DRN-5881939

The complaint

The trustees (Mrs R and Mrs G) of the R Trust (the 'Trust') complain about a failed review in 2021 of a reviewable whole of life policy ('RWOL') – Zurich's Adaptable Life Plan ('APL') which is underwritten by Zurich Assurance Ltd ('Zurich').

What happened

In around September 1997 Mrs R and the late Mr R received advice from Allied Dunbar Assurance plc (Allied Dunbar). The APL was recommended, a Key Features and Personal Illustration was provided.

The APL commenced on 1 October 1997 on a joint life second death basis, the sum assured was £200,000 which was index linked in line with the Average Earnings Index. The Illustration set out an initial monthly contribution of £191.72, it set out that the cash in value would likely be significantly less than the contributions paid.

In 2002 Mr and Mrs R reached out to Zurich for some information about the APL. It has been explained that this was because, upon Mr R's retirement the premiums were no longer affordable. Following discussions with his children it was decided that the APL be written in trust and three of his children would carry on paying the APL's monthly premiums.

Zurich have provided annual review outcomes from 2007. In 2009 a review failed and two options were provided to Mr and Mrs R, either increase the monthly premiums to £427.68 in order to maintain the sum assured, or reduce the sum assured to £255,380. The premiums remained at £374 per month at the next review. For the following 11 reviews there was either no change or Zurich offered an increase in the sum assured for the same premium.

Mr R sadly passed away in 2019. In September 2021 the APL failed a review, a letter was issued which explained that the cost of providing cover was higher than Zurich had expected and so the current payments didn't support the sum assured. The options given were to either:

- Increase the monthly payments from £374 to £585.61.
- Reduce the sum assured from £292,451 to £267,893.

The Trust raised a complaint with Zurich it set out that the decision Mr R's children made to continue with the APL premiums in 2002 was based mainly on two key points. That following the first death Zurich would make an offer of settlement which was greater than the fund value, but that had not happened. And the fund value could be used to offset any significant increases to the monthly premiums, but that had not been offered as an option. It also asked for an explanation as to why the premiums had increased significantly following the 2021 review.

Zurich provided their final response and followed this up with a second response which addressed some additional complaint points that were raised. In summary the responses set out:

- An offer is not given upon the death of the first life assured, however there is a cash injection to the fund value and the ALP can be surrendered at any time.
- Zurich would pay £125 compensation due to delays in their communications.

The Trust was unhappy with the responses from Zurich and so referred the complaint to this service. In summary it said:

- Mr and Mrs R were advised that an offer to cash out the policy would be made upon the first death. This is evidenced by a follow up meeting and email in 2002.
- The premiums increased by around 56% in September 2021 without a satisfactory explanation as to why.
- Zurich should make a fair offer to buy out the policy at the level of the sum assured.

An Investigator considered the complaint, they didn't uphold it. In summary they said that the increases in premium following the 2021 review were in line with Zurich's terms and conditions, their regulatory obligations and that Zurich had acted fairly and reasonably.

The Trust remained unhappy and asked for an Ombudsman to review the complaint. It added, in summary, the following comments:

- It was told reviews would not be significantly affected by age or health as the APL progressed. Risk health factors were attributed to Mr R so his passing should have reduced the risk.
- Some information provided doesn't seem to have been taken into account – namely the review meeting in September 2002. It was decided that the APL would continue following this meeting.
- None of the responses from the 2002 meeting suggested that there could be significant premium changes.
- No clear reasoning has been provided about why the premiums have increased.

In 2022 the APL annual review failed, I understand the Trust decided to increase the premiums paid rather than reduce the sum assured or surrender the policy. In 2023 the review showed no change was needed to the policy.

The complaint was passed to me for consideration. Under this complaint I am only able to consider the aspects the Trust are able to bring about this policy. I am not able to consider any advice Zurich may have provided to Mrs R and the late Mr R.

I issued my provisional decision within which I explained why I did not intend on upholding this complaint:

> *"I think it's helpful to explain firstly how RWOL policies generally work in practice. The premiums paid cover the cost of life cover (mortality cost) and any charges. Anything above that is invested to build up a fund. At the start, when the cost of life cover is lower, more of the premiums are invested. Zurich have explained that the cost of providing cover is based on the sum at risk – the difference between the sum assured and the fund value. They've said the policy is designed so that the fund builds up over time to meet the sum assured on death. This means the sum at risk should steadily reduce as customers get older to offset the increase in the mortality charge.*
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> *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. Zurich have explained that when they set up a RWOL, and at each review, they are looking at the performance of the policy for its life. So, if all of the assumptions they make are accurate, no increase of premium would be needed for the life of the policy.

The opportunity for consumers to make decisions about key changes to the policy is a key event in the life of the policy. I think that there was an expectation reiterated in FG 16/18 that consumers needed to be provided with sufficient information about their policies in order to be able to make informed decisions about them. I think this is particularly relevant in relation to the point in time when the 'tipping point' is reached. The point at which the mortality charges exceed the premiums being paid.

I've been provided with the yearly mortality charges vs the premiums that were being paid. The ALP reached it's tipping point in the policy year ending 2021. Prior to this the premiums paid were covering the mortality costs.

Zurich have explained that they carried out a review, not long before the ALP's 2021 review, of their claims experience. This led to Zurich increasing the mortality rate charges. Zurich say this is the key factor that led to the ALP's 2021 review failing. I appreciate Zurich's explanation, but I consider the end of the policy year of 2021 a key point in the policy's life cycle. As such, Zurich ought to have provided clear, fair and not misleading information in a timely manner, within 12 months of the tipping point, to enable the options to be weighed up and enable a fully informed decision about the value of the policy and whether, and on what terms, the Trust wanted to retain it.

Taking into account the regulatory obligations (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 FG16/18), 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 the Trust in a clear, fair and not misleading way. This needed to include the risks, costs and benefits associated with the options available, as well as giving clear timelines for the making of decisions where applicable.

In broad terms I consider it was incumbent on Zurich to have provided the following information in a clear fair and not misleading way to enable an informed decision to be made:

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.*
- *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 information*

that would allow it 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 to Mrs R and the Trust after the end of the 2021 policy year. Zurich did provide most of the information I would expect them to have, however they didn't disclose the level of life cover costs and charges. The 2021 review letter triggered the Trust to get in touch with Zurich to ask some further questions about the policy. In response Zurich confirmed the cash in value of the policy and explained how the ALP worked. I've not seen any correspondence where Zurich provided the cost of the life cover. So, I can't agree that Zurich provided everything needed to enable an informed decision to be made.

What would the Trust have done differently?

I've considered what, if anything, the Trust would have done differently if it'd been provided with all the information set out above. Had it been given clear information the options open to it would have been:

- *Cash in the policy at the cash in value.*
- *Increase the premiums to maintain the level of the sum assured.*
- *Reduce the sum assured.*

I think it's important to note that Zurich's reviews were focused on making the policy last for the remainder of Mrs R's life. It would always have been their expectation that at some point the cost of cover would exceed the premiums being paid, but that this would be offset by the return provided by the policy's underlying unit fund.

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 current assumptions regarding things such as mortality costs and investment performance, the level of premium being paid would be sufficient to sustain the policy for life. Though that of course couldn't be guaranteed as the review relies on assumptions about future events.

So, taking this into account, the key question I have to answer is what the Trust would have done if the information had been presented to it in the way I have described above. Having considered everything, I think it's likely that even if Zurich had provided all the information set out above in a clear, fair and not misleading way, it would have still chosen to increase the premiums to maintain the level of cover. I say that because Zurich let the Trust know it could cash the policy in with no fees. But in response it made it clear in its communications with Zurich in October 2021 that it was not willing to cash the policy in for its current value. So, I don't think the *policy would have been surrendered. The only other option available to it was to reduce the sum assured.*

On 18 November 2021 Zurich responded to the Trust asking if, in the future, premiums may increase. They responded by explaining that it would be possible if there were further changes to their assumptions such as the average life expectancy and/or the fund's performance. In light of this information the Trust chose to maintain the sum assured and increase the monthly premiums. And so, had it been given the life cover costs along with a clear explanation from Zurich I think it would still most likely have chosen to increase the premiums to maintain the sum assured.

The Trust have asked about the option to use the fund value to offset the life cover cost. Zurich have said that the value of the fund is not sufficient to offset the life cover cost. Because the life cover cost is based on the difference between the sum assured and the fund value, should monies be used from the fund to pay the life cover the life cover cost would increase.

The Trust has raised a number of other complaint points which I will comment on individually below:

- *Effect of aging of the life assured.*

The Trust has said that it was told that the life assureds age and health don't have an impact on the premiums. But it seems now that the life cover cost increases as the life assured ages. Both of these things are correct – as set out above the APL has two main elements to it, the cost of life cover – to pay out the difference between the sum assured and fund value upon death of the second life. And a fund that is invested. The cost of the life cover element does increase as a life assured ages. However, Zurich have already taken that increase into account with their assumptions when they set their premiums. So, the way the policy is structured is designed to offset the increase in life cover costs.

In Mrs R's case, Zurich have explained that their mortality rate increased based on a review they carried out in respect of their experiences of other claims. That was a review of the population, not a review of Mrs R's age individually. This was the main factor which caused Mrs R's 2021 review to fail.

- *Offer of settlement following the passing of Mr R.*

I have considered the terms and conditions of the APL, the policy does not offer settlement following the first life assured. The policy is set up to pay the sum assured on the death of the second life. I appreciate the Trust have made some arguments about what was said at the time of sale, and then a few years later. I'm not able to consider any advice received under this complaint – I have considered what Zurich were obligated to do under the ALP's terms and conditions and I can't say Zurich have done anything wrong by not offering settlement at the time of Mr R's passing.

Zurich did provide a cash injection to the fund at the time of Mr R's death in the sum of around £13,000 – and I understand the fund can be cashed in without a fee at any time.

Summary

Whilst I don't think Zurich provided all the information to the Trust that I would have expected them to, had they done so I don't think it would have changed things.

Zurich carryout calculations at each review looking ahead to the life of the policy, they take into account the increasing life cover when doing so. The ALP was set up on a second life basis, and so the sum assured is not payable until the death of the second life assured. Though the policy can be cashed in for the fund value at any time."

Zurich responded to my provisional decision, they didn't agree that they had not met their obligations. In summary they reiterated that at each review point Zurich consider the assumptions that have been made in view of the lifetime of the policy. And that if the assumptions are correct then it does not follow that at the defined 'tipping point' (when the premiums paid no longer cover the mortality charges) the current premium paid will no longer be sufficient for the sum assured.

The Trust responded to my provisional decision, it didn't agree with the outcome. I have summarised the response below:

- It sought a specific explanation from Zurich in October 2021 about how the policy was managed and detailed justifications for the premium increases. Which it wanted to be written in line with the defined terms as set out within the policy documentation. Zurich didn't do so.
- Zurich didn't provide any warning that there could be significant increases in the premiums. In October 2022 the premium increased from £585 to £939. The Trust doesn't understand how there could be such a volatile change in premiums.
- The fund that the policy was invested into has not shown significant changes – it has performed in-line with it's risk profile.
- Having checked the mortality rates in the National Life Tables for England – published by The Office for National Statistics (ONS) it couldn't find a change in mortality rates.
- The Trust only continued to pay the increased premiums from October 2021 in order to maintain its contractual obligations. Had it known that it would not get a timely outcome to this complaint, and it would continue to remain at risk of unexplained volatile increases in the future, it would have decided to cash in the policy at that time. Had it done so it would have been able to invest the cash in value and premiums which it would easily expect to reach the sum assured. And so, the decision would have been common sense at the time – rather than one made in hindsight.
- I was saddened to hear how this complaint has affected the Trust's representative. Who has explained how difficult this has been emotionally for them.

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 appreciate this will come as a disappointment to the Trust, but, having carefully reconsidered all the evidence and additional comments from both parties, I'm not upholding this complaint.

When considering what's fair and reasonable in the circumstances, I need to take account of relevant law and regulations, regulator's rules, guidance and standards, codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time. In reaching my conclusions, I've considered in particular:

- 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).

My full reasoning remains as set out within my provisional decision, the contents of which forms part of this final decision, as quoted above. I will focus my explanation here on the additional comments both parties have made following the provisional decision.

Zurich do not feel that the distinction I have made of the 'tipping point' is fair when considering the way that the policy operates. I've considered their comments but am still of the opinion that they had an obligation to provide clear, fair and not misleading information to the Trust within 12 months of the end of the 2021 policy year. That included providing the cost of the life cover to the Trust – I can't see that Zurich provided this to the Trust.

The Trust have asked what will be done in relation to Zurich not providing all the information that was required of them to it (the cost of the life cover following the end of the 2021 policy year). Sometimes things go wrong, this Service do not regulate Zurich. Rather, my role is to consider if Zurich have made an error – and where I establish it has, as is the case here, consider what impact the error has caused.

Had Zurich given the Trust the cost of the life cover following the 2021 policy year, I don't agree the Trust would have made a different decision about what to do with the policy than it did at that time. And so, whilst Zurich ought to have provided the information to the Trust I can't agree there has been a financial loss caused by them not doing so.

I understand the Trust strongly disagree with that opinion. I have considered all of the comments made within it's submission following receipt of my provisional decision alongside all of the submissions previously made to this Service. The Trust has set out that it continued to pay the premiums only to maintain it's part of the contract.

However, the only options available to the Trust in October 2021 were to either:

- Cash in the policy at the cash in value.
- Increase the premiums to maintain the level of the sum assured.
- Reduce the sum assured.

If the Trust was unhappy to pay an increased premium, in order to maintain its part of the contract it could have chosen to reduce the sum assured – but that isn't the decision the Trust made in 2021, or a year later in October 2022 when it received another failed review. So, I'm not able to conclude that it would have decided to reduce the sum assured.

Instead, the Trust say it would have cashed the policy in. The only additional information I have determined ought to have been provided to the Trust by Zurich was the cost of the life cover. So, in order to say that it would have decided to cash in the policy I need to be persuaded that information about the cost of the life cover (how much the mortality cost was) would have led it to make a different decision to the one it made.

At the time that the complaint was raised, when asked to confirm if the premiums could increase exponentially over time, Zurich let the Trust know that they couldn't guarantee there would be no further increases to the premium in order to maintain the sum assured. So, the

Trust were aware that there was a risk of further increases to the premium in the future. Then in October 2022, when the review failed again, the Trust again chose the option of increasing the premiums paid rather than cash in the policy. It didn't cash in the policy at that point either.

I appreciate the Trust say that it could have cashed in the fund in October 2021 and invested the premiums it has paid – and had it done so it would have been able to achieve the sum assured. But, that option *was* available to it at the time, Zurich let the Trust know the cash in value and that it could be cashed in at any time. The Trust didn't take that option.

Based on the evidence I have seen, I don't agree receipt of information about the mortality cost would have caused the Trust to make a different decision to the one it did make following the failed review in October 2021.

The Trust have also said that it doesn't understand how the premiums could increase so significantly. And I appreciate it is looking for a detailed explanation. But, Zurich carryout a complex calculation which is based on a number of factors. That includes Zurich's internal experience with claims. The mortality rate charge increase that Zurich have explained was based on their claims experience – not published data by ONS.

Zurich made assumptions at the outset of the policy – which they then compare with what did happen over time at each review. They use that information to check that the premiums being charged are enough so that the policy will still meet its sum assured based on those future assumptions on a variety of factors. I'm satisfied with the information that Zurich has provided about the increase in premiums.

Summary

Zurich ought to have provided information about the mortality costs of the policy within 12 months of the end of the 2021 policy year. In order to agree that the Trust would have decided to cash in the policy at this point, I need to be persuaded that that additional information would have caused it to change it's actions.

Zurich let the Trust know that it could cash in the policy at any time and what the cash in value was at the time. They also let the Trust know that they couldn't guarantee the premiums would be able to remain the same in the future. With that information the Trust made the decision to continue to maintain the sum assured. I don't think additional information about the mortality costs would have caused the Trust to change it's decision.

My final decision

I appreciate this will come as a disappointment but I don't uphold the Trust's complaint about Zurich Assurance Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask the Trust to accept or reject my decision before 11 November 2025.

Cassie Lauder
Ombudsman