

## **The complaint**

Mrs A is represented by a claims management company ('CMC') in bringing her complaint.

The CMC says Mrs A was sold a ten-year savings policy by Zurich Assurance Ltd which was not appropriate for her circumstances. Specifically, it says Mrs A did not need the life cover provided by the policy, her attitude to risk was not properly considered and the charges included within the policy rendered it unsuitable for Mrs A's needs.

## **What happened**

Mrs A's policy was a Maximum Investment Plan. It began in September 1999 and had a £50 monthly contribution. It was surrendered in 2007 for £5,180.64.

Zurich rejected the complaint in January 2021. It said Mrs A was told in the policy documentation that life cover was included in the investment, to protect the proceeds from taxation. Though the adviser hadn't made record of Mrs A's specific attitude to risk, the illustration and policy provisions told Mrs A of the prospect that she could receive back less than she'd paid in – though this didn't happen.

Zurich also said that the charges were detailed to Mrs A in the documentation – so she chose to proceed despite her view on rates of inflation and the Bank of England base rate.

So, the CMC referred the complaint to this service where it was reviewed by one of our investigators. He felt the complaint ought to succeed.

Whilst he did not think the proposal for an investment savings policy was unreasonable, he did believe the recommended policy didn't meet Mrs A's requirements at the time. She did not require the life cover, and she had expressly set out her view on likely inflation – which exceeded the expected return on the policy, due to the charges and cost of life cover.

He therefore believed that Zurich ought to undertake a redress comparison using the benchmark of FTSE UK Private Investors Income Total Return Index for half of the investment and for the other half, the average rate from fixed rate bonds.

The CMC said Mrs A accepted the decision. However, Zurich disagreed. It made a number of further points:

- the investigator had said life cover wasn't of any use to Mrs A, but she had a dependent child at the time of the advice;
- the life cover cost was minimal;
- this was at the lowest possible cost to allow the proceeds of the policy to be tax-free;
- the documentation told Mrs A that she may get less back than she expected – but the investigator accepted this by noting Mrs A was prepared to take a small risk;
- the illustration of returns (at 7.5%) was the rate that all businesses were prescribed to use at that time by the Personal Investment Authority;
- it was merely an example – in fact, in the year to September 1999 the investment's Managed Fund had achieved annualised growth of 11.6% before charges;

- this shows the policy had the potential to achieve greater returns than those Zurich was permitted to illustrate;
- in Mrs A's case, her policy's returns were affected by early surrender and the financial downturn in 2001 – which were not foreseeable at the time of the advice.

Our investigator wasn't minded to change his view. Zurich still disagreed, but said it would agree to make Mrs A an offer equivalent to a refund of the cost of life cover on her plan together with a payment of interest in an attempt to bring the matter to a conclusion. However, the CMC said Mrs A did not accept the offer.

Zurich said it otherwise remained of the view that the complaint shouldn't be upheld. It also questioned the element of the calculation using the FTSE UK Private Investors Income Total Return Index because Zurich said it appeared to make no allowance for the deduction of taxation or charges. The complaint was then referred for an ombudsman's 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'd like to thank the parties for their patience whilst this matter awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld.

At the time of the sale, Mrs A met with the adviser alongside her husband. A number of recommendations were made, including personal protection policies. This complaint has only been pursued by the CMC in respect of the investment policy sold to Mrs A.

Mrs A had a joint mortgage with her husband, and one child. After her expenses were deducted from her monthly income, she had disposable funds of £140 per month. The purpose of the advice was to discuss critical illness cover. Mr and Mrs A held two endowment savings policies for their mortgage but didn't have critical illness protection.

Mrs A also agreed to take this policy out, with a view to saving for future education costs for her child. It was recorded that she could contribute £50 each month for this purpose.

Like our investigator, I am satisfied that Mrs A was seeking to take out a longer term policy and had a clear savings objective – and on that basis, it wasn't unreasonable of the adviser to make recommendations with low risk to achieve Mrs A's aim of making greater returns than were possible through deposit based savings accounts.

However, I agree that the information recorded in the fact find documentation wasn't properly taken into account when Zurich's adviser made the recommendation, notably in respect of Mrs A's confirmation that she did not want to consider life cover.

The policy proposed to Mrs A was a unit-linked combined life assurance and savings plan. The documentation sets out how the policy had main principles of paying a cash sum on maturity and providing a cash sum should the policyholder die during the term.

I do not believe that this was the most suitable offering that could have been put to Mrs A in her specific circumstances. She held life cover through the endowment savings policies, designed to repay her (and her husband's) mortgage should she have passed away. What Mrs A was seeking was a savings plan, with a low amount of investment risk.

I have seen no suggestion that other investments were considered – and there were options

open to Mrs A which would also shield her investment returns from taxation such as an ISA (as of April 1999). It is clear that Mrs A stated how she did not want to take out life cover, and though this 'qualifying' life cover was included to avoid income tax on the maturity value, there were other tax-efficient proposals that the adviser could have discussed with her.

Zurich has also set out how the views Mrs A held in respect of inflation were arguably optimistic, given the rate in preceding years. However, the adviser was required to obtain information from Mrs A to establish her objectives. Irrespective of the factual accuracy of her views, the illustration of the effect of the deductions issued by Zurich for the policy explained the impact of charges, assuming a 6% return – noting *“the last line in the table shows that over the full term the effect of the total deductions could amount to £1,490. Putting it another way, leaving out the cost of life cover and sickness benefits, this would have the effect of bringing the investment growth used from 6% a year down to 2.6% a year.”*

Taking all of the information in the round, I also believe this complaint should be upheld. That the key features information supplied to Mrs A pointed out the nature of the investment in respect of life cover shows transparency, but it doesn't automatically mean it was reasonable for her. And noting Mrs A's particular circumstances, I don't believe the recommendation made was consistent with her specified view, objectives and requirements.

Finally, I note Zurich's concern regarding the benchmark used for our redress. However, I disagree that the redress is fundamentally flawed. In assessing what would be fair compensation, our aim is to put a consumer as close to the position they would likely now be in if they had not been given unsuitable advice.

Where it is not possible to say precisely what the consumer would otherwise have done, we may use the return based wholly or in part on a benchmark to reflect what the consumer might reasonably have made (or lost) if things hadn't gone wrong. If I proposed a reduction for charges, we would effectively be assuming that the consumer would have made an investment that would have always underperformed the benchmark. So, we generally consider it fair to use the benchmark return as a measure of what the consumer would have got net of charges. I see no reason to depart from this, and I believe it suitable in the circumstances where the advice, in this specific case, was not suitable for Mrs A.

## **Putting things right**

### **Fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mrs A as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs A would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs A's circumstances and objectives when she invested.

### **What must Zurich do?**

To compensate Mrs A fairly, Zurich must:

- Compare the performance of Mrs A's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Zurich should also pay interest as set out below.

Income tax may be payable on any interest awarded. If Zurich considers tax is payable on the interest, it should send a tax deduction certificate with the payment. Mrs A may reclaim any tax overpaid from HM Revenue and Customs, if her tax status allows her to do so.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Maximum Investment Plan	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment (September 1999)	Date ceased to be held (April 2007)	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

This means the actual amount paid from the investment at the end date.

### **Fair value**

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Zurich should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

### **Why is this remedy suitable?**

I have decided on this method of compensation because:

- Mrs A wanted capital growth with a small risk to her capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs A into that position. It does not mean that Mrs A would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise

that broadly reflects the sort of return Mrs A could have obtained from investments suited to her objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

### **My final decision**

I uphold the complaint. My decision is that Zurich Assurance Ltd should pay the amount calculated as set out above.

Zurich Assurance Ltd should provide details of its calculation to Mrs A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 19 May 2022.

Jo Storey  
**Ombudsman**