DRN-4897146

The complaint

Mr and Mrs M complain about a reviewable whole of life (RWOL) policy they hold with Zurich Assurance Ltd. They think the policy was mis-sold and that it has been mismanaged.

What happened

Mr M took out policy in 1982 as he and a business partner had just started a company and wanted protection. It provided cover of £40,000 for a monthly premium of £41.90. Over time, the purpose of policy changed to providing family protection and his children became the beneficiaries of the policy.

The policy was reviewable and the sum assured fluctuated over the years depending on the outcome of Zurich's policy reviews. The sum assured peaked at £60,391 in 2007, but by the time of the 2020 review, it had fallen to £51,156. Following the 2020 review, Mr M complained to Zurich and raised several points of concern, in summary, he thought he'd been mis-sold the policy and Zurich had mismanaged it.

Zurich looked into the concerns he'd raised but didn't uphold the complaint. They noted that the sale of the policy had taken place before the introduction of the Financial Services Act 1986 came into place. And having considered the applicable regulations and Mr M's circumstances, they were satisfied the policy had met his objectives at the time. They didn't think they'd mismanaged the policy and explained how they calculated the policy's charges.

They also apologised for the lack of reviews between 2010 and 2017 but didn't think that he'd been disadvantaged by their error. However, they recognised that the matter had caused him distress and inconvenience, so they offered him £275 in compensation.

Mr M didn't accept their findings and asked for our help. The complaint was considered by one of our investigators who didn't think it should be upheld. He noted that there wasn't much information from the time of the sale, but given the rules that applied, he didn't think the policy was inappropriate for Mr M's needs at the time. He noted Mr M's comments around the mismanagement of the policy, but didn't think that was the case.

Mr M didn't agree and made the following points, in summary:

- He'd made it very clear to the salesperson that his decision to take out the policy was based less on the cover and more on the second benefit i.e. the potential growth of the cash fund. If Zurich had no records of this, then they'd been negligent.

- He'd been told the policy value could exceed the original sum assured of £40,000.

- Zurich knew that fund growth would be adversely impacted by increasing the sum assured and should have made him aware of this and offered him a choice.

- The investigator hadn't addressed the point he'd raised around the cost of cover increasing even though Zurich's risk was reducing. From 2009 to 2020 the sum at risk had reduced from £45,000 to £23,000, but the cost of cover hadn't reduced

accordingly.

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.

Having done so, I don't think this complaint should be upheld and I will now explain why. I'd firstly like to thank Mr M for his detailed submissions, and I can confirm that I've read and considered them in their entirety. However, I'm satisfied I don't need to comment on every point raised to reach what I consider to be a fair and reasonable decision.

Where I've chosen not to comment on something, it isn't because I haven't considered it and is instead because I've focused on what I think are the key issues. This approach is in line with the rules we operate under. Also, where the evidence is incomplete or inconclusive, I've reached my decision based on the balance of probabilities. That is, what I think is more likely than not to have happened in light of the available evidence and a consideration of the wider circumstances.

Was the policy mis-sold?

I've considered the points raised about the sale of the policy. It's important to mention the rules that applied at the time as this is the basis for assessing whether the policy was mis-sold. As the policy was sold before the Financial Services Act 1986 was in place, the current rules around suitability of advice don't apply. Instead, firms had a duty to act with reasonable care and skill and make an appropriate recommendation.

It is with this standard in mind that I've considered if the policy was mis-sold to Mr M. There's very limited documentation available from the time of the sale. Mr M's concerns centre around whether he ought to have been sold a term assurance policy instead of the RWOL policy. And that the sales pitch he was given was inaccurate and omitted key factors which could negatively impact the plan value.

I appreciate the points Mr M has raised regarding a term assurance policy being a more suitable product to meet this need. But my role here isn't to determine what would have been the *most* suitable product, it is to determine if the policy he was sold was appropriate.

From what I've seen, Mr M had a need for protection at the time he was sold the policy. He had just started a new business, and the policy would provide protection to his business partner in the event of his passing. The policy met this need, so I don't think I can say it was inappropriate for Mr M or that Zurich didn't act with reasonable care or skill when they recommended the policy.

I've also considered the points Mr M has raised about what he was told before he took out the policy. He's said that the person who sold him the policy had explained that the benefit of the RWOL policy was that the beneficiary could be changed, and it would also accrue an investment value over time. And it was this flexibility that made him choose the RWOL policy over a cheaper term assurance policy. I don't think that these statements were unreasonable or negligent as they reflected how the policy worked.

Given that there is no available documentary evidence from the time of the sale, it is difficult

to determine exactly what was disclosed. However, Mr M has provided the policy schedule and provisions that he was given at the time he took out the policy. These documents set out that the policy is reviewable, how the review process worked including the fact that the sum assured or premiums could change, and also that units could be deducted from the policy's unit fund if necessary.

So, even if Zurich didn't explicitly make this clear to Mr M when they sold him the policy, as these key pieces of information were contained within the documentation he received at the time, I don't think there's enough evidence to show that he was given inaccurate information. Taking all this into account, I'm not persuaded that he was mis-sold the policy.

Did Zurich mis-manage the policy?

I've considered the points Mr M has raised about Zurich how have managed the policy. In summary, he has concerns that the cost of cover has increased over time and have exceeded the premiums being paid, even though the sum at risk has fallen. He is also concerned that Zurich increased the sum assured which resulted in higher charges and would therefore negatively impact the value of the policy's underlying fund.

It's important to consider how the policy works. The cost of providing cover isn't a fixed charge and instead increases over time as the life assured gets older. It doesn't increase in a linear fashion and instead will increase faster and faster over time. This is why the cost of cover has continued to increase even though the sum at risk has fallen over time.

At the outset of the policy, when its costs are relatively low, the difference between the premiums being paid and the costs is used to build up an investment fund. The policy is designed so the fund will slowly build up over time so it can meet the sum assured on the death of the life assured. And the return from this fund is then used to offset the costs of the policy when they eventually exceed the premiums being paid.

So, the fact that the costs of the policy have increased over time and surpassed the premiums being paid doesn't necessarily mean that Zurich have mismanaged the policy. This is how the policy was always designed to work as its primary function is to provide cover, not to act as investment vehicle. With this in mind, I wouldn't expect Zurich's focus to be on solely growing the investment pot. Their focus is to ensure that the premiums in addition to the return from the fund can sustain the level of cover being provided for the entire life of the plan.

There have been occasions where they have increased the sum assured without a corresponding increase in premium. This is a crucial part of Mr M's complaint as he thinks he's been disadvantaged by these decisions. He's said that if the policy's sum assured had remained at £40,000, then its surrender value would have been higher. I take his point, so I've carefully considered if Zurich treated him unfairly when they did this.

The terms of the policy say that at each review, Zurich can increase or decrease either the sum assured or premiums. They had full discretion to do so based on their calculations and given that these decisions were made in line with the policy's terms and conditions and also with a view towards making the policy last for life, then I don't think they were acting unfairly.

There was a change to how the policy operated after 2010 as policyholders were given the option to either accept the increased sum assured or maintain the policy's existing sum assured. This was the case in 2018 when Mr M chose to accept an increase in the sum assured from £55,414 to £58,986. The question I must therefore ask is whether Mr M would have chosen to accept the increase if he'd been made aware that the charges of the policy were higher than the premiums being paid. At this point, the annual mortality charges of the

policy were £1,197.39 versus premiums of £658.92.

However, I must also balance this with the information that Mr M was provided with, such as the booklet provided with the reviews after 2010. It explained that if the review found that the cost of cover was lower than expected and the policy's cash value was building up more quickly than expected, then there were two options that the policyholder could take:

- They could maintain the level of cover and keep the cash value in the policy. It was suggested that a consumer may want to take this option if "*You can see a time when your need for cover will end so you want to build up the cash value. Your plan gives you the right amount of cover for your needs and you want to give yourself a 'cushion' in case the cost of cover increases in the future."*

- Or they could use the cash value to pay for the cost of extra cover without having to increase their monthly premiums. It was suggested that a consumer may want to take this option if "*You want more cover – perhaps because you have some new or bigger financial commitments, or want to provide more cover for your dependants."*

Also, the policy's yearly statements from 2010 onwards said:

*"**Why your cover and payments may change***

The amount of cover your plan provides can increase or decrease over time in response to changes in investment performance and trends in life expectancy. These factors affect the cost of providing the cover. We regularly review your plan to make sure the level of cover and what you pay are properly matched.

At a review your cover might reduce although you have the choice of increasing your payments to maintain the higher level of cover. This will happen if the overall cost of cover is higher than we expected.

If the overall cost of cover is lower than we expected you could choose to increase your cover or allow your plan's cash value to build more quickly. Under the original terms of your plan any increase to your cover following a review would have been applied automatically. We have since changed this so that you now have a choice whether or not to increase your cover.

We will review your plan every year."

So it appears that Mr M chose to increase the level of cover in 2018 despite being made aware that he could maintain the existing level of cover and build up the policy's cash value. I think that the fact that he chose to increase the level of cover, with the knowledge that the policy's cash value wouldn't build up as quickly, is indicative of his intentions at the time. In my opinion, it shows that he had some desire to receive as much cover as he could for the premiums he was paying, and his focus wasn't just on the investment element of the policy.

This point is very finely balanced, but in a scenario where he'd been told:

- the costs of the policy were higher than the premiums being paid

- but Zurich's assumptions were that when the expected return from the policy's fund was factored in, the fund would continue to grow over time, albeit at a lower rate than if the level of cover wasn't increased

I think he still would have chosen to increase the level of cover in 2018, so he could benefit

from a higher sum assured while still having the potential for the policy's fund to continue growing. Therefore, I won't be asking Zurich to do anything to resolve this aspect of Mr M's complaint. So, in summary, I don't think that the policy was mis-sold or that Zurich mismanaged it. Therefore, I don't uphold 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 M and Mrs M to accept or reject my decision before 4 September 2025.

Marc Purnell
Ombudsman