DRN-4654349

Financial Ombudsman Service

The complaint

Mr T complained, through a claims management company (CMC), that Sun Life Assurance Company of Canada (U.K.) Limited (Sun Life) provided unsuitable investment advice when it recommended Mr T to invest in a savings plan.

Mr T, through his representative, said he has been financially disadvantaged by the unsuitable advice given by Sun Life, and he would like to be compensated for this.

What happened

Mr T took out a savings endowment policy in June 1991 with a company that Sun Life has since bought. Because of this Sun Life has taken on responsibility for the issues raised by Mr T in his complaint. Mr T surrendered the policy in November 2005.

Mr T's CMC said when the savings endowment policy was recommended to him, he was inexperienced and didn't understand what he was signing up for. It said he was recommended a policy that was high risk and was unsuitable for him, in relation to his circumstances at that time.

Mr T's CMC said there was no reason why he needed a savings policy over 25 years or with life insurance attached. It said none of the details of the plan were explained to Mr T. It said there were more suitable options out there for him at that time. It said the plan was risk based, inflexible, had high charges and a lower investment percentage due to the life cover element, which was not required. The CMC said the plan was not suitable.

Sun Life said in response that it had not found any factors surrounding the sale of the plan that would affect its findings and conclusion to not uphold Mr T's complaint. It said it could see in the paperwork from the time of sale, that Mr T's priority was to save money, which it could see meant the plan was suitable for him. It said the agent that recommended the policy to Mr T at the time was not required to establish alternatives for Mr T. It said the life cover element was built into the policy and was not an optional extra. It said by including the life cover, meant the policy was 'qualifying', meaning on maturity any claim was paid free from tax.

I issued a provisional decision on this complaint on 30 January 2023. Both parties have received a copy of that provisional decision, but for completeness I include an extract from the decision below. I said;

"Mr T's complaint happened many years ago. When events complained about take place more than six years ago, our service can't always look into what happened. That said, Sun Life has given our service permission to look further into what has happened here. So as this is the case, I have proceeded to look into the merits of Mr T's complaint.

I am currently looking to uphold Mr T's complaint and will explain why.

I've been able to see some point-of-sale paperwork from the time. Sun Life has managed to obtain copies of some of the original forms used at the time and although these are not complete, I think it is reasonable for me to rely on this documentation and what has been written down in them, as an accurate reflection of what was discussed by the adviser and Mr T at the time.

In addition, where there are gaps in information, I have looked to make findings based on what I think more likely than not would have happened at that time, on the balance of probabilities, to arrive at a fair outcome in all the circumstances of Mr T's complaint.

I have been able to understand a bit more about what was discussed by the parties about Mr T's personal circumstances at the time, as some of his details are written in the sales documents. He was 20 years old, had a full-time job with a well-known national retailer, was most likely living at home with no dependants, was earning around £6500 a year and had no liabilities. The adviser didn't record down any assets held by Mr T either and taking his other circumstances into consideration, I think it's a reasonable assumption to make that he didn't have any.

I can see broadly from his circumstances, that Mr T was well placed to be able to afford the £25 monthly premium. The monthly contribution that he was signing up to seemed relatively modest compared to what most likely his disposable income would have been at the time.

But I am not persuaded the adviser considered Mr T's overall circumstances or what Mr T's priorities were especially considering the long-term lifespan of the savings policy.

I can see that it is recorded down on one of the sales documents by the adviser, that Mr T's priority was 'regular savings'. Sun Life has said that it felt by seeing this that the policy was suitable for Mr T. But also on the same form, and in the same section, it has been written down by the adviser in hand the comment 'future mortgage'. When I see this, I think on balance, a conversation would have been had by the parties about Mr H's plans, and this comment written down by the adviser suggests to me, Mr T would have mentioned home ownership as part of this.

When I consider Mr T's circumstances at the time, I don't think an inflexible long-term savings plan intended to grow capital over 25 years to be suitable for him. Since Mr T unnecessarily risked making a loss on his savings in the early years if he needed to surrender his policy – as it seemed likely he might have done, given what I have already mentioned about his circumstances and future plans of potentially paying for a deposit on a mortgage of his first property. I would also question whether Mr T had the capacity to make a loss, considering what his priority was and what he intended his savings to be for.

Additionally, a further reason that I am upholding Mr T's complaint is that I can't be sure what he understood about the risk he was taking on. Sun Life hasn't been able to provide a record of any discussion between the parties about this. As I said earlier, the documents provided didn't give me a complete picture of what occurred. So, I haven't been able to get an understanding about what risk Mr T was prepared to take on with the recommended savings policy.

That said, based on what I have read and Mr T's circumstances, I'm not persuaded the managed fund mentioned and recommended to him as part of the savings policy, was suitable. I say this because Mr T was unexperienced as a first-time investor, and I've seen nothing that suggested to me he had any knowledge of investments, or the risks associated. Sun Life has not been able to explain or provide any documentation that has showed me how investment risk was explained or presented to Mr T or that he understood the risk he was taking on.

What Mr T told the adviser about his circumstances and his objectives at that time, suggested to me that he did have a need to build up a contingency fund and also save for a deposit in order to meet his objectives to be a homeowner. So, I am currently minded to think a suitable investment would have limited his exposure to risk in order to preserve his capital, although I can understand that he might have been happy to take some degree of risk.

I don't have a lot to go on, but it seems more likely than not to me a managed fund was likely to reflect a higher level of risk than I think Mr H would have been comfortable with if he understood better that he should expect to lose out financially if he was to need to access his savings sooner – as he would more likely than not have needed to do, based on what he told the adviser, and what they recorded down in the sales documentation.

So, in conclusion, I consider there are a combination of factors here that lead me to conclude the recommended plan was unsuitable for Mr T. I am satisfied Mr T had a savings objective, but I don't currently think that extended to a 25-year savings term, such were his recorded priorities at that time. I also can't see that risk was considered, with most likely his funds being invested with too much risk taken on. It follows, that I currently uphold Mr T's complaint and Sun Life now needs to put things right."

I asked both parties to let me have any comments, or additional evidence, in response to my provisional decision. Sun Life did not respond. Mr T's representatives responded on 31 January 2024 and said it had nothing further to add.

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.

Neither party has anything further to add that I feel I need to comment on or that will change the outcome of this complaint. So, because of this, I don't see any reason to depart from my findings within my provisional decision. So, I uphold Mr T's complaint and Sun Life now needs to put things right.

Putting things right

I think Mr T 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 T's circumstances and objectives when he invested.

What should Sun Life do?

To compensate Mr T fairly, Sun Life must:

- Compare the performance of Mr T'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.

- Sun Life should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio	Status	Benchmark	From ("start	To ("end	Additional

name			date")	date")	interest
savings plan	No longer in force	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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Sun Life 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.

Any withdrawal from the savings plan 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 Sun Life totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr T 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 T'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 T into that position. It does not mean that Mr T 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 T could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold Mr T’s complaint about Sun Life Assurance Company of Canada (U.K.) Limited. I direct it to put things right as I have described above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr T to accept or reject my decision before 28 March 2024.

Mark Richardson
Ombudsman