

## The complaint

Mr A, as Trustee of the A Trust, complains about a reviewable whole of life (RWOL) policy the Trust holds with Zurich Assurance Ltd. He's unhappy with the outcome of a policy review which said he had to significantly increase his premiums in order to maintain the sum assured.

## What happened

This complaint relates to policy number 17xxx-xxx-xxS. It was taken out in the early 1980s and originally provided a sum assured of £50,000 for monthly premiums of £34.81. Over time the sum assured increased to £73,880, but the premiums remained unchanged.

The policy was reviewed in 2020, and the outcome was that in order to maintain the sum assured, the premiums needed to increase from £34.81 to £117.01. If the premiums didn't change, then the sum assured would fall from £73,880 to £59,593.

Mr A complained to Zurich about the outcome of the review. In summary, he didn't think he'd been treated fairly, questioned the assumptions Zurich had used when performing the review and thought that the increase in premium compared to the decrease in sum assured was disproportionate.

Zurich looked into the concerns he'd raised but didn't uphold the complaint. They explained that they periodically reassessed the assumptions they made when performing reviews. Their 2019 review of claim likelihood factors had shown that the number of claims had increased which meant that the cost of providing life cover was higher than they expected. This had impacted the 2020 review of Mr A's policy and because investment performance had also been below expectations, premiums needed to increase to put the policy back on track to provide £73,880 of cover.

Mr A didn't accept Zurich's findings and asked for our help with the matter. The complaint was considered by one of our investigators who thought it should be upheld. He thought that while Zurich had treated Mr A fairly, they hadn't provided him with sufficient information about the policy to enable him to make an informed decision. This was because they hadn't informed him about the costs of the policy and that from 2010, the costs of the policy had exceeded the premiums being paid.

He thought that if they had done so, then Mr A wouldn't have accepted any increases in the sum assured at "better than expected" reviews from 2014 onwards. So, to put things right, Zurich needed to pay Mr A £500 in compensation for the trouble and upset the matter had caused him. They should also reconstruct the policy based on Mr A not accepting any increases in sum assured with no corresponding increase in premiums from 2014 onwards.

Zurich didn't accept the investigator's findings. They believed they didn't have to notify Mr A that the cost of cover had exceeded the premiums being paid as this was how the policy was designed to operate, and they based their projections on this happening. So even though the costs of the policy were higher than the premiums, it wasn't inevitable that premiums would have to increase. This was because their assumptions were that the policy's underlying fund

would continue to grow over time, and the return from the fund would help to offset the cost of providing cover.

The investigator wasn't persuaded to change his opinion, so the complaint was passed to me to decide. I recently issued a provisional decision where I said:

*"Having done so, I don't think the complaint should be upheld and I will now explain why. In making my decision I've considered if Zurich met their regulatory obligations and I've set out below what I consider to be the relevant standards I've taken into account when making my decision:*

- *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).*

*I note Zurich's comments about why they think that they've met their obligations to provide consumers with fair, clear and not misleading information about their policies. However, I don't agree. The standards I've set out above say that communications from firms needed to include:*

- *"sufficient and clearly explained details regarding the performance of the product, its value and the impact of fees and charges";*
- *"the value at the previous communication date and the value of any premiums paid over that period";*
- *"charges incurred over the period in monetary figures"*
- *"a breakdown of the major components and the charge to the customer for benefits such as life cover and guarantees"*

*While Zurich clearly provided consumers with a great deal of information about their policies, they didn't set out the cost of providing cover. Because this wasn't provided, I don't think I can say that consumers were in a fully informed position.*

*However, I take Zurich's point about how their review process worked and the fact that they were focused on ensuring that the policy would last for life, and not just until the next review point. So, despite consumers not being aware of the charges that applied, they were in possession of what I would consider to be the most crucial piece of information – the level of premium that would sustain the policy for life based on Zurich's assumptions at the time.*

*I've considered how this applies to Mr A's complaint. The first issue I've thought about is the outcome of the 2020 review. The policy's terms say that it is reviewable and at each review, Zurich can increase or decrease either the sum assured or premiums. They had full discretion to do so based on their calculations and 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 treating Mr A unfairly by reviewing the policy and proposing changes.*

*I note Mr A's points regarding the size and fairness of the changes that were proposed at the 2020 review. But I don't think it was unreasonable for Zurich to revise their assumptions*

*about the policy and take action. I say this because they had a requirement under the standards I've quoted above to give adequate consideration to, and take proper account of fund performance and policy values in a way that ensured they treated their closed-book customers fairly and proportionately. In practice this meant they had to review their investment performance more frequently and ensure their assumptions accurately reflected the level of performance they were seeing.*

*While the revised assumptions clearly had a negative impact on Mr A's policy. I don't think Zurich acted unfairly in revising their assumptions to a more accurate level as it meant that consumers were being provided with a more accurate level of information than they were previously receiving and would potentially prevent a much worse outcome later down the line.*

*I've then considered if Zurich provided Mr A with sufficient information about the policy to enable him to make an informed decision. Having done so, I agree with the investigator's opinion that Zurich didn't fully meet their regulatory requirements. This is because, as I've noted above, they didn't provide Mr A with the cost of providing cover. Where I disagree with the investigator is about what Mr A would have done differently if he'd been given this information.*

*Mr A's policy had "better than expected" reviews in 2014 and 2018. At these reviews, he chose to accept a higher sum assured for the same level of premium. The question I must therefore ask is whether Mr A would have chosen to accept the increases if he'd been made aware that the charges of the policy were higher than the premiums being paid. This is a decision I must make using the balance of probabilities, so what was more likely than not.*

*I've set out below the position of the policy at the 2014 and 2018 reviews:*

- In 2014, the annual mortality charges of the policy were £637.30 versus premiums of £417.72 and the underlying fund was valued at c.£17,500.*
- In 2018, the annual mortality charges of the policy were £842.36 versus premiums of £417.72 and the underlying fund was valued at c.£21,800.*

*I must also take into account the information that Mr A was provided with, such as the booklet provided with the 2014 and 2018 reviews. It explained that if the review found that the cost of cover was lower than expected and the policy's cash value was building up more quickly than expected, then there were two options that the policyholder could take:*

- They could maintain the level of cover and keep the cash value in the policy. It was suggested that a consumer may want to take this option if "You can see a time when your need for cover will end so you want to build up the cash value. Your plan gives you the right amount of cover for your needs and you want to give yourself a 'cushion' in case the cost of cover increases in the future."*
- Or they could use the cash value to pay for the cost of extra cover without having to increase their monthly premiums. It was suggested that a consumer may want to take this option if "You want more cover – perhaps because you have some new or bigger financial commitments, or want to provide more cover for your dependants."*

*Also, the policy's yearly statements from 2014 and 2018 said:*

***"Why your cover and payments may change***

*The amount of cover your plan provides can increase or decrease over time in response to changes in investment performance and trends in life expectancy. These factors affect the cost of providing the cover. We regularly review your plan to make sure the level of cover and what you pay are properly matched.*

*At a review your cover might reduce although you have the choice of increasing your payments to maintain the higher level of cover. This will happen if the overall cost of cover is higher than we expected.*

*If the overall cost of cover is lower than we expected you could choose to increase your cover or allow your plan's cash value to build more quickly. Under the original terms of your plan any increase to your cover following a review would have been applied automatically. We have since changed this so that you now have a choice whether or not to increase your cover.*

*We will review your plan every 5 years and every year from 2018.”*

*So, from what I've seen, Mr A chose to increase the level of cover in 2014 and 2018 despite being told that he could maintain the existing level of cover and build up the policy's cash value. I think that the fact that he chose to increase the level of cover, with the knowledge that the policy's cash value wouldn't build up as quickly, is potentially indicative of his intentions at the time. In my opinion, it shows that he had some desire to receive as much cover as he could for the premiums he was paying, and his focus wasn't just on the investment element of the policy.*

*I've considered what Mr A would've likely done in a scenario where he'd been told:*

- *The costs of the policy were higher than the premiums being paid.*
- *But Zurich's assumptions were that when the expected return from the policy's fund was factored in, the fund would continue to grow over time, albeit at a lower rate than if the level of cover wasn't increased.*

*It's also worth noting that in 2014 the value of the underlying fund was around £17,500 and Zurich assumed that it would grow by 8.5% each year – so by around £1,500. The difference between the premiums and the cost of cover was around £220 so the expected return would comfortably cover this amount and still leave a reasonable sum to add to the underlying fund.*

*In 2018 the value of the fund was around £21,800 which would provide an expected return of around £1,850. The difference between the premiums and the cost of cover was around £425, so it would again be the case that the expected return would cover the difference and still leave a reasonable sum to add to the underlying fund. Additionally, despite the cost of cover exceeding the premiums since 2014, the underlying fund had increased year on year.*

*Taking all this into consideration, I think Mr A still would have chosen to increase the level of cover, so he could benefit from a higher sum assured while still having the potential for the policy's fund to continue growing. So because I don't think Mr A would have taken a different course of action, I don't think Zurich need to do anything to resolve Mr A's complaint.*

*I appreciate this will come as a disappointment to Mr A, but I hope he understands why I've come to this conclusion.”*

## **Responses to my provisional decision**

Zurich accepted my provisional decision and didn't provide any further comments. Mr A didn't accept my findings and asked me to reconsider my decision. He said, in summary:

- He'd arranged this policy through a firm that had been acquired by Zurich and believed that the original terms and conditions should apply, not Zurich's less advantageous terms.
- Given that I'd established Zurich's failure to provide appropriate information, he was struggling to see how the judgement could then fall in Zurich's favour. The benefit of the doubt should rest with the consumer, not with a financial services provider.
- He didn't believe that Zurich's behaviour aligned with the FCA's Principles for Businesses, particularly Principle 6, which states: *'A firm must pay due regard to the interests of its customers and treat them fairly.'* They sold him a product that was marketed as whole life and then in his later years subjected him to extremely large premium increases that rendered the life cover unaffordable. He believed this was contrary to TCF customer outcome 2 *'Product Design Products and services marketed and sold are designed to meet the needs of identified consumer groups and are targeted accordingly.'*
- He pointed to the regulations for Policyholder's Reasonable Expectations which had been applicable for most of the duration of the policy: *'4.4.6 We would regard all of these changes of approach, even where they are retrospective, as reasonable, provided that the impact on policyholders is smoothed within the office's established practice, and does not give rise to a significant discontinuity in the level of policy payouts.'*
- He was therefore surprised that I'd disagreed with the investigator, particularly as the significant increase in premium and reduction in sum assured happened in just one year. He was not aware of any excess mortality in the UK or adverse investment performance in 2019 to have caused such a dramatic change.
- Zurich should have been managing policyholder's reasonable expectations and not just assumed that policyholders would think that mortality experience has been better than expected for nine years and then suddenly impose such an increase in premium because that hadn't been the case.
- He understood that life assurers used industry standard mortality tables and expected future investment performance when making assumptions and smoothed out fluctuations in experience as much as possible.
- He was also surprised that I'd based my decision on the balance of probabilities. He would have preferred stable premiums and sum assured (i.e. small changes) and not a surprise volatile change in one year. He appreciated that although his policy isn't a with-profits policy, he would not have increased life cover in previous reviews if he knew that the underlying increase in Zurich's mortality experience was being disguised via changes in investment returns when doing policy reviews. He would not have accepted an increase in cover if he knew that the underlying mortality costs were now significantly higher, i.e. which would result in higher mortality charges and such a dramatic change in the required premium and reduction in sum assured.
- He didn't believe Zurich's behaviour met TCF outcome 5 - *'Product Performance and Expectations. Products perform as firms have led consumers to expect, and the service is of an acceptable standard.'*

## 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 reconsidered everything, I'm still of the opinion that this complaint shouldn't be upheld. I appreciate Mr A's comments about what he would have done if he'd been put in a fully informed position and also about the regulator's rules that he thinks Zurich haven't met. However, I won't respond to or comment on every point that he's raised. Instead, I will focus my decision on what I consider to be the key issues at the heart of this dispute.

I think it may be helpful I explain how our service operates, given Mr A's comments that the benefit of doubt should rest with the consumer and not with the financial services provider. It isn't the case that we are consumer champions or that we work for industry, our service is completely impartial. Our role is to weigh up the evidence and decide what is fair and reasonable in the specific circumstances of each complaint.

Also, where evidence is incomplete, I have to make my assessment using the balance of probabilities – in other words what I consider most likely to have happened in light of the available evidence and wider circumstances. I fully accept that Mr A thinks he wouldn't have chosen to accept the increases in sum assured in 2014 and 2018, but this statement is made with the benefit of hindsight. In order to be fair to both parties, I must consider what is most likely to have happened at the time, and not simply take his word for granted.

That being said, I'd like to reassure him that I've carefully considered the points he's made and thought about the regulator's rules that applied to Zurich's administration of his policy. I've also considered if Zurich correctly administered the policy in line with its terms and conditions.

Having done so, I'm not persuaded that Zurich didn't administer the policy correctly, or that they changed the terms of the policy to be less advantageous to Mr A. The original policy terms set out, in summary, that it is reviewable and adjustments can be made to either reduce or increase the sum assured based on Zurich's calculations. So, I don't think Zurich acted unfairly in reviewing the policy and proposing the changes that they did.

I also don't think they breached the relevant regulations, with the exception of the point I previously raised in my provisional decision around providing Mr A with sufficient information about the policy. I'm not persuaded that the requirements under TCF outcome 2 are relevant to this complaint as they apply to product sales and marketing. Given that the policy was taken out in the early 1980s, this rule wouldn't have been in place at that time.

I also note his reference to the '*Regulations for Policyholder's Reasonable Expectations*', but I've been unable to find the specific rule he is referring to. In any event, I don't think it's in dispute that Zurich didn't provide Mr A with all the information they should have given him about his policy, specifically the cost of providing cover.

I appreciate why he thinks that Zurich may have breached TCF outcome 5, but I'm not persuaded this is the case. I think it's important to remember that all their reviews have been performed with a view towards maintaining the level of cover for life. So, even though there have been '*better than expected*' reviews where the level of cover increased without a corresponding increase in premium, Zurich would have thought that the increase was sustainable for life provided their assumptions were borne out.

I also accept that Mr A thinks Zurich could have managed his expectations better, but I think that when they reviewed the policy in 2014 and 2018 and came to a better than expected

outcome, they were doing so based on their assumptions at the time. The fact that these assumptions weren't borne out is due to market conditions and not necessarily errors on Zurich's part.

Zurich reviewed their assumptions in 2019, and this is what led to the changes at the 2020 review. Their review didn't just consider the previous year's mortality rates and investment performance; it looked at trends over a period of time. I don't think this is unreasonable or that they tried to intentionally disguise poor performance. I think their review is in line with the regulator's guidance which says, in summary, that firms need to regularly review their policies to ensure that they remain fit for purpose.

This review should take account of investment performance and charges and should take place at least every five years. So, while I appreciate the point Mr A has raised, I don't think Zurich had a requirement to review their assumptions more frequently than they did. The 2020 policy review was the first one after they revised their assumptions for Mr A's policy, so I think they managed his expectations within a reasonable timeframe.

In my mind, the key issue at the heart of this complaint is what Mr A would have done if he'd been provided with all sufficient information about his policy's charges from 2010 onwards. He's said that wouldn't have accepted the increase in sum assured if he'd been made aware of the level of charges on his policy. I don't dispute his testimony, but it has been made with the benefit of hindsight. In order to make my decision, I must consider what he would have done in a scenario where he was possession of all the facts about his policy's charges and performance from 2010 onwards.

He shown a desire to keep the policy so I don't think he would have surrendered it if he'd been put in a fully informed position. Therefore, the impact of not providing sufficient information is mainly around what would have happened at the 2014 and 2018 reviews. He was paying premiums of £417.72 per year. His policy's charges and fund value were as follows:

Date	Mortality Cost	Fund Value
01/12/2010	£ 427.84	£ 13,494.58
01/12/2011	£ 474.95	£ 13,365.29
01/12/2012	£ 511.55	£ 14,612.51
01/12/2013	£ 554.45	£ 16,473.13
01/12/2014	£ 637.30	£ 17,545.65
01/12/2015	£ 608.89	£ 18,216.95
01/12/2016	£ 637.74	£ 19,930.80
01/12/2017	£ 688.11	£ 21,968.28

I must also give some weight to the information that he was given. Zurich provided him with what I would consider to be the most critical piece of information – what it would cost to maintain his policy, based on their assumptions, for the rest of his life. He was also provided with information about the expected rate of return on the policy's underlying fund and also the benefits of not accepting the increased sum assured in 2014 and 2018. To reiterate, he was given two options:

- He could maintain the level of cover and keep the cash value in the policy. It was suggested that a consumer may want to take this option if *"You can see a time when your need for cover will end so you want to build up the cash value. Your plan gives you the right amount of cover for your needs and you want to give yourself a*

*‘cushion’ in case the cost of cover increases in the future.”*

- Or he could use the cash value to pay for the cost of extra cover without having to increase the monthly premiums. It was suggested that a consumer may want to take this option if *“You want more cover – perhaps because you have some new or bigger financial commitments, or want to provide more cover for your dependants.”*

Despite being made aware he could reject the increase and build up a cushion in case the cost of cover increased in the future, Mr A chose to accept the increase. This leads me to believe that he wanted as much cover as he could get for the premiums he was paying. Also, even if he'd been made aware that the policy's charges were higher than the premiums, he would have seen that apart from a small reduction in 2011, the policy's fund value had continued to grow year on year, increasing from £13,494.58 in 2010 to £16,473.13 in 2013 and then £21,968.28 in 2017.

So, taking all this into account, I'm not persuaded that Mr A wouldn't have accepted the increases in sum assured in 2014 and 2018 if details of the policy's charges were included in the communications he received. I think the policy was performing as Zurich was expecting and they would have factored the level of charges into the outcome of their review.

So, while I note Mr A's comments about the course of action he would have taken, I'm not persuaded that course of action would have been likely. For the reasons I've provided, I still think he would have accepted the increases in sum assured. Because of this, I don't think his complaint should be upheld.

### **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 Mr A as Trustee of the A Trust to accept or reject my decision before 17 December 2025.

Marc Purnell  
**Ombudsman**