

The complaint

The trustees of the S Trust complain, through their representative, about a reviewable whole of life (RWOL) policy they hold with Zurich Assurance Limited. They're unhappy that they were asked to significantly increase their premiums in order to maintain the policy's sum assured after the 2023 policy review.

What happened

Mr and Mrs S took out the policy in 1990, it initially had a sum assured of £200,000 for monthly premiums of £94.71. It was subject to indexation up until 2019 and by then, the sum assured had risen to £654,029 for monthly premiums of £694.72.

In 2023 Zurich wrote to the trustees and said that the cost of providing cover was higher than expected. In order to maintain the sum assured, monthly premiums would have to increase to £1,347.08 or the sum assured would fall to £493,053.

Mr S complained to Zurich about the outcome of the review. Zurich looked into his concerns but didn't uphold the complaint. They explained that the review had been impacted by changes they'd made to their assumptions on the cost of providing cover. But they thought they'd carried out the review in line with the policy's terms and conditions, so they didn't think they'd acted unfairly.

Mr S didn't accept their findings and asked for our help with the matter. The complaint was considered by one of our investigators who also didn't think it should be upheld. He thought that Zurich were within their rights to review the policy and change their assumptions about the cost of providing cover. In his opinion, Zurich had made these changes to ensure that the policy would deliver on its original objectives and had provided the trustees with all the information they'd needed to be able to make an informed decision about the policy.

The trustees didn't accept his findings and made the following points, in summary.

- Zurich had misled them and if their behaviour was allowed to continue then it would undermine the principles of life assurance.
- The 2022 review gave them the option to increase the cover for no additional premium. This gave the impression that the policy was well on track and performing as expected but within 12 months things seemed to have gone wrong.
- They'd reviewed the investment performance and hadn't seen any anomalies. Zurich hadn't said that their administration costs had increased which only left mortality costs as the element which would have changed.
- Their understanding of the policy was that the premiums after administration costs were allocated to the investment fund, then mortality charges were deducted from the fund. The whole purpose of unit linked life policies was for the investment fund to effectively absorb changes to mortality costs and as the investment fund increased in value the liability to the insurer reduces. No evidence of hugely increased mortality

costs had been presented, so they questioned what had prompted the increase and how it could be justified with absolutely no warning after an effective reduction just 12 months earlier.

- It seemed that Zurich had changed their policy and substantially increased premiums payable to reduce their risk and give plan holders little choice but to surrender their plans or accept a huge reduction in the sum assured. By finding in Zurich's favour, we were condoning their behaviour.
- They didn't think Zurich had acted in a fair and reasonable manner and asked us to consider the FCA's letter to firms last September warning that it had evidence of poor outcomes for customers who take out whole of life policies that allow premium increases. The letter had noted that *'Firms are required to communicate to clients in a way that is clear, fair and not misleading, taking into account their needs'*. They hadn't received clear illustrations showing how long the benefits could be maintained on the existing premium and absolutely no early warning when increases may be required.
- The policy's underlying fund had a value of well over £200,000 so there was a large reserve to take additional mortality costs from when required which is precisely how the policy was designed and there hadn't been any erosion of the fund value.

The investigator wasn't persuaded to change his opinion so the complaint has been passed 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.

I appreciate the trustees' concerns at the outcome of the 2023 review, especially after the 2022 review had offered an increase in the sum assured for no change in premium.

I've considered if Zurich were within their rights to reach the outcome they did in the 2023 review. 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. 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."*

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.”*

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. 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.*

How does the policy work?

It may be helpful if I explain how RWOL policies broadly work in practice. The cost of providing cover isn’t fixed and instead increases over time as the lives assured get older. 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. The difference between the sum assured and the value of the pot is referred to as the sum at risk, and it is this figure that is used to calculate the charge for providing cover.

Over time, 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.

The 2022 review

With this in mind, I’ve considered the outcome of the 2022 review. I appreciate that it offered an increase in sum assured for no change in premium, but this must be considered in the context of the previous year’s investment performance. From 4 January 2021 to 31 December 2021, the fund’s unit price increased from 53.82 to 58.57 or by around 8.8%. This was higher than Zurich’s projection, so I don’t think it was unreasonable for them to offer the increase in sum assured, provided they made the trustees aware of the implications of accepting the increase.

I can see that the review letter encouraged the trustees to refer to a booklet which accompanied it. The booklet prominently displayed an explanation that they could either choose to accept the increase in sum assured if they wanted more cover, or they could choose to keep the value within the policy in order to provide a cushion in case the cost of cover increased in the future. Taking this into account, I’m satisfied that Zurich provided the

trustees with enough information to make an informed decision about accepting the increase in sum assured.

I accept that the 2023 review letter would have come as a disappointment to the trustees after the positive review in 2022. But the poor performance that impacted the outcome of the 2023 review wouldn't have been apparent at the time of the previous review. So, I don't think I can say that Zurich acted inappropriately or misled the trustees by offering an increased sum assured in 2022.

The 2023 review

I've then gone on to consider the 2023 review. From what I've seen, it was impacted by two main factors. The policy's underlying fund hadn't performed as well as expected, instead of the 6.25% Zurich had projected, it fell by 1.08%. In addition to this, Zurich changed their assumptions around how much they expected the fund to grow by each year from 6.25% to 4.5%.

The impact of these two factors was that in order for the policy's underlying fund to be at the level required to meet the sum assured in the future, more money needed to be paid into it each month, so an increase in premiums was needed. Alternatively, the sum assured could be reduced to a level that would be supported by the size of the underlying fund at the time.

Taking this into account, I don't think it was unreasonable for Zurich to revise their assumptions in light of the poor performance. I think the revision was in line with the regulator's guidance under outcome 3 of FG 16/18 which said, "*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.*" It doesn't seem unfair for a firm to revise their assumptions to correctly reflect what they were seeing in practice.

If they didn't revise their assumptions, then it could have resulted in much worse outcome for the trustees in the future. If the underperformance wasn't accounted for, then the underlying fund would be below the level needed to sustain the policy for the rest of the trustees' lives. This could have resulted in even larger premium increases or reductions in the sum assured being required in the future. So, having considered the available evidence, I don't think Zurich acted unfairly in reaching the outcome they did after the 2023 review.

Zurich provided the trustees with two options following the 2023 review, which in their opinion would ensure that the policy would last for the rest of the trustees' lives. I think this demonstrates that they are acting in the trustees' best interests. They are regularly reviewing the performance and costs of the policy and passing this information on to their customers as per the regulator's guidance. This could potentially work in the trustees' favour in the future, they could be offered an increase in the sum assured for the same premiums if investment performance exceeds Zurich's assumptions.

So, in summary, I think that Zurich have treated the trustees fairly. From what I've seen, they've acted in the trustees' best interests and communicated in a way that was clear, fair and not misleading. Therefore, I won't be asking them to do anything to resolve this complaint.

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 S and Mrs S as

Trustees of the S Trust to accept or reject my decision before 18 April 2025.

Marc Purnell
Ombudsman