

## **The complaint**

Mr H complains Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) mis-sold him a unit-linked reviewable whole of life plan.

Mr H is represented in this complaint by a claims management company (CMC) but, for ease, I'll refer to Mr H directly throughout my decision.

## **What happened**

In 1988, Mr H took out a "Design for Life" unit-linked reviewable whole of life plan recommended by an adviser from a predecessor of Sun Life. Mr H paid into the plan a monthly premium of £20 with an annual premium increase of £2 for the first five years.

The plan was set up on a "maximum investment basis" meaning it provided the minimum amount of life cover available, £10,321. The plan was surrendered in 1999.

In November 2020, Mr H complained to Sun Life that the plan had been mis-sold. He said whilst the plan was set up on a "maximum investment basis" there is no evidence he required a whole of life savings plan, nor was there evidence other alternatives were discussed or his attitude to risk being having been established.

Sun Life didn't uphold the complaint. They said whilst they were unable to determine how long Mr H wished to save for, he was already contributing to long term plans at the time and the plan recommended could have been cancelled after five years without charge.

Sun Life also said whilst they cannot determine Mr H's attitude to risk, the funds selected would indicate a discussion had taken place and noted he'd had several years' experience of the type of investment recommended.

Because the plan was a suitable means of primarily saving over the medium to long term, with the life cover the minimum required to make the plan 'qualifying' for tax purposes, Sun Life said the recommendation was appropriate for Mr H's circumstances at the time.

Mr H remained unhappy, so referred his complaint to the Financial Ombudsman Service.

One of our Investigators looked into things but didn't think the advice given was unsuitable, so didn't think Sun Life needed to do anything to put things right.

As no resolution could be reached, this case has been passed to me to decide.

## **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.

After reviewing the complaint, I didn't fully agree with our investigator. So, I issued a provisional decision on 2 March 2023. In this I said:

*I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*Having done so, I don't currently agree with our investigators view. I'll explain why.*

*Firstly, it's important to say there is limited information available relating to the sale of the plan to Mr H, which is unsurprising as it was taken out some 35 years ago and surrendered some 24 years ago. We do have some point-of-sale documentation; however, I consider it reasonable that not everything might be available from the time.*

*In the absence of further records from the time of advice, the information Mr H has provided as part of his complaint submission and what I do have available from the time is evidence I've considered to help build a picture of his circumstances.*

*I recognise it's possible I may not be able to fully establish the events leading to Mr H taking out the plan - but I'm also conscious that over thirty years have passed since then. Ultimately, I need to reach a decision on the balance of probabilities – and this is what I've done using all of the information provided by both parties to the complaint.*

*Mr H says he was seeking a savings plan which seems reasonable given his circumstances at the time as a married 36-year-old with no dependants. The fact find from the time supports this identifying building capital as his primary objective. It seems Mr H had no real need for life assurance also supported by the fact find which identifies this as his third objective albeit with the caveat that it was included "virtually free".*

*But the plan brochure makes it clear that it is a "life assurance and investment plan" with even the "maximum investment basis" which was selected describing the plan as "also providing an amount of life cover sufficient to meet the typical needs of most people".*

*I asked Sun Life to provide me the cost of the life cover provided but they've been unable to provide me this information. Due to the passage of time that's past, this is understandable however without it, I'm unable to say with any certainty it was "virtually free" and didn't have an impact (maybe even a significant one) on the value of the plan.*

*Mr H raised the issue of his attitude to risk not being established. The plan was set up to invest in three of the available funds with his premium being split 25% into a cautious fund, 50% into a balanced fund and 25% into an aggressive fund. The plan offered an option for the premium to be invested in a managed fund, but this wasn't what happened. I'm satisfied on balance, a discussion regarding Mr H's attitude to risk is more likely than not to have taken place and that he was open to some, albeit a low to medium level of risk.*

*But I've seen nothing to suggest Mr H wanted to invest long-term. As Sun Life note, he was already contributing to long-term savings plans at the time and as I've said Mr H was 36 and married with no dependants. I've seen no evidence he wouldn't have needed access to the capital should changes in his circumstances such as parenthood or further house purchases have happened. I don't think committing him to a plan of this type was suitable.*

*Sun Life say whilst the policy was for whole of life, it could be cancelled penalty free after five years. But, throughout the first two years of the policy, 0% of Mr H's premiums were used to buy units and as such the fund value, once accounting for the cost of the life cover, was placed in a negative position.*

*Mr H surrendered the plan after 11 years. But the plan is designed to be held for a period of at least 15 years. For the plan to work as it was designed to, this time was needed for the fund value to grow after accounting to the associated fees and the cost of the life cover.*

*On balance, based on what I know about Mr H's circumstances at the time, I've not seen anything to suggest he wanted to invest for that period of time or longer and I think a shorter-term product, with lower associated fees would have been more suitable.*

*It follows, I don't think the advice provided to Mr H was suitable and I propose Sun Life should do the following to put things right.*

### **Fair compensation**

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

*I think Mr H would have invested differently. It is not possible to say precisely what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr H's circumstances and objectives when he invested.*

### **What should Sun Life do?**

*To compensate Mr H fairly, Sun Life must:*

- Compare the performance of Mr H's investment with that of the benchmark shown below and pay the difference between the fair value and the actual value of the investment. 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.*

<i>Portfolio name</i>	<i>Status</i>	<i>Benchmark</i>	<i>From ("start date")</i>	<i>To ("end date")</i>	<i>Additional interest</i>
<i>Design for Life plan</i>	<i>No longer in force</i>	<i>FTSE UK Private Investors Income Total Return Index</i>	<i>Date of investment</i>	<i>Date ceased to be held</i>	<i>8% simple per year on any loss from the end date to the date of settlement</i>

### **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.*

*Any additional sum that Mr H paid into the investment should be added to the fair value calculation at the point it was actually paid in.*

## **Why is this remedy suitable?**

*I have chosen this method of compensation because:*

- *Mr H wanted Capital growth and was willing to accept some investment risk.*
- *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.*

*Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.*

Sun Life responded to say they considered Mr H's complaint to have been raised outside of the time limits the rules we must follow allow.

I explained to Sun Life that I'd considered our jurisdiction over this complaint prior to issuing my provisional decision and I was satisfied there were no time-bar issues to address. After considering the points Sun Life raised, I said my opinion hadn't changed and set out why.

I also said DISP 3.2.6 sets out that "*where the Ombudsman then decides that the complaint is not out of jurisdiction, he will inform the complainant and give reasons for that decision to the respondent.*". So, unless I received evidence to change my mind on our jurisdiction, I would explain the reasons I've decided this case is one we can consider, when issuing my decision on the merits of this complaint.

I let Sun Life know they should provide any further comments either regarding jurisdiction or the merits of this case by 30 March 2023. I received no further response from Sun Life.

## **Why I can consider this case**

Sun Life said because Mr H paid into the policy £67.80 more over 11 years, in comparison to the surrender value he received in 1999, and then chose to invest the surrender proceeds into an ISA, it is reasonable to conclude that if he'd been unhappy with the returns, he would've raised those concerns at the time.

But there's no evidence that Mr H was disappointed with the return upon surrender or that he received a different amount than he expected. Mr H may well have been disappointed his plan hadn't performed better at the time of surrender, but based on what I've found, I think he was prepared to take some risk.

In short, nothing happened at surrender that Mr H wouldn't have been expecting as a possibility. His complaint isn't about the performance of the policy. Rather that he had no requirement for a whole of life savings plan, nor is there evidence alternatives were discussed. Mr H also complains there is no evidence his attitude to risk was established at the time.

The performance of the policy may have been a factor in Mr H surrendering it 1999, but that doesn't mean he ought reasonably to have had cause for concern that the advice he received was unsuitable, or that alternative products were available until he was advised by his representative in 2020, after they completed their own assessment.

For these reasons, I'm satisfied this complaint is one we can consider.

Regarding the merits of this complaint Mr H confirmed to me he had nothing further to add in response to my provisional decision. Sun Life also didn't provide any comments for me to consider regarding the merits of this complaint.

Because neither party provided any comments to my provisional decision regarding the merits of this complaint, I've seen no reason to reach a different conclusion to the one I reached previously.

### **Putting things right**

Sun Life should do the following to put things right:

#### **Fair compensation**

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

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To compensate Mr H fairly, Sun Life must:

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Income tax may be payable on any interest awarded.

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### **Why is this remedy suitable?**

I have chosen this method of compensation because:

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Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.

### **My final decision**

Your I'm upholding Mr H's complaint. Sun Life Assurance Company of Canada (U.K.) Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2023.

Sean Pyke-Milne  
**Ombudsman**