

The complaint

Mrs M has complained that she was given unsuitable advice by RLUM Limited to invest in unit trusts.

What happened

In August 1994, Mrs M was advised to invest £3,600 in the UK Income with Growth Trust and was advised to invest a further £3,000 in December 1994 in the UK Growth Trust. She surrendered them both in 2004 and received just over £11,000 back in total. In 2021 she complained via a claims management company (CMC) that the investment had been mis-sold. The CMC said that as an inexperienced investor, she was advised to take too much risk and was advised to invest too much of her available money.

RLUM replied and said they thought the advice given in August 1994 was suitable. However, they had no point of sale documents for the December advice, and so compared the performance of Mrs M's investment, with the return available from the Bank of England base rate of interest, plus 1% (BOE + 1%). They found that Mrs M's investment had performed better than that, and so she had not suffered any financial loss. Mrs M, and the CMC on her behalf, remained unhappy with the advice, and so the complaint was brought to our service.

An investigator at our service looked into the complaint and found it should be upheld. She agreed with what RLUM said about the advice given in December 1994. However, for the advice given in August 1994, she found that Mrs M had been advised to take too much risk with her money. The fund she was advised to invest in involved mostly equity investments, and the investigator felt this was too risky for Mrs M based on both her attitude and capacity for risk. The investigator recommended that RLUM calculate the return Mrs M would have achieved had she invested 50% of the amount invested in the FTSE UK Private Investors Income Total Return Index, and 50% using BOE + 1%.

RLUM agreed the complaint should be upheld but disagreed with the benchmark that the investigator suggested. They said that based on the date of the investment, they felt it would be fair to compare the whole amount invested, with the return available from BOE + 1%. They said that if the benchmark the investigator suggested was used, there would be a loss payable to Mrs M, but if they just used BOE + 1%, then there would be no loss to pay. They said they used BOE + 1% for the December sale, because they assessed Mrs M's attitude to risk as being low and that is the same as the risk level the investigator suggested Mrs M should have taken in August.

The investigator said that for the December advice, its arguable that Mrs M ought to have been advised to not invest at all, so BOE + 1% may have been too generous a benchmark and that the return from just BOE base rate may have been more appropriate. Regardless, there was no loss payable for the December advice, and she wasn't persuaded to change her mind about the August advice. RLUM were concerned that this was a change in approach, and so asked for the case to be passed to an ombudsman for a decision.

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.

The advice given in August 1994

In August 1994 when they met Mrs M, the adviser completed a fact find document and it shows that Mrs M was retired, earning £2,400 per year. Her husband was present at the meeting and his income was recorded as £9,600 (gross) and was planning on retiring in around three years. They owned their house mortgage free and each held £1,500 in cash in bank accounts. Their monthly income would have been around £900 to £1,000 per month after tax and their joint expenditure was around £700 per month.

Between them they had three relatively small endowment policies with a few years left to maturity. Mr M had around £3,500 from a policy that had just matured, and they held £6,000 each in Personal Equity Plans (PEPs).

Mrs M's aim was to have a comfortable retirement. She was advised to invest £3,600 in the UK Income with Growth Trust, which I understand comprised of over 90% equity investments, and the rest fixed interest. All parties now agree that this represented too high a degree of risk for Mrs M to take, based on her circumstances in August 1994. For completeness, I also agree. The adviser did not record Mrs M's attitude to risk at the sale. From the key features document, it's clear that this fund included risk. I can see she had a small amount of investment experience, having invested in a PEP which, by definition, included risk. So, I think Mrs M would have known that risk was included in this investment and was willing to take some amount of risk.

I've carefully considered how much risk she ought to have been advised to take, given her circumstances. As a household, they appear to have had a sufficient level of income to cover expenditure, leaving between £200 and £300 disposable income each month, after tax. So, I think it's likely she'd have been able to make up for some potential losses. The amount invested appears to have come from a combination of cash held on deposit and the maturing endowment policy held by her husband. Mr and Mrs M were left with just under £3,000 in cash after investing in August 1994. Based on these circumstances I'm convinced she could afford to take an amount of risk.

However, I'm not persuaded that she could afford to take the level of risk involved in the UK Income with Growth Trust, due to the high level of potential fluctuations involved with that amount of equity content. Mr M was due to retire in around three years' time, so their household income was likely to change. This is especially important given the adviser suggested that he needed to contribute more to his pension, in order to retire as comfortably as they wished. So, I don't think Mrs M had the capacity to make up for the potential losses that could be sustained in this Trust.

I've taken the above into account in considering an appropriate benchmark to use, to reflect the type of return Mrs M would have received had she invested at a suitable level of risk. I appreciate RLUM may have had experience of our service using simply the return from BOE + 1% as a benchmark in similar complaints in the past. However, we consider each case on its own merits and what is fair and reasonable in one case, may not apply to others. The investigator suggested a mix of two measures as a suitable benchmark, and I agree that this is a fair and reasonable way of calculating whether there has been any financial loss. I'll explain why.

The FTSE UK Private Investors Income Total Return Index tracks the performance of a basket of assets and is currently made up of around 50% equities, 30% fixed interest and cash, and 20% property and alternatives. The rate of interest provided by BOE + 1% is designed to reflect the general rates widely available in savings vehicles, including fixed rate bonds and bank/building society savings accounts.

The mixture of those two measures, is designed to reflect a situation where Mrs M's money was exposed to some actual market fluctuation, accounted for by the equity content in the index. As I'm persuaded Mrs M was willing and able to take a small amount of risk, I think it's fair that the benchmark used should reflect potential drops in the markets, as well as positive growth.

BOE + 1% by itself, would always produce a positive return, which may be more or less than that produced by the 50/50 mixture I've set out. Given it's not possible to know exactly where she'd have invested, I think a fair measure to use is a benchmark that involves slightly more risk, than the return reflected by BOE + 1% alone. In my view, the 50/50 mixture more accurately represents the sort of return Mrs M would've been able to achieve had she been given suitable advice. On that basis, I've set out below how RLUM should go about calculating compensation.

The advice given in December 1994

I'm in agreement with the investigator that Mrs M ought not to have taken any risk in December 1994. Given the amount of her overall assets already at risk by December 1994, I don't think it was suitable for her to invest a further £3,000 in a fund that invested in just equities, as the UK Growth Trust did.

While we don't know exact details of her assets in the December due to a lack of any fact find or suitability letter from that time, there's no evidence of Mrs M having received a windfall since the previous advice, or of her circumstances changing substantially. So, I think it's likely the amount invested at this time came from the amount they were left with on deposit in August, of around £3,000, plus anything further they'd saved in the interim. This being all their remaining savings, I'm satisfied that they ought not to have taken risk with their investment.

I'm mindful of the fact that Mrs M was able to tie the money away for many years after investing in the December. It appears they didn't need access to this amount for day to day spending. So, I don't think it would have been unsuitable for her to have placed at least some of this money into a savings account, or short-term fixed rate bonds, rather than leaving it in her current account. I think it's likely that had she been suitably advised, she would have received interest over and above that produced by simply the BOE base rate. As such I think a fair benchmark for this investment would be BOE + 1%.

RLUM have provided evidence that Mrs M's actual investment outperformed the interest of BOE + 1%. As I'm upholding this complaint, for completeness I've included in the below the method RLUM should use to calculate whether redress is payable with regards to this investment.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs M as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs M would have invested differently. It is not possible to say *precisely*

what she would have done differently. But I'm satisfied that what I have set out below is fair and reasonable given Mrs M's circumstances and objectives when she invested.

What must RLUM do?

To compensate Mrs M fairly, RLUM must:

- Compare the performance of Mrs M's investments with that of the benchmarks shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- RLUM should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
UK Income with Growth Trust – August 1994 investment	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: the interest rate provided by BOE + 1%	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
UK Growth Trust – December 1994 investment	No longer in force	BOE + 1%	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 investments at the end date.

Fair value

This is what the investments would have been worth at the end date had they produced returns using the benchmarks.

Why is this remedy suitable?

I have decided on these methods of compensation because:

- Mrs M wanted Capital growth with a small risk to her capital.
- BOE + 1% would be a fair measure for someone who wanted to achieve a reasonable return without risk to her 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 in August 1994 Mrs M's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs M into that position. It does not mean that Mrs M would have invested 50% of her money in an account providing interest at the rate of BOE + 1% and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs M could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that RLUM Limited should pay the amount calculated as set out above.

RLUM Limited should provide details of its calculations to Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 13 October 2022.

Katie Haywood
Ombudsman