DRN-3825642

The complaint

Mr B is represented by a claims management company ('*CMC*') in bringing his complaint. It says that Sun Life Assurance Company of Canada (U.K.) Limited ('*Sun Life*') mis-sold a Capital Builder Plan to Mr B in August 1993.

What happened

The Capital Builder Plan was a unit-linked qualifying savings policy. Mr B chose a monthly premium of £25 with an initial sum assured of £5,640. He surrendered the policy in August 2006 for £3,500.17.

A complaint was forwarded to Sun Life by the CMC in October 2021. It said that the complaint was fourfold. The policy had been mis-sold because:

1. Mr B was in his early twenties, single and living in rented accommodation – there was a strong likelihood that his situation would change in the medium term, so for Sun Life to propose a 25-year inflexible policy was inappropriate;
2. Mr B didn't have any dependants, so the life cover within the policy was unnecessary;
3. there was no evidence of any other savings options being discussed with Mr B, such as tax-efficient savings options with greater flexibility;
4. half of Mr B's investment was placed into an aggressive fund – and this exceeded his 'medium' risk profile.

In March 2022, Sun Life rejected the complaint. It said it took the view that the policy had been appropriate for Mr B's circumstances at the time of the sale. Its adviser hadn't been required to document discussions about other alternative products, as the regulatory position at that time did not require it to do so. However, the adviser had completed a necessary fact find with Mr B. Sun Life also concluded that the inclusion of life cover was appropriate, as it was required to ensure the policy did not incur a tax liability for Mr B upon surrender.

So, the CMC brought Mr B's complaint to this service. It supplied evidence of complaints about Capital Builder Plans sold to two other customers in 1992, where Sun Life had upheld them. In those examples, Sun Life couldn't evidence that its adviser had fully explained the risks associated with the policies in a balanced manner, nor had the advisers held any meaningful discussions about alternative risk-free savings options with the customers. It also agreed life cover wasn't necessary.

In both instances, Sun Life had returned the policy premiums in full, with interest at a rate of the Bank of England base rate +1%. The CMC said the same redress should apply to Mr B.

One of our investigators reviewed the complaint and felt it ought to succeed – albeit on a different basis than that put forward by the CMC. He took the view that the policy had been suitable to recommend to Mr B as it provided him the potential for savings growth. However, he disagreed that it had been appropriate to propose a policy with a 25-year term given the inflexibility and Mr B's age at the time of the sale.

Our investigator concluded that Sun Life ought to treat the policy as if a shorter ten-year extendable term had been selected, and recalculate the surrender value Mr B would have received in 2006. If this showed any financial loss, the difference should be paid to Mr B with interest of 8%.

Aside from a query regarding redress on other cases, the CMC said Mr B welcomed the complaint outcome. However, Sun Life did not agree. Whilst it didn't have any other comments to make, it asked for the complaint to be referred to an ombudsman.

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.

Having looked at everything before me, I also believe this complaint should be upheld, on the same basis put forward by our investigator. I'll explain my reasons for reaching this conclusion below.

I note that the CMC has supplied evidence of different complaints by other complainants about Capital Builder Plans, where Sun Life agreed they were mis-sold or wrongly advised. But those complaints are not relevant here; Mr B's complaint is distinct and specific to him. No two complaints are factually identical, and I do not consider that other upheld complaints create any precedent on this complaint before me. Each complaint at this service will be addressed on its own merits and circumstances.

The savings policy had a chosen monthly premium of £25, and was set up for a 25-year term. Life assurance was included to ensure any gains arising from the policy were exempt from income tax.

It was recorded on the application that Mr B had wished to save for his future, and I do not believe the inclusion of a small proportion of life cover rendered the policy unsuitable for that purpose. I say that with particular reference to the fact that Mr B held no other life assurance at the time of the sale.

I recognise that Mr B was only in his early twenties at the time of the advice, and he did not own any property or have any dependants. But that of itself doesn't mean the proposal for a savings policy was automatically unsuitable, merely because it was set up as a medium term or a long-term investment (at the choosing of the customer).

The fact find documentation had set out how future financial plans were a consideration for Mr B. After the cost of his expenses was deducted from his net monthly salary, he had a recorded £860 of disposable monthly income. I therefore consider the premium was affordable for him – and I note it was the lowest possible premium for this type of policy, where set premiums could be selected from £25, £40, £50, £80 or £100 per month.

I realise the CMC has submitted how the policy may be unsuitable for Mr B because of the risk rating of one of the two underlying investment funds (there was a 50/50 split across international and equity funds). However, Mr B was assessed in the fact find documentation as to his appetite for risk, and, in my view the documentation issued at the time gave Mr B sufficient information to make an informed choice regarding the investment.

In the round, I do not believe the recommendation was unreasonable, merely because of Mr B's age, circumstances or the underlying investment risk of the savings policy. There will be a point at which all investors undertake investment decisions for the first time and I'm satisfied, on the balance of probabilities, that this policy was a suitable recommendation for Mr B to achieve his future savings goals.

However, like our investigator, I do not believe the proposed policy term was appropriate in the circumstances. Whilst Mr B had a documented need for savings and no other cover or investments of this nature, he also had notable flexibility around his goals and aims; Mr B did not have any confirmed intent as regards property, his family, or other documented reasons for requiring a policy set up to mature just before he reached his 50's. It is clear that Mr B hadn't given consideration to a future savings or investment requirement over a long term, but rather, the medium term. This, in my view, is borne out by the surrender of the policy in 2006.

I agree with our investigator that the appropriate advice in these circumstances would have been a shorter term of ten years – with the option for review. This would have afforded Mr B a degree of reflection in 2003, by considering and revisiting his savings needs in his early thirties - at a time where his circumstances could have materially changed. I say that with reference to the fact the adviser had noted how Mr B had said he included property, marriage and children as future personal and financial aspirations.

The fact find documentation allowed for terms of 10, 15, 20, 25, 30, 35, or 40 years to be considered for medium to long term savings policies such as this Capital Builder Plan. Based on the evidence I've seen, while I don't find the recommendation unsuitable, I agree that a medium term investment ought reasonably to have been considered for Mr B. Sun Life should therefore undertake a redress comparison with the surrender value Mr B received in 2006, against the return he would have received if he had selected a shorter policy term.

Putting things right

Sun Life ought to undertake a comparison on the return Mr B would have received if he had taken a medium term policy, extended to 2006 – using the same monthly £25 contribution and the same level of risk ascertained in the fact find in 1993.

If this comparison shows that the surrender value Mr B received in 2006 was greater, then no redress is payable. If a medium term extended policy would have produced a larger return, Sun Life must pay the difference to Mr B.

If Sun Life considers it is legally obliged to deduct income tax from the interest paid, it should issue a tax deduction certificate with the payment. Mr B may be able to reclaim the tax paid from HM Revenue and Customs, if applicable.

My final decision

I uphold this complaint. Sun Life Assurance Company of Canada (U.K.) Limited must pay Mr B the redress I've set out above, with interest – if the redress comparison shows Mr B would have achieved a greater return on a medium term policy in 2006 than his 25-year policy. If Mr B's surrender value exceeds that of the redress comparison, no award will be due.

I make no other award or direction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 November 2023.

Jo Storey
Ombudsman