

The complaint

Ms H has complained that about the advice Zurich Assurance Ltd gave her to take out a personal pension plan (PPP) in 1990, as contributions made to the PPP have formed part of her bankruptcy estate. As this complaint concerns Ms H's bankruptcy estate, the Insolvency Service is also a complainant here. But, for ease of reading, I'll refer only to Ms H.

What happened

Ms H had a pension plan with another pension provider, which I'll refer to as Company R. Ms H also set up a PPP with Zurich on 1 August 1990 through one of Zurich's tied financial advisers. Zurich's fact find recorded Ms H was 22 years old and employed, and retirement planning was important to her.

Ms H was declared bankrupt in March 2000. In 2023, after turning 55, representatives of the Insolvency Service wrote to Ms H to say she was aware her PPP with Zurich is currently vested in the bankruptcy estate and, as trustee in bankruptcy, the Official Receiver still holds an interest in the policy. The letter went on to say:

"as your bankruptcy petition was prior to 29 May 2000, any pension policy belonged in your bankruptcy estate and was available to be realised for the benefit of your creditors upon you reaching retirement age as specified in the policy. The pension policy is legally available to the Official Receiver to realise in full at anytime thereafter."

Ms H complained to Zurich that she was advised to take out her PPP when it would not be protected, should she ever become bankrupt. Ms H said Zurich's adviser should have suggested she contribute to her policy with Company R, as the benefits held in that policy were protected from her bankruptcy estate.

On 5 July 2023, Zurich issued its final response to Ms H's complaint. It said the law set out that personal payments to a PPP are not protected where the policyholder was declared bankrupt before May 2000, as Ms T was. Zurich said it was obliged to abide by the law. Zurich added that Ms H's financial adviser would have been unable to advise her on pension plans she held elsewhere – the adviser's responsibility was to ensure the new product he recommended (Ms H's PPP with Zurich) was suitable for her. Zurich thought the advice to take out the PPP was reasonable, noted it occurred ten years before Ms H's bankruptcy.

Unhappy with this response, Ms H complained to our Service. Ms H said she did not foresee her bankruptcy, her adviser should have considered this possibility in 1990 and not sold her a pension that was not protected should she ever become bankrupt.

Zurich consented to our Service considering Ms H's complaint, given the time that had passed since it first sold Ms H her PPP. One of our Investigators reviewed Ms H's complaint but did not uphold it. Our Investigator thought Zurich's advice to take out a PPP was suitable for Ms H, noting Zurich's fact find recorded she wanted to plan for her retirement. Our Investigator did not think Zurich could have predicted Ms H would go bankrupt ten years

later so could have not done more about this.

Our Investigator explained Zurich's adviser was only able to recommend Zurich policies – he could not have advised her on her policy with Company R, which was set up to receive SERPS contributions. Even if Zurich's adviser had suggested Ms H contribute to her policy with Company R instead, these personal contributions would not have been protected from the bankruptcy estate at the time of her petition. So, these contributions would likely still have formed part of the bankruptcy estate. Ms H responded to our Investigator to say she wanted an Ombudsman to make a decision about her complaint.

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 would first like to acknowledge how upsetting this complaint is for Ms H. I am not able to say what should form part of the bankruptcy estate – that is a matter for the Official Receiver. The Official Receiver, and Zurich, have already explained to Ms H why her PPP with Zurich forms part of the bankruptcy estate and there is little I can helpfully add. I have seen no evidence to suggest Zurich has acted unreasonably when responding to requests from Ms H or the Insolvency Service's representatives for information about this matter – it has explained to Ms H it is obliged to abide by the law and there is nothing more I could ask it to do here.

I have considered Ms H's complaint about the advice she received in 1990 carefully. There is little evidence available, given this policy was sold 33 years before Ms H's complaint. Based on the evidence I have, Ms H was employed and wanted to save for her retirement, so I do not think there is any evidence to suggest her PPP was unsuitable for her. Zurich was not obliged to advise Ms H her PPP may not be protected from bankruptcy should the situation ever arise, so I do not think Ms H's complaint should be upheld on this basis. In any event, Ms H has said herself she did not foresee her bankruptcy ten years after the advice. So, I do not think there is enough evidence to suggest she would have not accepted the adviser's recommendation to take out a PPP if Zurich had highlighted this risk for her.

As our Investigator explained, contributions to Ms H's policy with Company R may have been protected because she contracted out of the State Earnings-Related Pension Scheme (SERPS) and were 'protected' from the bankruptcy estate. But any personal contributions to a PPP with any provider, including Company R, may not have been protected from the bankruptcy estate based on the legislation in place at the time the PPP was sold. So, it's likely personal contributions to her Company R policy would have been treated in the same way that her Zurich PPP contributions to her Zurich policy have been by the Official Receiver, and would likely have formed part of her bankruptcy estate.

My final decision

I understand my decision is likely to disappoint Ms H but, for the reasons explained above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask I and Ms H to accept or reject my decision before 13 February 2024.

Victoria Blackwood

Ombudsman