DRN-4656970

The complaint

Mr L is represented by a claims management company (CMC). It brings a complaint on his behalf about a Capital Builder savings plan sold to him by Sun Life Assurance Company of Canada (U.K.) Limited.

The CMC says the plan was mis-sold because Mr L had no need for a long-term savings plan, there was no evidence his attitude to risk was assessed and he wasn't advised of the need for sufficient emergency savings. It also says Mr L should have been offered alternative savings vehicles and the life assurance included in his plan was excessive.

What happened

In 1993 Mr L took out a Capital Builder savings plan.

In 2001 Mr L switched the funds his plan was invested in.

In 2005 Mr L surrendered the plan.

In 2023 the CMC complained to Sun Life on his behalf. In summary it said:

- There was no evidence that Mr L required a savings contract of such a long-term and there was a strong likelihood that Mr L's circumstances would've changed significantly over the medium term because he was in his late twenties at the point of sale.
- There was no evidence of other saving options being discussed, such as alternative tax efficient savings vehicles which the CMC said offered greater flexibility, less risk and access without an early surrender penalty.
- There was no evidence that Mr L had sufficient emergency savings, in the CMC's view he needed a minimum of three months' income. It said the adviser should have made Mr L aware of this need prior to him committing to a long-term inflexible contract.
- There was no evidence of Mr L's attitude to risk being established to ensure the advice given was appropriate.
- The sum assured on the plan was significantly more than the minimum sum required to confer qualifying status.

Sun Life didn't uphold Mr L's complaint about the savings plan. It said as the plan had been taken out about 30 years before the complaint was made and surrendered approximately 18 years ago, it didn't have the point-of-sale documentation and only held very limited information.

Sun Life noted it wasn't allowed to keep Mr L's data for any longer than was necessary and once his plan had matured or been surrendered, it was only obliged to keep records for a further seven years.

In the circumstances it said it was unable to investigate his complaint. However, it said if Mr L held any information about the plan, he could provide this to Sun Life and it would review its position.

The CMC didn't agree with Sun Life and referred Mr L's complaint to our service. It reiterated the points previously made.

Our investigator considered the complaint but didn't think it should be upheld. He noted what had been said on Mr L's behalf and his comments regarding why he surrendered the plan.

The investigator said the original paperwork from the point of sale wasn't available but that didn't necessarily mean that the factors that had been raised in the complaint, hadn't been discussed and considered at the time. On that basis, he didn't think it was more likely than not that the plan was unsuitable for Mr L.

The CMC didn't agree with the investigators conclusions and in summary it said:

- It had submitted hundreds of claims to Sun Life regarding the Capital Builder plan and the vast majority of these had been upheld. However, it said Sun Life was now rejecting similar claims.
- Its view was that this investment was sold to consumers because of the length of term which it said gave Sun Life higher commissions. The CMC also said no shorter-term contracts were discussed even though a ten-year extendable plan with lower charges was available.

The investigator noted the comments made and said that each complaint was considered on an individual basis. He also said there was no evidence to support the CMC's assertion that shorter term contracts hadn't been discussed.

As no agreement could be reached Mr L's complaint was referred to me for review.

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.

The CMC has said that Sun Life has upheld numerous cases for this particular product and so it should uphold this case.

It is important to note in the first instance that we consider each individual case on its own merits. So the fact that a particular business, or our service, has upheld cases where a certain product was involved, doesn't mean every case will be upheld. It depends on the facts of the individual case.

The reality here is that because this plan was surrendered and therefore came to an end, approximately 18 years before this complaint was made, Sun Life hasn't retained much in the way of information. Similarly, Mr L doesn't hold any information from the point of sale. I have been provided with some limited documentation relating to a change of funds within the plan by Mr L, and in respect of the surrender of the plan.

The fact Sun Life doesn't hold much information about Mr L's plan doesn't mean that the advice it provided approximately 30 years ago to take out the plan was unsuitable. Sun Life doesn't hold the information because it wasn't required to do so and as it has explained, it would need a proper reason to continue holding personal information about a consumer. So, for instance, if it was still administering Mr L's plan.

The CMC has raised several reasons why it says this plan was unsuitable for Mr L.

<u>Length of term and affordability/sufficiency of emergency savings</u>

The CMC says there is no evidence that Mr L needed such a long-term savings plan and given his age at the time, there was a strong likelihood that his circumstances would change making the length of the commitment an issue for him.

As I have said, there is limited information from the point of sale. Mr L was in his late twenties at the time, and I understand from information provided in the final response letter from the business (relating to another product) that he was employed.

There is little evidence available in relation to his objectives for taking out this plan and the term of the plan is also not known.

Mr L has said that ""*I took out the plan when I re-joined the company pension scheme, to boost my savings, having been out of it and in private pensions since 1989.*

I surrendered the plan to pay off part of my mortgage as, from memory, the performance wasn't great after thirteen years."

However, I have to bear in mind that this is Mr L's recollection some 30 years after taking out the plan. So I wouldn't expect him to have a detailed recollection or recall any discussions that took place.

What is clear is that Mr L kept his plan in place for approximately 12 years, which would suggest that he was able to commit to more than a short-term plan. And I note he has explained the reason he surrendered the plan was that he was disappointed with its performance, not because his circumstances had changed, and he was unable, or unwilling to commit to making regular payments into the plan.

In addition, I consider that maintaining the plan for that length of time would suggest, in the absence of any other evidence to the contrary, that affordability wasn't an issue for Mr L. And similarly, Mr L hasn't suggested he surrendered the plan because he couldn't afford to maintain the payments but rather because he wasn't happy with its performance and so he decided to use the funds to pay back some of his mortgage. In any event, as I have said, I wouldn't expect him to have a detailed recollection given the time that has passed.

<u>Attitude to risk</u>

I note the point made by the CMC in respect of Mr L's attitude to risk. We don't know whether or not his attitude to risk was assessed by Sun Life as we don't have the documentation from the point of sale where issues of that nature would be recorded. However, I note that Mr L made the decision to switch the funds in his plan in 2001, which would suggest he was actively engaged in deciding what type of funds he wished to invest in and thus what level of risk he wished to take, rather than simply following any advice he was given by Sun Life.

<u>Inclusion of life cover</u>

This type of plan required life cover to be included in order to make it qualifying for tax purposes. The tax advantage provided by this type of plan was a feature which some consumers would have found attractive and beneficial. In addition, some consumers may have been content to have a small amount of additional life cover. We don't know what the position is here, as we don't have plan documentation indicating the level of life cover included in the plan, or any point-of-sale documentation detailing any discussions that took place. So, I'm not persuaded therefore that it is more likely than not, that the inclusion of life cover was more than was required and that its inclusion made the plan unsuitable for Mr L.

<u>Alternative savings products</u>

As we don't have evidence from the point of sale it is difficult to determine, now, some 30 years later, which discussions did, or didn't take place, in relation to alternative savings products. And as I have said, I wouldn't expect Mr L to be able to accurately recollect what was discussed, given the time that has passed. There may have been a more flexible product with easy access available. However, because of the limited documentation I can't evaluate what factors were considered by Mr L and the adviser at the time. And the fact that there may have been other products on the market at that time which were more flexible with easier penalty free access, does not of itself mean that this plan was unsuitable for Mr L. It really depends on his circumstances and objectives at the time and as I have said, there is little information available in that regard.

Summary

Unfortunately because of the time that has passed since the plan was taken out and since it was surrendered, there is very limited evidence available from the point of sale. Having taken into account the evidence that is available, and the representations put forward, I am not persuaded on balance that the Capital Builder savings plan recommended to Mr L was unsuitable.

My final decision

I do not uphold Mr L's complaint against Sun Life Assurance Company of Canada (U.K.) Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 May 2024.

Julia Chittenden
Ombudsman