

## The complaint

Mr C has complained about the advice he was given by Sanlam Financial Services UK Limited ('Sanlam') to invest into four Savings Programmes between 1987 and 1991. Mr C has said he lost out financially as a result of the poor advice.

Mr C has brought his complaint via a third party but for ease of reference in this decision I shall refer to 'Mr C'.

## What happened

As a result of the advice Mr C was given by Sanlam, he held four Savings Programmes;

Policy number	Date of sale	Monthly premium	Total invested	Date of surrender	Sale proceeds	Gain/(loss)
1	18.12.87	£15.00	£1,875.00	05.05.98	£2,226.50	£351.50
2	07.02.89	£40.00	£4,920.00	29.04.99	£6,196.70	£1,276.70
3	27.04.90	£25.00	£3,025.00	09.05.00	£3,431.40	£406.40
4	19.04.91	£25.00	£3,075.00	06.07.01	£2,975.25	(£99.75)

At the time of the surrender of the final policy in July 2001 Mr C didn't raise a complaint but after speaking with his representative he was made aware he may have cause for complaint. Mr C complained to Sanlam in June 2021. He said that his attitude to risk wasn't accurately assessed (he wasn't prepared to take any risk with his savings), he wasn't asked whether he had emergency funds in place, he had no investment experience, was single without any dependants so didn't need the life cover within the policy, the term was inflexible and other more suitable options weren't discussed.

Sanlam consented to this service looking into the complaint and initially the investigator concluded it should be upheld. For the first sale he couldn't see that Sanlam discussed Mr C's objectives or the level of risk he was willing to take and he wasn't persuaded this product was appropriate for Mr C. He didn't feel that Sanlam had considered the suitability of the subsequent policies. There wasn't sufficient evidence to show how Sanlam had reached its recommendation to invest into the savings programmes that provided life cover and an investment benefit if withdrawn earlier.

After receiving a response from Sanlam, the investigator reconsidered the complaint and didn't think it should be upheld. I issued my provisional decision saying that I was thinking of reaching a different outcome than the investigator. But I wanted to give the parties the opportunity to give me anything further to consider before I issued my final decision. Here is what I said;

"In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

When the evidence I have for a complaint is incomplete or contradictory, I have to

make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

The first savings plan sale was made before the Financial Services Act 1986 came into force – on 29 April 1988. That Act was aimed at regulating investment business and giving investors greater protection. It introduced the requirement for investments to be suitable for the consumer's circumstances – so financial businesses had to find out the consumer's needs and circumstances and give suitable advice.

Before then was a legal duty to give advice with reasonable skill and care – to ensure that the recommended investment was appropriate for the consumer's circumstances at the time.

### Mr C's circumstances

There is very little documentation available from the times of the sales and with the exception of Mr C ticking 'yes' or 'no' in response to some questions about his health there is a limited record about his circumstances and investment objectives.

To find out more we asked Mr C's recollection about his circumstances around the time of the sales.

Mr C told us he didn't have any other investments or hold any savings at the times of the sales. But he couldn't recall anything further about his financial circumstances other than he had a mortgage of around £30,000 at the time of the first two sales. He later moved but couldn't remember how much his mortgage was for on the second property. Neither mortgages had life assurance as Mr C didn't have any dependants during this time. His only commitments he could recall, other than his mortgage repayments, were usual household bills and possibly a loan for a motorcycle or car.

### Mr C's attitude to risk

In the absence of any information or evidence to show how Mr C's attitude to risk was assessed, or what his objectives were, I have to take into account what is known about his circumstances, what he has told us and consider whether the investments recommended were appropriate and suitable. Mr C has told us that the adviser failed to accurately assess the level of risk he was willing to take and that he wasn't prepared to take any risk when it came to his savings.

The only information I do have about Mr C is that he was employed, had a mortgage plus usual household outgoings and possibly a loan for a vehicle. It's also recorded that Mr C was with the same employer throughout and earned a reasonable salary so I've first considered whether the policies were affordable for him.

In 1991, when the four policies were all running together Mr C's annual salary, including overtime, was recorded as being £23,580 (including overtime) so the maximum total monthly cost of £105 represented just over 5% of his gross income. This plus the fact that Mr C took out further policies over the four-year period suggests that the plans weren't unaffordable for him.

Mr C told us he didn't have any savings at the time, so I don't think it's inconceivable that he did seek advice about how to go about that. Mr C was young – aged 25 years at the time of the first sale – and from what he has told us, and the paperwork provided by Sanlam, I haven't seen any evidence to indicate that Mr C had any investment experience. This suggests that Mr C would have been reliant upon the advice given to him by Sanlam's adviser.

Sanlam hasn't been able to show us how it established Mr C's attitude to risk. But I accept that for the first sale it took place over 35 years ago and it's understandable there is little paperwork from the time of that sale – this took place pre-regulation, there were no formal requirements in terms of the information businesses needed to record and retain – so for that particular sale I would have expected Mr C's attitude to risk to have been agreed through discussion between him and the adviser.

Sanlam has given us 'client factfile' update sheets for the three later sales, but with the exception of recording that Mr C was topping up on his regular savings, they don't provide any other details or information about what was discussed – whether Mr C's investment objectives or circumstances were ascertained, whether the Programmes were still suitable for him or how risk was explained and agreed.

Mr C has told us that he was looking to save. And in some instances a first time saver might be willing to take some level of risk with their savings for the potential of capital growth. It's not always the case that a first time saver isn't willing to take any investment risk. But bearing in mind this was Mr C's first time saving, and that he told us he didn't want to take any risk, I don't think it's unlikely he would have erred on the side of caution in order to build up his savings in the first instance.

However, I can't know this for sure and I've equally borne in mind Mr C was young and the Savings Programmes were for the longer term, so potentially Mr C could have been willing to take some level of risk over those terms and had the resources via his income to fund any losses to capital that may occur.

So, while it's difficult to know what was discussed about risk and subsequently agreed between Mr C and his adviser, I've looked at the investment advice and whether it matched Mr C's investment objective of savings.

### The advice

Mr C has said that other more suitable options weren't discussed. My role isn't to consider what the alternatives may have been but to assess whether the recommendations that were made to him were appropriate or suitable for him.

All of the Savings Programmes were 100% invested into the Managed Fund which I see from the policy document provided by Sanlam was the 'default' investment fund out of its wide range of funds. And all of the Savings Programmes had a life assurance benefit (or investment benefit if that was greater).

Under the heading of 'your fund choice' in a Savings Programme guide from November 1990 the Managed Fund was said to be 'managed for growth and consists of substantial property elements, UK and international equities and fixed interest securities.' There is no mention of Sanlam's own risk rating of the fund.

I note that document also says, 'The Programme is designed to grow steadily with the optimum benefit and worth being realised after about 25 years.' It further says, 'Remember you are saving for the long term and it will be some time before the value of your units exceeds the contributions you have made'.

The Managed Fund – as defined in the earliest available product particulars Sanlam has been able to give us from 2000 – is described as being of medium risk and within the balanced managed sector. So, even though I can't be sure of Sanlam's own risk rating of the fund at the outset, its later risk rating implies Mr C was 100% invested into a collective medium risk investment.

While I accept these Programmes were sold over 30 years ago, the documentation provided by Sanlam from the time of the sales doesn't indicate that Mr C's lack of investment experience, flexibility or his investment and savings objectives were properly considered.

Based on the evidence I have and Mr C's recollections, I don't believe any reasonable attempt was made by the adviser to know its customer. It wasn't established what Mr C's other financial expenses or commitments were or if he had the capacity to hold the policies which would need to be retained for at least 25 years to show a worthwhile return over other shorter term priorities particularly bearing in mind that because of his young age, it wasn't unforeseeable that his circumstances may have changed.

And while there will be a point at which an investor undertakes investment decisions for the first time, I'm not satisfied, on the balance of probabilities that these Savings Programmes were appropriate or suitable recommendations for Mr C.

And while I accept that it was prudent for Mr C to commit to saving, I am not persuaded that it has been shown it was appropriate or suitable to recommend policies with exposure to an underlying fund with stock market exposure which needed to remain in force over the very long term in order to give Mr C worthwhile returns. So even though I'm satisfied that Mr C could potentially afford to pay the (total) monthly £105 contribution for savings, I think the Programmes were inflexible and don't think they were structured to meet his likely needs over a shorter term than 25 years.

And while I accept that the policy provided the opportunity for saving, but this could have been achieved without the addition of the life assurance and implicit cost. It's difficult to conclude that the Programmes were right for Mr C – no-one was going to be financially disadvantaged in the event of his death – and he could have achieved savings growth without the need or cost of the whole of life policy itself.

So, taking all of the above into account, provisionally, I think Mr C's complaint should succeed."

I said that for redress purposes the performance of Mr C's investments should be compared with the benchmark of Average rate from fixed rate bonds.

Mr C's representative responded agreeing with my findings but pointed out that given the sales were pre-1996 the benchmark should be the Bank of England base rate plus 1%. I wrote to the parties to apologise and to confirm this was correct.

Sanlam didn't agree with my provisional decision. In its response it said;

- Because of the passage of time since the first sale it wasn't possible to confirm what the adviser was told by the client, whether the Programmes were suitable or otherwise or whether alternatives were discussed. And as the first sale was made prior to the FSA Act 1986 it was a black and white situation – it wasn't possible to know what was discussed in the meetings and therefore should result in a non-uphold as per previous decisions issued by the Financial Ombudsman.
- I had said my provisional decision had been based on Mr C's recollections so it seemed his recollections were more exact – other more suitable options weren't discussed and that the adviser failed to accurately assess his level of risk – rather than his recollections of his own circumstances which were rather vague. And those recollections aren't evidence of what Mr C told the adviser at the time. Basing my decision on Mr C's recollection wasn't the most reliable basis.
- Mr C's recollection was that he had a mortgage at the time of the first two sales and Sanlam said it more likely it was endowment mortgages that were taken during this time to ensure repayment at the term. Even if Mr C's mortgage was capital and interest repayment its questionable that a mortgage lender wouldn't have requested a life term assurance assigned to the lender. It had doubts over Mr C's recollections of his financial circumstances and didn't have meeting notes to know if Mr C disclosed the information about his mortgage to his adviser.
- In his response to the investigator's opinion, Mr C had said he didn't require policies that included life cover. Sanlam said a small amount of life cover was included in each plan to make it qualifying for tax purposes and it was the term assurance element of the plan that qualified it for tax purposes. In 1991 Mr C was earning £23,580 – just below the higher rate tax bracket of £23,700 – so it made sense that Mr C took advantage of the tax efficient status of the plans on the assumption he would receive salary increases. The life cover costs were minimal and the fact it qualified the plan didn't make the investment unsuitable. Mr C said he didn't understand the investments but was provided with each plan brochure and could have asked the adviser for further information.
- Mr C had said he wasn't prepared to accept any loss, but he did on the fourth plan after ten years. That loss should have alerted him to the potential that the other three plans may have exposed him to a higher level of risk than he has said he was prepared to take.

### **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.

Sanlam has said it wasn't right that I based my provisional decision on Mr C's recollections about what he thought happened at the meeting when his recollections about his own personal circumstances were vague.

I accept that Mr C's recollections weren't detailed – I wouldn't have expected them to have been after such a time. But certain things are most likely known – Mr C didn't have any dependants and I think its likely Mr C had a mortgage (and associated household outgoings) as generally getting a mortgage is a memorable lifetime event, particularly for

someone of a relatively young age. And also, I think its most likely that Mr C was looking for savings – otherwise I would question why he would have invested into the Savings Programmes. And I've got no reason to think he was anything other than a first-time investor which suggests he would have been reliant upon the advice he was given.

But I didn't just base my provisional decision on what Mr C told us. I considered the – equally limited – information that Sanlam has been able to give us – again I accept it hasn't been able to provide much information from the time of the sales. But I think it's fair to say the 'client factfile' documents it did give us only recorded very limited information ('yes' or 'no' answers to some health questions) and without any reflection of Mr C's financial circumstances or requirements other than – for the later three investments – he was topping up on his Savings Programmes.

So, I looked at what was known, or most likely known, and whether, in my opinion, the advice given was right for Mr C.

In its response to my provisional decision Sanlam has highlighted the benefits of the Savings Programmes, in particular the low cost of the life cover and that it was the term assurance itself that qualified it for tax purposes. While this may have been an advantage for some investors, I don't agree that overall, it was an important driver in Mr C's requirements at the time. He was a first-time saver and I think most likely without any investment experience so I don't think the complexities in life assurance plans and potential tax advantages would have been in the forefront of his mind rather than his underlying known priority of the opportunity to save.

Sanlam has also referred to the potential that Mr C may have needed to have the life assurance for mortgage purposes. That might have been the case, but it can't be known for sure. And I think there are other elements of this complaint that are more compelling and more pertinent for me to consider in order for me to reach my decision.

And I didn't think it was unreasonable to conclude that the investment itself – the Managed Fund – was of a medium risk. While it isn't necessarily the case that a medium level of risk is unsuitable for a first-time investor, I remain of the view, that overall, along with other elements of the Savings Programmes didn't make the advice suitable or that Mr C was advised with reasonable care or skill for the first sale. Notably that I'm not persuaded that it was suitable to propose policies with exposure to an underlying medium risk fund comprising equities which needed to remain in force over the very long term – 25 to 30 years – in order to give Mr C worthwhile returns.

I don't think there needed to be such a risk taken or long-term commitment attached to Mr C's savings. And equally I don't think it was unlikely that Mr C's personal and financial circumstances would have changed significantly over the next 25 to 30 years. Such a commitment, just for the purposes of saving, in my opinion wasn't necessary.

I don't think Sanlam's comment about Mr C making a small loss on the fourth plan adds any weight for me to consider. That element was considered at the jurisdiction stage of the Financial Ombudsman considering the complaint.

### **Putting things right**

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

I think Mr C 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 C's circumstances and objectives when he invested.

To put the matter right, Sanlam needs to do the following;

For each of the four Savings Programmes, Sanlam should pay compensation of 'D + E', where:

- A = a refund each of the monthly premiums paid to the dates of surrender;
- B = a return on each premium in 'A' at Bank of England base rate + 1% compounded yearly, from the date it was paid to the dates of surrender;
- C = the value of the policies at the dates of surrender;
- D = (A + B) - C = the investment loss (if appropriate) at the dates of settlement; and
- E = interest at 8% per cent per year simple on 'D' from the dates of surrender to the date the redress is paid.

Compensation for capital growth on the policy premiums in 'B' is not usually subject to income tax. However, if Sanlam considers that tax is payable on the interest, it should send a tax deduction certificate with the payment. Mr C may reclaim any tax overpaid from HM Revenue and Customs if his tax status allows him to do so.

### **My final decision**

For the reasons given above I uphold Mr C's complaint. Sanlam Financial Services UK Limited should put the matter right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 5 January 2023.

Catherine Langley  
**Ombudsman**