, causing the insured to cancel the policy.

The Ombudsman described the increase as *staggering*, but added *the rise in life cover costs was typical for these types of policies, particularly as the life assured gets older*. Consistently with many other decisions of the same kind, he also said *the way in which Zurich charge for the life cover it provides isn't something the (Ombudsman's) service is directly able to look into or question*.

The Ombudsman concluded that while Zurich was at fault for failing to communicate with the insured in *a clear and not misleading way*, the outcome would have been the same (i.e. eventual cancellation of the policy) if communications had been satisfactory. He awarded the insured, who had wasted over £100,000 in premiums over the life of the policy, the sum of just £150 in compensation.

This decision followed many others in that no consideration was given to whether reviewable premium insurance was suitable for these complainants in the first place, given that the principal purpose of the cover was not to provide protection to financial dependents during the life of the policy, but to avoid IHT on the insured's death.

For the reasons given above, reviewable premium life insurance is not appropriate as part of a tax avoidance strategy. If the insured lives into or beyond their 70's, the premiums are likely to rise at each review date by amounts which may double or treble each time, to the point where the insured is obliged either to cancel the policy, or to accept the prospect of a much reduced death benefit, often much less than the aggregate of premiums paid over the years. Neither of these outcomes is compatible with tax efficiency.

Remedies

The FOS may provide a quick and simple remedy in cases where reviewable premium insurance has been mis-sold to unsophisticated insureds, with policies insuring modest death benefits.

However it appears to be an inappropriate forum for those insureds who have taken out many hundreds of thousands or millions pounds worth of life cover for the purpose of avoiding IHT. The FOS' jurisdiction to award compensation is limited⁴, and as we have seen, the Ombudsman has (so far) avoided any consideration of the underlying question whether reviewable premium insurance is at all suitable in the context of IHT avoidance; and has also declined to examine the basis upon which premium reviews are conducted in any particular case.

The preferred forum for redress for an insured who has been forced by premium reviews to choose between accepting unaffordable or uneconomic increases in premiums, or abandoning the policy, must be the High Court. So far there have been no reported cases dealing with this kind of complaint, but it seems very likely that such a case will be heard sooner rather than later.

The first and most obvious cause of action is likely to lie against the insurer who has sold the policy. The essential information, that reviewable premium life insurance is not appropriate in the case of IHT avoidance schemes, is never referred to by life insurers, who continue actively to sell this type of insurance to this market (which is obviously very lucrative for them).

Insurers' current practice appears on the face of it inconsistent with advice given by the Association of British Insurers in May 2006⁵, which remains current. The advice is provided in the context of whether clauses permitting premium reviews are fair and reasonable, but the answer (essentially that such provisions will only be fair if sufficiently explained) provides specific guidance about what such explanations should entail. This includes, under the heading *Procedural Fairness*, the following:

³ See ABI's *Advice on Practical Aspects of Unfair Contract Terms for Non-Investment Protection Policies with Reviewable Premiums*, published in May 2006.

⁴ To £195,000 in the case of acts or omissions taking place prior to 1st April 2019.

⁵ See *Advice on Practical Aspects of Unfair Contract Terms for Non-Investment Policies with Reviewable Premiums*.

Procedural Fairness

- 3.4.1 A clear explanation of the review mechanism and the reasons why it is adopted before the conclusion of the contract.
- 3.4.2 A choice between guaranteed and reviewable premiums and a clear explanation of the difference.

Substantive Fairness

- 3.4.3 Precision about the reasons for variation or criteria to be adopted.
- 3.4.4 A verifiable mechanism for calculating the change.
- 3.4.5 Reference to variations being calculated in a “fair” and/or “reasonable” way.
- 3.4.6 A clear statement of the maximum and minimum charges, if any.
- 3.4.7 If the review results in the need to increase the premium to maintain the benefits, a choice for the policyholder.

Under the heading *Principles* the following is provided:

- 4.1.1 A clear explanation of why the reviewable premium product is appropriate, how the review process works and, if applicable, why (or not) they might choose reviewable rather than guaranteed premiums.
- 4.1.2 Increases or decreases that are calculated fairly when insurers review premiums.

Under the heading *Clarity in Product Literature* it is provided that relevant factors affecting fairness may include:

- 4.3.1 Whether or not the contract was entered into in good faith. **An example of bad faith would be a deliberate marketing practice of setting a low price at the start with the intention of increasing the price at subsequent reviews.**
- 4.3.2 Whether or not the individual consumer was given sufficient information to allow them to make an informed decision about whether to enter into the contract.
- 4.3.3 **Whether or not the consumer could have understood the reasons for premiums changing at a review and the risks for them inherent in the policy.**
- 4.4 Insurers should take account of the following:
- 4.4.1 Where premiums are reviewable this should be

prominently shown in product literature and the basis for reviews should be clearly set out.

- 4.4.2 The regulations require all terms to be written in “plain and intelligible” language and FSA rules require product literature to be clear, fair and not misleading ...
- 4.4.3 Insurers should base reviewable premiums on assumptions based on robust calculations which are documented to provide the necessary audit trail at the time of the review. **The insurer may need to demonstrate that fair and reasonable values had been used for the assumptions made at outset and why there is a valid reason for a change the values of the assumptions at a review.**
- 4.4.4 Insurers must explain the risks (emphasis added).

The ABI advice does not specifically address the risk that if the insured lives for longer than expected, increases in premium are inevitable, and may render the insurance uneconomic, or the consequence that if the insurance is linked to an IHT avoidance scheme, that would defeat the object of such a scheme. However to the extent that both such risks are plainly present, it may reasonably be said that any fair explanation of how reviewable premium insurance works should include a reference to those risks.

The fact that in practice whole-of-life insurance with reviewable premiums is unlikely to benefit the insured’s estate, or his trustees, if the insured happens to outlive his estimated life expectancy, should be quite straightforward to prove. Once that is established, it should be a short step to demonstrating that for this reason such insurance is unsuitable for use in connection with IHT avoidance schemes, which depend on the policy being maintained until the insured’s death (which is why term insurance is not used for this purpose).

If the right case were brought before the Courts, the prospects of demonstrating that life insurers should not be marketing reviewable premium insurance for use in avoiding IHT would appear to be good.

Other potential Defendants

Life insurance cover taken out in furtherance of tax avoidance will almost always be handled by specialist brokers, sometimes working in conjunction with other professional advisers, all of whom may benefit from very large fees or commissions. Whether such brokers or advisers may be in breach of duty in recommending reviewable premium insurance to those clients in any given case is a question beyond the scope of this article, and will of course be very fact dependent. However the potential for complaints against these parties is obvious.

Summary

Reviewable premium insurance is much cheaper than fixed premium insurance in the early years of the policy, and may be attractive to insureds looking for financial protection for a term expiring well within their actuarial life expectancy. However it does not appear suitable for insureds with whole-of-life insurance, particularly where that insurance is written in trust for the purpose of avoiding IHT. This is because the premiums for such insurance may become unaffordable or uneconomic after the insured reaches his 70's, forcing a cancellation of the policy or a substantial reduction in the proposed death benefit, both of which options will defeat the purpose of the scheme.

Allegations that reviewable premium insurance has been mis-sold to those seeking to use life insurance to avoid IHT are

unlikely to prosper before the FOS, whose jurisdiction is in any event limited in the context of policies taken out as part of a tax avoidance scheme. However depending on the facts, there would appear to be reasonable prospects of a successful claim in the Courts against the insurers who market such products in the knowledge that this structure for funding premiums is not appropriate for whole-of-life insurance, and perhaps also against the brokers and financial advisers who advocate this form of insurance.

Disclaimer

No liability is accepted by the author for any errors or omissions (whether negligent or not) that this article may contain. The article is for information purposes only and is not intended as legal advice. Professional advice should always be obtained before applying any information to particular circumstances.

ABOUT THE AUTHOR



**Bob Moxon
Browne KC**

Bob Moxon Browne KC is hailed by the legal directories for his vast experience in insurance work. Held in very high regard across the industry, he has long been recognised as a leader of the Bar in this specialism. Acting equally for reinsurers, insurers and their insureds, Bob has a niche interest in life and other forms of personal protection insurance, with close knowledge of the attitudes of both the Financial Services Ombudsman and the insurance industry to issues which can arise in this sector of the market. This experience has been particularly highly valued by solicitors acting for private clients seeking to use life insurance policies to avoid taxation on the transmission of wealth to successive generations.

Bob has been recognised in the legal directories over many years as a leader in the fields of Insurance and Reinsurance.

"A legend in the life insurance markets" Chambers and Partners 2026

"Over the course of a long career he has changed the face of insurance law. He is incandescently clever and rolls his sleeves up. He is the most affable barrister at the insurance bar." Chambers and Partners 2026

"He always has the right point to make and is phenomenally sharp" Chambers and Partners 2026

"Bob has a formidable courtroom presence and exceptional advocacy skills. I am awe of his ability to handle the most complex and sensitive cases with gravitas and precision" Chambers and Partners 2026

2TG's expertise

At 2TG, we are widely recognised for our expertise in life, critical illness, and income replacement (permanent health) insurance. We act for both insurers and policyholders, advising on complex and sensitive disputes across the full spectrum of claims.

Our work includes cases involving fraudulent claims, suicides, complex medical conditions, non-disclosure of risky lifestyles, and disputes over trusts or criminal conduct. We are also frequently instructed in inquests, particularly where deaths occur under suspicious or unusual circumstances.

In permanent health insurance, we specialise in policy interpretation, fraud, and claims involving self-reported conditions such as depression or chronic fatigue syndrome, where evidential challenges are significant.

We also have deep knowledge of the regulatory framework governing consumer insurance, frequently advising on matters involving the FCA and the Financial Ombudsman Service, and have acted in the only successful judicial review of the FOS by an insurer in this area, challenging its approach to financial caps.

Contact the Clerks

For further information about our practice in this area
please contact our clerking team:



Lee Tyler
Senior Clerk
ltyler@2tg.co.uk



Billy Hammonds
Joint Deputy Senior Clerk
bhammonds@2tg.co.uk

CONTACT DETAILS

Address

2TG, 2 Temple Gardens, London, EC4Y 9AY

Telephone

+44 (0)20 7822 1200

Email

clerks@2tg.co.uk

www.2tg.co.uk