DRN-3868217

The complaint

Mrs P complains, through a claims management company, that a predecessor scheme of Zurich Assurance Ltd provided unsuitable advice in 2001. She feels the fund she was recommended to invest in was too risky for her.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again here. The facts are not in dispute so I will focus on giving the reasons for my decision.

I issued a provisional decision on 6 December 2022 where I set out why I felt the complaint should be upheld and what I felt the redress should be. An extract is below and forms part of this 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've looked at what I know about Mrs P's overall financial situation when she took out this investment. In addition to what the parties have told me, I think it's reasonable for me to rely on information in the 'fact find' document and suitability letter.

Mrs P was employed, and her annual pre-tax income was around £10,000 per year. She was married and she lived in the family home, which had a mortgage of approximately £90,000. Together with her husband, they had approximately £700 net monthly disposable income. Mrs P had two financial dependants. She was recorded as wanting to invest a lump sum to supplement her income. This was coming from approximately £45,000 of joint savings she held with her husband. She was also expecting their joint income to increase by 5%.

I've thought carefully about whether the investment fitted Mrs P's risk approach. Mrs P needed to be comfortable that the level of risk associated with the recommended investment reflected her attitude to risk. I agree with the Investigator, that I can't say she was. Her attitude to investment risk wasn't confirmed and the only reference I can see to it, was in the suitability letter where she is referred to regarding herself as having a "balanced attitude to risk".

As Zurich can't show how it assessed Mrs P's attitude to risk or that it explained the risk to her, I do not believe it was reasonable to recommend such a risk-based investment to her. The fund fact sheet suggests it comprised of approximately 75% of equities, this included overseas equities. Whilst I presume risk was discussed as it was mentioned in the suitability letter (and there is nothing to show that Mrs P objected to the classification), I don't believe she understood the risks involved. Zurich hasn't shown me that it explained that lower risk investments could still have offered Mrs P potential for growth but at less risk to *her capital.*

On balance, based on what I've seen and been told, I can't fairly make a finding that investing in the PIB Managed Fund was a risk Mrs P was willing to take with her money. In terms of risk, taking into account her limited investment experience and the indications that she leant towards the more conservative/less speculative end of Zurich's risk scale, I think a more cautious investment strategy would've been suitable for Mrs P.

So, I am not satisfied that the recommendation was suitable for her. This means Zurich needs to take steps to put things right.

For all these reasons, I am upholding this complaint.

Zurich didn't respond to the PD and so there was nothing further from them to consider.

Mrs P responded through her CMC to say that she agreed with the PD and had no further comments for me to consider.

Putting things right

As neither party had any further comments for me to consider, my findings are as set out above and in my provisional decision. Zurich should put things right for Mrs P as set out below.

I think the appropriate benchmark here is to compare what Mrs P actually earned with what she would have earned had she invested into funds where there was a small element of investment risk.

Fair compensation

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

I take the view that Mrs P 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 P's circumstances and objectives when she invested.

To compensate Mrs P fairly, Zurich must:

- Compare the performance of Mrs P'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.

- If Mrs P paid separately for the life cover, Zurich should ensure she is compensated for this extra cost by refunding the premiums paid plus 8% simple per year from the date the premiums were paid to the date of settlement.

Portfolio name	Status	benchmark	From “start date")	additional interest	
Portfolio Investment bond- Managed Fund	Surrendered	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	Date ceased to be held	8% simple per Year on any loss from the end date to the date of settlement

Income tax may be payable on any interest awarded.

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:

- I have found that Mrs P most likely wanted capital growth with a small risk to her capital.

- The average rate of the fixed rate bonds would be a fair measure of someone who wanted to achieve a reasonable return without risk to their capital.

- The FTSEUK 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 P'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 P into that position. It does not mean that Mrs P 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 P could have obtained from investments suited to her objective and risk attitude.

My final decision

My final decision, for the reasons set out above, is that I uphold this complaint and Zurich Assurance Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs P to accept or reject my decision before 17 January 2023.

Yoni Smith
Ombudsman