

The complaint

Mr B complained about Utmost Life and Pensions Limited (ULP). He said he has an investment plan with it, that has underperformed. He said ULP should compensate him for the poor performance of the plan.

What happened

Mr B took out an investment plan in 1987 from a company called Property Equity & Life Assurance. It was called 'The Varifund Investment Plan' and for a monthly payment Mr B was able to invest most into a fund of his choice – he chose the flexible property fund. There was also life assurance cover attached too. There were potentially tax efficiency advantages by the plan being set up in this way.

The investment plan Mr B took out, was for 10 years, and initially was due to mature in 1997. There was an option for Mr B to extend the plan by a further 10 years, when his plan reached maturity. His plan is still ongoing, so presumably this is what he chose to do on a number of occasions. During this time, his plan migrated through at least one other company, before being managed by ULP, the current plan providers, and the company that are responsible for Mr B's complaint.

Mr B said ULP provided him with a projected maturity value. He said this was significantly less than what was presented to him when he purchased the policy in 1987.

Mr B said he did not accept that this was down to sustained poor performance over a long period of time, this being 37 years. He said he would like an adjustment to the maturity value that was more aligned with realistic compounded returns, for the level of risk assumed and over time.

ULP said in response the reason the project maturity value was much lower than expected, was due to the effect of sustained low investment returns. It said projected rates at the time of sale were not guaranteed and the actual amount achieved could be lower. ULP said Mr B's policy was invested in a Life Property fund and this had been directly affected by market conditions.

ULP said annual statements detailing performance had been issued since the policy was taken out. It said it sent letters displaying illustrated maturity values on a number of occasions to Mr B, and in particular in 2007. It considered Mr B had been aware from that date, that he may have had cause of complaint in relation to his policy. However, it said, he had not submitted his complaint until now. ULP said Mr B's complaint fell outside of the time limits that our service needed to adhere to, in order to look at the merits of his complaint.

Mr B was not happy with ULP's response and referred his complaint to our service. He said he had historically relied on the plan monitoring itself with a view to it having a maturity value within the boundaries aligned with the original sales pitch.

Mr B said the investment plan he agreed to was low to moderate risk, with projections provided assuming 8% and 10% performance growth a year. It was reasonable for him to expect returns within a reasonable deviation from this but not 2-3%, as was the case.

Mr B said he was reviewing now as he needed to do so in order to plan his retirement. It was for this reason that he reviewed a recent valuation with the original projections. He said the impact of any non-recurring poor investment choices could have been levelled out over time. He said it should not be his responsibility to constantly watch the plan's value and complain if he felt it was underperforming.

An investigator looked into Mr B's complaint. He said he agreed with ULP that he was unable to look at the suitability of the policy sold to Mr B in 1987. He said under rules that our service needed to adhere to, Mr B's complaint was out of time.

The investigator concluded Mr B would have had to raise a complaint by 2010 if we were to have the suitability of his policy looked into. This was because Mr B received a letter about the lower maturity value of his policy in 2007, and our rules state that Mr B could only raise a complaint about an issue if it happened less than 6 years ago or within 3 years of him being aware of it.

The investigator decided he only able to consider the performance of Mr B's policy. He said management of the fund was a matter of ULP's commercial discretion and he wouldn't seek to question its investment decisions, unless there was some sort of error.

The investigator said he couldn't uphold Mr B's complaint on the grounds his investments had not performance as expected. He had not found anything to show ULP acted incorrectly or treated Mr B unfairly.

Mr B was not in agreement with the investigator's view. He provided a detailed response on 28 October 2024. I have carefully read all of his submission and have summarised what I think are the points relating to the crux of his complaint. He said:

- He went through the sales literature from the time he was sold the plan in 1987.
- He chose at that time to invest in the flexible property fund. He said he was provided with a projection of between 8% and 10% growth a year.
- It was reasonable for him to have inferred the performance would, with a margin for error, return such values, and that exposure to the sector was not with high-risk investments.
- He did not now believe this to have been the case, he believed the fund was not operated in a manner consistent with its sales literature. General performance of stocks in the property sector had on average delivered much better over the same period of time. He didn't believe the fund managers invested so badly over the period, that they fell so short of general trends over a 37-year period.
- ULP may have mis-represented its intentions as to how it would invest his money; or perhaps underreported gains; or by using hidden fees; or it absorbed the difference as profit [for itself].
- ULP appeared to have some flexibility in terms of what it surrendered to our service or that it allowed us to investigate. And in turn it had a role in decision making in relation to his complaint.
- In relation to the investigator's view on part of his complaint being time barred, he said he contended that any event referred to cannot be taken as a single point in time. He believed ULP had been treating him unfairly over time, and not as one single event.

- He did not agree that he would have been reasonably aware of the expected value of his plan at the time he received the statements. He said he didn't think it was reasonable for him to have believe the fund under performed without researching in the property sector's performance. He said he only noticed recently when he was planning for his retirement, how his fund had performed.
- He would like to be compensated for the difference between the fund's maturity and a reasonable value as calculated according to compounded average growth within the property sector over the same period of 37 years.

Because the parties are not in agreement, Mr B's complaint has been passed to me, an ombudsman, to look into.

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 have independently reviewed Mr B's complaint and have arrived at the same outcome as the investigator, for broadly the same reasons. I will explain why.

The crux of Mr B's complaint as I see it, is that he is not happy with the performance of his investment plan that he holds with ULP. He has held the plan for a long time, more than 37 years now, and he expected the proposed maturity value to be significantly more than what ULP's illustrations have said it will be.

The investigator considered looking at two issues here. Firstly, whether the investment plan was suitable for Mr B in the first place. And secondly, whether there were any issues with the way ULP managed Mr B's plan that would have affected performance.

I need to make the distinction, because the investigator concluded that the first issue was not something we could look at according to our rules. But the investigator felt we could consider the second issue, this being Mr B's complaint about performance, as he felt the issue was ongoing.

I also need to consider the same two issues, because in his most recent submission, Mr B has put forward arguments about why his complaint should be looked at, and I note that he has argued for his complaint about performance to not be time barred according to our rules. He's given an example that illustrates his point, that his issues around this are ongoing. But as I have explained, the investigator up to now also agrees this is the case. He was just concluding that; he couldn't look at what happened when Mr B was sold the plan and whether it was suitable for him in the first place. But he can and did look into all of Mr B's complaint points about performance. As I have said, I have looked into both issues.

Jurisdiction

I have looked at whether I can look at what happened when Mr B was sold the investment plan in 1987, and I don't think I can. This part of Mr B's complaint, about what happened at the time of sale and whether the plan was suitable for him from the outset, I think falls outside of my scope, and the rules that I need to follow when I consider whether I can look into a complaint.

Our rules are set out in the Financial Conduct Authority (FCA) dispute resolution (DISP) section of the handbook. Under DISP 2.8.2, it explains that a complaint must be brought to us within 6 years of the event being complained about, or if later, within 3 years of when the

complainant was aware or ought reasonably to have been aware, that they had cause to complain.

In relation to Mr B's complaint, the sale of this investment plan occurred more than 6 years ago, and according to our rules, this means that the events took place too long ago in the past and is out of time unless Mr B was aware or ought to have been reasonably aware within 3 years of making his complaint.

I can see that Mr B was given statements about his plan, that showed an illustrated maturity value in 2007. I think Mr B would have been aware from 2007 of his grounds for complaint about whether the policy was suitable for him. So, for this reason I think his complaint is out of time on these grounds too.

In summary, I don't think, according to our jurisdiction rules, that I can look into the merits of Mr B's complaint about what happened at the time of sale and whether he was sold a policy that was suitable for him. So, I won't be looking into this.

I do agree with Mr B though and the investigator, that I can look into his complaint about fund performance. This is for the same reasons that both have given, this being that the issues he has raised is about performance of the fund, and this is ongoing. So, I have gone on to consider the merits of Mr B's complaint about whether he was treated fairly, in relation to performance of his investment plan.

The merits of Mr B's complaint about the performance of his investment plan

I have read Mr B's comments and understand how strongly he feels about the performance of his plan. I can see that he has been paying into it for a very long time and the performance of his investment is very disappointing for him. That being said, I can only uphold a complaint where it is fair to do so.

I would usually need to see that the business has made mistakes or has got something wrong. Simple poor performance of investments in the market, is not enough. Mr B has described a range of scenarios where he thinks ULP are responsible for mismanagement rather than poorly performing investments, but I have not seen any evidence of this.

The FCA has a wide spectrum of rules – that ULP and its fund managers must follow when running their funds. These rules require investment managers to have robust governance structures in place to ensure consumers funds are managed appropriately and in accordance with their policies.

ULP is accountable to the regulator for the way in which it operates itself and its funds and the regulator in turn monitors the management of these funds. It is not the role of this service to audit ULP or the decision-making processes and controls of its investment managers or funds. However, I am not aware that the regulator has any concerns about the operation of ULP's property fund, being complained about by Mr B here.

In addition, achievement of a certain rate of growth that Mr B has pointed to in the sales literature, was never guaranteed. Mr B was taking an investment risk with his money in order to achieve gains, and this risk that he took, didn't pay off in the way he had hoped. I don't think I can fairly say ULP has treated Mr B unfairly here though or done anything wrong; it is instead the case, that Mr B's investments have performed not to his expectations.

Finally, Mr B has mentioned ULP deciding which documents to provide and having the choice to decide what we can and can't investigate: this is not the case. I can see that our service asked ULP for all the documentation that it still retained in relation to Mr B's

complaint, and I am satisfied that it has supplied what it held. Ultimately, I make the decision about what I can and can't look into, and not ULP or any other party. For the issues I can, I will go on to decide, on the merits what I think is fair and reasonable in all the circumstances.

With that in mind and to conclude, Mr B invested money with ULP, in funds that performed less well than he hoped for. Unfortunately, that is always a possibility with risk-based products. As I can't see any evidence of ULP, treating Mr B unfairly here, I won't be upholding his complaint.

I appreciate that my decision will be disappointing for Mr B, and I acknowledge the strength of his feelings in the submissions provided. But based on everything I have read and the findings I have given, I don't uphold Mr B's complaint.

My final decision

My final decision is that I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 February 2025.

Mark Richardson
Ombudsman