

The complaint

Mr and Mrs B complain, through a claims management company, that Legal & General (Portfolio Management Services) Ltd provided unsuitable investment advice in 2006 when it recommended them to invest £14,000 in stocks and shares ISAs* and £14,000 in Unit Trusts. (**Individual Savings Accounts - a form of tax efficient savings*).

To resolve their complaint, Mr and Mrs B are looking for financial compensation.

What happened

With 12 years or so to go before Mr B reached state pension age, he took early retirement due to ill health in 2006. When Mr and Mrs B spoke to Legal & General's financial adviser, Mr B had recently received around £30,000 as a retirement lump sum which boosted Mr and Mrs B's existing savings.

Over the course of meetings in May and June 2006, alongside making other investments which are not the subject of this complaint, Mr and Mrs B were advised to invest as follows:

- £7,000 each in a Maxi ISA with funds invested equally in the Henderson Preference & Bond fund and the New Star Sterling Bond fund, and
- £7,000 each in Unit Trusts with funds invested equally in the INVESCO Perpetual Income fund and Artemis European Growth fund.

Mr and Mrs B said they were mainly unhappy because the financial adviser's recommendations left almost all their life savings and money Mr B would need to depend on for his future financial needs exposed to funds underpinned by equities and increased their total exposure unnecessarily. They felt the recommendation they each invest £3,500 in the Invesco Perpetual Income Fund and £3,500 in the Artemis European Growth Fund was particularly concerning as they felt both had significant equity compositions unsuitable for first time investors such as them.

In response to this complaint Legal & General said Mr and Mrs B had left it too late to complain about advice in 2006. Mr and Mrs B weren't happy with this response so they brought their complaint to us.

Where complaints concern something that happened more than six years ago, the Financial Ombudsman Service can't always look into what happened. An ombudsman considered whether the complaint was in our jurisdiction and told Legal & General that Mr and Mrs B were still in time to bring their complaint and this was a complaint we could look at.

Our investigator proceeded to look at the merits of their complaint.

Legal & General said the recommendation was suitable for Mr and Mrs B and they didn't agree with any of their complaint points.

After considering the complaint, the investigator said he mainly thought that:

- Mr and Mrs B were in a position to be able to invest and the ISAs had been suitable as they matched the risk level Mr and Mrs B were looking for to meet their financial needs and achieve their investment objectives for long term growth. Our investigator felt that the funds they were invested in comprised a diverse range across sectors and countries, so limiting Mr and Mrs B's risk exposure.
- The Unit Trust investments weren't inappropriate for Mr and Mrs B as the funds themselves were well established with equities in large multi-nationals and focused on long term growth. Whilst they carried some risks, our investigator felt Mr and Mrs B were aware of this and understood that to achieve some growth ahead of standard savings accounts they had to take a small amount of risk. The investigator said Mr and Mrs B knew the funds could go up and down but accepted this as they wanted to invest for the long term to get the growth they wanted.

All in all, our investigator didn't feel this was a complaint he could recommend upholding.

Mr and Mrs B didn't agree with the investigator. In brief summary, their representative said:

- Mr and Mrs B had simply agreed to the meeting with the financial adviser to clarify what was best to do with their money at this new stage in their lives where they had access to greater funds than previously but that "*...there was no prerequisite objective towards investing, simply (they) wished to look after their capital and rely upon other's expertise...*"
- Given the amount of their capital it was clearly not appropriate to simply leave this in the current accounts, but there was no reason to then automatically jump to the position of investing the capital that was destined to pay for their retirement.
- Considering their changed circumstances and uncertain future needs, and pending full retirement when their likely expenses, needs, desires and objectives would change, it wasn't appropriate to invest this sum. Mr and Mrs B's representative put things this way: "*This was money they had built up to pay for their retirement not to be gambled with or potentially flitted away on the eve of their full retirement.*"
- Mr and Mrs B held endowment policies that would be maturing in the coming years so they already had risks within their holdings and should not have been increasing the risk levels further at this stage – or at least, not until other risk based products had matured.

As the complaint hasn't been resolved, 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.

Legal & General has engaged with us in dealing with the complaint following the ombudsman's decision and I am satisfied that I can consider the complaint, so I don't need to say more about jurisdiction.

I've looked at the complaint afresh and I've independently reached the same conclusions as our investigator. I'll explain my reasons.

I think it's reasonable for me to rely substantially on the documentation completed at the time, including the fact find and suitability letter, to give me an insight into Mr and Mrs B's circumstances and financial situation and an understanding of their wishes and intentions when they met with Legal & General's adviser in 2006.

This is what was recorded about Mr and Mrs B's financial situation and circumstances at the time.

They had £1,350 in disposable income each month after paying for their monthly commitments of £1,250.

Mr and Mrs B had built up a capital amount of around £133,000 from redundancy lump sums, savings and a lump sum inheritance which was currently invested as follows:

- they each had approximately £52,776 in cash based savings,
- Mr B had nearly £7,000 invested in a PEP (an historic form of tax efficient equity based investment) and around £13,000 invested in stocks and shares ISAs.
- Mrs B had £7,000 invested in stocks and shares ISAs.

Mr and Mrs B owned their own home worth around £185,000 and had no other financial liabilities or dependants.

Overall, I am satisfied that Mr and Mrs B were in a strong enough financial situation to be able to invest £58,000 of their cash reserves as recommended by the adviser.

One of Mr and Mrs B's main complaints is that the recommended investments didn't fit their attitude to risk, so I've thought carefully about what I know about Mr and Mrs B's risk approach at the time compared to the risks of the investments they were recommended.

Mr and Mrs B already had some investment experience with endowment plans, money in a PEP and other stocks and shares ISAs. So I think it's fair to say they were not completely new to investing. They told the adviser they had tended to invest in deposit accounts for short term expenditure and chosen to save additional disposable income into medium-term investments in a corporate bond PEP and stocks and shares ISA as they understood this to be one of the least volatile investments that would grow steadily rather than be subject to the 'roller coaster' ride associated with the stock market.

The adviser concluded from this that Mr and Mrs B appreciated "...*that equities are likely to provide more investment growth over the medium to long term...*"

I think Mr and Mrs B probably had a reasonable understanding of the basic principle that risk was commensurate with growth potential and, in choosing to invest, they needed to balance their investment objectives against the risk they felt comfortable taking with their money.

The adviser identified Mr and Mrs B's existing risk profile as 'Minimal to Cautious'. Referring to a scale of risk rated by Legal & General as follows: 'Minimal Risk', 'Cautious Risk', 'Moderate Risk' and 'High Risk' the adviser said Mr and Mrs B wanted to lift their risk profile to 'Cautious' overall.

Legal & General explained 'Cautious Risk' as follows:

"You are looking for the potential of a return in excess of cash deposits but capital security is an important concern. You are willing to invest in non-cash assets and are comfortable that there may be some exposure to the stock market. You accept that your money is not

guaranteed, the value of your investments will vary and your investment potential may be restricted.

I think it's likely risk was discussed and there's nothing to show that Mr and Mrs B raised any objection to this assessment of their risk approach at the time, which I'd have expected them to have done if they disagreed. I find that Mr and Mrs B demonstrated a 'Cautious' attitude to risk overall (as defined by Legal & General) and that this fairly reflected their understanding of risk and the level of risk they were comfortable taking on.

Mr and Mrs B had kept well over a third of their potential £133,000 investment pot as cash deposits so I think they had capacity to take some investment risk with the £28,000 they invested together in the ISAs and Unit Trusts.

Mr and Mrs B wanted to achieve capital growth in a tax efficient way and have cash left on deposit for security. They wanted to build on their previous investing experience of a stocks and shares ISA and have a more diversified portfolio. They wanted to earn a greater return than that received on a bank deposit account. They were prepared to invest for the medium term and for at least five years.

The adviser recorded that Mr and Mrs B understood "*...that deposits do not provide the highest growth potential and that investment can boost your returns. However, you also appreciate that some investment can be illiquid or volatile and so you wanted to avoid these asset classes, preferring the more cautious asset class you are already familiar and happy with, fixed interest securities...*"

Whilst I think it was reasonable to recommend risk-based investment to Mr and Mrs B in order to boost their chances of getting a better return on their money, they needed to be comfortable that the level of risk associated with recommended investment reflected their attitude to risk.

The ISAs recommended were invested in bonds - fixed interest funds that provided tax free returns. They were intended to achieve long-term capital growth in a tax efficient way over a minimum investment term of at least five years. The adviser drew Mr and Mrs B's attention to fund specific risks in the product literature he gave them.

Mr and Mrs B complained that, as part of their overall portfolio, the ISAs unnecessarily exposed them to risk. But, thinking about the investment risk of the ISAs and Mr and Mrs B's plans for achieving capital growth and getting a better return on their money compared to the funds they kept in deposit based savings, I find the ISAs reasonably reflected their agreed objectives and risk attitude and they were suitable for Mr and Mrs B.

Thinking about the Unit Trusts, Legal & General can't provide the product fact sheets from the time of the investments but it's my understanding that the funds comprised equities in large multi-nationals.

In the suitability letter the adviser said: "*I explained that equities are the most volatile investment asset class but can offer the highest growth potential over the medium to long term. A degree of volatility can be reduced through diversity, both geographically in different markets and secondly into different sectors of the market, such as small, medium and large companies.*"

The adviser had noted that: "*You both confirmed that you are prepared to put a portion of your lump sum into funds found in the moderate and high risk profile, providing that your overall portfolio risk profile is cautious.*"

And also: "...You appreciate the higher growth potential of equities and commercial property, but also that such investments should perhaps be kept longer, in case of either volatility or illiquidity. Given the more sizeable amount of capital you now have to invest you felt it was now appropriate to invest in all asset classes to create a diversified investment portfolio. However you are still relatively cautious and so want to invest the majority of your total wealth in cash and fixed interest securities."

The funds aimed for long term growth which was what Mr and Mrs B wanted. It's likely the funds were diverse and comprised a mix of sectors and countries to maximise the spread of risk and limit the risks arising from having investment concentrated on too narrow a spectrum of funds.

I'm not persuaded that the equity based investment in the Unit trust funds was unsuitable for Mr and Mrs B. I think that Mr and Mrs B understood and accepted the risk of the funds that Legal & General advised them to invest in. They had some investment experience, discussions with the adviser and access to all the relevant product literature so they were well placed to make investment decisions.

I've taken into account that Mr and Mrs B say they simply wished to look after their capital and they were prompted by the adviser to invest. But I think it's fair to say Mr and Mrs B also wanted to have the benefit of the adviser's advice and recommendations. I think they understood it was their choice to accept the advice – having been made aware of the option of National Savings, Mr and Mrs B decided not to invest in this area. I can understand why, as this didn't give them the best chance of making the sort of returns they hoped for.

They also chose to keep back more than £47,000 in cash based savings, as against the adviser's recommendation that they should keep around £13,000 in their bank or building society to provide easy access, short term funds to meet any sudden or unexpected costs. I think they understood there was some risk associated with investing in Unit Trusts. And if they hadn't felt comfortable with the level of risk associated with investing in Unit Trusts, they were aware that there were other less risky options for their savings.

On the recommendation of the adviser, Mr and Mrs B invested £30,000 in a portfolio bond that included some more risky investment options - Mr and Mrs B don't have any complaint about that investment. I think they most likely understood that by investing in funds across the whole risk profile, this maximized the degree of diversity they had whilst still giving them a broadly cautious risk profile overall.

Overall, their £14,000 investment in Unit Trusts made up around just 10% of their portfolio. So, although equities tend towards volatility, I don't find Mr and Mrs B were over reliant on these more risky funds or disproportionately invested in Unit Trusts that didn't fit comfortably within their overall risk approach.

I appreciate that Mr and Mrs B say it's the additional risk presented by investment in ISAs and the Unit Trusts that tipped them over into unacceptable risk exposure. But I consider the ISAs were relatively low risk, being fixed interest. And Mr and Mrs B's investment in Unit Trusts made up a relatively small part of their portfolio - not enough in my view to adversely impact on their overall risk exposure.

To sum up, having considered everything, I find that Mr and Mrs B were not exposed to more risk than they wanted to take. I am satisfied that Legal & General's recommendations to invest in the ISAs and Unit Trusts were suitable as they met Mr and Mrs B's identified needs and investment objectives and the advice was suitable based on their financial situation and circumstances at the time.

I appreciate that what I've said here will come as a disappointment to Mr and Mrs B but I hope that setting things out as I've done helps explain why I've come to this overall conclusion.

My final decision

I don't uphold this complaint for the reasons I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 16 December 2022.

Susan Webb
Ombudsman