

The complaint

Mr L complains that Zurich Assurance Ltd ('Zurich') unilaterally changed the terms of the Growth Protector Plan ('the plan'). He is unhappy about this and feels Zurich has provided misinformation about the changes and, despite what it says, that the changes made to the plan leave him poorer as a result.

To put things right, Mr L wants Zurich to sort things out if there were errors in the way the plan operated and revert to the previous arrangements that had been in place for 50 years.

What happened

Mr L started investing in the plan in 1973. From his point of view, one of the most important plan features had always been that the net investment income in the capital unit fund was redistributed each December by removing it from the fund and (after deduction of charges) adding it to his plan via an allocation of units.

Following a review of the plan, Zurich identified that historically the annual income distribution process hadn't always operated as intended and in December 2021 it took immediate steps to prevent what it described as *'the offending process'*.

Mr L found out about this when he phoned Zurich on 14 December 2021 to enquire about his additional units for 2021. This was followed by an exchange of correspondence between Zurich and Mr L. When Zurich was unable to address Mr L's concerns about the changes to the way the plan operated, he complained about what Zurich had done and expressed concern that he had been misinformed about why units had been removed from his fund.

Zurich explained the reasons behind the changes to the plan terms and conditions and the effect this would have on the plan in future. Zurich said the value of the plan was unaffected, there would be no difference in the amount of charges taken and no change in the amount of any underlying investment growth – the difference was simply where and how any investment growth would now be recorded. Zurich recognised however that its actions, including the length of time it had taken to explain the situation, had resulted in trouble and upset for Mr L and paid him £100 compensation.

When our investigator looked into what happened, he explained his role was to look at whether Zurich had acted unfairly. Whilst the investigator appreciated that Mr L didn't want the plan to change, he didn't feel that Zurich had done anything wrong when making changes to the plan.

Mr L didn't agree with the investigator and I have briefly summarised the main concerns he has mentioned, as follows:

- Mr L says he can *'never be satisfied'* until Zurich provides him with detailed information showing how the fund performed over 2021, 2022 and 2023 so he can calculate and understand what's been happening to his investment in the absence of any understandable explanation having been provided

- he feels he has been misled by Zurich since he raised his concerns in December 2021, in particular:
 - being told that the reason units were removed from his plan was that the fund had had a bad year – Mr L wants to see evidence of this as he says: *'...the fund had had its second best performance over the previous ten years, and the general level of dividends being paid out was the highest ever.'*
 - despite being told there would be no impact on the value of his plan, comparable values showed a reduction in the value of his investment since December 2021 even though he had continued to pay in around £200 each month and all dividends had been transferred to the fund
- Zurich failed to communicate the changes it made *'in a clear, fair and not misleading way'* as required by the Financial Conduct Authority ('FCA')
- he would like proof to show that Zurich has referred itself to the FCA and he has questions about the FCA's role in the matter.

As Mr L's complaint hasn't been resolved between the parties, it comes 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.

I've carried out an independent review and having done so, I've reached the same overall conclusion as our investigator. I'll explain my approach and how I've reached my decision.

I appreciate how strongly Mr L feels about this complaint. We provide an informal service for resolving disputes between financial businesses and their customers and this is reflected in the way I've approached the complaint. Whilst I've summarised some of Mr L's concerns in my own words, I've carefully read and considered everything both parties have said. The purpose of my decision isn't to provide answers to all Mr L's questions or address all the points raised so I won't necessarily mention everything Mr L has brought to my attention.

It's part of my role to identify and concentrate on the core issues I need to address in order to reach a fair and reasonable decision based on the facts of the case. It's my understanding that a key part of Mr L's complaint is that he objects to the changes Zurich made to the way it assigns plan dividends, so I've considered this first.

When thinking about the changes Zurich made to the plan terms and conditions and whether Zurich was entitled to make these changes, I've kept in mind guidance issued by the FCA. This says that plan terms and conditions must allow for the change and *'firms should ensure that variation terms in their contracts are transparent and not unfair'*. There needs to be a good reason for the change and Mr L needed to be told about it. He was entitled to expect reasonable notice of the change before it was implemented.

I haven't seen anything that suggests to me that Zurich wasn't permitted to change the plan terms and conditions as it did. The Growth Protector Plan terms and conditions allow Zurich to adjust the basis of determining the plan benefits in certain circumstances. Its review showed that the way it was making the annual income distribution meant that the plan had grown at a lower rate than should have been the case. So it was reasonable for Zurich to take the steps necessary to enable it to make fairer annual distributions – and in its clients' interests that it did so.

I can't see that Mr L was given any proper notice about this before the changes were made – but Zurich seems to have already accepted this was a failing on its part when it apologised to Mr L and paid him £100 in respect of the shortcomings there had been in the service it provided to him on this occasion.

I appreciate that the changes made by Zurich impact on a plan feature that was particularly important to Mr L. But Zurich corrected the historical error by adding units to Mr L's plan – boosting his investment. It also explained that the amount of charges taken won't increase and the value of the underlying investment will not be affected. Zurich says the only change in future will be '*where and how any investment income is recorded*'. The value of Mr L's investment might still go up and down as a consequence of market fluctuations. ***But the changes Zurich made to the terms of the plan shouldn't cause Mr L any financial detriment in future.*** I say this because:

- Funds often have income units and accumulation units. Any cash produced through dividends and interest on underlying holdings will be distributed to unitholders directly in the former case, and held within the fund in the latter case.
- The way Mr L's holding in the plan previously worked was similar to having income units with an automatic reinvestment function. The amount of income on the underlying holdings proportional to Mr L's unitholding was taken out. After relevant charges were deducted, the balance was used to buy more units, as opposed to Mr L getting the net income in cash.
- As a result of the changes Zurich has made, his holding operates like accumulation units. The same charges are deducted but income is never released from the fund.
- Given Zurich's admission that it had calculated things wrongly for some time, I can understand Mr L's concern about his investment. But I am satisfied these changes don't have any impact on the value of his investment or its ability to grow.
- In case it might be helpful, here's another way to look at this. The fund itself contains investments, property etc., and cash. That cash grows when investments pay dividends or other income. The sum of all those things is the overall value of the fund – commonly called the Net Asset Value or NAV. Mr L's plan, represented by a number of units, is a proportion of that overall NAV.
- This isn't something Zurich can manipulate – it's a factual valuation of the fund assets set by an actuary. Zurich has explained how the unit value changes when income is taken out (as was previously the case) but doesn't when the income is retained in the fund. This is because when income comes out, the overall NAV is lower and so each unit is worth slightly less. When that income is returned to the fund, new units are created and so the overall value of the holding remains the same, but with more units held at a lower price. This is materially the same as the income remaining in the fund throughout, and retaining a lower number of units but at a higher unit price (and this is exactly what Zurich has changed).
- This can be difficult to see when there are so many other variables and reasons for the unit price to change. But I am satisfied that the new treatment of investment income hasn't disadvantaged or caused a financial loss to Mr L (or any other investor).

I've also thought about some of Mr L's other concerns.

After Zurich made changes in December 2021, investment income remained within the capital unit fund. This meant the unit price was higher than it would have otherwise been so Mr L's plan didn't lose value because of Zurich's actions. This also explains why there was no addition of units to Mr L's plan in December 2021 as had happened in previous years.

Zurich publishes information annually about fund performance which investors are able to see. I appreciate that Mr L wants to see a lot more detailed information about how the fund has performed in recent years, but how businesses choose to operate and the services they offer are matters that come under the oversight of the regulator. The regulator sets out the type of information funds have to make available to investors and there are rules and guidance about this in the FCA Handbook. I haven't seen anything to suggest Zurich failed here to provide the information it should have done. I don't think it would be fair and reasonable to expect Zurich to provide more bespoke detail to individual investors and in these circumstances, I can't require Zurich to provide the more detailed performance figures that Mr L wants to see here.

I appreciate that Mr L isn't happy about information he was told over the phone in December 2021, but being given incorrect information isn't enough of a reason to show that Zurich intended to mislead him. There was a further phone call on 27 January 2022 followed by a letter from Zurich a few days later explaining why no units were added to Mr L's plan in December 2021, which clarified that fund performance wasn't the underlying reason.

Zurich also said in 2021 that it introduced annual statements for the Growth Protector Plan but these did not confirm the correct details and incorrectly stated a charge of 1.5% on the capital unit fund taken daily in the fund prices. It said it would be correcting and improving the information shown in the annual statements which seems fair and reasonable to me.

I also asked Zurich for more information about its contact with the FCA. Zurich sent me details of its communications with the regulator about this matter and I am satisfied that it '*referred itself to the FCA*'. So I hope this puts Mr L's mind at rest on this point. The FCA has its own website if Mr L wants to find out more about its role.

To sum up, I find:

- Zurich was entitled to make the changes to the plan and correct the information reported about the plan on annual statements
- the reasons Zurich has given for making changes to plan and annual statements are fair and reasonable
- Zurich has explained the changes and the impact on Mr L reasonably clearly –it should have done so sooner and explained things better, but the £100 it has paid already covers these service failings and I am satisfied that the payment Zurich has already made to Mr L is fair compensation overall.

My final decision

For these reasons, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 27 September 2023.

Susan Webb

Ombudsman