

The complaint

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

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

What happened

In 1988, Mrs H took out a "Design for Life" unit-linked reviewable whole of life plan recommended by an adviser from a predecessor of Sun Life. Mrs 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, £11,680. The plan was surrendered in 1999.

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

Sun Life didn't uphold the complaint. They said whilst they were unable to determine how long Mrs H wished to save for, she 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 Mrs H's attitude to risk, the funds selected would indicate a discussion had taken place and noted she'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 Mrs H's circumstances at the time.

Mrs H remained unhappy, so referred her 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:

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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 Mrs 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 Mrs H has provided as part of her 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 Mrs 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.

Mrs H says she was seeking a savings plan which seems reasonable given his circumstances at the time as a married 35-year-old with no dependants. The fact find from the time supports this identifying building capital as her primary objective. It seems Mrs H had no real need for life assurance also supported by the fact find which identifies this as her 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.

Mrs H raised the issue of her 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 Mrs H's attitude to risk is more likely than not to have taken place and that she was open to some, albeit a low to medium, level of risk.

But I've seen nothing to suggest Mrs H wanted to invest long-term. As Sun Life note, she was already contributing to long-term savings plans at the time and as I've said Mrs H was 35 and married with no dependants. I've seen no evidence she wouldn't have needed access to the capital should changes in her circumstances such as parenthood or further house purchases have happened. I don't think committing her 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 Mrs 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.

Mrs 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 Mrs H's circumstances at the time, I've not seen anything to suggest she 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 Mrs 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 Mrs H as close to the position she would probably now be in if she had not been given unsuitable advice.

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

What should Sun Life do?

To compensate Mrs H fairly, Sun Life must:

- Compare the performance of Mrs 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 Mrs 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:

- *Mrs 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 Mrs H's circumstances and risk attitude.

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

I explained our Investigator had raised the issue as to whether this complaint had been brought in time previously, to which Sun Life responded giving the Financial Ombudsman Service consent to continue our investigation.

DISP 2.8.2A states '*if a respondent consents to the Ombudsman considering a complaint in accordance with DISP 2.8.2 R (5), the respondent may not withdraw consent.*' so I asked Sun Life to provide any comments they wished to provide regarding the merits of this case as by 30 March 2023. I received no further response.

Mrs H confirmed to me she had nothing further to add in response to my provisional decision.

Because neither party provided any comments regarding the merits of my provisional decision, 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:

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

What should Sun Life do?

To compensate Mrs H fairly, Sun Life must:

- Compare the performance of Mrs 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.

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I have chosen this method of compensation because:

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My final decision

I'm upholding Mrs 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 Mrs H to accept or reject my decision before 28 April 2023.

Sean Pyke-Milne
Ombudsman