DRN-5535051

Financial Ombudsman Service

The complaint

Mr H is unhappy that Zurich Assurance Ltd ('Zurich') – then Allied Dunbar Assurance Plc but I will refer to Zurich throughout for ease – gave him unsuitable advice to link his personal pension plan to a mortgage as the repayment vehicle.

For simplicity, I'll refer to Mr H throughout, even where the submissions I'm referring to were made by his representative.

What happened

I've outlined what I think are the key events and points involved in Mr H's complaint below.

In 1993, Mr H sought advice from Zurich and the financial questionnaires from around the time noted, amongst other things, that:

- Mr H was aged 44 and wasn't working as he was establishing a new company.
- He and his wife had what was seemingly an interest only mortgage with an outstanding balance of around £51,000 and a term ending in 2009.
- Their mortgage was linked to two jointly held endowment policies, with sums assured of just under £33,000 that were due to end in 2007 and 2008, taken out with the aim of repaying their mortgage upon maturity.
- Mr H had an existing pension with Scottish Amicable ('SA) with a scheme retirement age ('SRA') of 65, although it was noted that he wanted to retire in 2009, at age 60. This had a projected retirement value at his SRA of 65 of £234,000, of which he could take tax free cash of £58,000.
- Based on a very recent recommendation of Zurich's, two life assurance plans had been taken out – one for Mr H for a sum assured of around £39,000 and a second plan jointly with his wife for £53,000, both to end in 2009 when Mr H turned age 60.

On a handwritten '*Fact Find Update – Changes to Client Circumstances*' form of Zurich's dated from 1993, the adviser said that Mr H was starting up a new business and needed to raise capital of around £10,000. It said he could do that by borrowing against existing endowments, so the current assignment of those policies needed to be lifted. And that the lender would accept pension linking but required additional life cover for the loan term.

Zurich's recommendations were then set out in documents titled '*Recommendations and reasons*', under which it said '*Please give reasons for the recommendations you have made and plan(s) sold*'. And those that I think are relevant to the complaint issue of Mr H's pension being linked to his mortgage recommended that he do the following:

- That Mr H link his existing pension to the mortgage for the endowment assignment to be released.
- The term of the joint life assurance plan should be extended from age 60 to age 65 – seemingly in line with Mr H's SA pension SRA – to meet the mortgage lender's requirements.
- Mr H should set up a new personal pension plan when his work project gets

underway to provide income in retirement.

Mr H hasn't disputed that he went on to do all of the above, except the latter.

Mr H complained to Zurich at the end of September 2024. At the time he said, in summary, that it had sold him an unsuitable pension mortgage along with expensive life assurance plans.

Zurich responded and said:

- There was no evidence that an FSAVC plan – that Mr H took out with it 1992 but had lapsed by 1994 and which Mr H has since clarified he isn't complaining about – was linked to a mortgage.
- It had already responded to concerns raised by Mr H in 2009 about the sale of the protection plans. And while it still went on to address a few points it said it hadn't previously addressed, such as the cost of the plans, it said that Mr H's complaint about these had been made too late for our Service to be able to consider it.
- Based on the documentation available from the time, which is limited, Mr H wanted to release the endowment plans from the mortgage. It said the mortgage provider had agreed to this instead being supported by Mr H's pension with the joint life plan providing cover, the latter of which the lender insisted be extended to match the pension SRA of age 65.

In response, Mr H clarified to Zurich that his complaint is that its recommendation that he link his SA pension to the mortgage was unsuitable, as providing for retirement was very important to him at the time when rationalising the mortgage was only noted as being fairly important. Mr H said Zurich didn't properly consider matters when it suggested he use his SA pension to repay the mortgage.

In November 2024, Zurich sent Mr H a further response. It said that while the adviser could only recommend the products from its range, it was still appropriate for them to take into consideration other plans Mr H already held and suggest that these be used, in the way it did. Zurich said that its representative recommended Mr H link his SA pension plan to the mortgage as the repayment vehicle, as this was a plan he already had and it met Mr H's requirement of reducing costs. So it felt its adviser acted appropriately, based on Mr H's circumstances and that existing arrangements were considered. And it was for Mr H to continue to ensure, going forwards, that the plan continued to be appropriate.

In November 2024, unhappy with this response, Mr H referred his complaint about the advice to link his SA pension to the mortgage to our Service.

Zurich said that a complaint from Mr H about the sale of the life protection plans didn't fall within our jurisdiction. But that it consented to us considering a complaint about the advice to use his pension as a repayment vehicle for the mortgage, if this had been made outside our timescales.

We asked Mr H several questions about what happened at the time of the events complained of and subsequently. And he added, in summary, that:

- At the time he needed to raise £10,000 for a new business venture – he was embarking on a few different franchise businesses.
- It was Zurich's adviser that suggested using his SA pension to repay the mortgage. And he fully relied on its advice – he isn't capable of understanding or making such important decisions on his own.

- Recommending he do so was high risk and not something he understood or was comfortable with. And Zurich did so without properly explaining the risks or even looking at the figures
- Although the mortgage is now repaid, Mr H wasn't able to take enough tax-free cash from his SA pension to do so – he was only able to take £26,625 from this in 2001.
- Mr H didn't take out another personal pension in the way Zurich had recommended.
- Mr H has experienced several health issues, some of which were only diagnosed ten years ago, but which he feels go towards explaining the difficulties he has had in managing his affairs and with his decision making over the years. And he is living well but hand to mouth, with extra income proving difficult to achieve on top of his SA pension and state pension.

One of our Investigators reviewed Mr H's complaint and didn't uphold it. They said, in summary, that:

- Given the outstanding mortgage balance at the time and based on the projected pension figures available in 1993, Mr H would be left with a sizeable retirement fund even if he linked his SA pension to the mortgage and used his tax-free cash to repay this. And doing this seemed a viable and reasonable option for Mr H to secure the proposed loan, as per his objective.
- At the time Mr H met with Zurich, standard industry growth projection rates were higher. So the information available likely didn't suggest his SA pension wouldn't reach its projected growth. Unfortunately, the level of investment growth in markets declined. So when Mr H took his retirement benefits eight years earlier than intended, he achieved less tax-free cash. But, while projected rates weren't achieved, this doesn't mean Zurich's advice was unsuitable.
- In linking his pension to the mortgage in place of the endowment policy, Mr H just changed the repayment vehicle. And as he would've already been aware of the risks associated with linking an endowment policy to the mortgage, he would've been aware of those associated with instead linking his pension to this.
- As Mr H was to link his pension to his mortgage, Zurich recommended he take out a new pension plan which seemed reasonable to reduce the risks associated with pension linking. But Mr H didn't do this, so he didn't take steps to mitigate the risk of his SA pension not achieving the growth required to repay his mortgage at the same time as providing a retirement fund.

Mr H didn't agree and asked for an Ombudsman to consider his complaint. He added, in summary, that a pension mortgage is a very high risk arrangement and this wasn't explained to him. And even if this had been, the use of a pension to repay a mortgage is questionable and our Service has historically made it clear that such sales are mostly unsuitable.

Because no agreement could be reached the case has been passed to me for a 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.

Having done so, I'm not asking Zurich to do anything, for the reasons set out below, which are largely the same as those given by our Investigator.

In deciding this complaint I've taken into account the law, any relevant regulatory rules including the principles and good industry practice at the time.

While I've carefully considered the entirety of the submissions the parties have provided, my decision focuses on what I consider to be the central issues. The purpose of my decision isn't to comment on every point or question made, rather it's to set out my decision and reasons for reaching it. And Mr H's complaint has changed over time, seemingly as more information about what happened at the time of the events complained of has become known during the complaint correspondence. So, to be clear at the outset, the complaint I'm considering is that Mr H feels he was unsuitably advised by Zurich to link his SA pension to the mortgage.

There's a lack of information from the time, which isn't surprising to me given the events complained of took place over 30 years ago. So, where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words, I've looked at what evidence we do have and the surrounding circumstances to help me decide what I think is more likely to, or should, have happened.

Mr H has said it was Zurich's adviser that suggested using his SA pension to repay the mortgage and that he couldn't make such decisions and manage his affairs himself. But, while I don't doubt the impact Mr H's health has on him, respectfully, I don't think the evidence from the time supports that this is likely what happened in these circumstances.

As set out above, a handwritten form of Zurich's from the time reflects that Mr H was starting up a new business and needed to raise capital of around £10,000. It said he could do that by borrowing against existing endowments, so the current assignment of those policies needed to be lifted. And that the lender – I think in reference to the mortgage lender – would accept pension linking – in replacement of the endowment – but required additional life cover for the term.

This note is contemporaneous evidence from the time of what the adviser understood Mr H's *existing* circumstances and objectives to be in seeking Zurich's advice. Mr H has corroborated some of the details, given he has also told us that at the time he needed to raise £10,000 for a new business venture. I've no reason to doubt that the note is an accurate summary of the position Mr H put forward at the time. And, in the circumstances, I think it shows that Mr H likely went to Zurich with a clear objective of what he wanted, likely having secured a loan with certain conditions and having decided he wanted to link his pension to the mortgage after being told his provider's requirements. That is rather than Zurich having first suggested to Mr H that he should do this, in the way he has said it did.

And, even if I'm wrong and that wasn't the case, this doesn't change my decision, for the reasons given below.

Mr H has said that a pension mortgage is a very high-risk arrangement, that this was not explained to him and that, even if it had been, the use of a pension to repay a mortgage is questionable and our Service has historically made it clear that the vast majority of sales are unsuitable.

I'm considering the individual circumstances of Mr H's complaint though. And, to clarify, a pension mortgage is where a customer *takes out* a mortgage to pay the funds *into* a pension and at the end of the mortgage term repays this with part of the pension fund. Whereas, in Mr H's case, following Zurich's advice he seemingly retained the same mortgage and SA pension that he had prior to this. To put it simply, following the advice, Mr H went on to replace one existing asset with another – i.e. the endowments with his SA pension – as the repayment vehicle for the existing mortgage.

I understand Mr H's disappointed that he ultimately didn't have enough tax-free cash from his SA pension to repay his mortgage when he did. However, Mr H took the tax-free cash from his pension in 2001, which he has acknowledged was eight years before it was anticipated that he would do so at the end of the mortgage term, in 2009. So Mr H inevitably lost out on pension growth he would have likely otherwise achieved during that time.

In addition, at the time Mr H met with Zurich with the intention of using tax free cash from his pension to repay his mortgage, standard industry growth projection rates were much higher at 8.5% at the lower rate, 10.75% mid-rate and 13% at the upper rate. It seems likely that the anticipated growth for Mr H's SA pension would have been based on standard projection rates at the time or similar – I haven't seen anything to suggest otherwise. And that it was therefore the subsequent change in the financial markets which also impacted the level of growth, and therefore on the amount of tax-free cash, that Mr H ultimately achieved from his SA pension.

I can't reasonably hold Zurich responsible for Mr H choosing to take tax free cash years earlier than intended, nor for the change in the financial markets. And I haven't seen anything to suggest that, at the time, Mr H linking his pension to the mortgage wasn't a reasonable way to achieve his aim of securing the loan he wanted for his venture, while later still being able to repay the mortgage and be left with a retirement fund.

As I've said, there's limited information available because of the passage of time for me to know what, if any, information Zurich provided Mr H with about the risks in linking his pension to the mortgage, for example. The available evidence does show though that Zurich obtained information about Mr H's circumstances and objectives, that it gave its recommendations and that it confirmed it had '*discussed the above recommendations with the client and agree the actions described'* in the way I'd expect. And, on balance, in the circumstances I've not seen enough evidence to persuade me that Zurich failed to clearly explain such things to Mr H, nor that the advice given wasn't a reasonable way for Mr H to achieve his objectives.

In any event, even if I was persuaded that Zurich had gotten things wrong – which, for clarity, I'm not – I think it's unlikely Mr H would have acted any differently at the time and in the circumstances if Zurich had done what it should have. This is because, as set out above, evidence supports that Mr H had a clear idea of what he wanted to do. He wasn't working and had no income as his plan was to start his new venture. And it seems Mr H had taken considerable action in finding lending and getting the mortgage provider's approval of the above. So I think Mr H is likely to have gone ahead and linked his pension to the mortgage in any event to secure the lending he needed to move forward with this.

So, for the reasons set out above, while this will be disappointing for Mr H and I'm sorry to hear of his health and financial circumstances, I'm not asking Zurich to do anything.

My final decision

For the reasons given, I don't uphold Mr H's complaint about Zurich Assurance Ltd.

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

Holly Jackson
Ombudsman