

The complaint

Mr L is represented by a claims management company ('CMC') in bringing his complaint. The CMC says Mr L was given unsuitable advice by Sanlam Life & Pensions UK Limited to take out a protection policy and an investment savings policy in 1991.

What happened

The advice was given by a predecessor business for which Sanlam takes responsibility. In 1994, Mr L asked that the sum assured for the protection policy (which operated as a reviewable whole of life policy) be reduced to the minimum amount. In January 1995, it was confirmed to Mr L that the sum assured reduced from £41,806 to £8,100.

In April 2013, Mr L surrendered the protection policy. He retained the savings policy.

In 2019, the CMC complained to Sanlam. It said both policies should not have been recommended to Mr L. In respect of the protection policy it said Mr L was single, without dependents and the reasons for the recommendation were not put to Mr L. It also explained that Mr L's primary savings aim had been flexibility, and the recommendation for the savings policy was also not suitable to meet that aim. Mr L had no documented savings at all – he should therefore not have been advised to place his only savings funds into a policy as inflexible as the savings policy.

The CMC explained that since the policy required life cover to render it qualifying for tax purposes, this also made it unsuitable for Mr L who did not require cover of that nature. Finally it said that no real measure of future affordability had been undertaken.

Sanlam rejected the complaint in October 2019. In respect of the protection policy, it said Mr L had written to it in 1994 to reduce the sum assured. So he was aware of what he had been sold and the benefit of the cover.

Regarding the savings policy, Sanlam said the policy had been kept in force for 26 years, so this must show that it was affordable for Mr L. Specifically when he had surrendered his life assurance policy in 2013, he did not do the same for the savings policy.

Sanlam said it took the view that its adviser having told Mr L to commit to a long term savings product designed to be funded for at least 25 years in order to achieve optimal returns seems to have been sound advice. It also said that where affordability would allow, the adviser should also have suggested a level of deposit-based savings as an emergency fund. But it remained of the view that the advice was sensible for Mr L.

The complaint was referred to this service. Sanlam told us that it did not consent to the complaint being considered as it felt it had been pursued outside of our time limits.

An investigator concluded that the matter had been referred within time, and that Mr L having surrendered the protection policy in 2013 didn't trigger any cause for complaint. Sanlam then confirmed it agreed to our investigator looking into the merits of the complaint.

The investigator said Mr L did not have any recorded need or requirement for the protection policy and she took the view that this should not have been sold. She also felt the adviser should not have proposed the investment savings policy either. At the time, no information regarding Mr L's outgoings had been sought, and Mr L's savings had been placed into an investment fund with a considerable amount of equities, representing too much risk for a first-time investor that was not prepared to take any degree of risk with his capital.

The CMC said Mr L accepted the investigator's view on the complaint.

Sanlam accepted our investigator's view in respect of the protection policy. But, it said the sale of the investment savings policy had been reasonable in the circumstances. It made a number of further points, noting in summary:

- while it accepted that Mr L had no documented savings for emergencies, it also said the information from the time of the sale didn't show that the policy was unaffordable for Mr L;
- at the time of the sale there was no regulatory requirement for the adviser to record Mr L's attitude to risk;
- Mr L has maintained the monthly £30 contribution since 1991 without any problems;
- though the investigator thought the sensible advice would have been for Mr L to have built up an emergency savings fund before considering any investments, the fact he had no savings meant Mr L would have been unprepared for emergencies anyway;
- in a similar complaint, another ombudsman did not agree that a complainant's policy was mis-sold because there wasn't any information to suggest that they actually needed to have emergency savings in place or that affordability was an issue;
- in another similar complaint, an ombudsman had said that a complainant had the capacity to accept the risks of the underlying fund for an investment savings policy of this type and to suggest they may have done something differently was speculation;
- Mr L was given a fund choice fact sheet within with a policy brochure, to which he signed to confirm receipt;
- the £30 premium was just over 6% of Mr L's disposable income leaving enough for him to commence emergency savings if had he wished to start building up some accessible savings as well.

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 considerable patience whilst this matter awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld.

In summary, my findings are:

- I note Sanlam has now agreed to uphold the complaint about the protection policy, noting at the time of the advice Mr L had no financial dependents and did not need cover since he already held appropriate cover through his endowment mortgage;
- I believe this is a fair resolution in circumstances where there was no recorded need or identified circumstances to recommend the sale of a policy of this nature;
- in respect of the sale of the investment savings policy, Sanlam has referred to other complaints rejected by different ombudsmen at this service;
- but complaints aren't determined by precedent, as no two matters are factually identical;

- instead, I will look at the evidence before me to make findings which I believe to be a fair and reasonable outcome in the circumstances of this specific complaint;
- the 'Savings Programme' was a unit-linked investment savings policy, which contained life assurance to make it qualifying for taxation purposes upon maturity;
- the policy documentation stated that the optimum term to retain the policy was for 25 years;
- I disagree that because Mr L had cause to review the protection policy in 2013, this must mean he should have known that the investment savings policy was also unsuitable for him;
- he surrendered the protection policy because he had repaid his endowment mortgage at the time;
- I do recognise that as Sanlam has put forward, Mr L having been able to maintain contributions since the policy's inception does show that affordability was perhaps not an issue for him – though that is said with the benefit of hindsight;
- nonetheless, that Mr L has retained the policy beyond 25 years doesn't provide evidence as to what he was told at the time of the sale or what ought to have happened based on his circumstances at the time;
- I am also mindful that in its response to the complaint Sanlam has confirmed how Mr L *'had no deposit-based savings, the adviser did not seem to raise any concerns regarding this fact and [it] concede[s] that he certainly should have done so'*.
- though Sanlam is correct that the regulatory position at the time of the sale was different (and fact finds and reasons why letters were not required), the adviser still had to know its customer and provide a recommendation to Mr L which was suitable for his circumstances;
- the adviser did nonetheless complete some facts and information gathering on Mr L's financial circumstances (in a 'client factfile') but it was very limited;
- on the information I've seen I don't believe that Mr L's lack of investment experience, flexibility, or his investment and savings objectives were properly considered;
- and though Sanlam has said that the contribution represented just 6% of his outgoings, this is not true;
- the only known information was that Mr L's current mortgage commitment was almost 44% of his income;
- he was noted to have £486 remaining monthly after his mortgage was accounted for;
- but no other expenditure was recorded (though it will have clearly existed)– so Sanlam's percentage is not based on an accurate assessment of disposable income, since that was not known;
- on the evidence which is available, I don't believe any reasonable attempt was made by the adviser to know its customer;
- it wasn't established what Mr L's other financial expenses or commitments were or if he had the capacity to hold a policy which would need to be retained for at least 25 years to show a worthwhile return over other shorter term priorities;
- as it was, Mr L was aged 30, single and with no dependents at that time;
- however, shortly after the policy began these circumstances changed;
- whilst there will be a point at which all investors undertake investment decisions for the first time I'm not satisfied, on the balance of probabilities that this policy was a suitable recommendation for Mr L;
- while I do accept that the prudent advice was for Mr L to commit to savings - since it is documented he had no savings or available spare capital at all – I am not persuaded that it has been shown it was suitable to propose a policy with exposure to an underlying fund comprising equities which needed to remain in force over the very long term to give him worthwhile returns;

- so, while I'm satisfied that Mr L could potentially afford to pay the monthly £30 contribution for savings, I don't think the policy was structured to meet his likely needs over a shorter term than 25 years and this complaint should succeed;
- I believe it's reasonable to use our standard benchmark formula for someone who was prepared to take little to no risk with their money, and I have therefore set out appropriate redress below.

Putting things right

For the Personal Protection Programme, Sanlam should refund the premiums with 8% simple interest, from the date of payment of each premium to the date of settlement, less the surrender value paid in 2013.

For the Savings Programme, which is still in operation, Sanlam should pay compensation of 'D + E', where:

- A = a refund each of the monthly premiums paid to the date of settlement;
- B = a return on each premium in 'A' at Bank of England base rate + 1% compounded yearly, from the date it was paid to the date of settlement;
- C = the value of the policy at the date of settlement;
- D = (A + B) - C = the investment loss at the date of settlement; and
- E = interest at 8% per cent per year simple on 'D' from the date of surrender to the date the redress is paid.

Compensation for capital growth on the policy premiums in 'B' is not usually subject to income tax. However, if Sanlam considers that tax is payable on the interest, it should send a tax deduction certificate with the payment. Mr L may reclaim any tax overpaid from HM Revenue and Customs, if his tax status allows him to do so.

My final decision

I uphold this complaint. Sanlam Life & Pensions UK Limited must pay the redress I have directed above to Mr L.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 5 April 2022.

Jo Storey
Ombudsman