DRN-4929568

The complaint

Mrs R complains, through her representative Mr R, about Zurich Assurance Ltd. She's unhappy with how they've administered a reviewable whole of life (RWOL) policy she holds with them.

What happened

Mrs R took out the RWOL policy in 1984. It initially had a sum assured of £50,000 for monthly premiums of £24.88. It was reviewable after the first ten years and every five years thereafter, until Mrs R reached the age of 70, when reviews would take place more frequently.

Zurich reviewed the policy in 2021 and wrote to Mrs R explaining that the sum assured of £67,942 couldn't be maintained by the existing premiums of £24.88. If Mrs R wanted to maintain the sum assured, then the premiums would have to increase to £63.66. Alternatively, the premiums could remain the same, but the sum assured would reduce to £59,718.

She complained to Zurich and said, in summary, that she was unhappy with the outcome of the review, the delay in the review letter reaching her after it had been sent, and also that the letter had been signed by someone who didn't work for Zurich anymore.

Zurich looked into her concerns but didn't fully uphold the complaint. They apologised for how long it had taken for the letter to arrive and explained that this was due to changes in their working practices following the Covid-19 pandemic. They also apologised for the signature on the letter and said that they were in the process of having the signatory changed.

They went on to say that the policy had been reviewed in line with its terms and conditions, and the outcome had been impacted by the policy's underlying fund not performing as well as expected and mortality rates increasing. They apologised for how long they'd taken to answer her concerns and paid her £100 in compensation for the inconvenience.

Mrs R 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 the policy hadn't been sold by Zurich, so any issues relating to the potential mis-sale of the policy needed to be raised with the business who'd sold Mrs R the policy.

He investigated the issues Mrs R had raised relating to the policy's administration but didn't think Zurich had done anything wrong. In his opinion, they'd administered the policy correctly and had provided her with clear information about whether its benefits could be maintained in the future. Mrs R didn't agree with the investigator and made the following points, in summary:

- She'd taken out the policy through a firm (B1) that was subsequently acquired by Zurich, so they were responsible for the mis-sale complaint.

- The policy provisions and schedule the investigator referred to, were provided after she'd agreed to take out the policy.

- The premium was agreed as a fixed amount to be paid for the lifetime of the policy.

- The changes proposed after the 2021 review were invalid as the review letter was signed by someone who wasn't an employee of Zurich.

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've set out the reasons why below. I'd firstly like to say that I've summarised what I consider to be the key points of this complaint in much less detail than Mrs R's submissions. This isn't a sign of disrespect but instead reflects the informal role of this service. However, I'd like to assure Mrs R that I've carefully read and considered all the points she's made and all the available evidence before making my decision.

Was the policy mis-sold?

Mrs R has raised concerns about the sale of the policy but there is some dispute about whether the advice to take the policy out was given by an IFA or by B1. I note that Mrs R has provided a cheque made out to B1 from 1984 which she says shows that she made a contract with them to take out the policy. However, I'm not persuaded that this is the case as I think the cheque is related to the payment of monthly premiums and not a payment for advice received.

Zurich have provided evidence from their systems which shows that the recommendation to take out the policy was given by an IFA. Therefore, any complaint points relating to the mis-sale of the policy need to be raised with the IFA who made the recommendation and not Zurich.

Were Zurich within their rights to review the policy?

The policy provisions set out that it would be reviewed on its tenth anniversary and every five years thereafter until the life assured reached 70, at which point reviews would be held more frequently.

It also set out that at each review, adjustments could be made to the sum assured. The adjustment could either result in an increase or decrease in the sum assured. However, in the event of a reduction, the policyholder could elect to increase their monthly premiums in order to maintain the previous sum assured.

I note Mrs R's point that she didn't receive the policy provisions until after she agreed the contract to take out the policy. However, if she was unhappy with any of the content then she could have raised her concerns at the time. Given that she chose to continue with the policy after receiving the documents, I'm satisfied that this implies that she consented to the terms of the policy.

In any event, the reviewable nature of the policy should have been explained by the person

who recommended the policy to her. If this didn't happen, then I don't think I can fairly hold Zurich to account for this issue, as it wasn't their responsibility to do so before the policy was sold.

The documentation they sent to Mrs R after she took out the policy explained how it worked and there is no mention anywhere that the premiums would be fixed for life. So, I don't think Zurich have acted unfairly in reviewing the policy and making changes, and I don't think the policy offered a fixed premium and sum assured for its lifetime.

Was the review letter valid as it was signed by an employee who'd recently retired?

I've considered Mrs R's point that the content of the 2021 review letter was invalid as it signed by someone who'd recently retired. She's pointed to the terms of the policy which say that no provision or condition of the policy may be waived or modified except by an endorsement issued by the company and signed by an authorised official.

I appreciate her concerns, but I don't think that the outcome of the review represented a change or modification to any of the provisions or conditions of the policy. As I've previously set out, the facility to review the policy and make changes to either the sum assured or premiums was a part of the policy provisions. Therefore, in carrying out the review, Zurich were acting in line with the terms of the policy and weren't modifying or changing any of the policy provisions or conditions. With that in mind, I don't think there was a requirement for the review letter to be signed by an authorised official.

From what I've seen, the letter was automatically signed electronically, and the signature hadn't been updated as quickly as it should have been. I accept that this may have been misleading, but as Zurich have apologised for the error, I don't think they need to take any further action.

The outcome of the 2021 review

I've considered if Zurich treated Mrs R fairly in reaching the outcome they did in the 2021 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

In reaching my conclusions, I've considered:

- The FCA's Principles for Businesses, in particular Principle 6 and Principle 7;
- The FCA's Conduct of Business Sourcebook (COBS), in particular COBS 2.1.1R(1) and COBS 4.2.1R(1)
- The FCA's Final guidance on the "Fair treatment of long-standing customers in the life insurance sector" (FG16/8).

With this in mind, I've thought about Mrs R's complaint against Zurich. In summary, her main concern about the outcome of the 2021 review was that it was unfair, and the monthly premiums shouldn't have to be increased in order to maintain the sum assured.

I will firstly recap how RWOL policies generally work in practice. Broadly speaking, in the

early years, premiums are generally used to purchase units in an investment fund. Units in the fund are then sold to cover charges on the policy such as the cost of providing cover and administration fees. 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 using 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.

Sometimes, the increase in premiums can be significant and potentially unaffordable for consumers. Or the reductions in the sum assured can mean that the policy is no longer fit for its original purpose. But the significant impact of these changes can be mitigated by making early adjustments to the policy.

For example, if premiums are increased some years before a failed review, then it will result in a larger investment pot being built up over time. This will decrease the difference between the sum assured and the investment pot (known as the sum at risk) which is the figure Zurich uses to calculate their charge for providing cover. Alternatively, a consumer may decide to maintain premiums but reduce their policy's sum assured which would also have the same effect.

The opportunity for a consumer to make these decisions is a key event in the life of the policy. Given the impact of increasing life cover costs over time on the investment fund, consumers have important decisions to make about any potential changes to the policy.

Those decisions become more difficult the longer the consumer pays into the policy and the options available for mitigating poor outcomes start to reduce. 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.

Did Zurich provide Mrs R with sufficient information about his policy?

The table below shows the costs of Mrs R's policy versus the premiums that she was paying:

Year	Annual Mortality Cost	Yearly Premiums	Surrender Value at anniversary date (1 March)
1994	£73.74	£298.56	£2,707.14
1995	£84.59	£298.56	
1996	£94.01	£298.56	
1997	£102.83	£298.56	
1998	£109.35	£298.56	
1999	£129.45	£298.56	£5,339.37
2000	£133.92	£298.56	
2001	£144.61	£298.56	
2002	£156.86	£298.56	

2003	£164.55	£298.56	
2004	£204.50	£298.56	£6,487.69
2005	£225.01	£298.56	
2006	£241.30	£298.56	
2007	£261.96	£298.56	
2008	£292.82	£298.56	
2009	£250.96	£298.56	£7,710.12
2010	£253.86	£298.56	
2011	£228.25	£298.56	
2012	£248.24	£298.56	
2013	£268.20	£298.56	
2014	£368.12	£298.56	£13,711.88
2015	£415.42	£298.56	
2016	£407.64	£298.56	
2017	£439.49	£298.56	
2018	£485.35	£298.56	
2019	£541.16	£298.56	£17,984.96
2020	£668.04	£298.56	£18,433.35
2021	£842.49	£298.56	£19,427.27

What the table shows is that during 2014 (specifically by 1 March 2014), the costs of the policy had overtaken the premiums being paid. This tipping point represents a key event in the policy's lifecycle as it is the point where there is a change in the mechanics of the policy - the unit fund starts being utilised to supplement the premiums. This means that investment performance becomes much more important than it was previously. If there is poor performance then there will likely be an increase in the premiums, potentially significant, that would represent a poor outcome for Mrs R.

I think that sub-outcome 2.1 of FG 16/18 specifically addresses the need for consumers to understand the impact of charges in order to make an informed decision and sets out the level of information that should be provided in communications. It says:

"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."

I think the guidance is clear that there needed to be a high level of transparency in communications relating to closed book products, including the impact of fees and charges. I think that once the tipping point is reached, it is imperative that the level of charges and their impact on the policy needs to be disclosed to consumers in a fair, clear and not misleading way. In doing so, firms can ensure consumers are in a position where they are able to make a fully informed decision about whether to keep a policy or not, given the increased risk of changes to the premiums or sum assured going forward.

In my view, 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.

The tipping point of Mrs R's policy was 1 March 2014. Having passed that tipping point, I have given careful thought to how Zurich were communicating with her. My understanding is that they were issuing yearly statements which provided them with the opportunity to deliver important messages. I think Zurich should have made Mrs R aware of the position of the policy within 12 months after the date when the tipping point was reached, so by 1 March 2015 at the latest.

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 Mrs R 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 think Zurich ought to have provided Mrs R with the information set out below 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 Mrs R information that would allow her 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 Mrs R after March 2010, and while I can see that some of the information was being provided, I'm not satisfied that her information needs were being fully met.

The main reason for me saying this is because there was no 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 Mrs R would have been able to make a fully informed decision about her available options following each review including

whether or not she wanted to keep the policy. Therefore, I'm of the opinion that there was an imbalance of knowledge between Zurich and Mrs R. This meant that she wasn't able to make a fully informed decision about what steps she wanted or needed to take following the tipping point being reached.

What would Mrs R have done differently?

I've considered what, if anything, Mrs R would have done differently if she'd been provided with all the information I've set out above after the tipping point was reached, taking into account what Zurich would likely have said at the time and the information they were providing her with.

From what I've seen, Zurich were making their assumptions based on the policy lasting for the remainder of Mrs R's life, and not just until the next review point. 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 assumptions regarding mortality costs and investment performance prior to 2021, the level of premium being paid was sufficient to sustain the policy for life.

It's important to note that Zurich couldn't have given Mrs R an early warning of the outcome of the 2021 review. The main factor behind the outcome of the review was poor investment performance and increased mortality rates caused by the Covid-19 pandemic in 2020. This wouldn't have been part of Zurich's calculations at any of the previous reviews, so they wouldn't have envisaged that the premiums would need to increase significantly in order to maintain the sum assured.

Given Zurich's likely explanation that the policy was working as intended, and also taking into account other factors such as the original purpose for the policy still being place and also that the policy's underlying fund had continued to grow over time. I don't think Mrs R would have sought to make changes to the policy or surrendered it, even if she'd been made aware that the charges were higher than the premiums being paid.

Therefore, I don't think Zurich need to do anything else to resolve Mrs R's 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 Mrs R to accept or reject my decision before 12 May 2025.

Marc Purnell
Ombudsman