

## The complaint

Mr H complained, through a claims management company (CMC), that CASLP Ltd (trading as Sanlam Life and Pensions UK Limited ('Sanlam')) provided unsuitable investment advice when it recommended Mr H to invest in a savings programme which also included life insurance.

Mr H felt he had been financially disadvantaged by poor advice and wanted redress based on the principle of investment loss.

## What happened

In September 1991, Sanlam recommended Mr H to invest in a savings programme which was made up of ten separate policies (or 'contracts') and included a life assurance benefit of £1,845 or the investment benefit if greater. A total of £12,200 was paid in premiums. A surrender value of £14,636.60 was paid in January 2012.

Mr H told Sanlam he was mainly unhappy because there was:

- no evidence of a requirement for him to have savings contracts of such a long term nature
- no evidence that, as a single person without dependents, he required the life cover and although this meant the contracts had qualifying status for tax purposes, this didn't justify paying for cover he didn't need when the life cover charges could have been invested instead
- no evidence of him having adequate deposit based emergency savings worth at least three months' income as an absolute minimum
- no evidence that medium to long term contracts, especially when this meant 20 years plus, were appropriate for Mr H whose shorter term plans included '*property, marriage and children*'
- no evidence that he had been provided with all the relevant product literature.

In response to his complaint Sanlam said, in brief summary, that:

- the life cover was a worthwhile addition as it ensured Mr H would pay no additional tax on encashment
- while Mr H appeared to have only £2,000 at the time of the sale, he'd maintained premiums until surrendering the policy in January 2012, indicating there were no issues with affordability or that he required access to these funds earlier
- even if he had no emergency savings in place, part of the recommendation was to save for the short to medium term via a building society
- Mr H had signed to confirm receipt of the product brochure
- there didn't appear to be any specific objectives in respect of the required term within the 'factfile' – it looked like there had been discussion with Mr H about his longer term objectives, including in his 50's and beyond, which would have been at least 26 years after the policy was sold
- The policy appears to have been kept for the purpose it was sold. If Mr H had believed this was a medium-term investment, he would have surrendered the policy sooner instead of keeping it until 2012, and not complaining about it until some 9 years later.

Mr H wasn't happy with this response so he brought his complaint to us.

Where complaints concern events that happened more than six years ago, the Financial Ombudsman Service can't always look into what happened. Our investigator first considered whether the complaint was in our jurisdiction. She explained to Sanlam why she thought Mr H was still in time to bring the complaint and after Sanlam gave its consent to us investigating Mr H's complaint, our investigator proceeded to look at the merits.

Ultimately, based on all the information she had seen, the investigator felt this was a complaint she should recommend upholding.

In summary, her view was that whilst Mr H had capacity to take some risk with his money, she didn't think the long-term nature of the plan was suited to his objectives or that the inclusion of life cover was suitable. In particular, she said the product couldn't have been used towards the milestones he'd mentioned because the full benefit wouldn't be realised for 25 years. And given that he had only £2,000 in savings, it wasn't reasonable to make a recommendation that didn't address his more foreseeable and immediate needs.

All in all, our investigator concluded that the way the plan was set up and how it was charged meant the product was inflexible and unsuitable for Mr H.

Sanlam disagreed and said the evidence didn't show that it had sold Mr H an unsuitable product. It made the following points:

- other products were available, but the advisor could only recommend suitable products he was able to offer and the savings plans recommended weren't unsuitable
- it's clear Mr H wanted to make additional savings out of income to boost his existing building society savings and part of the advisor's overall recommendation was that he should do this – there's no evidence that Mr H didn't act on the advisor's recommendation to also save in a building society
- the policy was described and sold as suitable for 20 - 40 years. Mr H kept it for 21 years
- there's nothing to suggest that this plan was misrepresented or that anything in the product literature would've given the impression that this was a policy suitable for shorter term savings – and the fact Mr H maintained the policy for 21 years doesn't suggest he wanted a short term plan
- the life cover may not have been a priority for Mr H, but it allowed the proceeds to be taken without the liability to personal taxation. This was a useful benefit given the likelihood that Mr H would be a higher rate tax-payer in the long term – which is what happened.

The complaint came to me to decide. I issued a provisional decision.

### **What I said in my provisional decision**

Here are some of the main things I said.

'There is limited information now available about Mr H's financial situation when he took out these policies, but Sanlam has helpfully provided some point of sale paperwork and I think it's reasonable for me to rely on this as an accurate reflection of what was said at the time.

Mr H's circumstances and financial situation in 1991 aren't in dispute. He was unmarried, with no dependent children and living with his parents. He was in full time employment and his job offered progression opportunities which he could reasonably expect would bring him commensurate salary benefits in the years ahead. I've seen nothing to suggest he wasn't expecting to progress his career and work up until retirement age, which gave Mr H plenty of earning potential.

The factfind completed when he took out the plan shows that he earned around £17,600 per year. He had £2,000 cash in deposit based savings. His monthly net income was recorded as £1,008 and his outgoings shown as £400, leaving him with a cash surplus each month of around £600. He had no outstanding liabilities.

All this suggests Mr H was well placed to be able to invest £50 each month, bearing in mind that the monthly contributions seem to have been very modest compared to his disposable income at the time.

But it doesn't look to me like the advisor took into account that it was likely Mr H's circumstances at point of sale would change in the foreseeable future and how this would impact on him over the medium to long term lifespan envisaged for the savings programme. Mr H said he had plans to buy a house in the next ten years or so and it was clear from his discussion with the advisor that marriage and children were part of the future he imagined for himself. All of these things would impact significantly on the amount of disposable income he'd likely have and his capacity for investment loss – even allowing for his probable salary increases.

Although his circumstances and disposable income at the time suggest Mr H could easily have afforded to put money aside, he had only limited cash savings (less than two months' worth of salary). Given that he paid no rent or mortgage and doesn't seem to have had any financial responsibility for the usual household outgoings, this makes me think that Mr H hadn't so far found it very easy to invest regularly without the discipline of a structured savings product. So, I don't think the advisor would've had any good reason to think that Mr H was likely to start building up his cash savings after investing in the savings programme, just on the basis of his advice alone – especially as Mr H would have £50 less left to invest after paying into the savings programme.

As the overall suitability of the advisor's advice was dependent on Mr H choosing to use more of his disposable income to build up his cash savings (which Sanlam seems to accept), this calls into question the recommendation made to invest in the savings programme when I don't think the advisor could reasonably rely on Mr H implementing the other part of his recommendation.

There's mention of the possibility that Mr H might've had some stocks and shares but I think the advisor would've likely recorded details if he'd had any significant portfolio – in fact, he recorded just £2,000 liquid cash and 'NIL' under 'Investments'. So, in the absence of any more information, I don't think it's likely that Mr H would've had any significant other capital at the time.

This effectively meant that, unless he made some financial plans to be able to afford the future he envisaged, Mr H would be dependent on his limited building society savings and monthly cash surplus stretching far enough to cover the costs of buying a home, getting married and potentially supporting dependents, as well as meeting any significant unplanned expenditure or emergency spending needs arising.

In these circumstances, I find that an inflexible savings plan intended to grow capital over the medium to long term (and at least 20 years in this case) was unsuitable, since Mr H unnecessarily risked making a loss on it in the early years if he needed to surrender it - as it seemed likely he might've needed to do given his circumstances and future plans.

Additionally, a further reason for upholding this complaint is that I can't be sure about exactly what Mr H understood about risk. Sanlam doesn't have a record of any detailed discussion about the risk Mr H was prepared to take with these investments. But I'm not persuaded that the managed fund recommended to him was likely to have been suitable. I say this because Mr H appears to have been a first time investor and I've seen nothing to suggest he had any particular knowledge of investment risk. Sanlam hasn't shown me how investment risk was explained or presented to Mr H or that he understood investment risk.

What Mr H told the advisor about his circumstances and his objectives suggested he did however have a need, at the very least, to build up a contingency fund and also save for a deposit, in order to be able to meet his aspiration to be a homeowner within the next ten years. So I think a suitable investment would have limited his exposure to risk in order to preserve his capital for these purposes, although I can understand that he might have been happy to take some degree of risk to achieve his investment goals. I don't have any more details, but it seems likely to me that a managed fund described as: '*...designed to grow steadily with the full benefit and worth being realised after about 25 years...*' was likely to reflect a higher level of risk than I think Mr H would've been comfortable taking had he understood that he should expect to lose out financially if he wanted to access his savings sooner – as he would likely have needed to do according to what he told the advisor.'

### **What the parties said in response to my provisional decision**

Mr H has confirmed he's in agreement with my findings and has nothing further to add.

Sanlam doesn't agree with my assessment of this case and has made the following main points:

- It could only recommend products from its own product range. The factfile clearly states "recommend Building Soc account for short to medium i.e. 0 –20 yrs" and Mr H had signed the factfile as confirmation that these recommendations reflected the discussions regarding his situation.
- Given Mr H's disposable income, even after paying £50 for his savings policy, it wouldn't have had a significant impact (if any) on his ability to also pay into a building society account.
- Mr H also took out another policy around the same time so it's fair to say he had some interest in longer term security and was preparing for it.
- At the time of this sale there was no requirement that the determination of Mr H's attitude to risk needed to be documented – that doesn't mean a discussion would not have taken place.
- A later factfile shows that Mr H held shares that would have been purchased rather than acquired via an employer's share scheme so he had investment experience.
- Mr H had the capacity to accept the risk the fund presented.
- A little over 2 years later, Mr H had a new address so it appears that he managed to acquire a deposit without the need to surrender, cancel or stop premiums to his savings policy.
- On balance, Sanlam said it believed it cannot safely be concluded that this policy was unsuitable or mis-sold or, given the prolonged period which Mr H paid the premiums, that the plan was inherently unsuitable.

### **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.

We've set out our approach to dealing with complaints on our website and I've kept this in mind while deciding this complaint.

I've taken carefully into account everything that's been said in response to my provisional decision. I'd like to assure Sanlam that I've thought carefully about everything again before coming to my final decision. And whilst I have highlighted above only what seem to me to be the main points of concern they've raised, I have read thoroughly and taken into account everything they have asked me to reconsider.

Sanlam hasn't provided me with any new information that changes what I think about this case. I'd already considered the main points mentioned above when thinking about my provisional decision as well as the wider considerations that impact on the outcome of this complaint. But I would additionally comment as follows:

- The evidence Sanlam mentions which shows Mr H had other shares contradicts the information recorded in the factfile. So I don't feel that what Sanlam has said is enough for me reasonably to be able to conclude that Mr H was an experienced investor who would likely have properly understood investment risk. Sanlam has accepted that the managed fund he invested in '*clearly presented some risk*'. I'm still not persuaded that I've seen enough to find that Mr H was well placed to make an informed decision on whether he was comfortable with the investment risk he was signing up to with the recommended fund.
- The fact that any discussion about risk wasn't recorded means there's insufficient evidence now to enable me to conclude, on balance, that the investment suited Mr H's risk approach when the other evidence I mentioned in my provisional decision suggests to me that this was unlikely.
- I still don't find that Mr H was willing or able to risk losing money he would need to depend on in the event of any unforeseen spending needs arising and to fund his future plans, in particular for home ownership. His lack of any sufficient contingency fund or adequate savings, even if he had prioritised putting aside money to build up his savings at the same time as he invested, meant that it would be some time before the investment recommendation would be suitable for his particular circumstances.
- A change of address of itself doesn't necessarily mean that Mr H was able to fund any substantial deposit from his own financial resources. Or if he did, that it follows that the advice to invest was suitable. For the reasons set out more fully in my provisional decision, it's still my view that his circumstances and financial situation at the time the advice was provided meant the investment recommendation was unsuitable.

I appreciate that Sanlam takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

### **Putting things right**

#### **Fair compensation**

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

I take the view that Mr H 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 his circumstances and objectives when he invested.

To compensate Mr H fairly Sanlam should:

- ☐ 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.
- ☐ Sanlam should also pay interest as set out below, and
- ☐ provide the details of the calculation to Mr H in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Savings Programme	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. Sanlam must give Mr H a certificate showing how much tax it's taken off if he asks for one.

### ***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, Sanlam 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:

- had the advisor discussed Mr H's need for a savings plan that would help him achieve his stated financial investment goals and objectives involving buying a property, getting married and having a family and his need for a suitable contingency fund to draw upon as needed for unforeseen expenses, I think it's more likely than not that he would have invested at low 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 their 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 H'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 H into that position. It does not mean that he 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 H could have obtained from investments suited to his needs and objectives and his risk attitude.

### **My final decision**

I uphold this complaint and direct CASLP Ltd (trading as Sanlam Life and Pensions UK Limited) to take the steps set out above to put things right for Mr H.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 1 June 2023.

Susan Webb  
**Ombudsman**