DRN-3427686

The complaint

Mr G complains about a recommendation from Zurich Assurance Ltd (Zurich) in 2000 to take out a Maximum Investment Plan (MIP). He is represented by a claims management company (CMC).

It says that Mr G was only looking to save, and he didn't want or need the life cover included in the plan. The CMC also complains Mr G's attitude to risk wasn't recorded and the plan was too risky for him.

The CMC says the charges under the plan made it a pointless way of saving because, it says, the plan had to achieve an average annual growth rate of around 5% just to break even.

What happened

Mr G and his wife met with an adviser in 2000. He was recommended a Maximum Investment Plan (MIP) with a monthly contribution of £250 and a ten-year term, which he took out.

Mr G made monthly contributions into his MIP until 2008 when he surrendered it.

In 2020 a CMC acting on Mr G's behalf made a complaint to Zurich. It said the plan was unsuitable as Mr G was not looking for life cover. It also said that no record had been made of Mr G's attitude to risk and the plan charges made it a pointless way of saving. The CMC said other cases decided by this service supported its representations about the impact of the charges.

Zurich didn't uphold Mr G's complaint. It said Mr G's MIP provided life cover of £22,500, which was the minimum requirement to keep the plan qualifying for tax advantages. Zurich said the cost of life cover was minimal at less than one percent of the monthly contribution and it said Mr G was made fully aware of the inclusion of life cover in the documentation he received.

Zurich also said the value of the plan was not guaranteed and was dependent on investment growth. It said this was explained in the documentation provided to Mr G at the time of advice. Zurich pointed out the recommendation letter stated that Mr G was comfortable that his plan would be invested in real assets such as equities and property. It also explained that the value of the plan was determined by those investments and Zurich said Mr G understood the value could go down, as well as up.

Zurich said the adviser explained that the plan wouldn't be suitable if the saving term was less than ten years and Mr G confirmed he was happy to maintain payments for the whole term. In addition, it said Mr G was provided with documentation which explained the nature of the plan and showed the potential returns and charges.

Zurich said it was satisfied the MIP was suitable for Mr G's needs and he understood the investment he was making.

The CMC disagreed with Zurich's conclusions and referred Mr G's complaint to our service.

Our investigator considered the complaint and didn't think it should be upheld. He said life cover was included to make the plan a 'qualifying' policy which meant the amount paid at maturity would be free of any further tax for the plan holder.

The investigator considered the life cover would've had a minimal impact on the potential for growth on the savings because it was a small proportion of the monthly payment. He pointed out the amount paid in life cover over the term was less than 0.5 percent of the total contribution.

The investigator didn't comment on the impact of the charges as he noted that the complaint was about suitability rather than performance.

The investigator acknowledged that Mr G's attitude to risk wasn't recorded during the sale. He considered Mr G's circumstances at the time and how the investment was made up.

He noted that Mr G and his wife had an investment property and held a savings account and two savings plans. The investigator took into account that the plan was invested with about 78 percent in equities and the rest being made up of bonds, gilts, property, and cash.

The investigator considered that Mr G was a fairly experienced investor who was willing to take a medium level of risk in order to grow his capital. So, he didn't think the MIP was unsuitable for Mr G.

The CMC disagreed with the investigator's conclusions. It pointed to the projected returns on the illustration and the reduction in yield. It said the charges impacted the plan to such a degree that it was not a worthwhile savings proposition which it said was demonstrated by the poor returns. It said by comparison Bank of England base rate at the time of the advice was six percent.

The CMC said Zurich hadn't established Mr G's attitude to risk and it hadn't explained the risks inherent within the plan and that his plan was heavily invested in equities. It said Mr G's experience in relation to another savings plan wasn't relevant as it had been subject to a mis-selling complaint for which Mr G had been compensated. The CMC also said it didn't consider having an investment property would have made Mr G aware of how this plan worked.

The CMC reiterated that Mr G was not interested in life cover and said the fact find supported this. So, it said he shouldn't have been sold a plan that included life cover. It didn't agree that having a "qualifying" plan for tax reasons was sufficient justification as it reiterated its view that the charges didn't make the plan worthwhile.

The CMC said the plan posed too much risk for Mr G and suggested a unit trust ISA would have been a better option as it had lower charges, greater flexibility and was more tax efficient. It said this option should have been offered and explained to Mr G.

As no agreement could be reached Mr G's complaint was referred to me for review.

I issued a provisional decision where I concluded that his complaint should be upheld. I didn't think that Mr G was a fairly experienced investor. I took into account the amount of money he was investing, the commitment to invest that sum over a ten-year period and the amount of risk posed by the fund the plan was invested in, which was largely made up of equities, together with the impact of the charges.

I didn't think Mr G understood the level of risk posed by the plan. Overall, I concluded that the MIP recommended to Mr G was unsuitable taking into account his circumstances and objectives. I considered on balance that it posed more risk than he was willing to take.

Both parties were then given an opportunity to respond with any representations they might wish to make.

The CMC representing Mr G accepted my provisional decision and made no further representations.

Zurich didn't agree with my provisional conclusions and in summary it said:

- Mr G's plan had made a positive return, so it said Mr G appeared to be complaining about the performance of the plan.

- I had said in my provisional decision that Mr G had capacity to invest and was aware of the life cover, along with the impact that could have on the potential return, and therefore those aspects didn't make the plan inappropriate. But Zurich was confused, based on what I had said, as to why I considered the plan to be unsuitable.
- It said I had referred to Mr G's attitude to risk, but it was unsure whether I considered there was an issue with the Managed Fund the plan was invested in.
- It said it wanted to clarify that the MIP had several funds which an investor could use. And it said if I felt that the MIP itself posed too much risk could I clarify why, so it could understand my rationale.
- It also said if my concern was in relation to the Managed Fund, within the MIP, could I confirm this to Zurich so that it could respond further.
- It noted my reference to the impact of charges and said that at the relevant time the Personal Investment Authority (PIA) set out rules for how illustrations should be produced. It said that in April 2000 firms had to provide customers illustrations using the rates of 4%,6% and 8%.
- It said it complied with the rules around illustrations at the time and Mr G was informed that the charges could bring down the return to 4.1%, if 6% was achieved.
- It said I had concluded that a mid-rate of 6 % was reasonable based on the Bank of England rate also being 6%. And it said I had confirmed that I didn't agree with the assertion about the growth rate being reduced to 4.1%. But Zurich said it wasn't clear why I felt the impact of the charges would affect the risk posed by the MIP.
- Zurich pointed out that Bank of England base rate was 6% at the time of advice but as Mr G was a basic rate tax payer any deposit based investment would automatically have had 22% tax deducted, so the net rate, if a 6% investment could have been obtained, would have been 4.8%.
- It said it felt that I had provided several reasons why the plan was not unsuitable, and it didn't understand the specific reasons why I considered the plan and or the fund posed too much risk. Zurich said it would be grateful for clarification so it could assess those reasons and provide a response.

We wrote back to Zurich and indicated that if it had any further representations in respect of the suitability of the MIP plan for Mr G and the risk it posed, including the fund that it was invested in, or any other representations in response to the provisional decision then it had a further 14 days to provide those.

Zurich acknowledged our response and provided no further representations. It said it was waiting for further clarification.

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.

This is an informal dispute resolution service which is an alternative to the courts. We have a two-stage process with an initial view being issued by an investigator. If either of the parties doesn't agree with that view, they can ask for an ombudsman to review the complaint, as has happened in this case.

As I didn't agree with the investigator's view, I issued a provisional decision setting out my conclusions, in order to allow the parties an opportunity to respond with any representations they might have. This isn't designed to be a long, complicated process where a party then seeks further clarification before they finalise their representations. Each party should make representations based on the provisional conclusions provided to them. If it is unsure whether a point is relevant or not, it is up to that party whether it wishes to address it in its response. But, if it doesn't do so, it runs the risk of its representations on that particular issue not being taken into account.

I also have to consider whether it would be fair to both parties to provide further clarification to Zurich. I think it is likely to be unfair to the parties for me to engage in a dialogue with only one side, where I give further explanation of the rationale for my provisional findings, and enable that party to expand, or adjust, its representations accordingly. Particularly, as I have already given that party two separate opportunities to provide its representations in response. The provisional decision sets out my conclusions and reasoning and that is what each party should respond to.

Having carefully considered the response from Zurich I think that it is, in effect, largely a statement of disagreement with my conclusions and reasoning rather than Zurich being unable to understand the decision itself. I still remain of the view that the complaint should be upheld for the reasons I have already outlined in my provisional decision, which I will reproduce below, and forms part of my final decision.

However, I think I should firstly address some of the specific points raised by Zurich. I don't think that a complaint about an investment that has made a positive return is *necessarily* a complaint about performance, although of course it could be.

If a consumer doesn't understand the level of risk an investment poses, as I have concluded was the case with Mr G, then they would not necessarily understand, when they received the proceeds of their investment, that the advice they were given was unsuitable because the investment posed too much risk for them. In fact, where they haven't made a loss, it is less likely that they would understand that there was cause for concern, particularly if they aren't an experienced investor. And you will note that, further on in this decision, I have concluded that Mr G wasn't a fairly experienced investor.

The CMC representing Mr G made a number of points of complaint, some of which I didn't agree with. For instance, it said that the inclusion of life cover made the plan unsuitable and the impact of charges made it a pointless way of saving.

However, just because I don't agree with *all* the points put forward on Mr G's behalf doesn't mean that I consider Zurich's recommendation to be suitable for Mr G. I also think some of the points I've made in my provisional decision have been slightly taken out of context by Zurich.

I concluded that the impact of costs didn't make this a pointless way of saving and I noted that Mr G had made a positive return on the money he invested, but that doesn't mean that I thought the impact of costs had no relevance to my decision. It *does* have some relevance because there is the issue of the risk Mr G was taking with this money, which I consider was too much risk for him, and it was even less worthwhile for him to take that risk over a long period, when any return he might receive would be reduced by costs.

I also didn't conclude that Mr G was aware of the impact the cost of life cover could have on the plan's potential return. However, it is fair to say I didn't think the inclusion of life cover made the plan unsuitable for Mr G.

I should also clarify that I didn't conclude that a mid-rate of 6 % was reasonable based on the Bank of England rate also being 6%. I thought it was reasonable to look at the medium rate, out of the three rates, with regards to what *might* reasonably be achieved. And the medium rate was 6%.

Zurich has said it us unsure whether I felt that the Managed Fund was too risky for Mr G. I think it is clear from my provisional decision that I thought that Fund posed too much risk for Mr G. I have specifically talked about the way the fund was made up and said it was largely made up of equities including international equities. I have also said

"I take into account that Mr G was committing to invest £3,000 a year for a term of ten years where his annual income was £26,000 and he was already paying into another savings plan. He also had a young family who were dependent on Mr G and his wife.

So, while I consider Mr G did have disposable income and that he wanted to save, I'm not persuaded on balance that he was willing to take the level of risk posed by the MIP plan, which was invested primarily in equities, with that sum of money."

I have also said that I didn't think Mr G understood the risk the Managed Fund posed. So, to be clear, I reiterate that I don't think Mr G was willing to take the level of risk posed by the MIP plan invested in the Managed Fund with that amount of money and with that length of commitment.

I note Zurich has said that it had other funds available, but Mr G was recommended this plan which was invested in the Managed Fund. The suitability letter indicates the adviser recommended the MIP and refers to the types of assets it will be invested in. So, I consider it more likely than not that Mr G ended up with the Managed Fund because of the advice he received from Zurich. While there may have been lower risk funds available Mr G would still have been tying up a significant proportion of his income with that fund for a long period and would've had to bear the impact of charges on any return he might receive from that low risk fund. I note, generally, it is harder to achieve a high rate of return with a low risk fund, so the impact of charges is also likely to have been more significant.

The benchmark I have indicated should be used for comparison includes the average rate for fixed rate bonds for half of the comparison. While I can see Zurich's point about tax being paid on interest from deposit-based products, at least the return on those products is fixed, and the period of commitment is lower than ten years. Usually, at the end of that bond term the money would be invested in another fixed rate bond. Whereas with a low risk fund provided by Zurich at the relevant time there would be a long commitment with no certainty of return but there would still be the impact of costs on that unguaranteed return.

So, having carefully considered the points made by Zurich, I still consider the comparison set out in my provisional decision to be a fair and reasonable way to calculate the compensation in Mr G's case.

The following represents an extract from my provisional decision, and forms part of this final decision.

<u>What I've provisionally decided and why</u>

Mr G and his wife met with an adviser in 2000. Their circumstances were recorded in a fact find document. Mr G was married with two young children, self-employed and he and his wife jointly owned their residential property. It was recorded that Mr G also owned a retail property and Mr G's wife owned a rental property.

Mr G held a regular savings plan which was yet to mature and had an estimated value, at that time, of about £18,000. The level of risk posed by that investment is not clear from the fact find.

The fact find also records that Mr G's wife held a MIP taken out in 1998 for the benefit of their eldest child, with a value at that time, of around £2,000. Mr G and his wife also had some joint savings.

It was recorded that Mr G's income was £26,000 and that he was a basic rate taxpayer.

The fact find also noted Mr G's financial priorities and regular saving was recorded as a priority he was interested in at that time rather than in the future.

Zurich recommended a MIP plan to Mr G with a monthly contribution of £250 over a term of ten years, invested in the Life Managed Fund.

Mr G was self-employed with disposable income remaining after their liabilities were paid, and I consider he wanted to save regularly for capital growth over the medium to long term. So, I don't think a savings plan was unsuitable for him in principle. However, he was advised by Zurich to commit £250 a month over ten years. That wasn't an insignificant proportion of his income to invest and put at risk.

The MIP was invested in the Life Managed Fund. Zurich has provided a fund fact sheet from 2000. The fund objective for the Life Managed Fund is set out in that fact sheet which states:

"The Life Managed Fund aims to provide excellent prospects for long-term growth while limiting the risks associated with pure equity funds. It accordingly offers a balanced investment portfolio, spread across a wide range, including shares, properties, fixed-interest securities and cash, both in the UK and globally. "

The fact sheet shows the fund was largely invested in equities (about 78 percent) with some international equities. The rest of the fund was made up of bonds, gilts, property and cash. I note international equities can pose additional risk because changes in foreign exchange rates can have a negative effect on the investment.

<u>Attitude to risk</u>

The CMC representing Mr G points out that his attitude to risk was not recorded by Zurich. It doesn't automatically follow that because it wasn't recorded the recommendation was unsuitable. However, I have to consider Mr G's recorded circumstances and objectives at the time in order to determine what risk he was willing and able to take.

Zurich says that the Managed Fund was suitable for low risk investors who were anticipating maintaining an investment over the medium to long term. It points out the intended term was ten years and says, in 2000, investing over such a term, it would generally have been considered that an investment in equities would perform better than deposit-based alternatives.

I don't disagree that the Managed Fund could be suitable for a relatively inexperienced investor investing some of their disposal income over the longer term. However, I have to consider Mr G's particular circumstances and the amount that was being invested.

I note Mr G had already taken out a savings plan, but I don't agree that he was a fairly experienced investor. That plan hadn't yet matured so I don't think having it would necessarily have made him aware of the nature of the risk posed by this type of product. I also note that his representative has said that plan was the subject of a successful complaint. Similarly, the savings plan held by his wife had only been taken out a few years before so again, I don't think it would necessarily have made Mr G aware of the nature and level of the risk posed by this recommendation.

Mr G and his wife did own some property in addition to their own residential property, but it appears to have been a fairly limited property portfolio and I don't consider that would have meant Mr G was an experienced investor.

I also note that the monthly premium of his existing savings plan was significantly lower than the one recommended by Zurich.

The recommendations letter noted that:

"You are comfortable that the contributions to your plan will be invested in real assets such as equities and property on your behalf. That means the value of the plan is determined by the value of these assets and can go down as well as up in value. You confirmed that you understand this. You told me that you were happy to maintain contributions to the plan for 10 years. The plan is not suitable for saving over a shorter period."

While I think Mr G would have understood from that description that the plan posed some risk, I am not persuaded that he would have understood the level of risk posed.

I take into account that Mr G was committing to invest £3,000 a year for a term of ten years where his annual income was £26,000 and he was already paying into another savings plan. He also had a young family who were dependent on Mr G and his wife.

So, while I consider Mr G did have disposal income and that he wanted to save, I'm not persuaded on balance that he was willing to take the level of risk posed by the MIP plan, which was invested primarily in equities, with that sum of money.

Overall, I consider, given Mr G's circumstances at the time, that he was able to take a low level of risk with £250 per month over that term. And I consider he was prepared to take that level of risk in order to try to achieve his objective of saving and achieving a return on his capital.

Inclusion of life cover

I agree with the CMC that there doesn't appear to have been any clear requirement from Mr G for further life cover as he already had £100,000 of life assurance in place. The fact find indicated protection was a need to be considered in the future. Although, as Mr G had a partner and young children and was the higher wage earner, some additional life assurance may well have been of some benefit.

However, I take into account that this type of plan required life cover to be included to make it qualifying for tax purposes. I think the tax advantage was a potential benefit that would have been attractive to Mr G. And I note only the minimum level of life cover was included and the cost of this, as a proportion of his monthly contribution, was low. So, in any event, I agree with the investigator that it was unlikely to have had a significant impact on the return.

I am not persuaded therefore that the inclusion of life cover made the plan unsuitable for Mr G.

Impact of charges

The CMC acting on behalf of Mr G has said this plan was a pointless way of saving because of the impact of charges. It has pointed out that Bank of England base rate at that time was six percent.

The illustration produced at the time showed the potential returns the plan might make. Although, of course, these rates of return weren't guaranteed. The medium growth rate used was six percent and I think it is reasonable to look at the medium rate with regards to what might reasonably be achieved.

I can see the illustration showed that the impact of costs, leaving out the cost of life cover and sickness benefits, was to reduce this assumed investment growth rate down to 4.1 percent a year. So, I don't agree that the charges meant this was a pointless way of saving. While base rate may well have been higher than this projected return, this was a ten-year plan and the projected rate was over that whole period and base rate can, and does change.

I also note that when Mr G surrendered his plan he received about £5,600 more than he invested, so clearly he was able to make a return on his contributions.

Having said that, I consider the charges did have an impact on the return and that impact would affect the weighing up of risk versus benefit. Because Mr G was recommended a plan that posed more than a low level of risk and any benefit would be affected by the impact of charges. Therefore, the potential benefit was reduced. So, whilst I don't think the impact of charges, of itself, made the investment unsuitable for Mr G, I consider it was part of the overall consideration of whether the plan was suitable for Mr G.

Summary

Overall, I consider the MIP recommended to Mr G was unsuitable taking into account his circumstances and objectives. I consider on balance that it posed more risk than he was willing to take.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr G as close to the position he would probably now be in if he had not been given unsuitable advice.

I think Mr G would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr G's circumstances and objectives when he invested.

What should Zurich do?

To compensate Mr G fairly, Zurich must:

- Compare the performance of Mr G's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Zurich should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Maximum Investment Plan	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any additional sum that Mr G paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Zurich totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr G wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr G's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr G into that position. It does not mean that Mr G would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr G could have obtained from investments suited to his objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

I uphold the complaint. My final decision is that Zurich Assurance Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G to accept or reject my decision before 1 June 2022.

Julia Chittenden
Ombudsman