DRN-3989436

The complaint

Mr W complains about a recommendation made by Sun Life Assurance Company of Canada (U.K) Limited (Sun Life) to take out a 10-year savings plan in 2000.

He is represented by a claims management company (CMC). It says the recommendation wasn't suitable for Mr W because the plan contained life cover, which it says he didn't need as he was single with no dependants. The CMC says an ISA was a better alternative as it was more tax efficient, had greater flexibility and had lower charges.

The CMC also says the funds the plan was invested in were mostly high-risk funds which it says were too risky for Mr W. It doesn't agree with the assessment of Mr W's risk profile and says there didn't appear to have been any discussion about risk.

What happened

Mr W met with an adviser from Sun Life in 2000. The adviser recommended that he take out a 10-year Maximum Savings Plan with a monthly contribution of £50. The adviser also issued a reasons why letter setting out the reasons for the recommendation.

Mr W took out the plan. It appears, from the information provided by Sun Life to his representative, that he surrendered the plan in 2003.

In 2022 the CMC complained to Sun Life on Mr W's behalf. It said that Mr W didn't need the life cover included in the plan because he was single with no dependents.

It said Mr W should have been advised to take out an Individual Savings Account (ISA) instead. It noted that type of investment offered the option to transfer to a fixed interest fund. So it didn't agree with the explanation given in the reasons why letter for discounting an ISA, namely where it said there was no option to transfer to cash in times of high market volatility.

The CMC also said that the funds the plan was invested in were too risky for Mr W given his circumstances at the time.

Sun Life didn't uphold Mr W's complaint. It said that at the time the plan was taken out Mr W had a medium to long term savings objective. Sun Life said his disposable income at the time suggested he could afford the monthly contribution of £50.

Sun Life said that life cover was built into the plan and made it qualifying for tax purposes. It noted that Mr W had a life assurance shortfall. So it said the life cover provided by this plan could be used to pay for funeral expenses.

Sun Life said the different funds available posed different levels of risk, but it said they would have been selected by Mr W because its advisers weren't allowed to advise on fund choice. It said the adviser could provide information about the different funds and the key features document would also provide information that would have made Mr W aware of the aims and risks of each fund.

The CMC referred Mr W's complaint to our service. It reiterated the points of complaint.

Our investigator considered Mr W's complaint and was of the view that it should be upheld. He took into account Mr W's circumstances and objectives at the time and was of the view that the funds selected posed more risk than Mr W was willing to take.

The investigator was of the view that Mr W would have been willing and able to take a low level of risk with the money he had invested. So he said that Sun Life should compare the performance of the plan with the performance of a benchmark using a 50/50 combination of the FTSE UK Private Investors Income Total Return Index and the average rate from fixed rate bonds.

Sun Life didn't agree with the investigator's conclusions. It reiterated that when its advisers sold this type of plan, they weren't allowed to recommend the investment fund choice. It said they were only able to provide information to allow the client to make the fund choice.

The investigator noted what Sun Life had said about its advisers' role but felt that given Mr W's circumstances it was more likely than not, that he had discussed the funds with the adviser before a selection was made. He didn't think the assessment of Mr W's risk profile was reasonable in the circumstances and said he was recommended an investment commensurate with that risk profile, so the advice was unsuitable. He also didn't think Mr W needed the life cover contained within the plan as he was single with no dependants.

As no agreement could be reached the complaint was referred to me for review.

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.

To recap, Mr W met with an adviser in 2000. A personal financial planning profile was completed at the time which recorded that he was in his late forties, single and employed. Mr W didn't own his own home and he had a small amount of savings. In the profile it was recorded that he had a balanced/aggressive attitude to risk.

A reasons why letter was issued by the adviser summarising the advice provided and it recorded that Mr W had an objective of "Regular savings." It stated:

"*You want to provide a lump sum in the medium to long term through a disciplined method of regular savings. You also have a shortfall in Life Cover."*

and

"I therefore recommend you take out a Maximum Savings Plan for a term of 10 years. This will provide you with a capital sum at the end of the term. It provides a minimum amount of the anticipated savings on death within the term of £4,500, which will go towards your shortfall in this area as detailed in the attached Financial Objectives page and pay off your debts/funeral expenses on death. "

I am satisfied on balance that Mr W had a savings objective as recorded in the summary and I note he paid into the plan for a few years. I think it more likely than not that he was seeking to build up a capital sum as he didn't have a significant amount of savings. I consider a savings plan was a way of achieving this as it was a disciplined way of ensuring regular payments were made. In addition the illustration from the time indicated that the impact of charges still allowed a return to be made on the payments made into the plan.

However, no clear purpose for building up that capital sum was recorded. So it isn't clear why Mr W wanted to commit to paying premiums for ten years. I also note that the point of sale documentation indicates that there was an early surrender penalty if he cashed in the plan prior to the end of the term.

<u>Inclusion of life cover</u>

The CMC says that as Mr W was single with no dependants, he had no need of the life cover included in the savings plan.

Life cover is included in this type of plan in order to make it qualifying for tax purposes, so the plan holder doesn't have to pay any further tax on maturity. I think that is a feature that would have, in all likelihood, been attractive to Mr W.

As life cover is an additional cost this will generally have an impact on the performance of the plan. However, as the amount of life cover here was relatively small - £4,500 - I don't think it is more likely than not to have had a significant impact on the performance of Mr W's plan. And the illustration from the time indicated that taking account of the charges, the plan would still be able to make a return.

I can see there was reference in the reasons why letter to Mr W using the life cover for funeral expenses or to cover debts, but I don't think, given his circumstances, that he had a clear need for cover.

While I don't think it is clear that Mr W needed the life cover included in this plan, I am not persuaded the inclusion of the life cover, <u>of itself</u>, meant that the plan was unsuitable for him.

<u>Level of risk</u>

When Mr W took out this savings plan, he didn't have any prior investment experience and the job he held at the time doesn't suggest that he would've had any other knowledge of investments.

The financial profile indicates that Mr W had some disposable income, but it appears that the recording of his outgoings and expenses was fairly limited, as for instance, premiums he was paying for a protection plan weren't included. So, I consider it more likely than not that, in reality, his disposable income was lower than recorded.

Mr W didn't own his own home and he didn't have a significant level of savings, so I think his assets were fairly limited. Given his financial situation and his lack of investment experience I am not persuaded on balance that he wanted to take a balanced to aggressive level of risk as identified in the profile. I note the funds the plan was invested in included international equities which posed additional risk due to currency fluctuations.

I note there was no reference to his attitude to risk in the reasons why letter and I'm not persuaded on balance that he understood the level of risk posed by the funds he invested in. Overall, I don't think he would have chosen to take that level of risk if he had.

Sun Life says its adviser was not allowed to recommend the funds, and they would be selected by the individual taking out the plan. So, it says Mr W would have chosen the funds himself.

While I note the point Sun Life makes, I think in *this* case, there was a clear causal link between the advice Mr W received and the funds his plan was invested in.

In its response to the complaint Sun Life said "*When your plan commenced in February 2000 our agent was required to establish your attitude towards investment risk. Your attitude towards risk were recorded as being balanced/aggressive*."

I can see that the financial profile was signed by the adviser and the consumer, and I consider it more likely than not that they completed the document together, with the adviser providing guidance and advice where necessary. So I consider it more likely than not that the adviser assessed Mr W's risk profile as being balanced/aggressive.

I also take into account that the financial profile, which included that risk assessment, and the application form, which contained the fund selection, were both signed, and therefore completed, on the same day.

I also note there was a default fund if no selection was made, however four separate funds were selected for Mr W's plan in equal proportions: the Green Fund, the UK Equity Growth Fund the Perpetual Fund and the Far East Fund.

Overall, I consider the selection of these funds for Mr W's plan was a direct consequence of the risk profile assessment by Sun Life's adviser. Accordingly the end result was that Mr W was recommended a plan invested in funds that posed more risk than he was willing and able to take, and which was therefore unsuitable for him.

I agree with the investigator, that taking into account his circumstances and objectives, Mr W would have been willing and able to take a low level of risk with the money he invested in order to try to achieve a return.

<u>Alternative investments</u>

I have also considered the CMC's assertion that Mr W should've been recommended an ISA instead of the MIP. While I think that an ISA was a potential alternative, I don't consider that there is sufficient evidence to demonstrate that Mr W would otherwise have taken out an ISA. It seems there was some discussion about ISAs at that time and Mr W indicated a preference for the discipline of making regular monthly payments.

<u>Summary</u>

Overall, I consider there are a combination of factors here that lead me to conclude that the recommended plan was unsuitable for Mr W. Although I am satisfied that he had a savings objective I don't think there is anything to indicate he had a purpose or requirement for the ten-year saving term. I also don't think there was a clear need for the life cover given his circumstances. Although as I have said, I consider the impact of its inclusion was likely to have been fairly minimal. I consider the funds invested in posed too much risk for Mr W and I am satisfied there was a clear causal link between the advice he received regarding his risk profile and the four funds that were selected.

Putting things right

I am not persuaded, taking into account the limited information recorded at the time, and the many years that have passed since the plan was taken out, that I can ascertain precisely what investment Mr W would otherwise have invested in but for the unsuitable advice to take out the MIP invested in the four funds.

So, I think it is reasonable to say he would have invested in another investment which posed a low level of risk and that any compensation should be calculated by way of comparison with a benchmark as set out below.

Fair compensation

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

I take the view that Mr W would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must Sun Life do?

To compensate Mr W fairly, Sun Life must:

- Compare the performance of Mr W'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.

- Sun Life should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MIP	No longer exists	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

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, Sun Life 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Sun Life totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr W wanted Capital growth with a small risk to his capital.

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

- The FTSE UK 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 Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It does not mean that Mr W would have invested 50% of his 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 Mr W could have obtained from investments suited to his objective and risk attitude.

The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

I uphold the complaint. My decision is that Sun Life Assurance Company of Canada (U.K.) Limited should pay the amount calculated as set out above.

Sun Life Assurance Company of Canada (U.K.) Limited should provide details of its calculation to Mr W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 13 November 2023.

Julia Chittenden
Ombudsman