Financial Ombudsman Service

complaint

Mr C has complained through a third party representative that advice he received from a predecessor firm of Sanlam Life & Pensions UK Limited ("Sanlam") in November 1990 to invest £70.00 per month in a whole life savings policy, the "Savings Programme", was unsuitable.

Specifically, his representative has questioned why Mr C, who was single with no dependents at the time, would need a policy over such a long term that incorporates life cover. Also, the adviser did not establish Mr C's attitude to investment risk to be satisfied that the choice of the Managed fund was appropriate.

As Mrs C's representative submits that the policy was unsuitable, the policy should be cancelled from outset with a refund of all the premiums he has paid, plus interest at 1% above Bank of England base rate.

background

I issued a provisional decision on this complaint, a copy of which is attached, which forms part of the decision and I invited both Mr C's representative and Sanlam to respond to it.

Briefly, I concluded that, on balance, the policy was appropriate for Mr C as it was apparent that he wished to save a regular sum to obtain a worthwhile return over the long term. The policy appears to have achieved this objective to-date.

As the policy was taken out in November 1990, there was no requirement for the adviser expressly to record Mr C's attitude to risk and I could not safely conclude by virtue of his age alone at the point of sale that he would not be prepared to take a degree of risk with this policy. Mr C had retained the policy for almost 24 years without any evident dissatisfaction with it.

However, Sanlam had concluded, that, given the premium Mr C chose was £1 less than the minimum monthly premium payable to an alternative savings policy it offered with a lower charging structure, he might have been better advised to invest in this policy. Accordingly, I supported its offer to reconstruct the "Savings Programme" policy as an "Investment Programme" policy from outset and recalculate its current value accordingly.

developments

In reply, Sanlam confirmed that it agreed the conclusions in my provisional decision and had nothing further to add on the matter.

Mr C's representative responded that it disagreed with my provisional decision and said that:

- It should not be assumed that the policy was suitable because Mr C has kept it in force for more than 23 years. Otherwise, investors who held mortgage endowment policies for many years until they were made aware these policies had been mis-sold would not have received compensation;
- Mr C retained the policy not because he considered it was suitable for him but because he was concerned that he would be penalised for surrendering the policy early and his complaint may be time-barred. That he maintained the policy to-date does not make the advice suitable;

- Mr C had no previous investment experience, and established guidance requires individuals at his age in November 1990 to build up slowly their exposure to risk. He was advised to invest in a medium risk-rated fund, whereas appropriate advice may have been to invest in a more cautious with-profits product, for example;
- For these reasons, Mr C should receive a refund of premiums, plus interest at 1% above Bank of England base rate.

my findings

I have considered all the submissions made by both parties in response to my provisional decision to decide what is fair and reasonable in the circumstances of this complaint.

In my view, it is significant that Mr C has maintained this policy for more than 23 years without any apparent dissatisfaction with it and I find it surprising that he should decide to complain about the sale of this policy now, given it has also provided him a reasonable return on his premiums.

As I confirmed in my provisional decision, the adviser was require to satisfy himself that the nature of the policy was appropriate for Mr C's circumstances even though there was no requirement to record his attitude to risk. I am not persuaded that, by virtue of his age alone, it can be assumed Mr C would not have wished to adopt a medium approach to investment risk with £70 of his monthly disposable income. Mr C has retained this policy over the long term during which he will have received annual valuations which reflected the fluctuating nature of the investment and he does not appear to have expressed any concerns about the policy.

The Managed fund was a medium risk-rated fund offered as the 'default' fund by the product provider for investors who wish to achieve potential returns greater than they might acquire by placing their premiums in a deposit account. The cost of the integrated life cover at Mr C's age would not have unduly compromised this objective.

All things considered, I am not persuaded to depart from the conclusions I reached in my provisional decision and do not believe Mr C was inappropriately advised to take out this policy as to be entitled to receive a refund of all his premiums, plus interest, he has paid to this policy over more than 23 years.

Notwithstanding this, Sanlam identified that Mr C could have been advised to make a premium of £1 per month more to benefit from the more favourable charging structure of the "Investment Programme" policy. Therefore, without any admission of liability, it is prepared to rewrite Mr C's policy as if he had made premium payments of £70.00 per month to an "Investment Programme" policy.

Therefore, I would recommend that Mr C considers the offer made by Sanlam Life & Pensions UK Limited dated 6 December 2012 to resolve his complaint, which enables him either to:

1. continue the "Savings Programme" policy at £70.00 per month, but with the charging structure associated with an "Investment Programme" policy taken out in November 1990 and its current value recalculated accordingly or

2. continue the “Savings Programme” policy in its existing form and to receive a lump sum payment representing the increase in its current value calculated on the basis set out in (1) above.

My understanding is that this offer remains open for Mr C to accept.

my final decision

In the meantime, my final decision is that I do not uphold Mr C’s claim for redress other than the compensation offered by the business in its ‘final response’ to him dated 6 December 2012.

Kim Davenport
ombudsman

COPY OF PROVISIONAL DECISION

I have carefully considered the relevant information about this complaint. Having looked closely at the evidence, I am considering departing substantially from the conclusions reached by the adjudicator.

Subject to any further comments and evidence that I receive by 5 August 2014, I intend to issue a final decision along the following lines. Final decisions will be published. To prevent the consumer being identified, he will be referred to as “Mr C”.

complaint

Mr C has complained through a third party representative that advice he received from a predecessor firm of Sanlam Life & Pensions UK Limited (“Sanlam”) in November 1990 to invest £70.00 per month in its “Savings Programme” - a whole life savings policy - was inappropriate for him.

Specifically, his representative has said that it does not appreciate why Mr C, who was single with no dependents at the time, would need a policy over such a long term that incorporates life cover. Also, the adviser did not establish Mr C’s attitude to investment risk to be satisfied that the choice of the Managed fund was appropriate.

background

In response to this complaint, Sanlam concluded that the policy was appropriate for Mr C’s needs in principle. It did, however, agree that he might have been better advised to invest his premiums in its “Investment Programme”, notionally a 10-year endowment policy which he could have continued beyond its initial term. This policy operated a lower charging structure than the “Savings Programme” and required a minimum monthly premium of only £1.00 per month more than the “Savings Programme”.

Accordingly, Sanlam offered to rewrite Mr C’s policy with the charging structure of an “Investment Programme” plan and to recalculate its current value accordingly. Alternatively, Mr C could leave his “Savings Programme” policy in its original form and accept a lump sum redress payment equal to the additional value it would have acquired on the lower charging structure of an “Investment Programme” policy.

Mr C’s representative rejected this offer on his behalf and referred his complaint to this service. He has requested Sanlam to cancel the policy from outset and refund all the premiums he has paid, plus interest at 1% above Bank of England base rate.

This complaint was investigated by one of our adjudicators, who concluded it should be upheld. Mr C was young, single and with no financial dependents in 1990 and did not require life cover of £26,460 that was incorporated in the policy to ensure that any gain made by the policy on surrender was exempt from income tax.

The adjudicator accepted that Mr C had intended to save over the longer term, and that the inclusion of life cover was required for the policy to ‘qualify’ for tax exemption. However, he was not satisfied that Mr C held sufficient investment experience to appreciate the risks associated with investing his premiums in the Managed fund, which included significant exposure to UK and international equities.

He recommended that Mr C should receive redress, if any, equivalent to the shortfall in value of his “Savings Programme” plan and the cumulative value of his policy premiums if they had attracted a return of 1% above Bank of England base rate to-date.

In response, Sanlam disagreed with the adjudicator’s reasoning for the redress payment. Mr C had retained this policy for almost 24 years without any evident dissatisfaction with it and he continued to receive annual statements which confirmed the on-going value of the policy. If Mr C had not appreciated the risks inherent in the Managed fund, and its effects on the on-going value of the policy, it was reasonable to suppose that he would have raised his concerns earlier in the term of the policy. It confirmed that its offer to resolve this complaint remained available for Mr C to accept.

As no agreement could be reached in this complaint, it has been referred to me for review.

provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I accept that Mr C was relatively young when he took out the policy, and it is apparent that he did not have any previous experience of risk-based investments. I do note from the file provided by Sanlam that, in recommending this policy, the adviser appears to have taken into account Mr C’s potential life changing experiences through to his retirement and beyond.

Thus, I am satisfied that there was a clear intention on Mr C’s part to save on a regular basis over the long term, and it is evident that he has retained the policy he was recommended to-date.

In assessing this complaint, I have taken into account that Mr C received advice to take out this policy in November 1990, more than 23 years ago. Inevitably, there is likely to be a lack of documentation surrounding the sale of this policy and, at that time, it was not a requirement for Sanlam specifically to establish Mr C’s attitude to investment risk.

The evidence that does exist confirms that Mr C was young, single and with no financial dependents. His earnings and regular outgoings at the time gave him a net disposable income of almost £400 per month. As such, there appears to be no issue concerning affordability as the monthly premium he paid to the policy represented around 18% of his available income for regular savings.

I appreciate the point made by Mr C’s representative that he may not have required the life cover provided by this policy in his circumstances at the time, and I have considered whether any life cover charges compromised the policy’s ability to provide him a worthwhile return on his premiums. Given his age at outset, the life cover charges would have been negligible and continued to be so to-date.

Mr C’s representative has suggested that the Managed fund exposed his premiums to a degree of risk of which he had no previous experience because no account was taken of his attitude to risk. While it was not required for the adviser to record Mr C’s approach to investment at the time, his objective to achieve a return that would exceed the gains he might achieve by placing his premiums on deposit required him to take some degree of risk.

The Managed fund was the ‘default’ fund offered by the product provider for an investor with this objective in mind.

At outset, Mr C was young, with no existing provision for saving on a regular basis. In my view, investing £70.00 per month in a ‘medium’ risk-rated fund over the long term (during which his income might be expected to increase) gave the policy sufficient potential to provide him a worthwhile return. It is evident that he has continued to pay £70.00 per month to this policy for more than 23 years without appearing to harbour any dissatisfaction with it.

While Mr C’s representative has said that Mr C did not require the life cover provided by the policy, the minimal cost of this cover at his age, and the likely reduction in yield arising from the other policy charges, were not significant as to affect the policy’s potential to provide a worthwhile return.

Above all, the factor I find most compelling is that Mr C has not surrendered his plan to-date; neither has he in any way questioned the way it operated in the light of annual statements he would have received which showed that its value fluctuated between statements and did not appreciate in accordance with the additional premiums he had paid in the preceding 12 months. On balance, I am satisfied that Mr C was prepared to accept a measure of investment risk, that he was prepared to save over the long term and that the premiums were affordable.

Notwithstanding this, I consider that Sanlam’s offer to reconstruct Mr C’s policy to adopt the initial charging structure of the “Investment Programme” that would have been available to him, if he had been prepared to pay more than £70.00 per month is fair and reasonable in the circumstances. I am not sufficiently persuaded that Mr C was inappropriately advised to take out this policy as to be entitled to receive a refund of all his premiums, plus interest.

Under the offer made by Sanlam to resolve his complaint, Mr C may elect either to:

3. continue the “Savings Programme” policy in its existing form, albeit with its current value being recalculated based on the initial charging structure associated with an “Investment Programme” policy taken out in November 1990, or

4. continue the “Savings Programme” policy in its existing form and receive a lump sum payment representing the increase in its current value calculated on the basis set out in (1) above.

provisional decision

My provisional decision is that I do not uphold Mr C’s claim for redress other than the compensation offered by the business in its ‘final response’ to him dated 6 December 2012.

Kim Davenport
ombudsman