DRN-4607086

The complaint

Mrs P complains about a recommendation from Zurich Assurance Ltd ("Zurich") to take out a Maximum Investment Plan ("MIP").

Mrs P says she was only looking to save and didn't need or want the life cover included in the plan. She also complains that Zurich didn't record her attitude to risk and that she was exposed too heavily to equities. She also says the plan charges made it a pointless way of saving because the reduction in yield produced a lower growth rate than that of the Bank of England base rate at the time.

Mrs P is being represented in this complaint by a claims management company. However, for ease of reference, my decision will refer to Mrs P only.

What happened

Mrs P met with a Zurich adviser in January 2001. The adviser recommended that she take out a ten-year MIP with a yearly contribution of £2,400.
Mrs P took out the plan in 2001 and maintained it until 2006. Mrs P paid in a total of £14,400 and received back £16,658.14, making a small profit.

Mrs P complained to Zurich in September 2021 as she was unhappy with the following:
She wasn't looking for life cover and was only looking to save.
There's no record of her attitude to risk having been discussed and she didn't believe that investing 75% in equities within the MIP was suitable based on her circumstances.

The plan achieved a return of less than 5% per annum when the Bank of England base rate was already 6%. Clearly the charges have impacted the returns as per the illustration.

Zurich didn't uphold Mrs P's complaint. It said the main purpose of the MIP was to provide regular savings over the medium to long term. Mrs P already held an investment in a stocks and shares ISA, so it was not inappropriate for her to use other forms of unit-linked investments, in a tax-free way, to save towards her future. She also had £35,000 on deposit in addition to this plan, so it felt he had adequate funds available in case of an emergency. Zurich also said the charges that applied, and the risks associated were fully explained within the point of sale documentation and it felt that Mrs P was able to make an informed decision to go ahead.

Mrs P was unhappy with Zurich's response and so she referred her complaint to our service for an independent review.

One of our investigators considered Mrs P's complaint and concluded it shouldn't be upheld. In summary, they said:

- Whilst the fact find suggested Mrs P already held life and critical illness cover, there's nothing to say that a consumer can't hold more than one of these policies and it's clearly noted on the fact find that Mrs P was specifically was looking for this cover.
- Mrs P had two children and so it isn't unreasonable she'd be looking for this, but regardless, Zurich has confirmed the cost of the life cover within the plan was minimal, and was at the lowest level possible to allow that the proceeds of the plan were available at the end of the term tax free.
- The annual cost of the investment was affordable and in line with Mrs P's disposable income.
- The information provided shows that the money invested was mainly in UK-based equities, which are considered more stable and safer.
- While they appreciated that equities can be high risk due to market fluctuation, this would be mitigated by the equities being invested in a more stable market.
- The percentage invested in bonds was also mainly invested in UK based companies, which are again considered relatively low risk.
- Mrs P had no loans or other debts, her mortgage was already paid off and she had around £35,500 in deposit-based savings, as well as £7,000 held in an ISA. So they felt the investment recommendation was suitable and in line with her attitude to risk.

Mrs P didn't accept the investigator's findings. She said the very high concentration of equities made the plan unsuitable for a balanced risk, let alone someone whose risk profile hadn't been discussed. She also said the return after the charges have been deducted was 4.1% which was much lower than the Bank of England base rate at the time and so she wouldn't; have proceeded with her investment had the effect of the charges been explained fully.

As no agreement could be reached Mrs P's complaint was referred to me for review. I issued my provisional findings in January 2024, which I include below:

What I've provisionally 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.

Zurich has provided a copy of the fact find Mrs P completed on 10 January 2001. The following was recorded in this:

- *Mrs P was 49 years old at the time, married with two children, with one of these children being financially dependent on her.*
- *Mrs P was a self-employed company director of a pharmaceutical company, with an annual salary of £20,000.*
- *Mrs P had a monthly income of £1,500, with monthly expenditures of £500 – leaving her £1,000 in disposable income.*
- *Mrs P owned her own home and had no outstanding mortgage.*
- *Mrs P had £35,500 held on deposit.*
- *Mrs P had £200,000 worth of life cover over two polices.*
- *Mrs P's immediate priority was regular saving as well as financial protection against specific illnesses and death.*
- *Mrs P could afford to invest £300 per month.*

I am satisfied Mrs P wanted to save for the future, was employed and had some disposable income. So, I don't consider a savings plan was unsuitable in principle. However, I have to consider whether this plan was suitable for Mrs P taking into account her circumstances and objectives.

Attitude to risk

Mrs P's attitude to risk was not recorded by Zurich on the fact find. Whilst it's not clear why, it doesn't automatically follow that the recommendation was unsuitable. I've considered Mrs P's recorded circumstances and objectives at the time in order to determine what risk she was willing and able to take.

Zurich says that Mrs P had some investment experience as she had around £7,000 invested in a stocks and shares ISA. It says she was therefore aware of the concept of investing into asset backed investments and that tax efficiency was important to her, along with the protection the plan would provide to her family in the event of her death. It says the managed fund was generally considered suitable for investors whose approach to risk was balanced and at that time, it was considered an appropriate investment fund to keep pace with inflation over the medium to longer term.

I also note Zurich's comments about what was recorded on the recommendation letter regarding risk. It stated:

> *"You are comfortable that the contributions to your plan will be invested in real assets such as equities and property on your behalf. This means that the value of the plan is determined by the value of those assets and can go down as well as up in value. You confirmed that you understand this."*

While I think Mrs P may have understood that the plan posed some risk, I am not persuaded on balance that she understood the level of risk posed by this plan. She was told that her plan could go down as well as up. But there is nothing to show that she was told anything more than this and I think it is more likely than not, given the adviser didn't think it important to identify her risk appetite in the fact find, that this was the limit of any discussion about risk. Mrs P was recommended a ten-year MIP invested in the Life Managed Fund. The fund objective was set out in the fund fact sheet which states:

> *"The Life Managed Fund aims to provide excellent prospects for long-term growth while limiting the risks associated with pure equity funds. It accordingly offers a balanced investment portfolio, spread across a wide range, including shares, properties, fixed-interest securities and cash, both in the UK and globally."*

From the information provided it appears the fund was mainly made up of equities (75.8%), as well as property (4.4%) and a small proportion of fixed interest assets such as bonds (12.2%) and cash (7.6%). UK equites made up (55%), whilst international equities made up 20.8%. International equities can pose additional risk because changes in foreign exchange rates can have a negative effect on the investment.

I appreciate the point Zurich makes that a mixture of equities and bonds was seen at that time as a good way of keeping pace with inflation. I also note what it says about the fund having consistently produced good average annual growth. But ultimately, I have to consider whether the risk posed was in line with Mrs P's attitude to risk.

Mrs P's annual income at the time was about £20,000, so paying in £2,400 a year in contributions wasn't an insignificant sum for her to put at risk. In addition, she was committing to making these payments for ten years. I note Mrs P made regular contributions and held the plan for five years, surrendering five years before the end of the term.

Overall, I consider, given Mrs P's circumstances at the time, that she was able to a small level of risk with £300 per month over that term. Especially considering she had sufficient *funds reserved in case of an emergency. I consider she was prepared to take this level of risk in order to try to achieve her objective of saving and achieving a return on her capital. But I'm not persuaded she that she was prepared to take the level of risk posed by her investment being exposed to over 75% in equities.*

Impact of charges

I note the point made Mrs P has made about the impact of the charges and the Bank of England base rate that was in force at the relevant time. I can see that the charges did have an impact on the performance of the plan. But I don't agree that the charges made it a pointless way of saving, as the medium investment growth rate on the illustration showed a return of around 4.1% taking into account the impact of charges but excluding the cost of life cover and sickness benefits. While base rate may have been higher than this, this was a ten-year plan and the projected rate was over that whole period and base rate can, and does change.

Having said that, I think the impact of the charges did affect the weighing up of risk versus benefit. Because Mrs P was recommended a plan that posed more than a low level of risk and any benefit would be affected by the impact of charges. Therefore, the potential benefit was reduced. So, whilst I don't think the impact of charges, of itself, made the investment unsuitable for Mrs P, I consider it was part of the overall consideration of whether the plan was suitable for Mrs P.

Inclusion of insurance cover

I also note that Mrs P said she didn't need or want the life cover included in the plan. However, the fact find recorded that Mrs P was interested in an investment with a ten-year term, that included life and critical illness cover for the same term. I also understand that life cover was included in these plans in order to make them qualifying for tax purposes. That is a feature that I think, in all likelihood, would have been attractive to Mrs P.

In addition, Zurich has confirmed the cost of the life cover within the plan was minimal, and was at the lowest level possible to allow that the proceeds of the plan were available at the end of the term tax free. So I don't find the inclusion of this cover to have been unsuitable for Mrs P's circumstances.

Summary

Overall, I consider the MIP recommended to Mrs P was unsuitable taking into account her circumstances and objectives. I consider on balance that it posed more risk than she was willing to take.

Responses to my provisional decision

Mrs P accepted my provisional findings but Zurich didn't. In summary, it said:

- The managed fund concept was introduced to give customers an effective and accessible way to spread their investment over a number of different asset types and economies, and over several hundred different company shares.
- Mrs P was opting to save for the medium to long term by taking this plan and the managed fund was suitable to achieve her objective.
- As market practice evolved, and new funds introduced with a narrower focus, customers were able to switch their investment into a fund that matched their changing investment objectives.

- It should be remembered though that alongside the managed fund, Zurich's legacy products typically offered gilt funds enabling customers to move into more stable asset types as they near their investment horizon.
- It is important that the advice Mrs P received is assessed based on the investment landscape and the facts at the time of the sale in 2001 and not now, with the benefit of hindsight.

As such, the complaint has been passed back 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.

Whilst I appreciate Zurich believes that the MIP was suitable for Mrs P, I still don't agree. As I explained in my provisional findings, I'm satisfied Mrs P was prepared to take some risk in order to try to achieve her objective of saving and achieving a return on her capital. But I'm not persuaded she that she was prepared to take the level of risk posed by her investment being exposed to over 75% in equities. Zurich's response seems to suggest that Mrs P could have switched her investment into a fund that matched her attitude to risk or circumstances once it started to make new funds available. But this doesn't detract from the fact that I'm satisfied her original investment was unsuitable.

I understand Zurich's point that the advice should be considered from the time of the sale and not with hindsight. However, I'm not persuaded Zurich couldn't have provided suitable advice at that time, with Mrs P's attitude to risk being fully considered. As I mentioned in my provisional findings, there has been no evidence provided to support that her risk was considered, given the adviser didn't think it important to identify her risk appetite in the fact find.

So I remain of the opinion that consider the MIP recommended to Mrs P was unsuitable taking into account her circumstances and objectives. And I consider on balance that it posed more risk than she was willing to take.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs P as close to the position she would probably now be in if she had not been given unsuitable advice. I take the view that Mrs P would have invested differently. It is not possible to say precisely what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

What must Zurich do?

To compensate Mrs P fairly, Zurich must:

- Compare the performance of Mrs P'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 pay interest as set out below.

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	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

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, Zurich 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.

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Zurich totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs P wanted capital growth with a small risk to her 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 her 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.

- It's not clear if Zurich mentioning the investment landscape and available funds at the time is in reference to it not, at the time, being able to advise Mrs P to make an investment in line with my suggested settlement. However, I'd like to clarify again that I consider that Mrs P's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs P into that position. It does not mean that Mrs P would have invested 50% of her 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 Mrs P could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision is that I uphold this complaint and instruct Zurich Assurance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 8 March 2024.

Ben Waites
Ombudsman