DRN-4739297

The complaint

Miss W complains about Zurich Assurance Ltd ('Zurich'). She says that the investment bond she has is unsatisfactory. This is because it has performed poorly and has not been well managed by Zurich.

What happened

Miss W was advised to start an Investment Bond in 2007. She was given this advice by a third party. She says she complained about this bond to the third party in 2014 and this complaint was upheld. She says that it was found that the investment wasn't suitable for her circumstances. I understand this complaint wasn't considered by the Financial Ombudsman Service

Miss W complained to Zurich in August 2023, saying that the performance of the investment bond was unsatisfactory.

Zurich considered Miss W's complaint, but it didn't uphold it, it said that:

- It wasn't responsible for whether the investment bond was suitable for Miss W, as it didn't advise her to start it.
- Risk bearing investments can fluctuate in value and it didn't monitor all the funds that Miss W's bond invested in as some of them used third party fund managers.
- It mainly provided the administrative functions associated with being a product provider.
- It recommended that she talk to a financial adviser if the funds weren't what she wanted.

Miss W didn't agree, and she brought her complaint to the Financial Ombudsman Service. She outlined that her problems with the bond were that:

- Zurich has a record of historical complaints, and this has resulted in a lack of confidence with its service and products.
- The fees and charges were not transparent.
- The growth forecasts shown to her at the start of the investment were misleading.
- The bond has not performed well. It provided lower growth than it was estimated it would at the outset.
- Zurich should take responsibility for investment decisions made within the underlying funds as it pays costs to the fund managers.
- Zurich referred to world stock markets, but she understood that the underlying investments were UK based.
- She was not provided with any advice about the potential volatility of the investments, particularly the property fund
- It was misleading for Zurich to state at the time of sale that cashing in early might result in a loss of capital.
- The industry regulator, the Financial Conduct Authority's ('FCA') Consumer Duty principles are that consumers should have a confident understanding of the products

and they should provide a fair value. This has not happened here as she has lost a significant amount of money. It should withdraw the plan as it provides poor value.

One of our Investigators considered the complaint but didn't uphold it. He said that:

- Zurich wasn't responsible for the suitability of the investment for Miss W's circumstances as it didn't advise her to start it.
- It isn't reasonable to uphold a complaint on the basis of fund performance as it is expected that this will vary.
- He provided some detail about the bond charges and where information about these was shown in the documentation. He didn't think these were unreasonable or that the documentation was misleading.
- The point-of-sale documentation explained that the bond performance wasn't guaranteed. And it was right to say that surrendering the plan at an early point could lead to losses.
- The funds did invest overseas (and in a wider range of markets overall) but the responsibility to ensure this was suitable for her was her advisers, not Zurich's.
- The FCA's new consumer duty regulations do not apply to this investment due to when it was taken out, and that it is a withdrawn product.
- Advising Miss W to start an investment with a death benefit was the responsibility of the advisers who set it up.

Miss W responded and did not agree. She said that:

- She maintained that the charges were not transparent as she did not have exact percentages about what some of the funds could return.
- The illustrations from the time of sale were misleading and unfair, she expected a minimum performance.
- She should be able to receive information such as how much the plan would have provided if withdrawals had not been taken. This would be clearer and more transparent.
- She has not been made aware by Zurich that consumer duty does not apply to the investment.
- She thinks the death benefits should be removed. I note it was later made clear this could only be done when the plan started.

As no agreement has been reached the complaint has been passed to me to consider and issue my final 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.

I think it's firstly right to say that much of Miss W's dissatisfaction with this policy originates from the fact that it's not suitable for her. As she says, she has complained about the suitability of the investment for her circumstances, and this has been upheld. I've not been provided with the details of this earlier complaint, but I think it's established that she shouldn't have been advised to invest in this bond.

But Zurich is the policy provider here and it didn't advise Mrs W to invest in the bond. So, it isn't responsible for ensuring that the bond is right for her. And whilst it did produce some of the illustrations at the time of sale, it also isn't responsible for ensuring that Miss W was fully informed about the investment when she started it. Both of these are the responsibility of the third party that advised her to make the investment. And this would include the specific issues that Miss W has raised about the risk of the property fund, and the information she was given about this.

This means that I won't look at whether the plan is right for her in this decision. Or whether she was given reasonable advice and information at the time of sale. These complaints should be made against another business, and I understand they have already been considered. I've looked at the complaints Miss W has made that should be considered against Zurich.

Regarding the issues Miss W has raised about the performance of the funds. The information I have been provided shows that this bond invests in a diverse range of funds. But what they all have in common is that they are risk bearing. So, there are no guarantees that they will perform as expected. It becomes more likely that they will produce a good return over a longer time frame, but this isn't certain.

These funds are managed by both Zurich and third-party fund managers – depending on the fund. Where the investment decisions are made by the third-party fund managers Zurich will have no control over these. And so, it wouldn't be right to say Zurich is responsible for any losses that Miss W may feel she has suffered in these.

And it's not normally reasonable to uphold a complaint about investment performance in any event. This is because it is influenced by factors that are beyond the control of the business. So, it's not right to say that Zurich should have ensured that the funds it managed performed at a certain level. Miss W was advised to start investments that had no guarantees or minimum levels of performance. They may provide less or more that Miss W was expecting. But this is essentially how these risk bearing investments work. Clearly this is not what Miss W wants but his is an issue that should be considered against the entity that advised her to start the investment.

The funds are standard retail products and can be suitable for an ordinary investor. But they are all complex to some degree, especially when compared to, say, a savings account. Miss W has commented about the property funds and the geographical spread of the assets in some of the other funds. I don't disagree that property funds are often complicated, and they can have risks that are not easily discernible. And almost all the funds her investment bond uses have some degree of overseas exposure, it's hard for an investment fund to avoid this given the global nature of many businesses and most will use complicated instruments and techniques, such as hedging and derivatives, to manage risk and cash flow.

But this isn't inherently wrong. Many investors seek the opportunity that the increased risk and complexity can bring. And it's right that a business can provide products that do this. What can be wrong is recommending a product such as this to a consumer that does not want the level of complexity and risk that a product or fund has. This seems to be the case here, but I can only reiterate that Zurich did not advise Miss W to start this investment and so it's not responsible for this.

Miss W has said that the charges are not transparent, and I note the detail in which the Investigator has considered this issue. I've already said this investment is complex and some of the charges are applied as a percentage. And each fund manager will have their own way of applying charges within the funds. But having looked at the fees I think, whilst complex, they are typical for products of this type. I don't think the charging structure is unreasonable or unfair.

Our Investigator detailed the information about the charges Miss W was given at the point-of-sale and over time. I won't reiterate this here. I think the information reasonably explains the charges. Even though some of these are not fixed, I don't think it's right to say they are not transparent. And I've noted that the annual statement does provide the actual amounts paid, albeit also saying that the amounts payable can vary.

Mrs W has said the point-of-sale illustrations were misleading. This is because they showed growth rates that the bond hasn't achieved. She thinks there should be a minimum standard or performance.

Zurich was required by the industry regulator to show illustrated performance using the percentage rates that it did as well as telling her that investment returns are not guaranteed which it also did. And as I've said above there isn't a performance guarantee with this investment. So, I can't reasonably say that it should have performed at the illustrated rates at any time.

And it was right to say that surrendering the bond early on may lead to losses. There are two reasons for this. Some of the charges are taken at the start of the investment. And, given the risk of fluctuations, it's usually considered reasonable to invest over a longer time frame. So, there is a greater risk of loss at the start of the investment.

Miss W has mentioned the Consumer Duty regulations and that Zurich hadn't met its obligations under the duty. The Consumer Duty is a new standard for firms which was introduced by the regulator, the FCA, in July 2023. I've looked at the points raised about the duty, and concluded that they are not relevant here. This is because Miss W's investment is a closed product and not caught by considerations arising from these rules.

Miss W has asked that Zurich provide some information that shows what the bond would have been worth if withdrawals had not been taken. Zurich has explained that this is a complex calculation. And I've already said that I think the information Zurich has supplied about the policy is reasonable, so I don't think it needs to provide this further information to Miss W.

I'm not upholding Miss W's complaint as I don't think Zurich has made any errors here or acted in a way it shouldn't have. I don't think Zurich needs to do anything to put this right.

My final decision

For the reasons set out above, I don't uphold Miss W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 June 2024.

Andy Burlinson
Ombudsman