

The complaint

Mr Z's representative, a claims management company (CMC), complains on his behalf that he was given unsuitable investment advice by St. James's Place Wealth Management Plc, referred to as "the business".

In short, the CMC says Mr Z was assessed as a 'balanced risk' investor but advised to invest in 'high risk' funds. It didn't see that he had any funds invested in cash, gilts or bonds which is consistent with a 'balanced' approach.

What happened

In 2005, Mr Z was advised to invest £180 a month into the Unit Trust ISA, within the International Fund. He was also advised to transfer his PEP and ISA to the business and invest equally in four funds.

It was recorded that Mr Z was 47 years of age and married. He had no financial dependents, and jointly owned his home outright – with his wife – worth around £500,000.

It was also recorded that Mr Z was newly self-employed as a consultant and had an annual (gross) income of £15,000 and was anticipating a higher income. Mr Z had the following savings and assets:

- A PEP worth £6,500.
- An ISA worth £24,000.
- Cash/bank deposit of £15,000.

I note it was also recorded that his attitude to risk was three out of five, or balanced /medium and his objective was capital growth, tax efficiency and accessibility over the medium to long term. It was recorded that he had a moderate investment experience.

The business didn't uphold the complaint. In short, it said:

- The confidential Financial Review Document (the FRD) confirms that Mr Z's attitude to risk was medium, as confirmed in the suitability letter.
- Mr Z was advised to transfer his ISA/PEP from a third-party provider – approximately worth £30,000 – to the business, which was invested equally across the following four funds: UK and General, Greater European, Recovery Trust and International Trust.
- The investment management department confirmed all the funds had exposure to cash, with a medium level risk, apart from the Greater European fund which had an 'upper medium' risk rating.
- Mr Z discussed with the adviser his attitude to risk. He was also left with a brochure entitled 'Guide to Choosing your Attitude to Risk'. The suitability letter confirmed the funds that Mr Z had selected and their risk profile. It also said that he accepted some additional risk to balance his portfolio.
- Mr Z elected to contribute £180 a month into the International Trust medium risk fund. This would've benefitted from 'pound cost averaging' thus reducing exposure to market volatility and is likely to have diluted the effect of Mr Z's choice to select an

- upper medium risk fund.
- Mr Z raised no issue at the time and instead raised his contribution to £500 per month in December 2005 and added a further lump sum in 2008.
- There's no evidence that the recommendation wasn't right for the Mr Z at the time.

One of our investigators considered the complaint but didn't think it should be upheld. In summary, he said:

- It's not our role to risk rate funds or determine whether the risk rating for a fund is correct. He must consider whether the recommendation was suitable, and having done so, he's satisfied that it was.
- He's satisfied the investment of £180 a month was affordable. Mr Z and his wife's combined disposable income was £1,396 a month and they had no financial commitments. Mr Z had cash deposits of £45,500. If he wanted, he could've dropped his cash deposit to whatever amount he wanted.
- Given Mr Z's experience – he had a stocks and shares ISA and a PEP – he wouldn't have had any trouble understanding how the investment worked.
- The recommendation met Mr Z's objectives for capital growth, tax efficiency and accessibility to his funds. This wasn't like he was locking away a lump sum for a period.
- The funds fit with Mr Z's attitude to risk and objectives. Although the funds are largely equity based, the funds' objective – capital growth – is in line with his own.

The CMC disagreed with the investigator's view. In response, it said:

"We note your comments but unfortunately the funds recommended are not compatible for the recorded risk profile or someone with moderate investment experience and therefore in our opinion the advice was unsuitable. Investing virtually all the monies into equities is not in any way commensurate for someone who has specifically recorded a moderate risk profile."

As no agreement has been reached the matter has been passed to me for review.

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 agree with the investigator's conclusions, for much the same reasons. I'm not going to uphold this complaint.

On the face of the evidence, and on balance, despite what the CMC says, I'm not persuaded that the recommendation was unsuitable for Mr Z.

But before I explain further why this is the case, I think it's important for me to note I recognise Mr Z's strength of feeling about this matter. The CMC has provided detailed submissions to support the complaint, which I've read and considered carefully. However, I hope he won't take the fact my findings focus on what I consider to be the central issues, and not in as much detail, as a discourtesy.

The purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by the CMC and the business, and reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must take into account the relevant law, regulation and best industry

practice. But it's for me to decide, based on the information I've been given, what's more likely than not to have happened.

On the face of the evidence, and on balance, I can't say that that the recommendation was unsuitable.

It's fair to say that certain questions were asked of Mr Z to arrive at the conclusion that he was a 'balanced risk' investor, not a 'moderate risk' investor as the CMC claims in its latest response. I note it was classed as three out of five, where one was cautious and five was speculative.

I note the business says that this is reflected in its recommendation of the regular contribution ISA and his choice of funds, both of which match this profile. On the face of the evidence, and on balance, I'm unable to disagree with this conclusion.

Despite the funds being equity based, the business says that its investment management department confirmed that all the funds had exposure to cash, and apart from one fund were medium risk funds. In other words, the funds were risk rated as three out of five, except for one which was four out of five. On the face of it that doesn't appear to be 'high risk' investments as the CMC claims.

That notwithstanding, I should make clear that I'm not specifically looking at whether Mr Z was a balanced risk investor, or whether the recommendations were medium risk. I'm considering if the recommendations were generally suitable for him. Notwithstanding the points made by the CMC about the funds, I agree with the investigator that it's not for us to risk rate the funds. In this instance the funds were classed as presenting a medium risk, I've no reason, given the business' explanation, to think this was incorrect.

On balance, I'm satisfied the recommendation met Mr Z's key objective for capital growth and tax efficiency. I note the business says Mr Z's ISA's and PEP were free of any personal liability to UK income tax and no liability to capital gains tax, which is what he wanted.

I appreciate Mr Z wasn't an 'experienced' investor, but he wasn't without investment experience, therefore he's likely to have known how the investment worked and the risk involved.

I'm not persuaded that Mr Z took more risk than was suitable for him. On balance, I'm satisfied that he was made aware of the risk rating and was willing to take a greater risk – with one of the funds – to balance out his overall portfolio. In the circumstances, I'm unable to say that this was unsuitable.

I think Mr Z did what he felt was right for him. I note it was recorded that Mr Z believed a spread of growth trusts is appropriate to give diversification. I'm conscious that he still had £15,000 in cash and a home jointly owned with his wife – worth around £500,000 free of any mortgage, so was in good position to invest a monthly amount and overall take a medium risk.

I note that Mr Z was initially incorrectly told that two of the funds out of the four funds were rated 'four out of five' in the risk rating, but in actuality, it was only one fund that was rated 'four out of five'. But notwithstanding the error, Mr Z was still prepared to take a greater risk with his funds.

I'm also mindful that Mr Z increased his monthly contribution into the ISA from £180 a month in mid-2005, to £500 a month in December 2005, and did so of his own volition. This doesn't suggest that Mr Z was unhappy with any risk rating either for himself or the funds.

I note he also paid in a £1,000 lump sum in 2008 and then stopped making regular contributions altogether in March 2009. In 2012, Mr Z transferred his investment away from the business, but I don't think this was something that he or the business envisaged at the point of sale. It's likely that Mr Z's circumstances were different to what they were in 2005, and he did what he thought was best for him at the time.

I've seen no evidence to suggest that Mr Z was given any guarantees about the level of return. And just because he didn't receive a better return doesn't mean the recommendation was unsuitable.

I appreciate Mr Z will be unhappy I've reached the same conclusion as the investigator. Furthermore, I realise my decision isn't what he wants to hear. But on the face of the available evidence, and on balance, I'm unable to uphold this complaint and give him what he wants.

My final decision

For the reasons set out above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 27 May 2021.

Dara Islam
Ombudsman