DRN-3969221

The complaint

Mr S has complained about the advice he received from Sanlam Financial Services UK Limited ('Sanlam') to invest into two Savings Programmes.

Mr S is represented by a third party bringing his complaint but for ease of reference in this decision is shall refer to 'Mr S'.

What happened

Mr S was advised by Sanlam to invest into two Savings Programmes which I shall refer to as 'Policy one' and 'Policy two'. Details of those investments and partial surrender are;

Policy no.	Dates of sale	Monthly premium	Segments surrendered	Dates of surrender	Total invested	Surrender proceeds	Segments still running
One	27.04.90	£35.00	6 to 9	29.11.07	£2,968.00	£4,269.94	Zero to 5
			4 and 5	21.08.19	£2,464.00	£5,224.76	Zero to 3
Two	19.09.90	£50.00	6 to 9	29.11.07	£4,140.00	£5,898.38	Zero to 5
			2 to 5	04.04.19	£6,620.00	£12,993.03	Zero to 1

Mr S became concerned about the advice he had received and complained to Sanlam. He said there was no evidence of more suitable savings options being discussed. The policies were written to the age of 65 years and there was no evidence that a suitable ten-year savings contract with the option to extend was discussed which he says would have been cheaper, therefore producing a better return.

When Policy two was taken Mr S would have met Sanlam's threshold for its Investment Programme but there was no evidence this better policy was discussed and that Policy one should have been cancelled and the ten-year plan taken funded by the premiums being paid for Policy one and two.

In its response to Mr S's complaint Sanlam didn't think it should be upheld and said;

- The Savings Programmes – Policies one and two – were written on a non-qualifying basis and without any life assurance. The qualifying nature of the alternative Investment Programme and the additional mortality costs that would have been incurred didn't make this a straight swap in terms of cancelling Policy one and investing the premiums of Policy one and two into a new ten year policy.
- The fact find for the sale of Policy two said Mr S wanted to increase his savings for his mortgage. His Homeowners Programme was set up for 25 years and would suggest a longer-term savings programme may have been more appropriate. And it said Mr S's risk rating was high which suggested he would have been declined at underwriting stage for an Investment Programme or that he specifically didn't want life assurance due to the higher mortality charges.
- And as some of the segments were still in form this suggested Mr S was looking for

longer term savings than a ten-year plan.

Mr S said that the Savings Programmes were sold to people in their twenties who did not require such a long-term product and the sales were commission driven. The better product was the Investment Programme because of its ten-year extendable policy with lower charges bur this wasn't discussed because of the lower commission level. Mr S was instead sold two Savings Programmes within a five-month period in order to maximise commission.

Our investigator who considered the complaint didn't think it should be upheld. He said;

- There was nothing to suggest the Savings Programmes were unaffordable for Mr S.
- There was nothing to suggest Mr S didn't want to invest for the longer term or for a specific purpose. No attitude to risk was recorded so it was difficult for the investigator to comment on that.
- From the information available Mr S wanted a savings plan and even though he had made partial withdrawals there wasn't any evidence to persuade the investigator that the advice was unsuitable.
- The investigator could only consider what had been invested into, and not any alternatives.

Mr S asked for his complaint to be passed to an ombudsman for a decision.

I issued my provisional decision concluding that the complaint should be upheld 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;

> 'I should first make clear that I appreciate how long ago these sales were made and it might be difficult for Mr S to recollect details from the time and for Sanlam to have complete documentation. 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 of what I think is most likely to have happened given the available evidence and the wider circumstances.
>
> And while both sales were a long time ago, they were made after 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 investment to be suitable for the customer's circumstances – so financial businesses had to find out the customer's needs and circumstances and give suitable advice.
>
> <u>Mr S's circumstances</u>
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> There is some documentation available from the time of the two sales and some information about Mr S's circumstances was recorded. As that was recorded at the times of the sales, I don't think it's unreasonable for me to rely on that information. And I also asked Mr S for his recollections.
>
> In April 1990, at the time of the first sale, its recorded that Mr S was 28 years of age, single, employed and earning £9,360 annually. He owned his own property with a mortgage outstanding of £21,850 which cost £220 per month. He had bought that property in November 1988 but planned to move in December 1990. He had no other assets but did contribute to a contracted-out pension scheme at £40 per month and was paying off credit card debt at £52 per month but which was due to be repaid in October 1990. He had two life assurance policies costing him £25 per month. Mr S

didn't hold any savings or investments. It's recorded in the 'Client factfile' that Mr S's 'Client Objectives/Ambitions' were for savings and retirement provisions.

The September 1990 Client factfile update sheet records that Mr S was now married and lived in the same property. Under 'Change' its recorded that Mr S 'Would like to remortgage property to capital raise [£]5,000 & increase savings by £50.00pm'. The factfile records that Mr S did plan to move in the December of that year so he might have wanted to raise that capital for moving costs but Mr S's recollection is that he wanted those funds for wedding costs and I note he had recently married.

I asked Mr S's recollection about his circumstances around the time of the sales, which, as mentioned above, I appreciate was a long time ago.

He told us that he didn't have any savings or experience of investment which ties in with the factfile records but recalls that he thought it would be prudent of him to start saving. I asked him about why he wanted to save/invest for the longer term of 25 years or more. Mr S's recollection is that he wasn't aware that the policies were exclusively long term as they were presented as being suitable for the medium term. For the second sale Mr S couldn't recall the reason for the increase in savings of £50 per month. In its response to Mr S's complaint Sanlam had said that Mr S increased his savings for his mortgage, but I can't see there being any record of that in the fact find.

<u>Mr S's attitude to risk and the advice</u>

In the absence of any information or evidence to show how Mr S's attitude to risk was assessed, I have to take into account what is known about his circumstances, what he has told us and consider whether the investments recommended were right for him. I asked Mr S about this and he told us his recollection that 'he was not willing to take much risk' with his money.

The information I have about Mr S is that he was employed, had a mortgage plus – I assume – the usual household outgoings, was repaying a credit card debt which was to finish shortly. Mr S was employed at the time of both sales and earning £9,360 – or £780 a month gross. There's no note of his net income.

When both policies were running the premiums were £85 per month. Ignoring the short-term repayment for the credit card bill, Mr S was paying £220 for his mortgage, £25 for his life assurance policies and £41 in pension contributions. So, he had known monthly outgoings of £371 without taking into account essential household outgoings. The two Savings Programmes premiums represented nearly 11% of his gross income.

Mr S did apply for an earnings replacement programme for £550 per month in July 1990 – which he didn't take up. And while that requested programme payment of £550 per month may not have been a true reflection of Mr S's net monthly income, I think it's likely it was at least the minimum Mr S thought he could live on if he wasn't able to work. So, taking this into account, and the fact that the premiums represented around 15% of £550, I've not been given anything to suggest that the policies were unaffordable for him.

The factfind records that Mr S didn't have any savings or investments at the time and that is his recollection also. And without any experience, this suggests that Mr S would have been reliant upon the advice given to him by Sanlam's adviser.

Mr S has told us that he was looking to save. And in some instances, a first-time saver might be willing to take some level of risk with their savings for the potential of capital growth. It's not always the case that a first-time saver isn't willing to take much risk. But bearing in mind this was Mr S's first time investing, he didn't have any savings to fall back on and that he told us he didn't want to take any risk and, I don't think it's unlikely he would have erred on the side of caution in order to build up his savings – via investment – in the first instance.

However, I can't know this for sure and I've equally borne in mind Mr S was relatively young and the Savings Programmes were for the longer term, so potentially Mr S could have been willing to take some level of risk over those terms.

I've reviewed The Savings Programme document which says;

> 'The longer you keep contributing, the more you will have paid in and, if investment values move ahead as expected, your accumulated savings will be worth more. The Programme is designed to grow steadily with the optimum benefit and worth being realised after about 25 years….
>
> Remember you are saving for the long term and it will be some time before the value of your units exceeds the contributions you have made.'

I've borne this in mind when considering whether it was right for Mr S to be advised to invest into the Savings Programmes taking into account all of his circumstances. And based on the evidence I have and Mr S's recollections, I don't believe any reasonable attempt was made by the adviser to know its customer. It wasn't fully established what Mr S's other financial expenses were or if he had the capacity to hold the policies which would the above makes clear would need to be retained for at least 25 years to show a worthwhile return over other shorter term priorities particularly bearing in mind that because of his relatively young age, it wasn't unforeseeable that his circumstances may have changed.

And while there will be a point at which an investor undertakes investment decisions for the first time, I'm not satisfied, on the balance of probabilities that these Savings Programmes were appropriate or suitable recommendations for Mr S.

Mr S has said that other more suitable options weren't discussed. And in particular he referred to the Investment Programme. But my aim isn't to consider what alternatives may have been available but to look at whether the recommendations and investments that were made for him were suitable for his needs.

In its response to Mr S's complaint it says the policies were sold on a non-qualifying basis and without any life assurance. But the Programme Schedule I've seen for both policies states that the savings programmes provided an investment benefit and a life assurance benefit. And I note that Mr S was already paying monthly premiums for two life assurance policies at the time of the first sales.

At the time Mr S took out the first policy he had no financial dependants in need of life cover and was married when he took the second policy. However, in the absence of knowing otherwise, I accept he may have needed those two earlier policies for mortgage purposes. But he had his mortgage set up by the time he received advice from Sanlam and I haven't seen anything to suggest that Mr S wanted to increase the benefit payable upon his death so I would question why the Savings Programmes, with the implicit increase in the costs of the premiums to cover the life assurance element of the policies, was thought to be the best option for him. They included a cost in the premiums for life assurance, a benefit he already had in place.

Both of the Savings Programmes were initially 100% invested into the MI Managed Fund. The fund description in January 1990 was 'The Fund is managed for growth and consists of a substantial property element, UK and international equities and fixed interest securities.' There is no mention of Sanlam's own risk rating of the fund, but the constituents of the fund suggest the risk imposed in investing were higher than low risk and I am aware that several years later, Sanlam did rate the risk for the fund as medium.

I note Mr S did switch his funds 70% into MI Gartmore Pacific Growth Fund and 30% into MI Baring Eastern Fund in 1994. But that was four years after the initial sales, so I don't think that action has a bearing on what he was advised at the times of investment.

While I accept these two Savings Programmes were sold over 30 years ago, the documentation provided by Sanlam from the time of the sales doesn't indicate that Mr S's lack of investment experience, circumstances or his investment and savings objectives were properly considered.

While I do accept that the prudent advice was for Mr S 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 two policies with exposure to an underlying fund comprising property, UK and international equities and stock market exposure which needed to remain in force over the very long term in order to give Mr S worthwhile returns.

So even though I am satisfied that Mr S could potentially to pay the monthly contributions of £85 for savings, I think the Savings Programmes were inflexible and I don't think they were structured to meet Mr S's likely needs and potential alterations to his circumstances – which did change between the first and second sale when he got married – over a shorter term than 25 years.

And while I accept that the policies provided the opportunity for Mr S to save, this could have been achieved without the addition of life assurance and the implicit costs. It's difficult to conclude that the Savings Programmes were right for him – he already had two life assurance policy and he could have achieved savings growth without the need or costs the further life policies.

So, taking all of the above into account, I have provisionally decided that Mr S's complaint should succeed.'

To put things right I provisionally said Sanlam should compare the performance of the two Savings Programmes with the Bank of England base rate over the period.

Mr S responded to say he didn't have anything further to add.

Sanlam wasn't happy with the proposed outcome. It said;

- The policies were still partly in force, which would indicate the terms weren't unsuitable. As Mr S had made several partial surrenders demonstrates the flexibility of the product and that his money wasn't locked away.
- Mr S's policies were non qualifying and the bare minimum life cover of £100 was

applied as demanded by the regulator. This would lead to a miniscule impact on growth. As soon as the policy achieved a positive value equal to the amount of cover there would be no further life cover costs to Mr S.

- The Managed Fund was rated in accordance with whatever rules were in place at the time. It wasn't for this service to decide years later that it wasn't correct. Any change to the rating could have been due to alterations in regulations and the investments held.

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.

Sanlam has said that as the policies were still in force this suggested they weren't unsuitable for Mr S and because of the partial surrenders, they were flexible. I agree that by Mr S still having segments of the Programmes still running may suggest that Mr S wasn't dissatisfied with them. But I don't think that adds anything to the question of whether they were suitable at the outset. They were designed to be long term investments – over 25 years – and I didn't think that in itself was right for Mr S bearing in mind his personal and financial circumstances and young age of 28 years. And it was clear his circumstances had significantly changed by the time of the second sale as he had gotten married and was looking to move to a new house.

Sanlam has clarified the cost of the life assurance element of the policies. And I understand that a minimum life cover would have had a limited impact on the growth.

I accept that the MI Managed Fund wasn't risk rated by Sanlam at the times of the sales. And the fact that the risk rating may have increased later could have been due to changes in regulations or the underlying investments. However in my provisional decision I also said that at the time of the investment in 1990 Sanlam's description of the fund was 'The Fund is managed for growth and consists of a substantial property element, UK and international equities and fixed interest securities' and that the constituents of the fund suggested that the risk imposed was higher than low risk.

While I accept Sanlam's comment that its own risk rating of the Fund was after the sales, but I don't find my comment that I thought it likely that the Fund exposed Mr S to a higher than low risk to be unfair. The investment into property was recorded as being 'substantial' which suggests a material investment held within the Fund. Property can be an illiquid asset class making it difficult to sell quickly at the right price and property values can be volatile. The equity element would have exposed Mr S to the potential of stock market investment risk and the overseas element of the equity exposure could have posed additional risks such as currency fluctuations.

I also said that without any investment experience, Mr S would have been reliant on the adviser. As this was Mr S's first venture and he didn't have any savings to fall back on, I didn't think it unlikely that he would have wanted to err on the side of caution and his recollection is that he didn't want to take much risk. So, I think it's questionable whether the MI Managed Fund – with its apparent risk exposure of the underlying investment – was right for Mr S.

So, Sanlam's comments haven't caused me to change my mind on the outcome of Mr S's complaint. Overall, taking all of the above into account and my provisional decision Mr S's complaint should be upheld.

Putting things right

To put the matter right, Sanlam needs to do the following;

For both of the Savings Programmes, which are still in operation, Sanlam should pay compensation of 'D + E', where:

- A = a refund each of the monthly premiums paid to both programmes for the respective start dates to the dates 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 dates of settlement;
- C = the value of the policies at the dates of settlement;
- D = (A + B) - C = the investment loss (if appropriate) at the dates of settlement ;

  And;

- E = interest at 8% per cent per year simple on 'D' from the dates 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 S may reclaim any tax overpaid from HM Revenue and Customs if his tax status allows him to do so.

My final decision

My final decision is that I uphold Mr S's complaint and Sanlam Financial Services UK Limited should put matters right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 March 2023.

Catherine Langley
Ombudsman