DRN-4616354

The complaint

Mr L complains about Zurich Assurance Ltd. He doesn't think they've correctly administered a reviewable whole of life (RWOL) policy he holds with them.

What happened

Mr L took out a reviewable whole of life (RWOL) policy in 1980 in order to provide protection for his family. It initially had a sum assured of £80,000 for monthly premiums of £31.15.

Mr L complained to Zurich in 2020 and said that he was disappointed with the policy as it wasn't working in the way it had been explained to him when he took it out. He said that his understanding was:

- The units bought would always be retained and never be used for anything else
- The premium would always be adequate for the whole of life if the funds grew at 5% per annum and the life cover would be reduced or increased if performance was lower or higher
- The premium, after service fee, would be used to buy more units
- The life cover, over the long term, would be better that a with-profits whole of life policy and never less than the total gross premiums paid

Zurich looked into his concerns but didn't uphold the complaint. They explained how the review process worked and said that the latest review had been impacted by lower than expected performance of the underlying investment fund, alongside an increase in mortality costs. They acknowledged that the policy's sum assured had fallen but thought they had administered the policy in line with its terms and conditions.

Mr L didn't accept Zurich's findings and asked for our help in the matter. The complaint was considered by one of our investigators who didn't think it should be upheld. He thought that Zurich hadn't acted inappropriately in buying and selling units as this was how the policy was designed to work. He also thought that Zurich had kept Mr L informed of how the policy was performing throughout its lifespan, and had kept to the original terms by performing regular reviews. He noted that the policy had been sustainable throughout its life and had met its original objective of providing life cover and accruing an investment value.

Mr L didn't agree with the investigator's findings and made the following points:

- Zurich had a duty to carry out proper reviews, but they'd been negligent and had missed several reviews. If they'd carried out the reviews, then they would have found out that he hadn't needed that level of life cover since 2011 as he was mortgage and loan free by that time and his children were no longer dependent.
- He'd been experiencing some difficult personal circumstances between 2012 and 2018 and had forgotten about the policy. He'd only found out in 2020 that the

surrender value had fallen for the first time.

- When he queried it with Zurich, they said they'd been cashing in the units to maintain the life cover. He'd subsequently complained to them and said that they shouldn't have done that without reviewing it with him, but their reply was that they were acting in line with the policy provisions. Whilst Zurich may have acted in line with the written policy provisions, they'd failed to comply with the implied condition of ensuring that the policy was still in line with his needs and wishes.

- Had Zurich reviewed the policy with him before they started cashing in units, he would most likely have continued with the policy by reducing the life cover to the surrender value of the policy, assuming that some of the premium would continue to be used to add units to the policy. Otherwise, he would have surrendered the policy at that time.

- He strongly felt that Zurich had failed in their duty of care and should refund him all the units that they'd cashed in, and all the premiums he'd paid since they started to cash in units.

The investigator wasn't persuaded to change his opinion, so the complaint was passed to me to make a decision. I recently issued a provisional decision where I said:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't think this complaint should be upheld and I will go on to explain why. In making my decision, I've considered if Zurich treated Mr L fairly by cashing in units and also if they provided enough information to enable him to make an informed decision about the policy.

In considering what is fair and reasonable in all the circumstances of this complaint, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, codes of practice; and what I consider to have been good industry practice at the relevant time. Having taken all these elements into account, I've set out below what I consider to be the key factors:

Relevant considerations

I think the FCA's Principles for Businesses ("the Principles") are relevant to this complaint. They are set out in the FCA's Handbook as "a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G). Particularly relevant are Principles 6 and 7 which say:

- *Principle 6 – "A firm must pay due regard to the interests of its customers and treat them fairly."*

- *Principle 7 – "A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

Principle 6 and 7 have applied unchanged since 1 December 2001.

The Conduct of Business Sourcebook (COBS) sets out further relevant regulatory obligations. I consider the most relevant obligations here are:

- *COBS 2.1.1R (1) – "A firm must act honestly, fairly and professionally in accordance*

with the best interests of its client (the client's best interests rule)."

- *COBS 4.2.1R (1) – "A firm must ensure that a communication or a financial promotion is fair, clear and not misleading."*

These obligations were in place at the time of each of the relevant policy reviews I have set out in the background section above and since 1 November 2007 when COBS came into force.

FG 16/8 Fair treatment of long-standing customers in the life insurance sector

In 2016, the FCA published a guidance note – "FG 16/8 Fair treatment of long-standing customers in the life insurance sector" – which I think is also a relevant consideration. It was published in December 2016, following a Thematic Review and a period of consultation. The guidance was provided in four high level outcomes (with fourteen sub-outcomes). The four high level outcomes were:

1. *The firm's strategy and governance framework results in the fair treatment of closed-book customers.*

2. *The firm's closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle to enable them to make informed decisions.*

3. *The firm gives adequate consideration to, and takes proper account of, fund performance and policy values in a way that ensures it treats its closed-book customers fairly and proportionately.*

4. *The firm's closed-book customers are able to move from products that are no longer meeting their needs in a fair and reasonable manner.*

Also of particular importance is the note's clarification that:

1.14 The requirements on firms have not changed; they reflect the Principles and certain other rules. Some of the detailed expectations have also previously been set out in:

- *formal guidance in the form of Responsibilities of Providers and Distributors for the Fair Treatment of Customers (RPPD) Regulatory Guide*

- *other communications such as a previous With-Profits Regime Review Report and various Treating Customers Fairly (TCF) communications as referred to in Chapter 2 of TR16/2; and*

- *senior management speeches*

The relevant sections of the finalised guidance, in my opinion, are:

Outcome 1: The firm's strategy and governance framework results in the fair treatment of closed-book customers.

Sub-outcome 1.2: The firm checks, through periodic product reviews, that closed-book products remain fit for purpose and continue to meet the general needs of the target audience for whom they were designed.

Finalised Guidance: Our expectations

As stated in the RPPD, and in line with Principle 6, we expect firms to review a product periodically to check whether it continues to meet the general needs of the target audience for whom it was designed at the point of sale or after any subsequent changes are communicated between the firm and customers. To do this, firms that have closed-book customers should have well-defined and effective processes to ensure that products continue to meet customers' reasonable expectations. Firms should also have in place adequate risk management systems to ensure that they can identify where poor outcomes may be occurring, and take appropriate action.…

Firms should ensure that closed-book products are delivering fair outcomes for customers. Although we recognise that T&Cs should be taken into account when reviewing a product, this should not detract from the need to focus on achieving fair outcomes for customers. Firms will be aware that some products were manufactured and sold in a different era – where, for example, economic conditions may have been fundamentally different. The risk that the passage of time could adversely impact on the outcome the customer receives is something that firms should be aware of, and their processes should take this into consideration.…

We expect firms to consider whether a product continues to provide a fair outcome to the customer. This may include assessing whether customers have received the investment return that they could reasonably expect, or whether product charges consistently outweigh the performance being produced.

When considering outcomes that closed-book customers may be experiencing, the firm should take into consideration all the relevant factors that could affect the product's performance. For example, value for money, and product performance (including the impact of charges, contractual obligations, communications to customers and complaints data) are all likely to be relevant factors to assess. However, this is by no means an exhaustive or definitive list. Firms should be able to articulate clearly the criteria that they assess products against and be able to explain what a fair outcome should be for each product (or group of products). This should take into account what a reasonable customer expectation should be, based on what the customer is likely to have understood by the information given to them at point of sale.

Where firms identify issues, they should take appropriate and timely action to address them in line with the fair treatment of affected customers….

Outcome 2: The firm's closed-book customers receive clear and timely communications about policy features at regular intervals and at key points in the product life cycle that enable them to make informed decisions.

Sub-outcome 2.1: Regular communications to customers provide them with sufficient information to make informed decisions.

Finalised Guidance: Our expectations

We expect firms to ensure that they meet the information needs of all their customers, including closed-book customers, on an ongoing basis.

Principle 7 of our Principles for Businesses requires firms to have due regard to the information needs of their customers. As such, firms should have appropriate mechanisms in place to assess these information needs and ensure their communications meet these needs. To do this, firms should provide their closed-book customers with regular communications regarding their policies. We would expect this communication to be issued at least annually, unless the firm is able to justify how it is otherwise meeting the information

needs of its customers.

In line with Principle 7, firms should also ensure the content of these regular communications is consistent with their customers' information needs. In their communications, firms should include, for example, sufficient and clearly explained details regarding the performance of the product, its value, and the impact of fees and charges.

Principle 7 also requires communications to be fair, clear and not misleading.

Therefore, reflecting the nature of the policy sold, firms should consider including the following in the communication (as relevant or appropriate to customers' information needs):

- *The current value of the policy. The policy value may be different, due to charges or policy conditions, from the transfer or surrender value. Where this is the case, firms should provide both the current and the surrender value of the policy. For whole-of-life policies with cash-in-value, we expect this to be included as the current value. For conventional with-profits policies, the current value may be challenging to calculate; in such cases, firms should explain the impact of any likely terminal bonus on the current value and any reductions in asset share that will reduce the current value on surrender.*

- *The value at the previous communication date and the value of any premiums paid in over that period. This facilitates a broad comparison of the performance of the policy with reference to the current year's value.*

- *For unit-linked (non-profit) policies, charges incurred over the period in monetary figures. This includes setting out, in addition to the aggregate charge, a breakdown of the major components and the charge to the customer for benefits such as life cover and guarantees.*

- *For unitised and conventional with-profit policies, an explanation of the charges being deducted – for example, the guarantees that incur a charge and policy fees – and an indicative level of charge (in monetary terms) applicable to the policy.*

- *Where customers have specific options and benefits associated with a policy – for example, life cover or a guaranteed minimum death benefit – a reminder of this should be in regular communications.*

Sub-outcomes 2.2 and 2.3: Communications to customers at the time of key policy events are clear, accurate and enable them to make informed decisions; and communications with customers make them aware of guarantees or options (whether time-critical or not).

Finalised Guidance: Our expectations

Principle 7 of our Principles for Businesses requires firms to have due regard to the information needs of their customers and communicate in a way which is clear, fair and not misleading.

In line with this, we expect firms to ensure that closed-book customers are fully informed of the various options, features and guarantees that form part of their policies – both on an ongoing basis and in the lead up to policy events. Firms should undertake an assessment of the products' benefits and determine how to ensure customers are kept informed.

In line with our requirement that firms' communications should be clear, fair and not

misleading, we expect firms to be specific when setting out guarantees or benefits that are available to closed-book customers and avoid language that is ambiguous. For example, it would not be appropriate simply to provide statements such as 'you may have life cover as part of your policy'. Instead, firms should state the level of cover provided as a monetary amount. Furthermore, firms should also not 'cherry pick' which benefits are to be disclosed. The needs of customers vary, and benefits that are not of significance to one customer may be valuable to others.

In communications with customers regarding a policy event, firms should highlight the benefits (plus any associated costs) that are likely to be impacted by the event in a sufficiently prominent and specific manner.

Additionally, to be clear, fair and not misleading, we expect any communication surrounding a key event to:

- *set out clearly all options available to the customer in a balanced manner including the risks, costs and potential benefits of each option*
- *set out clearly any charges that may apply (exit and/or paid-up charges should, where possible, be presented as monetary figures so that the impact is clear)*
- *provide sufficient notice to customers and provide clear time lines for when a decision is needed*
- *highlight where there may be a need for the customer to seek advice; and*
- *provide alternative options to incurring a paid-up/exit charge (for example, indicate if a customer could delay surrendering a policy so that a charge would not apply or would not apply at that time)*

…

Firms should carefully consider the layout and structure of event-driven communications to ensure that information is easily accessible and key information is sufficiently prominent. Consumer testing is one approach to assessing the quality of communications; proactively engaging with consumers both during the initial development of communications and afterwards will help ensure all communications remain fit for purpose. Firms should also take both the quality and contents of event-driven communications into consideration in the course of product reviews.

I think it's important to reiterate that even though the Finalised Guidance was published in December 2016, the examples of good practice it gave were based on actions the FCA reasonably expected from firms before that time based on rules and Principles that were in existence throughout the period in question.

FG 16/18 contains explicit statements regarding this point:

- *Feedback statement 2.9 – "Our existing rules and Handbook guidance, together with this guidance, are sufficient for firms to understand our requirements in this area and to make any changes necessary to comply with our expectations. The guidance simply adds an extra level of detail about our expectations to improve customer outcomes. These are not new expectations and are reasonably predictable from the Principles and relevant rules."*
- *Feedback statement 2.99 – "The guidance is not intended to create any new requirements but to remind firms of our expectations in relation to existing*

requirements contained in COBS rules and elsewhere."

Taking both of these statements into account, I think it is reasonable to use FG 16/18 as not only a relevant consideration, but also as what the FCA would consider to be good industry practice. With this in mind, I've thought about Mr L's complaint against Zurich.

I will firstly recap how RWOL policies generally work in practice. At the outset, when charges are relatively low, the difference between the premiums being paid and the charges results in an investment pot being built up. As the life assured gets older, the cost of providing cover increases and can exceed the premiums being paid in, but this can be offset by selling the accrued funds, or the return from the investment pot.

Businesses will undertake reviews to ensure that the policy can continue to provide the chosen level of cover. They will look at a number of different factors such as the size of the investment pot, current mortality rates and investment performance. If they decide the policy isn't sustainable at its current premium, the consumer will usually be offered the option of reducing the sum assured or increasing the premium.

At the heart of this complaint are Mr L's concerns about the use of the investment pot that had been built up in order to offset the cost of providing cover. The table below shows the mortality charges on Mr L's policy vs the premiums that were being paid.

Date	***Gross premium paid***	***Mortality costs***	***Sum Assured***
1.3.1980	*£373.80*	*£0.00*	*£80,000*
1.3.1981	*£373.80*	*£3.66*	*£80,000*
1.3.1982	*£373.80*	*£50.91*	*£80,000*
1.3.1983	*£373.80*	*£51.92*	*£80,000*
1.3.1984	*£373.80*	*£53.00*	*£80,000*
1.3.1985	*£373.80*	*£54.92*	*£80,000*
1.3.1986	*£373.80*	*£57.70*	*£80,000*
1.3.1987	*£373.80*	*£61.33*	*£80,000*
1.3.1988	*£373.80*	*£65.69*	*£80,000*
1.3.1989	*£373.80*	*£71.14*	*£80,000*
1.3.1990	*£373.80*	*£81.03*	*£85,479*
1.3.1991	*£373.80*	*£73.92*	*£85,479*
1.3.1992	*£373.80*	*£82.29*	*£85,479*
1.3.1993	*£373.80*	*£91.72*	*£85,479*
1.3.1994	*£373.80*	*£101.90*	*£85,479*
1.3.1995	*£373.80*	*£114.04*	*£85,479*
1.3.1996	*£373.80*	*£127.69*	*£85,479*
1.3.1997	*£373.80*	*£142.48*	*£85,479*
1.3.1998	*£373.80*	*£158.44*	*£85,479*
1.3.1999	*£373.80*	*£162.91*	*£85,479*
1.3.2000	*£373.80*	*£143.58*	*£91,419*
1.3.2001	*£373.80*	*£157.93*	*£91,419*
1.3.2002	*£373.80*	*£173.74*	*£91,419*
1.3.2003	*£373.80*	*£191.48*	*£91,419*
1.3.2004	*£373.80*	*£209.72*	*£91,419*
1.3.2005	*£373.80*	*£255.38*	*£99,669*

1.3.2006	*£373.80*	*£278.18*	*£99,669*
1.3.2007	*£373.80*	*£246.65*	*£99,669*
1.3.2008	*£373.80*	*£274.28*	*£99,669*
1.3.2009	*£373.80*	*£321.77*	*£99,669*
1.3.2010	*£373.80*	*£311.53*	*£90,049*
1.3.2011	*£373.80*	*£347.06*	*£90,049*
1.3.2012	*£373.80*	*£396.40*	*£90,049*
1.3.2013	*£373.80*	*£446.09*	*£90,049*
1.3.2014	*£373.80*	*£486.11*	*£90,049*
1.3.2015	*£373.80*	*£477.68*	*£83,697*
1.3.2016	*£373.80*	*£530.45*	*£83,697*
1.3.2017	*£373.80*	*£593.54*	*£83,697*
1.3.2018	*£373.80*	*£656.20*	*£83,697*
1.3.2019	*£373.80*	*£737.95*	*£83,697*

What it shows is that by March 2012, the mortality costs had overtaken the gross premiums being paid. I think this represents an important tipping point in the lifecycle of the policy because this is the point that the underlying fund starts being utilised to offset the cost of providing cover.

Zurich have explained that the cost of providing cover is based on the sum at risk - the difference between the sum assured and the fund value. They've said the policy is designed so that the fund value builds up over time to meet the sum assured on death. This means that the sum at risk should steadily reduce as customers get older to offset the increase in the mortality charge.

However, there may be occasions when the mortality deduction will be greater than the allocated premium and the fund value will reduce. However, the build-up of the underlying fund value means that the plan will remain on track if experience is in line with the original pricing assumptions, because the combination of premiums and fund growth will ensure that the plan continues to fund the deductions for the remainder of the policy.

I appreciate the explanation they've provided, but I think that there was an expectation reiterated in FG 16/18 that consumers needed to be provided with sufficient information about their policies in order to be able to make informed decisions about their policies. I think this is particularly relevant in relation to the point in time when the tipping point is reached.

After this point, the performance of the underlying fund becomes even more important. If performance falls below the levels Zurich based their assumptions on, then there is a higher probability of significant changes being made to the policy's sum assured or premiums at future reviews. This could potentially mean that the policy no longer meets its original purpose or simply isn't affordable.

I think consumers need to be made aware that the policy has reached its tipping point as it's likely to influence important decisions they'll have to make about the policy. For example, if a policy was to have a better than expected review where there was the option to increase the sum assured for no extra premium, they might elect not to accept the increased sum assured in order to build up the underlying fund as a buffer to protect against poor performance in the future. If they aren't aware that charges are outweighing premiums, then it will be less likely that they choose to take this course of action as they aren't in a fully informed position.

The opportunity for a consumer to make these decisions from an informed position is key towards the long-term sustainability of the policy. I fully appreciate that Zurich's reviews will be focused on ensuring that policies last for life, but this is based on their underlying assumptions in regard to investment performance and mortality costs. A consumer may be more cautious in their approach.

With this in mind, it is imperative that consumers are able to make decisions from a fully informed position as early as possible. The ability to mitigate poor outcomes becomes more difficult over time so it is in the consumer's interest to make key decisions at an early stage in the policy's life cycle, and in order to do so in a fully informed way, firms need to provide consumers with clear, fair and not misleading information.

Most policies will have set dates for contractual reviews requiring firms to provide updates on the performance and sustainability of the policy. But firms are not just limited to the communications that fall due at contractual review dates. They have the ability to deliver important messages and to provide fair, clear and not misleading information at other times and in other ways.

As I've noted above, Mr L's policy had reached the tipping point in the policy year ending March 2012. This was therefore a key point in the policy's life cycle and for Mr L's interests and information needs. And I consider that at this point, Zurich ought to have provided him with clear, fair and not misleading information in a timely manner to enable him to weigh his options up and make a fully informed decision about the value of the policy and whether, and on what terms, he wished to retain it.

I think the obligation on Zurich to do so is in line with the requirements imposed by PRIN 6 and 7, as well as COBS 2.1.1R(1) and COBS 4.2.1R (1). It is also in line with the illustrations of good industry practice outlined by the regulator in FG 16/8 and, taking all of that into account, is what I would in any event regard as the fair and reasonable response in the circumstances.

Having reached that tipping point, I've considered Zurich's communication to Mr L. His policy was being reviewed every five years, with the next review due in 2015. He was also receiving annual statements in or around April of each year. I think Zurich should have made Mr L aware of the position of the policy within 12 months after the date when the tipping point was reached, so by around the time of the April 2013 statement.

Taking into account the regulatory obligations I have set out above (PRIN and COBS) and what I consider to be standards of good industry practice at the time (including the regulator's views as expressed in FG16/8), and in any event what I consider to have been fair and reasonable in the circumstances, I'm satisfied Zurich should have taken steps to ensure they communicated information to enable Mr L to evaluate the impact of the increasing life cover costs on the policy and the available options in a clear, fair and not misleading way. This needed to include the risks, costs and benefits associated with those options, as well as giving clear timelines for the making of decisions where applicable.

In broad terms I consider it was incumbent on Zurich to have provided Mr L with the following information in a clear fair and not misleading way to enable him to make an informed decision:

- *A clear outline of the existing cover – including the sum assured and premiums.*
- *The current surrender value.*
- *The life cover costs (including administration charge).*

- *A clear explanation that the costs were no longer being met by premiums and that units in the investment fund needed to be sold.*

- *A clear explanation of how long the policy was likely to be sustainable on its existing terms (reasonable approximations would suffice).*

- *Estimates of what the policy might cost at the point when the policy was likely to cease to be sustainable on its existing terms in order to give Mr L information that would allow him to fully appreciate the risks and consequences of not taking any action.*

- *A clear explanation of the poor outcomes a consumer might face at the point the policy became unsustainable on its existing terms. This should include a clear outline of the levels by which premiums would need to increase (or the sum assured would need to decrease) in order to maintain the policy at that point (reasonable approximations or illustrative examples would suffice).*

- *A clear explanation of the options available to a consumer that were aimed at mitigating that outcome, together with the costs and benefits of each option (including increases in premium levels, decreases in the sum assured or surrender of the policy).*

I've considered the communications Zurich sent Mr L after March 2012. Unfortunately, they haven't been able to provide me with copies of the review letters and statements apart from the 2019 statement and copies of correspondence they had with Mr L in 2017. However, I've seen review letters and statements from other consumers who also held RWOL policies with Zurich, so I'm familiar with the content of the letters. From my experience they provided most of the information I set out, apart from the disclosure of the specific level of charges, or an explanation that the costs of the policy were no longer being met by the premiums.

Without this level of information, I don't think Mr L would have been able to make a fully informed decision about his available options following each review including whether or not he wanted to keep the policy.

For the reasons I've previously set out, I think communications to Mr L once the tipping point had been reached, should have provided all the information I previously outlined in a clear and accurate format to enable him to make a fully informed decision about what steps he wanted or needed to take to make the policy sustainable for life. I think this was confirmed in firm's obligations highlighted in FG 16/8, that "Communications to customers at the time of key policy events are clear, accurate and enable them to make informed decisions..".

Taking everything into account, I'm satisfied that Mr L wasn't provided with enough information about the policy, specifically relating to the cost of providing cover. Therefore, I'm of the opinion that there was an imbalance of knowledge between him and Zurich. This meant that he wasn't able to make a fully informed decision about what steps he wanted or needed to take following the tipping point being reached.

What would Mr L have done differently?

I've considered what, if anything, Mr L would have done differently if he'd been provided with all the information I've set out above after the tipping point was reached. He's said that Zurich had a duty to review the policy with him to ensure that it was continuing to meet his needs. He's also explained that his circumstances had changed by 2011 as by then he had no liabilities, and his children were no longer dependent.

I've reviewed all the available evidence to see what level of service Zurich would provide him with. Having done so, I haven't seen any evidence to show that Zurich needed to provide ongoing suitability assessments. The policy provisions concerning reviews only state that the policy will be reviewed, and adjustments could be made to the sum assured and/or premiums at the company's discretion. There is simply no mention or implication of any requirement to make sure the policy remained suitable for the policyholder. Therefore, I don't think I can say that Zurich have treated Mr L unfairly in regard to this aspect of his complaint.

I've then gone on to consider Mr L's concerns about the sale of the underlying units in the policy's investment fund. I've thought about what course of action he'd most likely have taken if he'd been made aware that the policy had reached its tipping point. To recap, he's said that if they'd made him aware that they were cashing in units, he would most likely have continued with the policy by reducing the life cover to the surrender value of the policy, assuming that some of the premium would continue to be used to add units to the policy. Otherwise, he would have surrendered the policy at that time.

I appreciate what he's said, but I also think it's important to note that Zurich's reviews were focused on making the policy last for the remainder of his life. It would always have been their expectation that at some point the cost of cover would exceed the premiums being paid, but this would be offset by the return provided by the policy's underlying unit fund.

So even if they'd explained that the cost of providing cover was higher than the premiums being paid, there would also have been an explanation that this was how the policy was designed to work. And based on their current assumptions regarding mortality costs and investment performance, the level of premium being paid would be sufficient to sustain the policy for life.

So, taking this into account, the key question I have to answer is what Mr L would have done if the information had been presented to him in this way. I've taken into consideration the fact that Mr L had more knowledge about the product than the average layperson due to his professional background. I also think a relevant consideration is Mr L's disengagement with the policy between 2012 and 2018 due to his personal circumstances at the time.

Having considered everything, I think it's likely that even if Zurich had written to Mr L in 2013 explaining that the costs of the policy had overtaken the premiums, he wouldn't have taken any action. Given his disengagement with the policy at the time, I don't think better communications from Zurich would have prompted him to take action.

I appreciate that Mr L didn't have the same need for the policy as he did when he first took it out. But I don't think this means he would have surrendered the policy after being made aware it had reached it's tipping point. He's explained that the purpose of the policy was for family protection and also to provide a pot of money at retirement. As he had no dependents after 2011, the policy's main purpose going forward from this point was therefore to provide a pot of money with the added benefit of protection.

Better communications from Zurich in 2013 would likely have explained that the tipping point had been reached. But, also that the policy would continue to grow and the growth from the underlying fund would support the cost of cover, so there would be no need to sell down units if their assumptions were correct. I don't think this message would have made him take the course of action which he now says he would have done.

I think this is evidenced by his actions in 2017. The correspondence he had with Zurich at the time shows he was starting to re-engage with the policy and consider his options. He'd written to Zurich and asked what his options would be after he retired. Zurich replied and

said that the policy was whole of life and had no end date. They also explained that he could surrender the policy, make it paid up or exercise the paid up term option.

Mr L then got back in touch and asked for projections based on the paid up and paid up term options. The projections Zurich provided showed that even using the lowest projected rate of return (1.5%), if he were to stop making payments and keep the policy's sum assured at £83,697, the policy would continue to grow over time despite deductions being made for the cost of cover from the underlying fund.

He then took no action until after the 2020 review when he was told that the surrender value of the policy had fallen due to poor performance, and he'd have to reduce the sum assured. Following this review, he complained to Zurich and then subsequently surrendered the policy.

Considering Mr L's background, I think he would have had a good understanding of the information he received from Zurich, not only in regard to 2017 projections, but also from the yearly statements which would have shown the units decreasing over time between 2017 and 2020. So, the fact he took no action until the policy's surrender value fell in 2020 implies that he was broadly satisfied with how the policy was performing despite the number of units in the underlying fund falling.

Because of this, and while I appreciate this point is finely balanced, I'm not persuaded he would have surrendered the policy earlier than he did even if he'd been put in a fully informed position. I think the available evidence shows that he was happy to accept the risk of increasing life cover charges in order to benefit from the protection the policy afforded with the potential for growth, at the original premium, for as long as possible. Therefore, I think it's more likely than not that he would have kept it while it was performing in line with his expectations and continuing to grow, but would have surrendered it in 2020 when the level of performance fell.

So, taking everything into account, I don't think this complaint should be upheld."

Responses to my provisional decision

Zurich responded and said that while they disagreed with some of the points I'd made, they didn't have anything else to add. Mr L responded to say he also disagreed with my findings and made the following points, in summary:

- Prior to when Zurich acquired his policy, he'd been engaged at reviews and it was implicit that Zurich should have engaged with him during their reviews or at least provided him with the information to carry out my his own reviews.

- Nothing in the policy provisions allowed Zurich to cash-in units to cover premiums or forsake the funds to shore up the sum assured.

- Zurich were negligent with their reviews. By not properly communicating and engaging with him, both parties had lost out as they'd lost a loyal customer and he'd lost out financially as would have been better off if he'd kept the policy.

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.

Having done so, I'm still of the opinion that the complaint shouldn't be upheld. I note the

points Mr L has raised about Zurich's review process and how it differed from the review process of the firm who originally administered the policy. However, I don't think that the fact that their review processes differed means that Zurich have acted unfairly.

As I noted in my provisional decision, I haven't seen anything to suggest that Zurich had an agreement in place where they would review the ongoing suitability of the policy with Mr L. And as there was also no regulatory requirement to do so, then I can't fairly say that Zurich needed to provide this service to Mr L.

I agree that Zurich should have been providing Mr L with enough information to enable him to make an informed decision about the policy. But for the reasons I gave in my provisional decision, I don't think it would have changed his decision to surrender the policy when he did.

I'm also not persuaded that he would have chosen to keep the policy. I appreciate that Mr L is of the opinion that he would have made changes to the policy instead of surrendering it. However, I'm conscious that he has made that decision with the benefit of hindsight. I think his actions, surrendering the policy after the failed 2020 review instead of accepting a lower sum assured, is a more likely indicator of the course of action he would have taken. I think it was likely that the main driver behind his decision to surrender the policy was because it failed to perform as well as it had previously done. And because of this, I don't think the provision of more information would have made him make a different decision.

I've considered the points Mr L raised about how Zurich were administering the policy. He's said, in summary, that they weren't able to cash in units from the policy's underlying fund to pay for the cost of cover. However, I'm not persuaded this is the case, the policy provisions state:

"On the first day of every month commencing with the month referred to in sub-paragraph (e) below, the amount in respect of which units are to be allocated (hereafter referred to as the "Unit Allocation Amount") is calculated in accordance with sub-paragraph (b) below, and is divided by the bid price at that time of the Units of the relevant Fund than applicable to the Policy, the result being calculated to the next lower one-hundredth of a Unit. If the Unit Allocation Amount is a positive amount, the number of Units so obtained is allocated to the Policy. If the amount is negative, the number of Units so obtained is deducted from the Units already allocated to the Policy, cancelling an equivalent number of Units and thus reducing the Unite allocated to the Policy. If the number of Units to be deducted exceeds those already allocated to the Policy, the excess will be carried forward as negative Units to be applied in cancelling and reducing future allocations of Units to the Policy until the excess is extinguished

Subject to paragraphs 1 (e) and 2 (a) below, the Unit Allocation Amount in any month is an amount (which may be positive or negative) equal to (i) the Basic Premium, if any, due and paid at the beginning of that month, less (ii) the Expense Allowance, If any, for that month, and less (iii) the Mortality Cost applicable to that month, aa described below, provided that if a Basic Premium is paid after its due date it may at the discretion of the Company be treated as having been paid on the due date or as being due and paid at the beginning of the month following payment."

So, the provisions explain that each month a calculation is performed to establish the unit allocation amount. This calculation factors in the premiums being paid and policy's costs including the mortality costs. If this calculation results in a positive figure, then units are added to the policy, if it is negative then units are subtracted from the policy. So, I'm satisfied that Zurich haven't acted against what was set out in the policy provisions when they cashed in units from the policy to pay for the cost of cover.

I take Mr L's point that the policy provisions don't explicitly state that Zurich's focus should be on making the policy last for life. But given that the policy is a whole of life policy and not a savings plan, I think it is reasonable that Zurich's focus is on ensuring that cover can be provided for the lifetime of the policy and not just for a set period. If they didn't do this and focused on building up an investment pot, then it is very possible that the policy wouldn't be able to meet its original purpose.

So, having reconsidered all the available evidence and submissions, I don't think this complaint should be upheld.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 April 2025.

Marc Purnell
Ombudsman