

The complaint

Mr and Mrs O, as trustees of the O Trust, complain about a reviewable whole of life (RWOL) policy the trust holds with Zurich Assurance Ltd. They're unhappy with the outcome of a policy review in 2023 which meant that the policy's sum assured reduced. They also believe the policy was mis-sold.

What happened

Mr O has brought the complaint, so for ease of reading I will mainly refer to him. He's held the policy since 1979 and took it out after receiving advice from a representative of a firm that was subsequently acquired by Zurich. The policy initially provided a sum assured of £25,000 for monthly premiums of £19.64. It was reviewable and by the time of the 2023 review the sum assured had increased to £34,667 for the same level of premiums.

Zurich reviewed the policy in 2023 and wrote to Mr O explaining that the cost of providing cover was higher than they expected. The impact of this was that the sum assured needed to be reduced to £28,950. Mr O corresponded with Zurich about the outcome of the review and eventually raised a complaint. He was unhappy with the lower level of cover and also said that when he took out the policy, he wasn't given an option to index the policy against inflation.

Zurich looked into his concerns but didn't uphold the complaint. They explained that there was limited information available from the time he was sold the policy. Based on his circumstances at the time and the documentation he would likely have been given, they thought the policy was a suitable recommendation.

They also explained that the reason they were unable to offer Mr O the option to increase his premiums was because of HMRC rules that applied to his policy. They also explained that his policy didn't have an indexation option, which is why it wasn't offered to him when he took it out.

Mr O didn't accept their findings and asked for our help. The complaint was considered by one of our investigators who initially thought it should be upheld. However, after considering further submissions from Zurich, he changed his opinion and thought that they hadn't done anything wrong.

Mr O didn't agree and asked for an Ombudsman to review the case and make 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 don't think this complaint should be upheld and I will now explain why.

Was the policy mis-sold?

I appreciate Mr O's concerns with how he was sold the policy. But I must consider his

complaint against the rules and regulations that were in place at the time. The Financial Services Act 1986 which regulated investment advice, didn't come into play until 1988. So, in 1979 there was no requirement for advisors to consider if a recommendation was suitable for a consumer's circumstances. Instead, they had to ensure that they advised with reasonable care and skill, disclosed relevant material information and didn't give any negligent misstatements.

I've considered what Mr O has said he was told at the time he took out the policy. And I've reviewed the very limited documentation available from the time of the sale. At the time he took out the policy he was married, had dependent children and was employed full time. Given that he had dependents, I don't think that a recommendation to take out life insurance was unreasonable. If he were to pass away, then the policy would have provided protection in the form of a lump sum which the trust could pass on to its beneficiaries. Therefore, I don't think the policy was mis-sold on this basis.

Mr O's concerns about the sale mainly stem from his recollection that he was told by the advisor that he would receive significantly more than the policy's original £25,000 sum assured. I note Mr O's recollections of what he was told at the time, but I must also take into account that the sale took place over 40 years ago and memories will fade over time. Because of this, I think it's reasonable to factor in any documentary evidence that is available.

Thinking about how the policy works, it did have the potential to provide a higher sum assured than what was originally taken out. However, this was dependent on the investment performance of the policy's underlying fund. Mr O's policy had performed well in certain periods over the years. Some reviews had been better than expected which led to the sum assured increasing to c.£35,000. But there have also been occasions when the reviews have been worse than expected and the sum assured has fallen.

In the absence of much documentary evidence, it is difficult for me to determine exactly what assurances or guarantees Mr O was given. The policy's terms and conditions document from the time of the sale, doesn't give any guarantees that the sum assured will increase to a certain level and instead only says that it may be adjusted. It also says that the policy's calculations are based on a growth rate of 7.5%.

Based on the policy's assumed growth rate, it doesn't seem unreasonable to think that the sum assured might have grown above the initial £25,000. The reality of what happened is that a growth rate of 7.5% wasn't consistently achieved. This is why the policy's sum assured is now £28,950 and not any higher than that. This may be lower than what Mr O was led to believe it would be, but because the documentary evidence we have doesn't give any guarantees, I don't think I can prove that the advisor gave negligent misstatements or determine that the policy was mis-sold on that basis.

I also didn't think the policy was mis-sold because Mr O wasn't given the option to index it. I haven't seen that Mr O was told the policy had this feature or that it was a need he had at the time it was taken out. So, on balance, I don't think he was mis-sold the policy. I think he had a need for protection, and the policy was a reasonable degree of fit for his circumstances at the time.

The 2023 review

I've then gone on to consider the outcome of the 2023 review, specifically if Zurich acted unfairly when they reduced the policy's sum assured. The reduction in the sum assured was brought about by the cost of providing cover being higher than what Zurich had expected.

It might be helpful if I explain how the policy broadly works in practice. The cost of providing cover isn't a fixed charge and instead increases over time as the life assured gets older. 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 for the fund to build up over time so it can meet the sum assured on the death of the life assured. The return from this fund is then used to offset the costs of the policy when they eventually exceed the premiums being paid.

Zurich would have made certain assumptions about the policy's investment return and also about mortality rates. From what I've seen, the 2023 review was impacted by poor investment returns in the years leading up to the review.

Zurich had a responsibility to ensure that the policy was able to sustain the level of cover being provided for its entire life. Their actuaries determined that the level of cover on Mr O's policy was unsustainable based on the level of premium being paid, so changes had to be made. I don't think this was unreasonable because if changes weren't made at that time, it could have led to a much worse outcome later down the line.

The terms of the policy say that at each review, Zurich have discretion to increase or decrease the sum assured. 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. I think it's important to note that this can also work in Mr O's favour in the future. If investment returns exceed Zurich's assumptions, then he will likely be offered the opportunity to increase the policy's sum assured without any increase in premiums, in line with what has happened in the 1989, 1994, 1999, 2009, 2013 and 2021 reviews.

So, having considered everything, I don't think that Zurich mis-sold the policy or that they've administered it incorrectly. Therefore, I won't be asking them to do anything to resolve this complaint. I appreciate that this will come as a disappointment to Mr O, but I hope he can understand my reasons for not upholding his 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 O and Mr O as trustees of the O Trust to accept or reject my decision before 24 October 2025.

Marc Purnell
Ombudsman