DRN-4191424

The complaint

Mrs K brings a complaint on behalf of herself and her late husband, Mr K. She and the late Mr K are now represented by a claims management company ('*CMC*'). It says that they were misadvised into taking out a Maximum Investment Plan by Zurich Assurance Limited.

What happened

The Maximum Investment Plan was an indexed qualifying unit-linked savings policy set up for a ten year term. It had an initial monthly premium of £100 which increased to £151 per month across the term. The policy started on 1 August 1997 and ended on 1 August 2007, with a maturity value of £19,558.31 being paid to Mr and Mrs K. The policy did generate a return over the investment period, with premiums paid by Mr and Mrs K totalling £14,994.

In August 2021, the CMC complained on behalf of Mrs K and the late Mr K. It said they had been misadvised into taking out the policy for three principal reasons:

1. Mr and Mrs K only had one material objective to save money – therefore the life cover included within the policy was unnecessary to achieve that aim;
2. their circumstances weren't properly considered – Mr K had suffered a heart attack and was looking to retire yet the adviser hadn't considered future affordability of the premiums, given they were indexed and would therefore increase;
3. Zurich failed to assess the correct risk of the investment, given Mr and Mrs K were rated as a 'two' on a risk assessment scale of one to four – this represented more risk than was acceptable to them.

In September 2021, Zurich rejected the complaint. It disagreed that the advice given in 1997 had been unsuitable. It also said the complaint issue about the impact of paying the premiums after the late Mr K's retired was pursued outside of the relevant time limits. As Mrs K didn't agree with Zurich, the CMC brought the complaint to this service on their behalf.

One of our ombudsmen reviewed the complaint in respect of our time limits, as Zurich had not consented to point two above (the issue of future affordability) being allowed to proceed. In his opinion, two letters issued by Zurich in 2005 and 2006 showed how the monthly premium was due to increase. The ombudsman said that these letters would have made it reasonably clear to the late Mr K and Mrs K of the specific point the CMC was making now (that there may be a problem maintaining the premium going into retirement for Mr K). As Mrs K and the estate of Mr K's complaint wasn't pursued until 2021, that complaint aspect was made too late and could not proceed.

The remaining two complaint points were considered by one of our investigators. He concluded that the policy was not entirely suitable for Mr and Mrs K's circumstances. He disagreed that the inclusion of life cover made the policy unsuitable – it had been a limited percentage of the premium and the documentation had explained that.

However, he did agree with the CMC that the investment represented more risk than Mr and Mrs K wanted to accept – and this was borne out by the evidence from the time of the sale. He was satisfied that they wanted to invest, but they were noted as being cautious. Zurich's recommendation exposed them to a greater degree of market volatility than they'd have wanted. He therefore believed the complaint should succeed in part.

Zurich disagreed. In summary, it said:

- it did not accept that investing in the managed fund exposed Mrs K and her late husband to too great a degree of risk;
- a rating of two out of four was 'balanced';
- Mrs K held a bond with another financial provider – and that had underlying equities;
- the Managed Fund invested in property, gilts and corporate Bonds as well as equities - over the medium to long term it outperformed returns on savings accounts;
- it is important to remember that the advice Mr and Mrs K received is assessed based on the investment landscape and the facts at the time of the sale in 1997 - not now with the benefit of hindsight;
- it contends that Mrs K and the late Mr K would or should have been aware of the nature of this type of investment and therefore the investment in the managed fund suited their portfolio and requirements.

Our investigator wasn't persuaded to change his view. He noted that Mr and Mrs K had an equity plan and bond, and they weren't risk averse. He accepted that they were not first time investors, but he still disagreed with the risk posed by the investment; the fact-find information from 1997 suggested their approach to investing was cautious.

Zurich still disagreed. It reiterated the points it had previously made, and also explained how there were a number of other funds available to Mr and Mrs K and they were able to switch the investment into any of these at any time in order to match any changing investment objectives; they were not restricted to the managed fund for her investment. Overall, it maintained its view that that the recommendation was suitable for Mr and Mrs K's objectives.

The CMC did not make any further comments on Mrs K and the estate of Mr K's behalf.

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.

I'd like to thank the parties for their considerable patience whilst this matter progressed through the Financial Ombudsman Service and whilst it awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld.

When Mrs K and her late husband Mr K were sold the plan in 1997, Mr K was ages in his sixties and Mrs K in her late forties. They had no dependants. They were both recorded as self-employed running their own business. They jointly owned a commercial property but had no outstanding mortgage or loans. The fact-find recorded that their priority was increasing their capital through saving and noted that Mr K had suffered a heart attack in the past.

Zurich recorded within the fact-find that that Mr and Mrs K's combined income was £4,000 net per month and that their monthly expenditure was £2,000. It was set out that they could afford £500 per month to meet their savings objective. In terms of existing savings and investments, they held £29,000 in a building society account as well as each holding with Personal Equity Plans and pensions.

I don't believe the recommendation for the policy was unsuitable itself insofar as the type of investments considered for Mr and Mrs K. It seems to me, on balance, that Mr and Mrs K wanted to place their capital into investments where there was a greater possibility of achieving higher returns. They had sufficient means, without liabilities or dependants and with disposable capital, to take a risk of the nature set out by the recommendation.

Like our investigator before me, I do not believe the inclusion of life cover at 0.02% of the monthly premium rendered the investment unsuitable, merely because their primary objective was savings rather than having life assurance provisions. I believe on balance that Mr and Mrs K likely wanted to go ahead with the investment and that on the information I've seen, they were in agreement with recommendation in the circumstances of their specific financial situation and recorded investment objectives.

However, I also take the view that I don't think Mr and Mrs K likely understood the particular risks their investments entailed. I'm not satisfied that they appreciated or understood that the underlying investment fund was made up primarily (75%) of equities.

I say that noting how during the life of the policy it was anticipated that Mr K would retire, and therefore the means of recouping losses they may suffer from market volatility would fall to Mrs K. The documentation does explain how returns were merely examples and not guaranteed. That the policy went on to return a profit doesn't mean it was suitable for the adviser to propose overall. I haven't seen any clear evidence to fairly say that the policy, which was described as offering a balanced investment portfolio, reasonably reflected a risk level that matched Mr and Mrs K's attitude to risk, which was recorded as the 'cautious' end of 'balanced'. Nor have I seen any objective evidence of any discussion around lower risk funds or alternative investments could have offered Mr and Mrs K potential for growth to their capital with less risk.

Taking all of the information in the round, I also believe this complaint should be upheld. That the key features information supplied to Mrs K and her late husband pointed out the nature of the investment in respect of life cover shows transparency, but it doesn't automatically mean it was reasonable for them. And noting Mr K's particular circumstances, I don't believe the recommendation made was consistent with their recorded risk profile.

Like the investigator before me, I don't believe Mr and Mrs K were given sufficient information in order that they could properly understand and appreciate the risks and benefits, such that they could make a balanced and informed choice about whether to invest in the policy or consider a lower risk investment elsewhere. I therefore uphold the complaint on that point.

It isn't possible to say precisely what Mrs K and her late husband would have otherwise done. I believe it's most likely they would still have gone ahead with the investment recommendation, but where it provided a more cautious approached to risk. I have set out the means of assessing this in assessing fair compensation below.

Putting things right

Fair compensation

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

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

What must Zurich do?

To compensate the estate of Mr K fairly, Zurich must:

- Compare the performance of Mr K'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.

- Zurich 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
Maximum Investment Plan	No longer exists	FTSE UK Private Investors Income Total Return Index	1 August 1997	1 August 2007	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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs K and the estate of the late Mr K 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 and Mrs K's circumstances 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 Zurich Assurance Limited should pay the amount calculated as set out above.

Zurich Assurance Limited should provide details of its calculation to Mrs K and the estate of Mr K in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K and the estate of Mr K to accept or reject my decision before 27 November 2023.

Jo Storey
Ombudsman