DRN-4207584

The complaint

Mrs N's complaint is that Sun Life Assurance Company of Canada (U.K.) Limited, trading as Sun Life Financial of Canada, ("SLOC") gave unsuitable advice when it sold her a savings policy in 1993.

Mrs N's complaint is brought on her behalf by a claims management company. For simplicity below I refer to Mrs N when referring to things said or done by her or by her representative on her behalf.

What happened

The policy was a ten-year unit-linked policy with premiums of £30 a month increasing over five years to £44.30 a month. The policy matured in 2003.

At the time of the advice Mrs N was employed, in her late twenties. She was due to marry later that year. Her fiancé's details weren't recorded. The adviser's notes – called *"Personal Financial Analysis"* - say she was aware this meant the advice didn't take account of cover or liabilities her fiancé might have. The notes recorded that she had no financial dependents.

The notes say Mrs N had an interest-only mortgage covered by an endowment policy. She was paying £160 to repay a loan that would end in ten months' time. The notes says she wanted to review her *"lack of life cover"* when she married and that she wanted life cover of £100,000 to provide for others, although it didn't say for whom.

The notes say Mrs N had deposit savings of £2000 at the time, disposable income of £1000 a month and wanted to start regular savings from income for the future. Is said, for example: *"Client wishes to save regularly now to improve future";* and *"Client is saving for marriage and wishes to save regularly for her and family's future".*

The adviser's summary of recommendations said: *"[Client] wishes to save a small amount per month in a disciplined fashion to provide funds in a better growth area – This will provide future money for further commitments i.e.: Family, Holidays etc"*; and *"Client wishes to set up a small regular savings scheme to save to improve financial future";* and *"[The plan] suits client due to level of commitment and she requires the plan to mature as soon as possible i.e.: 10 years"*.

The adviser assessed Mrs N as having a middling risk attitude of three out of five where one was described as *"cautious"* and five as *"speculative".* Her premiums were invested in a managed fund which likely would have invested in a mix of shares, bonds and property.

Our investigator didn't think the policy carried risk beyond that which Mrs N was prepared to take. He didn't think Mrs N's lack of investment experience meant only a lower risk policy could be suitable for her. He thought the policy met her savings objective. He noted it offered life cover of £3600 as a result of which any gains would be free of tax at maturity. Overall our investigator didn't think the advice to take the product had been unsuitable for Mrs N.

Mrs N didn't agree with our investigator's assessment. She said her circumstances hadn't been assessed correctly or appropriately and the policy was unsuitable given her circumstances. She said, in brief summary:

- She didn't require the product. She had no knowledge or experience of these types of financial products and had no requirement to produce a lump sum in ten years. There is no real reason why she wanted to save over such an inflexible term. The evidence doesn't show she really had a savings objective consistent with a need for the product rather than just wanting to save a bit of money where she could.

- She had only minimal cash reserves on deposit for emergencies or day to day spending and was at the time repaying a personal loan. It is not always most appropriate to pay off debt before investing but given her low level of cash deposits, that was the case here.

- Saving for a future commitment doesn't justify taking out a risk based product and the policy was well beyond the level of risk she was willing or realistically able to take. There is no documented explanation of her recorded risk attitude and nothing to indicate what she may have understood it to mean. The sales documents make no real mention of *"risk"*. The evidence doesn't show she understood, as an extremely inexperienced investor, the implications of the selected risk attitude. Also her recorded risk attitude didn't match that of an extremely inexperienced investor and clearly didn't match her personal and financial circumstances at the time, taking into account her level of savings on deposit and her level of outstanding debt in particular.

- She didn't require the policy's life cover, particularly given she was in her late twenties and single with no dependents, so this was just a drag on her returns. She was engaged to be married but none of her partner's details were recorded and so she would suggest life cover to produce a lump sum for her partner in the event of her death was not of paramount importance.

- She is not convinced the policy stood a reasonable chance of doing better than a savings account, given the charges and the cost of life cover.

- The provision of lots of complex, technical literature to an inexperienced investor does not mean she fully understood the inherent risks of the product and how it worked.

As the matter couldn't be resolved informally, it has been passed to me to decide.

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.

Having done so, I've arrived at the same conclusions as our investigator. The adviser had to make a suitable recommendation for Mrs N's circumstances. In this case what I've seen doesn't make me think the recommendation was unsuitable for Mrs N or that SLOC did something wrong for which it ought to compensate Mrs N now. I'll explain my reasoning.

From what I've seen Mrs N was looking to make regular savings to build up funds for the future. I agree that no specific savings objective was identified but the absence of a specific savings objective doesn't make regular savings wrong. I agree the policy was inflexible and the documentation illustrated that an early surrender was likely to be costly and prove very poor value in the first five years. Also Mrs N didn't have a need for savings to be available to her in exactly ten years' time.

But Mrs N did want to start saving regularly and the policy was a way she could make a regular savings commitment. Also she wanted something where funds were earmarked for the future rather than for immediate or shorter-term use. In my view the term of the policy and the ongoing commitment it involved was sufficiently clear and Mrs N decided to go ahead knowing that. Also I note the policy ran to maturity and I haven't seen persuasive evidence to suggest that the policy term or its inflexibility made the policy wrong for Mrs N.

In reaching this view I note also that the monthly payment was modest in the context of Mrs N's recorded disposable income. The income and expenditure figures recorded by the adviser suggest the premium was readily affordable. Mrs N hasn't suggested the payment was unaffordable. Given her overall financial situation I'm satisfied that it was reasonable for the adviser to suppose that she would be able to keep up with this regular commitment. On the face of it her disposable income left scope for her to accumulate savings in her deposit account as well as making longer term savings. So I don't agree that her relatively low level of deposit savings made it wrong at the time to advise her to take out the savings plan.

Also I don't agree that loan repayment ought to have been recommended instead or that the existence of Mrs N's loan made advice to make longer term savings unsuitable. I say this bearing in mind her loan repayments were expected to repay the loan within a year. I note that this would necessarily also increase her disposable income after that and that in the meantime, and with her upcoming wedding, Mrs N's initial commitment was kept down by starting the savings plan at a lower rate that would increase over time. So consideration of Mrs N's loan liability in my view tends to add weight to the idea that Mrs N had scope to start putting away excess income for the future.

I note Mrs N has said working in the financial services sector didn't give her the knowledge to understand these particular plans. I accept Mrs N was no more able to understand the technicalities of the savings plan than any other lay person. I have not assumed that she had any specialist knowledge of the workings of these policies. But the long term regular financial commitment the plan represented was made plain and I'm satisfied her general financial understanding was sufficient for her to make an informed decision as to whether or not she wanted this sort of savings plan.

I agree that there wasn't much explanation in the adviser's notes as to what three on a risk scale of one to five might mean. It was clear that it was mid-way between a very cautious attitude where growth potential would be low and a more speculative attitude where growth potential would be higher. But I note that to say something is speculative is not the same as explicitly pointing out that there is a risk of a loss of the invested capital.

That said, I agree with our investigator that Mrs N's lack of previous investment experience – which appears to have been limited to an endowment supporting her mortgage – doesn't mean that only a low risk or cautious investments could be suitably recommended to her or that to recommend more risk was necessarily inappropriate. Also, the answer of three out of five doesn't seem to me unreasonably high for Mrs A in her circumstances, given that she was investing relatively modest amounts relative to her disposable income and doing so on a monthly basis, rather than making a one-off decision to invest a larger lump, and also the investment was expected to run for a relatively long term time horizon.

Overall, while I don't overlook what Mrs N says about the shortcomings in the process or the records of it, what I have doesn't on balance persuade me that the investment risk involved with the plan exceeded that which was suitable given Mrs N willingness and ability to take risk at the time. I'm satisfied Mrs N was aware that investing in this way brought with it the possibility of losses as well as gains. There is no evidence Mrs N raised a concern about the policy proceeds when she received them at maturity and although this doesn't in itself show that the risks of the savings plan were suitable for Mrs N, it does mean there is no evidence of this kind to suggest that the returns received, including any losses, were obviously outside the range of outcomes Mrs N might have been led to expect at the outset.

The savings policy provided life cover, but the life cover it provided wasn't given by the adviser as a reason why the policy was being recommended to Mrs N. The plan provided the minimum cover needed for it to be a 'qualifying policy' so that Mrs N would have no personal tax liability when it matured. The cost of that cover would've been modest given Mrs N's age at the time. Also, although the policy wasn't sold for life cover but savings, I can't say the life cover was unwanted by Mrs N given what was recorded about her wish to have such cover and to increase the amount she had significantly in future. Overall, I don't think the life cover made the plan unsuitable for Mrs N.

I say this bearing in mind that what I've seen doesn't make me think that the recommended plan was unsuitable for Mrs N's savings objective, even though it did include life cover which would necessarily have been a cost and hence a drag on her returns like she says.

In saying this I note the policy charges and deductions do appear to have been significant – so I've thought carefully about whether these made the policy unsuitable to use as a savings vehicle. In particular the impact of charges in the early years if surrender took place early meant returns at the half-way stage would still be below the premiums paid, even with an annual return of 8.75%. It follows that this would also be less than the return on a deposit account. Interest rates at the time were in the region of 4.5% to 4.75% after basic rate tax – Bank of England base rate was close to 6% before tax. Historic annualised returns on UK shares had exceeded these figures and would continue to do so at times in the 1990s. The illustration given to Mrs N at the time used annual rates of return of 7% and 10.5%. I note the fund chosen was a managed fund which carried sufficient risk for returns above the lower illustrated rate to be feasible in my view.

The illustration used standard charges, as prescribed at the time, which were likely lower than those that actually applied – so it isn't in itself proof that the policy would work as a savings policy. But what I've seen doesn't persuade me that by virtue of its charges the policy was bound to fail as a savings vehicle if it was retained for its full term. Indeed I think it more likely the policy did offer the possibility – depending on investment performance - of outperforming a deposit account after charges, while also providing its life cover.

The policy's performance may have been disappointing with the benefit of hindsight. But at the time of the sale it I think it would have represented a reasonable option to meet Mrs N's savings objective. I note that stock market falls in the last three years of the plan will have had a significant impact on the value Mrs N received compared to what she might otherwise have got back from the product.

In conclusion, the evidence available here doesn't persuade me overall that advising Mrs N to save using this savings plan was unsuitable advice. So in light of all I've said above, and for the reasons I've given, I do not uphold this complaint. I appreciate that my conclusion will disappoint Mrs N.

I'm grateful to the parties for the courtesy and prompt assistance they have offered us throughout our investigation.

My final decision

For the reasons I've given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs N to accept or reject my decision before 1 February 2024.

Richard Sheridan
Ombudsman