DRN-4378733

The complaint

Mrs G complains that Sun Life Assurance Company of Canada (U.K.) Limited gave her unsuitable investment advice when it recommended her to invest in a unit linked savings policy with life insurance, over a 20 year term (the 'plan').

She mainly complains that:

• there is no evidence to show the advisor discussed other savings options that were also tax efficient, offered greater flexibility, less risk and had no early surrender penalty

• there is no evidence that her attitude to risk was established to ensure she was given appropriate advice

• the plan was misrepresented as being appropriate for 'medium to long term' capital but the charging structure meant it was unlikely to have any meaningful value unless maintained for the long term.

Mrs G feels she's been financially disadvantaged as a result and to put things right, she wants financial compensation.

The investment advice was provided by a financial business trading under a different name. But, as Sun Life is responsible for dealing with the complaint, I will refer to it as the financial business that provided the advice and sold the investment complained about.

Mrs G brings her complaint via a claims management company (CMC).

What happened

Mrs G received investment advice from Sun Life in December 1992.

After Sun Life identified that Mrs G had a need for capital creation and could benefit from life cover, its advisor recommended Mrs G to invest £50 each month in the plan.

The Capital Builder plan consisted of 20 separate policies made up of units in investment funds, within a life policy with a sum assured of £9,020. Mrs G maintained the plan until February 2006 when she surrendered the investment early.

After speaking with the CMC, Mrs G complained to Sun Life that it had mis-sold her the plan when she took it out on its agent's recommendation.

Sun Life said, in brief summary, that the Capital Builder plan had matched Mrs G's needs and circumstances and suited her wish for a regular savings plan.

Mrs G wasn't happy with this response and so she brought her complaint to this service.

Our investigator didn't recommend upholding Mrs G's complaint. He said that although there was limited information, he didn't think Sun Life had acted unfairly, saying (in brief summary):

- Mrs G had required a savings plan
- she had the disposable income to cover the monthly plan cost
- she didn't have any expected large expenditure like the purchase of a property
- he couldn't conclude the managed funds were too risky for Mrs G
- the policy was 'qualifying' for tax purposes, which meant the there was some life cover within the policy (which Mrs G didn't otherwise have)
- he hadn't seen sufficient evidence to say that a 20-year savings plan which would mature some 12 years before Mrs G's planned retirement was too long a term.

Overall, the investigator felt the plan had been suitable for Mrs G, given her circumstances at the time and what she wanted from her investment.

On Mrs G's behalf, the CMC disputed the investigator's findings, saying that it had:'…*submitted hundreds of claims to Sun Life regarding the Capital Builder policy with over 95% of them upheld. The firm has recently undergone a restructuring, and is now routinely rejecting claims that would previously have been upheld*.'

The CMC said the Capital Builder had been '*pushed to clients'* because the length of the term generated higher commission and shorter-term contracts weren't discussed, even though Sun Life could have offered a 10 year savings plan (that could have been extended) which had much lower charges, so the return would have been higher over any length of time.

Mrs G asked for an ombudsman to review the complaint and so it comes 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.

Where the information is incomplete or facts aren't agreed by the parties involved, I must base my decision on the balance of probabilities – in other words, what I consider is more likely to have happened in light of the available evidence and the wider circumstances.

Having thought about everything I've seen and been told, I've independently reached the same conclusions as our investigator. I'll explain why I say this.

Although the Financial Ombudsman Service doesn't always have power to investigate complaints about events that happened more than six years ago, Sun Life has consented to us looking into Mrs G's complaint about what happened in 1992 when it recommended this plan. So, I am satisfied that I can consider the complaint.

In addition to what the parties have told me, I've taken into account the information in the point of sale paperwork provided, including the 'Financial Planning Profile' carried out by Sun Life's advisor. This shows that Mrs G was in paid work, with the benefit of a workplace pension and scope for many years of earning potential before she reached state pension age. She was married and lived in her own home (none of Mrs G's income was recorded as going towards any mortgage repayments). Her net monthly income was around £890 per month and she had £4,500 in cash deposits, giving her a useful cash reserve to fall back on if needed. After allowing for her regular outgoings, she was left with a net monthly disposable income of £425.

I am satisfied that Mrs G was in a strong enough financial situation to be able to invest £50 per month. This is borne out by the fact she seems to have maintained these payments into the plan for the next 13 years or so.

I appreciate that this was a 20 year plan so she cashed the plan in at least six years earlier than she likely intended when she took it out. But I've not been provided with evidence that paying the premiums caused Mrs G financial difficulty. And the fact she kept the plan as long as she did doesn't suggest that early surrender was the result of the premiums not being affordable, rather than for another reason, such as Mrs G wanting to redirect her expenditure.

Mrs G received back a little over £9,000 when she closed the plan, paying a surrender charge of around £594, which the plan terms and conditions allowed for.

Thinking about all of this, I think it's likely that in 2006 Mrs G surrendered the plan earlier than she had originally intended because her circumstances had changed or she needed cash in an emergency or an unforeseen event meant she had some unexpected expenditure. I've seen nothing to suggest that Mrs G or the adviser thought she was likely to surrender the plan when she did. So I don't feel I can fairly conclude the early surrender date shows the plan was unsuitable for Mrs G at the time she was sold it.

There isn't a record of any detailed discussion about Mrs G's investment objectives. The paperwork I've seen does suggest there was some discussion about having a long term savings plan and that '*growth*', '*flexibility*', '*security*', '*cover*' and '*tax free'* were all things that were likely mentioned. Mrs G had no structured savings plan in place and, in any event, there was a risk that if she continued to keep her savings only as cash deposits, the long term effects of inflation would likely erode the value of her money. So I can understand why capital growth would have been identified as a particular need and with this requirement, I find it was reasonable for Sun Life to recommend a risk-based investment to Mrs G.

I've seen nothing to suggest that Mrs G lacked understanding or didn't have enough information to make an informed investment decision when she took out this plan.

Mrs G needed to be comfortable that the level of risk associated with the recommended investment reflected her risk approach. It's not clear what discussion took place around Mrs G's attitude to risk and reward as the point of sale paperwork doesn't record any information about this. But I've taken into account that out of a choice of investment options, Mrs G selected to invest in '100% Managed' funds. There were other funds she could have chosen which look like they would have been (potentially significantly) higher risk.

Mrs G didn't have any investment experience. So, without further evidence, I don't think it would have been reasonable for her to be in a particularly high risk fund that could have offered her scope for bigger returns.

On the other hand, in her particular circumstances and financial situation, she appears to have had no particular need to be especially conservative in her risk approach and the managed funds offered Mrs G the chance to grow her money as she hoped to do.

All in all, having considered everything, I am not persuaded that Mrs G was exposed to more risk than she wanted to take.

In terms of the life cover provided by the plan, the sum assured meant the policy was ‘qualifying’ in terms of its tax status. Mrs G could benefit from more favourable tax treatment, which was a useful feature of the plan. Additionally, as she didn’t otherwise have any life cover in place, the plan provided some extra financial security for her family, which I think would likely have given Mrs G some peace of mind, at a price that was affordable for her. I’ve seen insufficient evidence overall to suggest that the life cover made the policy unsuitable for Mrs G.

To sum up, I find that:

- the policy was affordable for Mrs G
- it offered her tax benefits
- the primary purpose of the cover wasn’t to provide a death benefit but it was useful
- I understand from what Sun Life has told me that it didn’t offer any alternative products at the time that would have been suitable for Mrs G.

Having carefully considered the evidence that has been provided, based on what I know about Mrs G’s circumstances at the time, I haven’t seen enough to be able to conclude that Sun Life’s investment advice was unsuitable.

So I can’t fairly uphold Mrs G’s complaint.

In coming to my decision, I’ve noted what the CMC has said about what happened on some other complaints. But each complaint is looked at on its own merits - I’ve looked at the circumstances that apply in this particular case and what happened on other cases doesn’t change my conclusion here.

My final decision

For the reasons I’ve explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs G to accept or reject my decision before 20 March 2024.

Susan Webb
Ombudsman