DRN-3842135

The complaint

Mrs Y complained, through a claims management company, that Zurich Assurance Ltd trading as Allied Dunbar Assurance plc provided unsuitable advice in 1997 when it recommended her to invest in a fund that she feels was too risky for her. She is also unhappy that she was sold life cover at the same time.

To put things right, Mrs Y wants financial compensation.

What happened

In December 1997, Mrs Y was advised by Zurich to invest £100 per month into the Maximum Investment Plan ('MIP') - which she did. The MIP was for 10 years and started in January 1998.

Mrs Y paid £12,000 into the MIP and got back £15,656.53 when it matured at the end of the ten year term on 1 January 2008, making a £3,656.53 return.

Mrs Y mainly complained that she was sold life cover when she was only looking to save and said that the MIP was unsuitable for her as it was based 75% on equity investment, which didn't reflect her attitude to risk. She was also unhappy with the MIP's performance and the impact of charges on the return she received.

Zurich didn't uphold the complaint. In response to the complaint issues raised, Zurich said, in brief summary:

- it was satisfied that the MIP was suitable for Mrs Y's circumstances at the time
- she had confirmed to the financial adviser that she had a balanced approach to investment risk
- the MIP was suitable for investors whose approach to risk was balanced
- it believed Mrs Y had missed the relevant time limit for complaining about the life cover and said it wouldn't be investigating this aspect of the complaint further.

Mrs Y wasn't happy with this response so she brought her complaint to us.

Our investigator first considered the question of jurisdiction. After explaining to Zurich why he felt he could look at all the complaint issues brought by Mrs Y, Zurich consented to us investigating Mrs Y's complaint, including her concerns about the life cover..

The investigator recommended upholding the complaint. He thought that whilst the life cover had offered a clear benefit to Mrs Y, it was overshadowed by the fact that the level of risk within the fund was unsuitable based on her circumstances as an inexperienced first-time investor. He also felt the MIP carried a level of risk that was higher than the level of risk Mrs Y was prepared to accept. This led to the investigator concluding overall that the advice provided was unsuitable. He set out the steps he felt Zurich needed to take to put things right.

Mrs Y appeared to be happy with this proposed outcome.

Zurich didn't agree with the investigator's adjudication in respect of Mrs Y's investment risk and believed that the MIP was suitable for her. It also disagreed with the way our investigator had suggested redress should be calculated and said the benchmark proposed didn't represent a fair comparison.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"As Zurich has consented to us looking into Mrs Y's complaint about what happened in 1997 when it sold this investment, I am satisfied that I can consider the complaint.

I've looked at what I know about Mrs Y's overall financial situation when she took out this investment. In addition to what the parties have told me, I think it's reasonable for me to rely on information in the 'Financial Health Check' document completed by the financial adviser in December 1997 during the course of discussions with Mrs Y and signed by Mrs Y. I'll refer to this in my decision as the 'fact find'.

Mrs Y was employed and her annual pre-tax income was around £10,000 per year. She was married and she lived in the family home, which was free from mortgage. Her husband was the main earner. Together, their net monthly income was £2,200 and total monthly outgoings amounted to £1,700, giving them around £500 monthly disposable income.

Mrs Y had one financial dependant. She told the financial adviser they had no plans or any other financial commitments. Mrs Y had £2,500 savings in deposit-based accounts and no previous investment experience or life cover. Mrs Y's husband had other more substantial assets and investments in his name.

I find Mrs Y was in a strong enough financial situation to be able to invest £100 each month. This was the conclusion our investigator reached also and as Mrs Y hasn't disagreed with what he said, I don't think I need to say more about this.

I've thought carefully about whether the investment fitted Mrs Y's risk approach. Mrs Y needed to be comfortable that the level of risk associated with the recommended investment reflected her attitude to risk.

The financial adviser has said that Mrs Y was happy with the risks she had to take at the time. On the fact find, a tick box has been completed to show that Mrs Y's attitude to investment risk fell under "2" – on a scale where "1" was "Cautious", "2" and "3" spanned 'balanced' and "4" was "speculative".

I've also thought carefully about what Mrs Y's investment objectives were in 1997. The adviser recorded in the fact find that it was Mrs Y's "…*No 1 priority to build up capital through savings*…" and that she was looking to accumulate tax free capital in ten years' time.

It doesn't look like Mrs Y wanted or needed to have any income from her investment – she told the financial adviser she had specific plans for the money in ten years' time and wanted to maximise the potential for capital growth. I think Mrs Y was happy to invest by setting aside a small sum each month to fund regular payments in order to grow her money over time.

Given this objective, I think it probably was reasonable to recommend a risk-based investment to Mrs Y. This offered the possibility of earning a greater return than she might have expected to receive on funds kept in a deposit based savings account.

But I'm not persuaded that I have seen enough to fairly say that the MIP, which was described as offering "…*a balanced investment portfolio* …" reasonably reflected a level of risk that matched Mrs Y's attitude to risk. Zurich can't show me how it assessed Mrs Y's attitude to risk or explained risk to her. Bearing in mind the best available information I have about the likely make up of the MIP in January 1998, I think it would have exposed Mrs Y to more risk than she wanted to take.

I say this because the adviser identified Mrs Y's risk approach at the 'cautious' end of 'balanced'. So I think it's likely risk was discussed in some detail and there's nothing to show that Mrs Y raised objection about this risk rating at the time, which I'd have expected her to have done if she disagreed.

But I have no reason to think that Mrs Y understood that investing in a fund that looks like it probably would have comprised 75% investment in equities, including overseas shares in its asset allocation, meant she should be prepared to expect a degree of volatility or that she was comfortable risking her money this way. Zurich hasn't shown me that it explained that lower risk investments could still have offered Mrs Y potential for growth but at less risk to her capital.

On balance, based on what I've seen and been told, I can't fairly make a finding that investing in the MIP was a risk Mrs Y was willing to take with her money. In terms of risk, taking into account her limited investment experience and the indications that she leant towards the more conservative/less speculative end of Zurich's risk scale, I think a more cautious investment strategy would've been suitable for Mrs Y. So I am not satisfied that the recommendation was suitable for her. This means Zurich needs to take steps to put things right.

So far as the life cover is concerned, given that I have found the MIP was unsuitable for Mrs Y, it follows that she shouldn't have been sold the life cover as part of the overall investment strategy. I have also noted in the fact find that the financial adviser recorded that Mrs Y "…*was not happy with life cover or protection plan and needs a savings plan for the time being only for £100 per month* …" This leads me to conclude that it's unlikely that Mrs Y would have chosen to take out life cover on a stand-alone basis had it not been linked to the MIP. So she has lost out in money terms as she paid for the life cover and received no financial benefit.

For all these reasons, I am upholding this complaint."

What the parties said in response to my provisional decision

Mrs Y told me she had nothing further to add.

Zurich mainly said that:

- the MIP had to have life cover included to allow the funds to be paid 'tax free' after the term of 10 years so if Mrs Y didn't require life cover then it proposed that 'tax at 20% should be deducted' from the funds, and
- that there were other lower risk funds which Mrs Y could have chosen to invest into and Mrs Y chose the funds within her plan.

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.

Zurich hasn't provided me with any new information that changes what I think about this case. I have addressed in my provisional decision all the main points which have a bearing on the outcome. I've explained why I didn't find that Zurich provided enough information to Mrs Y to enable her to make an informed decision on risk. For this reason, the MIP was unsuitable and this is why I am upholding this complaint.

I appreciate that Zurich takes a different view to me. But I still think it's fair to uphold this complaint for the reasons I explained more fully in my provisional decision.

Putting things right

Fair compensation

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

I take the view that Mrs Y would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs Y's circumstances and objectives when she invested.

To compensate Mrs Y fairly, Zurich must:

- Compare the performance of Mrs Y's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Zurich should also pay interest as set out below.

- If Mrs Y paid separately for the life cover, Zurich should ensure she is compensated for this extra cost by refunding the premiums paid plus 8% simple per year from the date the premiums were paid to the date of settlement.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Maximum Investment MIP	Surrendered	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

Income tax may be payable on any interest awarded.

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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Zurich should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have decided on this method of compensation because:

- I have found that Mrs Y most likely wanted capital growth with a small risk to her 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 their 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 Mrs Y's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs Y into that position. It does not mean that Mrs Y would have invested 50% of her 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 Mrs Y could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold this complaint and direct Zurich Assurance Ltd trading as
Allied Dunbar Assurance plc to pay compensation to Mrs Y as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs Y to accept or reject my decision before 3 January 2023.

Susan Webb
Ombudsman