DRN-3697998

The complaint

Mr P has complained about the advice he was given by Zurich Assurance Ltd ('Zurich') to invest in 1999. He says he didn't really understand the product and he didn't consider himself to be such a high-risk taker.

The investment was sold by a predecessor business of Zurich, but Zurich has taken responsibility for the advice.

Mr P is represented by a third party but for ease of reference I shall refer to 'Mr P' in this decision.

What happened

In July 1999 Mr P was advised to invest £7,000 into a Maxi ISA investing in the Threadneedle Managed Funds (later known as the XManaged Equity Focused Fund Retail Accumulation). Mr P sold the investment in February 2021 for £21,702.57 but thought he had lost out financially so complained to Zurich.

In its response Zurich didn't think the ISA had been mis-sold. It considered that it wasn't unsuitable for Mr P's circumstances and requirements. He had sufficient capital to make the lump sum investment for capital growth and in a tax efficient manner. It didn't think Mr P was financially illiterate as was being claimed, he was already making decisions about investing his funds as it was recorded he was '…most interested in the Maxi ISA.'

Our investigator who considered the complaint thought it should be upheld;

- She was satisfied that Mr P had a balanced attitude to risk as it was recorded at the time and there was no evidence to suggest otherwise.
- He invested 77% of his available cash which she thought was too much and the majority of which was likely invested in equities. She didn't think he had the capacity to accept large losses to his money.
- There was no evidence that the risk associated with investing in a balanced growth fund was explained and it was hard to say what level of detail he was provided with about the risk or that it was discussed.
- Mr P's knowledge of a Maxi ISA wasn't enough to say he would have understood the risk or had experience of investing in the stock market.
- She thought fair compensation would be to compare the performance of the investment with that of 50% in the FTSE UK Private Investors Income Total Return Index and 50% average rate from fixed rate bonds. If there was no financial loss, no compensation would be payable.

Zurich agreed in principle but thought it more appropriate that it calculate redress on half of the investment as the investigator had concluded that Mr P had been advised to invest too much. The investigator didn't agree – if one part of the advice wasn't suitable, everything was unsuitable.

Mr P thought the proposed redress was more suitable for a low risk/cautious investor. He thought 100% FTSE UK Private Investors Income Total Return Index to be correct as the investigator accepted he was willing to accept a balanced risk. The investigator didn't agree. She had found the investment carried more risk than Mr P could accept. She didn't think it was reasonable to compare his whole investment with 100% the FTSE UK benchmark when his investment was already fully invested in a balanced fund.

Mr P maintained the FTSE UK Private Investors Income Total Return Index should be used. He said he had the capacity to absorb potential losses, his income was likely to increase, he was happy to save over the medium to long term, which was suitable for a balanced investor, which he was. The funds he invested into weren't balanced as they were heavily weighted in equities and had foreign currency risk attached to them.

The investigator couldn't know how the fund was invested but had upheld the complaint because she thought Mr P had been advised to take too much risk with too much of his money. He had a limited understanding of stocks and shares and said he didn't consider himself to be such a risk taker. A consumer's attitude to risk may be balanced but if the investment they were recommended exposed them to too much risk the index proposed by Mr B was wasn't right.

Mr P didn't agree. He had said he hadn't said anything contradictory. He wasn't in the position to tolerate anything too high risk. The fund was medium risk. As the complaint couldn't be resolved, it has been passed to me 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.

<u>Mr P's circumstances and attitude to risk</u>

I have seen a copy of the client Fact Find from 2 July 1999. At that time Mr P was 22 years of age, single, living at home with his parents and was earning £10,000 per year in his role as a personal computer support engineer. Its noted that Mr P expected an increase to his earnings of 10% but at that time his net monthly income was £680 and his regular living costs were recorded as being £300.

Mr P had £9,000 split between two building society accounts. His priorities at that time were recorded as being 1) protecting lifestyle against specific illness, 2) protecting family or business against financial consequences of death and 3) investing capital for growth, income, or inheritance planning. He could put aside £100 per month comfortably in order to meet those financial needs.

The notes of that meeting state that Mr P was introduced to the adviser via Mr P's father who himself had taken a critical illness policy and he introduced Mr P to do the same. The notes continue 'Since [Mr P] has some capital savings, his next priority is investing capital for growth. He seemed to like the idea of investing in an ISA very soon.' As a result of that meeting Mr P took a critical illness policy with life cover at a cost of £50 per month which was 'within his budget'.

Under the section 'Indexation included' where it was ticked 'no', the reason given was 'The client was uncomfortable within increasing costs and his income may not increase until he qualifies.'

There is a Fact Find Update dated 12 July 1999. Mr P's circumstances hadn't changed, and he had excess monthly income of £348. It was recorded that his priority was to invest for capital growth and that 'The client has about £9,000 in building societies and was most interested in the Maxi ISA and the Balanced Managed Growth Fund. Decided to invest the maximum available £7,000 and have £2,000 in the 'emergency funds' with the building society.'

The resulting recommendation letter stated that it had been identified Mr P wanted to invest with the aim of increasing the value of his investment. 'You consider yourself to have a balanced attitude to investment risk and would prefer an investment that reflects this. You are happy to commit your capital for the medium to long term, which we consider to be at least five years. The Threadneedle ISA – Managed Funds was recommended, and Mr P was given the key features document and sample illustration for the investment.

There's no record of how Mr P's recorded attitude to risk was established. It's not evident from the Fact Finds how Zurich came to the conclusion that Mr P was a balanced risk investor. I would expect to see some sort of evidence that the risk of investing was explained to Mr P, taking into account his ability to understand investment risk and clarification of his experience or knowledge to understand the risk involved. So, I've considered whether Zurich collected sufficient information about Mr P's circumstances and objectives to enable it to assess his attitude to risk and advise him appropriately.

I've also borne in mind that – with the exception of the recently taken critical illness policy with life cover– Mr P was a novice investor who was seeking advice because he didn't have the knowledge or experience to make such an investment decision unaided. So, Zurich needs to demonstrate that it gave suitable advice taking into account Mr P's circumstances, understanding and knowledge after ascertaining his attitude to risk.

Clearly I can't know for sure what was discussed at the meetings Mr P had with Zurich's representative but from the documentary evidence that is available, I'm not convinced that Zurich has been able to show us how it established Mr P's attitude to risk.

However, in the absence of documentation to evidence how the risk assessment for Mr P was carried out I have taken into account his circumstances as recorded in the Fact Find from a few weeks before the sale and the Fact Find Update to see whether the level of risk the investment exposed him to was right for him.

Mr P was young, had only recently started working and had saved a lump sum which it's recorded he wanted to invest for capital for growth. It might have been the case that Mr P did want to explore the opportunity to make his money grow more than it had done in savings. But I haven't seen sufficient documentary evidence about how Zurich came to the conclusion that Mr P was a balanced risk investor and for that high proportion of his capital. And I've further borne in mind what Mr P had so far done with his savings – by keeping it in a risk-free environment in building society accounts.

Mr P did have some surplus monthly income at the time of the sale, but I don't think he was in a financial position to take excessive risks with his savings, which as far as I am able to tell, was his only capital. The Fact Find refers to his 'budget' and 'The client was uncomfortable within increasing costs and his income may not increase until he qualifies.'

So, I think his capacity to bear a loss was relatively limited. Taking everything else into consideration, I'm persuaded it was more likely that Mr P was willing to take some risk with some of his money but not too much risk with too much of his money bearing in the limited evidence about how the level of risk he was prepared to take was arrived at.

The advice

Of the £9,000 Mr P had saved, it was recommended that £7,000 be invested into a balanced risk fund within an ISA wrapper. This left Mr P with £2,000 as emergency funds. Just under 80% of Mr P's capital was invested into a balanced fund, which, like the investigator I think was excessive. I don't think he was in the position to accept that level of capacity for loss.

I think it would have been difficult, or taken Mr P a long time, to replace any significant loss cause by this investment. A balanced risk fund had the ability to do that – usually containing a significant percentage in equities. That brings with it the chance of significant loss. Mr P invested nearly 80% of his savings which he hadn't done before. Whilst there will always be a first time for this kind of investing and it may well be that Mr P was prepared to take some risk, I think it unlikely he would have wished to place so much of his money at the level of risk presented by this investment.

I don't believe there is sufficient evidence to show that it was made clear what in practice 'balanced' investing meant in terms of the losses that could be incurred. So, on balance I believe the complaint should be upheld. I think that Mr P was probably prepared to take some risk but not to the extent that he was advised to do.

Overall, and taking into account Mr P's circumstances and objectives at the time, I think this meant his money was exposed to risks I'm not persuaded he was willing or able to take. I am satisfied that the advice Mr P was given in 1999 wasn't suitable for him taking account of his personal and financial circumstances that I've already outlined.

So, in the particular circumstances of this complaint, I am upholding it. I think the advice wasn't suitable for Mr P.

Putting things right

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

Mr P has said redress should be compared 100% to the FTSE UK Private Investors Income Total Return Index. He said had the capacity to absorb potential losses, his income was likely to increase and he was happy to save over the medium to long term which was suitable for a balanced investor.

And Zurich has said the redress should only be offered for half of the investment. And that for the other half that would have remained on deposit, that would have had tax deducted from the interest and should be taken into account.

But I disagree. My role isn't to retrospectively say what the suitable advice would have been. There were many ways Mr P could have invested and it's not possible for me to now say precisely what he would have done. So, in line with our long-standing approach, I think it's more appropriate to use a benchmark to assess the type of return Mr P would have been able to achieve with suitable advice. This represents the sort of return Mr P would have got with some risk to his money.

I think Mr P would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

What should Zurich do?

To compensate Mr P fairly, Zurich must:

- Compare the performance of Mr P's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Zurich should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Threadneedle Maxi ISA Managed Funds/XManaged Equity Focused Fund	No longer exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	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 investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Zurich should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr P wanted capital growth with a small risk to his capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his 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 Mr P's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr P into that position. It does not mean that Mr P would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr P could have obtained from investments suited to his objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

For the reasons given above, I uphold Mr P’s complaint and Zurich Assurance Ltd should put the matter right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 11 January 2023.

Catherine Langley
Ombudsman