DRN-3757616

The complaint

Mr H has complained about the advice he was given by Sanlam Life and Pensions UK Limited ('Sanlam'). He says the recommendations made weren't right for him.

Mr H has brought his complaint via a third party, but for ease of reference I shall refer to 'Mr H' in this decision rather than his representative.

What happened

Mr H took three savings programmes and a qualifying reviewable whole of life policy upon advice from Sanlam.

In February 2021 Mr H complained about the advice he was given to buy the products. He said they were unsuitable for him and he had suffered a financial loss as a result. Sanlam upheld the complaint for the first two of the savings plans but didn't think the complaint about the third savings plan and life policy should be upheld.

It said for the third savings plan (ending 1003K) the sale was appropriate for Mr H. At the time Mr H had £6,000 of savings on deposit, already had a mortgage and was earning a respectable salary. Mr H paid £28 a month into the policy from June 1988 to October 2005. The plan provided the investment benefit from the policy and included life cover of £1,008. The plan was invested 50% into a property fund and the other 50% into a managed fund. It was surrendered in November 2005.

For the suitability of the whole of life policy (ending 6247T), Sanlam said it was paid into from December 1987 for ten years at a cost of £15 per month. The policy provided a life assurance benefit of £42,000. It was surrendered in April 1997 for £1,094.46. When it was sold to Mr H Sanlam said there were limited regulations and requirements on businesses selling these types of life assurance policy. There was no evidence to confirm it was wholly unsuitable.

Unhappy with the outcome, Mr H brought his complaint to this service.

Our investigator who considered the complaint initially thought it should be upheld in part –

- *Life policy*

  For the life cover the investigator said there wasn't any explanation as to why it was recommended to Mr H. As he was 23 years of age, single and had no dependants she couldn't see any reason why he would have had a need for any life cover as evidenced by him surrendering it after ten years. She didn't think it was appropriate for him.

- *Savings plan*

When Mr H took the savings plan in June 1988, he already had two similar policies in place. The investigator said it wasn't her role to look at what was best for Mr H but whether the advice he was given was suitable. So just because Mr H may have been better advised to combine his three savings accounts, it didn't mean it was wrong of the adviser not to recommend that course of action.

Looking at what was known about Mr H's outgoings for the two savings policies, the whole of life policy and his mortgage he already held, this suggested the policy sold in June 1988 was affordable for him. Because of his age, Mr H had the time and funds to make up any potential loss. The investigator thought the two underlying funds invested in – a managed and a property fund – were low risk and met Mr H's objective of saving. In conclusion the investigator thought the savings plan was suitable.

However, after comment from Mr H, and further consideration, the investigator concluded that Mr H's complaint about the savings plan should also be upheld. The investigator thought that at the point of sale Sanlam would have to provide a product that was suitable after determining Mr H's attitude to risk. In the absence of an assessment of Mr H's attitude to risk, and based on the information provided by Mr H, the investigator was satisfied that Mr H wasn't prepared to take much risk with his capital as he didn't want to risk losing any money.

Sanlam said that its advisers weren't able to recommend the underlying funds for the savings plan but the investigator said it still had a duty to make sure the plan didn't allow Mr H to choose funds that were too high risk to meet his needs. If the savings plan offered a range of funds, and not all of which were right for Mr H's objective of saving, then the plan wasn't suitable for him. And the funds Mr H invested into offered a greater risk than he was prepared to take.

Sanlam disagreed with the investigator. It said it was Mr H's choice as to which funds to invest in and Mr H had switched funds on several occasions. With reference to noting a client's attitude to risk it said the investigator was applying current day requirements to the time of the sale. There was no evidence to suggest it had advised the client about the fund choice. It said the funds selected by Mr H would support a higher attitude to risk than that of a balanced risk. And as evidenced by Mr H switching into higher risk funds, plus the fact that he had £6,000 at the point of sale, he could probably afford to take a bit of financial risk.

As the complaint couldn't be resolved, it was passed to me for a decision. I issued my provisional decision explaining that I intended on partially upholding the complaint and detailed how the matter should be put right but I asked both parties to give me anything further they wanted me to consider before I issued my final decision. Here's what I said;

"When the evidence I have for a complaint is incomplete or contradictory, I have to make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

The savings programme ('the plan')

As background, Mr H had two savings programmes taken shortly before the third sale made in June 1988. The first was taken in December 1987 and the second in January 1988. I won't be considering the merits of those sales as Sanlam has already agreed they were mis-sold.

The first two savings plan sales were made before the Financial Services Act 1986 came into force – on 29 April 1988. That Act was aimed at regulating investment business and giving investors greater protection. It introduced the requirement for investments to be suitable for the consumer's circumstances – so financial businesses had to find out the consumer's needs and circumstances and give suitable advice.

Before then was a legal duty to give advice with reasonable skill and care – to ensure that the recommended investment was appropriate for the consumer's circumstances at the time.

Mr H has very little recollection from the time of the sale but does recall it was a good idea to make some kind of saving. He has told us his attitude to risk was cautious. He was living with his parents until the summer of 1988 when he bought his first property with a mortgage of around £55,000 costing him about £500 per month. His income was recorded as being £29,410 and he had £6,000 in building society accounts.

Sanlam has been able to give us a copy of the 'Financial Planning Profile', 'Client Factfile' completed at the time which details Mr H's personal circumstances, his employment, income, assets, liabilities, pension scheme and details of the two savings plans already taken. But Sanlam hasn't been able to give us any paperwork from the time of the sale about how it assessed Mr H's knowledge and experience, his attitude to risk and investment objectives.

For any recommendations it made Sanlam had to ensure they met Mr H's investment objectives (including his attitude to risk, purpose of investing and how long he wanted to invest), that he was able to withstand the investment risk and had the necessary knowledge or experience to understand the risks.

Sanlam has said that at the time there no requirements to put in writing the consumer's attitude to risk. In the absence of any information or evidence to show how Mr H's attitude to risk was assessed, or what his objectives were, I have to take into account what is known about Mr H's circumstances, what Mr H has told us and consider whether the investments recommended were suitable.

Mr H was young – aged 24 years – and had just taken out his first mortgage. With the exception of the two savings plans Mr H had taken within the prior six months, I haven't seen any evidence to indicate that Mr H had any investment experience. This suggests that Mr H would be reliant upon the advice given to him by Sanlam's adviser.

Sanlam hasn't been able to show us how it established Mr H's attitude to risk. But I accept this sale took place over 30 years ago and it's understandable there is little paperwork from the time of the sale. Sanlam has said there was no need to put this in writing at the time, and if this is Sanlam's position, I would have expected Mr H's attitude to risk to have been agreed through discussion between him and the adviser.

Clearly Mr H was seeking advice because he had limited knowledge or experience to make those investment decisions unaided. The savings plan was recommended to Mr H and within that product Sanlam offered a choice of underlying investments. The Portfolio Fund Choice document I've seen (which I appreciate is from a later date than the sale) offers a wide range of funds with various risk ratings between low to high and investing in a variety of sectors.

The outcome of the meeting with the adviser was that Mr H's savings plan was to be invested – split equally – into the property fund and the managed fund, both of which Sanlam rated as medium risk investments.

Sanlam told us that its advisers weren't allowed to give advice to consumers about what selection the consumer could make about the choice of underlying funds to be invested into within the savings plan. It said this was confirmed in its Terms of Business stipulations, but it couldn't provide a copy of this due to the length of time since the sale. However, it has been able to give us a copy of its 'Savings Programme' document which explained the customer could invest in the managed fund or choose one of its 52 funds. The document further explains that the consumer could switch funds and detailed how to go about that. And Sanlam has told us that Mr H later carried out investment switches into various funds with different risk ratings. Sanlam has also said that if it had been the adviser choosing the funds then those funds would more likely have been the same funds chosen for the earlier two savings plans, but this was not the case.

However, and in the particular circumstances of this complaint, I've looked how Mr H came to be invested in the funds that he did. On the face of it, the information provided by Sanlam suggests that advice about the underlying fund choice wasn't given.

But equally I've considered the overall picture – that Mr H with little evident investment experience, attended a meeting with an adviser, upon whom I think he would have been reliant for investment advice. And the outcome of that meeting was that Mr H was to open a savings plan which was to be invested into two medium risk funds. All of the paperwork was completed at that one meeting and I find it difficult to see how Mr H would have known when the advice to invest into the savings programme had stopped and the choice of the underlying investments was for him to decide unaided.

If I think it's questionable that such an inexperienced investor would have the knowledge or experience to make those investment choices without any guidance or advice, then I would need to consider whether advice was given, albeit unintentionally through conversation or endorsement, see whether the two investments were suitable.

Alternatively, if the adviser didn't give any advice about the choice of the underlying investments – as is being maintained by Sanlam – then I would have to consider the suitability of the savings plan in the first instance if the chosen investments weren't right for him.

I say this because effectively Sanlam placed Mr H in a position of advising him to open the savings plan but then left him to make his own investment decisions without any support which I think potentially meant Mr H could invest into funds which were wholly unsuitable for him. Mr H was left in the difficult position of having agreed to the savings plan but without any help about what to do after that. It gave Mr H the unfortunate opportunity of being careless with his money without him knowing it. The savings plan exposed him to the potential of taking a risk that he has told us he wasn't prepared to take.

Bearing this in mind, I've gone onto consider the two investments that were held within the savings plan – the property and the managed fund – and whether they were suitable for Mr H, irrespective of whether any advice was given.

As mentioned above, Sanlam doesn't have any record of how Mr H's attitude to risk was ascertained so I have gone on to consider what Mr H has told us as well as his circumstances that were recorded at the time.

Mr H told us he recalls thinking it was a good idea to make some kind of saving and that his attitude to risk was cautious. But he also said he has very little recollection about the sale and I accept this sale took place over 30 years ago so I don't find this surprising as memories can and do fade over time.

While Mr H's recollection is that he was a cautious risk investor, looking at his circumstances I think it is equally as likely that H did want to explore the opportunity to make his money grow more than was available from cautious risk investments.

I say this because I've considered what is known about Mr H's circumstances as recorded by Sanlam at the time. Mr H was in his early 20's, had a respectable income of £29,410 per annum (which its recorded he expected to 'rise'), was making final salary pension contributions, had £6,000 in savings and had recently taken on a mortgage which he thought cost around £500 per month.

Taking all of this into account, I think Mr H's known circumstances suggest he was in a stable financial position and could afford to take some risk. He was young, single, had no dependants and was earning a reasonable salary which he said at the time he expected to increase. So, I think there was a capacity for loss which – in return for a better potential reward – would more likely be implicit in a medium risk investment than a cautious risk investment.

And Mr H has said he recalls that some sort of saving would be good. But I note he already had £6,000 in place with a building society – which was in excess of any funds he may have used for the deposit on his very recently taken mortgage – so he had already starting saving. Those savings also provided Mr H with a reasonable financial cushion representing around three months' worth of his salary. And taking into account his known income and outgoings, I've seen nothing to suggest the monthly premium for the savings plan of £28 was unaffordable for Mr H.

So, I don't think it's unreasonable to suggest – or conclude that it was just as likely – that Mr H was looking for an alternative to savings and was willing to take more risk than cautious. Sanlam has told us that subsequent to the initial investment Mr H carried out several fund switches into various funds with differing risk ratings, which while I accept these actions were after the initial advice was given, does suggest that Mr H was comfortable with the investment over the years and confident enough to make those switches.

Overall, I haven't seen sufficient evidence for me to conclude that Mr H wasn't willing to take a medium risk with his investments rather than cautious. So currently, and in the particular circumstance of this complaint, I'm not minded to uphold Mr H's complaint about the savings plan.

The whole of life policy

This sale took place in December 1987 prior to the introduction of the Financial Services Act on 29 April 1998 and at that time the business representative had to advise with skill, care and diligence and deal fairly with investors.

The cost of the policy was £15 per month and after deduction of the cost of the life assurance itself, the remainder of the premium was to be 100% invested into a managed fund. The sum assured was £42,000.

In the absence of much information being available about Mr H's circumstances at the point of this sale, I've considered whether Mr H wanted or needed life cover.

At the time of sale in 1987, Mr H was young and single with no dependents. He was living at home with his parents and he took his first mortgage in the summer of 1988, so life cover wasn't needed for mortgage purposes, which may have been a requirement at that time. He says he can't recall wanting life cover, his only intention was to start saving.

I accept that the policy provided the opportunity for saving, but this could have been achieved without the addition of the life assurance and implicit cost. It's difficult to conclude that the policy was appropriate for him – no-one was going to be financially disadvantaged in the event of his death – and he could have achieved savings growth without the need or cost of the whole of life policy itself.

So, in the particular circumstances of this complaint, I am upholding it. I can't see that the advice was appropriate for him at the time so I cannot conclude Mr H was advised with reasonable care and skill. So, to put the matter right, Mr H should be put back into the position he'd have been in had he not taken out this life cover."

To put things right I said, Sanlam should refund the premiums Mr H paid for the whole of life policy less the surrender value, plus interest at 8% simple per annum from the date the premiums were paid to the date of settlement.

In response to my provisional decision Mr H said he had nothing to add. We didn't receive any reply from Sanlam.

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.

As neither party to the complaint has given me anything further to consider, I see no reason to depart from my provisional decision. So, I confirm those findings and reiterate the compensation that Sanlam should calculate.

Putting things right

To put things right Sanlam Life and Pensions UK Limited must do the following:

- Refund the premiums Mr H has paid for the whole of life policy less the surrender value.

- Add interest* at 8% simple per annum from the date the premiums were paid to the date of settlement.

*If Sanlam Life and Pensions UK Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr H how much it's taken off. It should also give Mr H a tax deduction certificate he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

I uphold Mr H's complaint about the sale of the whole of life policy and Sanlam Life and Pensions UK Limited should put things right in the way I've set out above. I do not uphold Mr H's complaint about the savings plan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 November 2022.

Catherine Langley
Ombudsman