

The complaint

Mr H complains that CASLP Ltd gave him unsuitable financial advice when it advised him to take out a whole of life policy, with a 35 year term.

Mr H is represented in this matter by a claims management company (CMC).

(Mr H took out his policy with Merchant Investors Insurance, now part of Sanlam Life & Pensions UK Limited. CASLP Ltd is the parent company of Sanlam, so I have referred to the business as 'Sanlam' throughout this decision.)

What happened

In early 1989 Sanlam arranged for Mr H to take out a whole of life policy with a 35 year term, with a £50 per month premium.

Information recorded at the time the policy was arranged set out that Mr H was 30 years old, married with a child and earning a salary of around £40,000. He held an interest only mortgage, with a mortgage endowment as the repayment vehicle and he had deposit based savings of £6,000 and shares worth £5,000.

I understand Mr H surrendered the whole of life policy in 1995.

In 2021 Mr H's representative complained to Sanlam. It said the advice to take out a whole of life policy with a 35 year term had been unsuitable.

Sanlam didn't uphold the complaint. It said it felt the complaint had been brought too late for it to have to consider it.

Mr H's representative referred the complaint to this service. A jurisdiction decision was issued in March 2023, setting out why the ombudsman considered that Mr H's complaint could be considered by this service.

An investigator then considered the merits of Mr H's complaint. The investigator said she thought Mr H's complaint should be upheld.

To put matters right she said Sanlam should compare the amount Mr H received when he surrendered the policy in 1995, to the amount he would have received if he had invested the same amounts, on the same dates and received a return equivalent to the Bank of England's base rate plus 1%. If this calculation showed a loss, she said it should pay the difference to Mr H, plus simple interest at 8% per year on the loss, from the date the plan was surrendered to the date of settlement of the complaint.

Sanlam did not accept our investigator's view. It said it accepted that the policy was unsuitable if Mr H was looking for a policy with a 10 year term, but it said it felt the redress should be calculated based on what Mr H would have received if he had been advised to take out a whole of life policy with a 10 year term.

I issued my provisional decision on Mr H's complaint on 17 July 2023. In the provisional

decision I explained that I had reached a different view to that of our investigator regarding how I felt this complaint should be fairly settled. I set out my provisional decision as follows:

I noted that a jurisdiction decision had been issued in March 2023, setting out why an ombudsman colleague felt this service could consider Mr H's complaint. I explained that my provisional decision only considered the merits of Mr H's complaint.

As Sanlam said it accepted that the whole of life policy Mr H took out in 1989 was unsuitable if he didn't want to commit to a 35 year term, I explained that I had not reconsidered the suitability of the term of the plan recommended.

I instead focussed on whether the redress recommended by our investigator was fair in the circumstances of this complaint.

I noted that in the information recorded at the time Mr H took out the whole of life plan in 1989, a handwritten list appeared to set out Mr H's investment requirements at that time. In particular the list said:

1. *10 years+*
2. *Better Growth BS*
3. *Secure*
4. *Tax free*
5. *Cover*
6. *FT listing*

I said I didn't think it would be unreasonable to assume that '*10 year +*' referred to the length of time Mr H was willing to invest for. '*Better Growth BS*', I said I thought referred to Mr H seeking a better return than he could achieve from deposit based savings, (in this context I said I understood '*BS*' to be short for 'building society'). '*Secure*' I understood to mean that Mr H did not wish to take a high level of risk with this investment. '*Tax free*' I said I thought was self-explanatory. '*Cover*' I understood to mean that Mr H was willing to consider a plan with an element of life cover and '*FT listing*' I understood to mean the funds selected should be listed in the Financial Times or similar, so Mr H could monitor the fund performance if he so wished.

Based on the information recorded at the time, I said I thought it was fair to say that Mr H wanted a stock market linked investment. I reached this view as it appeared he was seeking '*better growth*' than a deposit based savings account offered and was looking to invest in listed funds. Likewise, I said I was satisfied that Mr H had some investment experience as he held a mortgage endowment and shares, so had some knowledge of investment products.

I said I was also mindful that in the letter Mr H sent to Sanlam in 1992, about the current value of his policy, he said: '*Whilst I appreciate that in the early period of all programmes of this type, there is a period before the programme value exceeds the contributions paid...*' I said I thought this confirmed that Mr H understood that he had taken out an investment product with front end loaded charges.

I said I was also satisfied, based on the information available that Mr H was willing to invest for '*10 years +*' and for the product to have an element of life cover.

In view of this I said I didn't think the redress our investigator had recommended was fair in the circumstances of this complaint as I didn't think a cash based savings vehicle would have met Mr H's objectives at the time the policy was arranged.

I said it was not in dispute that a 35 year term policy was unsuitable, but I said I couldn't reasonably find that a policy with a 10 year term would also have been unsuitable based on the information recorded about Mr H's personal and financial circumstances at the time he took out the policy in 1989.

Mr H's representative did not respond to my provisional decision. Sanlam responded to say it accepted my provisional decision and the redress I had proposed.

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.

As neither Mr H's representative or Sanlam have provided any fresh information or evidence in response to my provisional decision, I see no reason to depart from my earlier conclusions.

Likewise, as neither party has raised any new points in relation to the jurisdiction of this complaint, I have only considered the merits of Mr H's complaint as part of this decision.

(In my provisional decision I said it was unclear to me why Sanlam and our investigator had said the policy Mr H took out in 1989 wasn't qualifying. I apologise for any confusion on this point. Having re-reviewed the file, I note the sum assured was too low on the policy Mr H took out for it to be qualifying.)

Putting things right

To put matters right CASLP Ltd should compare the amount Mr H received when he surrendered the policy, to the amount he would have received if he had taken out a qualifying whole of life policy with a 10 year term in 1989, rather than the 35 year term, non-qualifying policy that was arranged.

If this calculation shows a loss, CASLP Ltd should pay the difference to Mr H, plus simple interest at 8% per year on the loss, from the date the plan was surrendered to the date of settlement of this complaint.

My final decision

My decision is that I uphold this complaint. I have set out above the steps CASLP Ltd should take to put matters right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 September 2023.

Suzannah Stuart
Ombudsman