

The complaint

Mr H has complained that he was mis-sold unit linked whole of life policies, by a predecessor scheme of CASLP Ltd.

Mr H is being represented with this complaint by a claims management company (CMC).

What happened

Mr H took out four unit-linked whole-of-life policies through CASLP Ltd, between 1987 and 1990.

The first policy was taken out in December 1987. It had an initial sum assured of £945 for a monthly premium of £5. The second policy was taken out in February 1988. It also had an initial sum assured of £945 for a monthly premium of £5. The third policy was taken out in November 1989. It had an initial sum assured of £256.50 for a monthly premium of £1.50. The fourth policy was taken out in March 1990. It had an initial sum assured of £427.50 for a monthly premium of £2.50.

A range of funds were offered, from which Mr H chose at commencement what to invest his monthly premium into. Units were sold to pay for the life cover and charges. The policies provided a death benefit of the greater of either the policy's unit value or the sum assured.

Mr H complained through his CMC that the policies had been mis-sold to him. He said that they had been incorrectly sold as medium-term plans and that alternative tax-free options should have been considered first.

CASLP Ltd initially replied to say that Mr H hadn't brought his complaint in time. However, one of our ombudsmen concluded that it had. CASLP Ltd then agreed to uphold Mr H's complaint regarding the latter two policies that were taken out, which Mr H accepted.

However, CASLP Ltd didn't agree to uphold the first two policies taken out in 1987 and 1988. They said that they had been taken out prior to the implementation of the Financial Services Act. They said the information was clear and not mis-leading.

An investigator looked into it but thought CASLP Ltd had acted fairly. He said he couldn't conclude the policies were inappropriate or Mr H had been given misleading information.

Mr H remained unhappy. He said through his CMC that the sales didn't follow the requirements of the time to not make negligent mis-statements, to advise with reasonable skill and care and to disclose material information.

As no agreement was reached, the case has been passed to me for a decision.

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.

Mr H has accepted the offer from CASLP Ltd to reconstruct the latter two policies as if they had been ten-year policies and compensate Mr H with the difference. My decision therefore is only regarding the two earlier policies.

Investment advice became regulated under the Financial Services Act 1986 with effect from 29 April 1988. Before this date, advisers didn't have to consider if a recommendation was suitable for a consumer's circumstances. Instead, advisers had to advise with reasonable skill and care, ensuring he or she didn't make misstatements and that material information (if relevant) was disclosed. As both parties have acknowledged, these two policies in question were sold prior to April 1988.

I recognise that because of the passage of time, there is little available information from the time of the sales in December 1987 and February 1988. However, we do have a copy of the application forms, programme schedules and product brochure. We also have the fact find information for the later sales (after the requirement from the implementation of the Financial Services Act).

From these, I cannot safely conclude what the advice was that was given to Mr H. However, it would seem that the suggestion to take out a unit-linked whole of life policy was a reasonable fit in the circumstances. It provided an element of savings, with the monthly premium purchasing units in the fund of Mr H's choice (in this case the International Managed Fund) and a surrender value accruing. It also provided a life assurance benefit (with units being sold to pay for charges and the cost of cover).

There is nothing to suggest this was clearly inappropriate and I can see that Mrs H was recorded as married at the time, so his wife would have been able to benefit from the life assurance element.

Mr H's CMC has suggested that tax free alternatives should have been offered first. I haven't seen anything to suggest they weren't, or what other options were considered. Also, these policies offered a benefit of becoming qualifying policies after ten years, meaning the value after that point wouldn't be liable to income or capital gains tax. I can't see anything to show that Mr H didn't intend to hold on to the policies for that long and I can see he kept them in place for much longer than that.

Mr H's CMC has also said that the requirements to disclose material information and not mislead were not met. Namely that the policies weren't sold exclusively for the longer term as they should have been. They have pointed to the fact that the complaint about the policies sold approximately two years later have been upheld, as Mr H was recorded at that point as wanting mid-term savings and these were longer term products.

However, I can't safely conclude that the advisor was aware for these two initial sales that Mr H wanted to invest for the mid-term. There is nothing to suggest that Mr H would need the savings in coming years and in fact they were kept in place for over 30 years. This is different to the later two policies where Mr H discloses a requirement mid-term. So I agree at this point (especially as the Financial Services Act had been implemented) the advisor should have done more.

I also can't safely conclude that they failed to disclose for the two initial policies that they were longer term products. The brochure makes it clear that the policies did provide

an investment benefit for long-term savings and were open-ended. It states clearly that whilst the surrender value can be accessed at any time, it is *“designed to grow steadily with the full benefit and worth being realised after about 25 years”*.

In summary, I am glad to see that CASLP Ltd have come to an agreement on settlement for the later two policies. However, I don't think the available evidence is enough for me to conclude that the first two policies should be upheld. They seem a reasonable fit for Mr H's disclosed circumstances at the time and the information provided makes clear how they were intended to work.

My final decision

My final decision, for the reasons set out above, is that the offer already made to put things right by CASLP Ltd is fair and I don't require them to do anything further. CASLP Ltd should pay Mr H the compensation agreed for the two upheld policies, if they haven't already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 December 2023.

Yoni Smith
Ombudsman