DRN-5689968

## The complaint

Mrs S and Mr S ('the complainants') say Hargreaves Lansdown Advisory Services Limited ('HL') recommended an unsuitable Onshore Investment Bond ('OIB') to them in 2009. HL disputes the complaint. It says – the OIB was suitable, it matched their objectives at the time of recommendation (and thereafter), and the ground on which they allege unsuitability relates to a recent change in its operation that was unforeseen and unforeseeable in 2009.

## What happened

The OIB was provided by Zurich Assurance Ltd, trading as Sterling. The complainants have a separate complaint about Zurich on the same facts, but with focus on Zurich's role as the OIB's provider and on its decision to change its operation (as described below).

In 2009 the complainants invested £500,000 into the Zurich OIB, as recommended by HL. They were the joint bond holders and the lives assured for it were them and their dependent children. The OIB was, and is, divided into multiple policies/segments. At the time, and until relatively recently, Zurich allowed and facilitated the assignment of ownership of the OIB's individual segments, which could then be managed separately whilst remaining within the same OIB – the 'assignment facility'.

Around August 2024 Mr S enquired into using the assignment facility.

Zurich confirmed it could no longer be used. Its explanations included –

"… *whilst we can note a cluster assignment on our records, we are unable to physically split the plan for administration purposes. This means that the investment within the bond will need to continue to be managed as a whole — with all parties agreeing to any change in investment funds or consenting to withdrawal requests. Cluster owners will be able to request a full withdrawal of ALL their clusters at any time, but they will not be able to take partial withdrawals from their clusters.*

*If the individual assignees wish to retain their investment and act independently, they will need to cash in the current investment and move to a product with another provider*."

and

"*Although we could assign bonds at individual cluster level, this is over and above the contractual right within the terms and conditions that allow simply for ownership of the Investment Bond (so the plan in its entirety) to be transferred.*

*While we did this with the best intentions of meeting customer need, you'll appreciate that, as the terms and conditions of the plan don't specify this as a feature, our administration system wasn't built with the functionality to split investments in this way.*"

In their claim against HL, the complainants say the recommended OIB was inherently unsuitable for them and unfit for the objectives they declared at the time of advice. They argue that their objectives required a flexible product that aided estate planning for the long

term (or for life), the assignment facility was a needed tool for such planning, and the fact that it was not a guaranteed term of the OIB (applicable for the life of the OIB) constitutes a fundamentally mismatch.

HL mainly says – its advice to the complainants in 2009 was isolated, thereafter they self-managed their investment without any ongoing service from HL; their objectives at the time were to have a long-term/life-long investment in a balanced portfolio that was transparent, that did not have exit penalties and that minimised tax liabilities; the OIB recommendation matched these objectives; their OIB included, at the outset and until recently, the assignment facility they desire; its advice was based on information about the OIB at the time of advice, and given the absence of ongoing service it was not subsequently obliged to review it; Zurich's changes, around late 2023, were unknown to HL until the complainants brought them to its attention; it cannot reasonably be responsible for those changes.

One of our investigators looked into the complaint and broadly agreed with HL's position, and with the main points it had made. She also considered suitability of the OIB, overall, and did not find a basis to say it was unsuitable for the complainants.

The complainants disagreed with this outcome.

In the main, they said –

- The full context for the advice they sought and received, and for their circumstances, in 2009 includes the facts that their family's lives were assured under the OIB, it was an investment intended for the long term/for life, and it was relevant to future estate planning in relation to the family (estate planning that the adviser noted should be kept under review).

- They accept that no definite plans to use the assignment facility existed at the time, but HL's financial planning report (which conveyed the recommendation) has numerous references to that facility being part of what it considered in the recommendation and being part of what, in HL's view, made the Zurich OIB suitable for them.

  "*I refer you to the last paragraph on page 18 of the report where it states "Such an investment can be particularly attractive to higher rate taxpayers who expect to become basic or nil rate taxpayers or expect to assign the Bond to basic or nil rate taxpayers before encashment. Also on page 19 the report states "Alternatively, some or all of the Bond could be assigned to Basic or Nil Rate taxpayers before encashment to minimise the prospect of higher rate tax". At the bottom of page 19 the report indicates that an offshore bond was also considered but rejected on grounds of cost but that whether onshore or offshore "the investment is likely to be very long term and there is a strong possibility that the Bond segments will ultimately be assigned to non tax payers on encashment.""*

- Despite the above, HL recommended an OIB that did not securely guarantee the assignment facility for the long term/for the life of the OIB, so their stated objective for long term/life-long flexibility in this respect has been unmet. Instead, based on Zurich's position (and explanation), the facility was inherently insecure and removable at any time. It was removed shortly before they sought to use it, and this confirms the OIB's failure to meet their long-term flexibility needs.

- They have shared with us evidence about alternative providers in the markets, many of whom offered OIBs with rights to the same type of assignment facility. HL could

have looked into and offered them such alternatives in 2009, in order to ensure the flexibility they required was secured in an OIB for the long term. Instead, the Zurich OIB was the only bond product offered to them, no alternatives were presented for their consideration.

The investigator was not persuaded to change her view. The matter was referred to an Ombudsman.

**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.

Both of the complaints (against HL and against Zurich) have been referred to me. They are separate complaints but, given the facts, there is a link between them, so it stands to reason that they should be determined alongside each other.

If a single underlying message can be derived from the complainants' submissions in both complaints it seems to be the following argument –

- one firm must be in the wrong;
- either HL recommended an unsuitable OIB that did not provide the guaranteed long-term flexibility they needed;
- or such flexibility existed within its recommendation and in the OIB, but Zurich has wrongly withdrawn that without legitimate grounds to do so.

I have considered both complaints. I will deal with Zurich's position in my decision for the other complaint. The present decision is about HL. My findings in both decisions should address the above argument.

I agree with the investigator's approach in considering the overall suitability of the OIB. I have done the same and I do not find grounds to conclude that its recommendation was unsuitable for the complainants.

Both parties are quite clearly focused on the specific assignment facility issue – the aspect which, according to the complainants, makes the OIB unsuitable – so I consider it reasonable to reflect the same focus in my findings. However, where relevant and where there is an opportunity to do so, I will also address wider suitability points.

My considerations begin with the November 2009 financial planning report. I have not seen evidence that its contents were disputed in 2009 or since, so I consider those contents to be reliable evidence.

The report confirms that out of five areas of advice (protection planning, mortgage/debt planning, retirement planning, investments/savings planning and inheritance tax planning), HL was engaged to provide advice under investment planning only. Reference is made to an issue concerning estate and inheritance tax planning that the report told the complainants to note for the future, but the report also acknowledges that the complainants wanted no advice in this respect.

The complainants had a surplus capital lump sum to invest. Their profile showed that they had wider assets (some invested) which were being managed separately. Their personal circumstances are set out in the report, including their cautious to moderate risk profile, their relatively high capacity for loss, and their preference for a portfolio containing a mix of around 70% equities and around 30% fixed interest funds.

The OIB's portfolio, which was geared towards capital growth, contained two actively managed multi-manager funds. One (into which around two thirds of the £500,000 capital was invested) had a cautious profile, with an almost equal split between equities and fixed interest securities, and the other (into which the remainder capital was invested) had a medium profile with a majority/70% equities component. Overall, I am satisfied that the portfolio broadly matched the complainants' cautious to moderate risk profile and their portfolio mix preference. The invested capital was surplus cash. They appear to have had around the same total amount in their leftover cash reserve after the investment, in addition to their other assets. On balance, I do not find any issues with their financial capacity for the portfolio investment.

Their objectives are summarised in the report as – to invest the lump sum for growth, in an actively managed product; to invest in a balanced portfolio (equity and fixed interest funds); to maintain the investment for the long term/for life, given that they had wider/other assets to meet their income needs; to have an investment that is transparent, that minimises tax liabilities and that does not include exit penalties. I have not identified any issues of unsuitability with regards to the transparency of the OIB's workings and/or its tax efficiency, and it is not in dispute that the OIB can be held long term.

This brings me to the complainants' argument about their need for long-term flexibility being live at the point of advice. The specific nature of flexibility in their argument is not quite what is depicted in the financial planning report's record of the objectives they presented at the time.

As I stated above, no distinct advice under estate planning was sought from HL. This would be the sort of planning that can include specific long-term estate related considerations and any associated need for flexibility. Furthermore, the list of objectives captured in the report appears to be focused on rudimentary investment factors (such as growth, management style, portfolio contents, investment horizon and tax). The complainants accept that they had no assignment plans at the time. Indeed, nothing in the summary of objectives says or suggests that they had a predetermined interest in a product that lent itself to any particular type of future assignments.

Nothing in the report says they had any predetermined idea about the type of investment product they wanted. Instead, the report said – "*We discussed the merits of investing in a broad range of asset types.*"

The report shows that HL initiated, with reasons, the idea of investing in an Investment Bond. Part of those reasons are what the complainants referred to in the quote I used in the previous section, in which they argued that the assignment facility was part of what HL considered in its advice and part of the reason why it viewed the OIB to be suitable. This is true. However, in the circumstances of the present case, I consider that a distinction could be drawn between factors that HL considered to be suitable for the complainants and factors that were required by their objectives.

Their stated objectives do not appear to have mentioned anything to prompt a need for the assignment facility. I accept, as they have argued, that the long-term nature of the investment alongside the fact that all family members' lives were assured under it would, at least, suggest a need for scope, in the future, to manage the investment within the individuals and interests in the family. In this respect, the statements made in the report about the benefits of the assignment facility in the OIB addressed the general need for such scope.

The complainants' point is that the facility's existence was not guaranteed for the life of the

OIB – as proven by Zurich withdrawing it and referring to the terms for the OIB in which no entitlement to it exists – so the Zurich OIB recommendation cannot possibly be viewed as suitable for their long term/life-long based objectives. However, another distinction can be applied here. It is one thing to refer to the stated objectives summarised above in a long-term context, and another thing to refer to a specific need for a guaranteed long-term assignment facility, which none of the stated objectives directly relates to.

In 2009, the assignment facility appears to have been approached as something that provided added value to the recommendation, not as one of the core requirements that had to be fulfilled by the recommendation. HL seems to have presented it as such and, as they had no plans for assignment at the time, it is reasonable to conclude that the complainants probably viewed it as such too.

The OIB was suitable for the complainants, with specific regard to the assignment facility, between 2009 and late 2023. It is noteworthy that after the 2023 changes the option of assignment in the OIB has not been completely deleted. Instead, and as Zurich says (quoted above), assignments can still happen, but not in the form that they could previously happen and not in the form that the complainants want. Therefore, it could be argued that an element of *flexibility* still exists in the OIB despite the changes, albeit none of any use to the complainants' August 2024 pursuit.

I understand their point about HL ensuring, in 2009, that the assignment facility was guaranteed for the long term. In another case, depending on the circumstances, factors and reasons might exist to support such a point. In the present case, I have not found that support.

The argument needs to show, in the circumstances of the parties' approach in 2009, that it was unreasonable for HL to rely on nothing more than the facility's existence at the time, without ensuring there was a guarantee (in the OIB's terms) that it would continue to exist in the long-term future. However, as I addressed above, those circumstances did not include a need for the specific assignment facility in the future.

If, as it appears, the assignment facility was no more than a matter of added value – beyond the stated objectives and distinct from a stated objective that had to be fulfilled – given that it existed at the time and given that the opposite in the future was not foreseeable to HL, I am not quite persuaded that HL had a duty to dedicate particular focus on ensuring that the OIB it recommended had an assignment facility that was guaranteed for its lifetime. It could have done so, and the complainants could argue that another firm would have done so, but, in the circumstances, I do not find that HL was obliged to do that.

Both HL and the investigator made points about the absence of an ongoing service. Mr S appears to view this as irrelevant. However, for the sake of argument, had there been an ongoing service and had any annual reviews within it approached or reached an estate planning stage (or any stage in which altering ownership of the OIB's segments was being considered), it is possible that an objective related to the assignment facility might have emerged, and might have been the subject of discussion before 2024. Any such discussion might then have changed the post-2009 facts and circumstances. I agree with Mr S that ongoing service is irrelevant to the initial advice in 2009. However, if, after 2009, events still culminated as they did in 2024, any discussion in between about an objective to use the assignment facility might have led to different considerations in the present complaint. None of this happened.

I take the complainants' points about the lack of alternatives considered at the time of advice, and about alternatives that existed/exist in the market. However, an adviser's regulatory obligation is to give suitable advice, not to give *more* suitable (or the *most*

suitable) advice in comparison to another. It is possible that another adviser could have given the complainants information on alternative OIB providers and/or recommendation of a provider different from Zurich with an OIB operating on different terms, but that does not automatically mean HL's recommendation was unsuitable. For the reasons I have addressed, I do not find that, in the circumstances of the case, its recommendation was unsuitable.

## My final decision

I do not uphold the complaint from Mrs S and Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 30 December 2025.

Roy Kuku
**Ombudsman**