

The complaint

Mr and Mrs M have complained about the investment advice they were given by ReAssure Limited ('ReAssure') in 2006 to invest into a Portfolio Bond. They say the advice was unsuitable for them.

Mr and Mrs M are represented by a third party but for ease of reference I shall refer to Mr and Mrs M in my decision.

What happened

In November 2006 Mr and Mrs M were advised to invest £25,000 into the L&G Property Fund. They sold the investment in 2009 at a loss but later became aware they could make a complaint about the suitability of the advice they had received. In May 2021 they complained to ReAssure that the investment was too high risk for them and had been advised to invest too much of their capital.

In its response to Mr and Mrs M's complaint ReAssure didn't think it should be upheld and said;

- The policy had been surrendered in July 2009 for £14,395 which was 11 years prior to Mr and Mrs M making their complaint.
- As a result, ReAssure didn't have any of the records or documents from the time of the sale but given the limited information it did hold there was nothing to suggest the sale was inappropriate.

Mr and Mrs M weren't happy with the outcome to their complaint so brought it to the Financial Ombudsman. Our investigator who considered the complaint thought it should be upheld. In brief he said;

- The funds had come about because of Mr M retiring and they were both low risk investors.
- There was very limited information available from the time of the sale, but the investigator thought the investment of £25,000 was affordable.
- But the investment was only into one asset class of property and the lack of diversification within the fund added extra risk to the investment.
- He recommended that the complaint be upheld and as compensation the performance of the investment should be compared to the performance of the FTSE UK Private Investor Income Total Retail Index on the basis that Mr and Mrs M wanted capital growth and were willing to accept some investment risk.

In response ReAssure didn't agree. It said;

- In the absence of any relevant documents from the time of the sale it was unfair to rely solely on the customer's testimony.
- Notwithstanding the above, ReAssure thought that if Mr and Mrs M were low risk

investors then when they suffered the loss upon surrender in 2009 it would be reasonable for them to have been aware they had cause for complaint.

- Therefore, it questioned whether Mr and Mrs M had brought their complaint to this service within the time limits that apply.

The investigator maintained that investment into one asset class meant their funds were exposed to risk solely from property. And ReAssure hadn't previously raised concerns about the time limits that apply in bringing a complaint.

In response Mr and Mrs M said they were aware there were risks in investing and thought the loss was as a result of the financial crisis in 2008. They thought they were unlucky at the time and it was only when reading a press article, they realised they might have cause for complaint about the advice they were given.

The investigator then issued his opinion that this was a complaint the Financial Ombudsman could consider as despite the loss he didn't feel that it was clear to Mr and Mrs M they had potentially received unsuitable advice.

ReAssure didn't agree so the time limit jurisdiction element was considered by one of our ombudsmen who decided that it was a complaint that could be considered, after which ReAssure responded again to the investigator's opinion. It said;

- Because of the lack of information from the time of the sale it didn't have sufficient information to reach a fair and reasonable outcome about the suitability of the sale.
- It provided the Key Features and Fund Key Features document from a few years after the sale which clearly described the fund and the investment risk. Mr and Mrs M had signed to say they had received this information.
- There's no evidence that Mr and Mrs M were confirmed as low risk investors without any existing investment. They may have had the appetite for taking some risk for potential growth. But the benefit of hindsight couldn't be used when providing a determination.

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.

After doing so, I've decided to uphold Mr and Mrs M's complaint. I'll explain why.

When the evidence or testimony surrounding a complaint is incomplete or contradictory, I have to make my decision on the balance of probabilities – which, in other words, means I base my decision on what I think is most likely to have happened given the available evidence and the wider circumstances.

Mr and Mrs M's circumstances

As is clear from the above, ReAssure hasn't been able to provide much documentation from the time of the sale. But, I don't find this surprising as the sale took place 16 years ago and the investment was surrendered 13 years ago.

However, ReAssure has been able to give us some documents including a copy of the Portfolio Bond application form dated 25 November 2006. Mr M was aged 61 years and

retired and Mrs M aged 54 years and still working. Their total income was recorded as being between £15,000 and £29,999.

And we asked Mr and Mrs M for their recollection of their circumstances at the time of the sale as well as their investment objectives.

Mr M said he had assets of £15,000 and Mrs M had £25,000. They had 'joint assets' of around £400,000 and no liabilities. Mr and Mrs M each had a monthly income of around £2,000 and their joint expenditure was between £1,500 and £1,700. They felt they were in the position to invest some of their savings in what they were told was a relatively safe investment. Mr and Mrs M recall being shown the history of the fund as well as an illustration of the annual growth. They were told the fund was invested in the rental value of large out of town retail properties. To the best of their recollection the adviser didn't enquire about their joint assets. They wanted a relatively safe investment with a slightly better return than from savings in their bank.

Attitude to risk

Mr and Mrs M were advised to invest in a 'moderate' risk investment – the Property Fund. Obviously because of the lack of information from the time of the sale I don't have anything to review in order to consider how this came about or how ReAssure made Mr and Mrs M aware of the varying level of risk implicit in different investments. And from the information available there is nothing to suggest that Mr and Mrs M were anything other than novice investors and as a result were seeking advice because they didn't have the knowledge or experience to make an investment decision unaided.

Mr and Mrs M have told us they had joint assets of around £400,000 and no liabilities. They didn't tell us of any investments held or any investment experience, only that they were looking to invest some of their funds for a slightly better return than from their savings. Bearing this in mind and the fact that Mr and Mrs M chose not to take any withdrawals from their investment, suggests to me that they were looking for some potential capital growth. But without any further information I can't fully assess their attitude to risk but inevitably there would be some risk in any type of investment that was looking for the potential of capital growth.

Bearing this in mind it doesn't seem unreasonable that Mr and Mrs M did want to invest some of their funds. Even though I can't know for sure what level of risk they were willing to take, their comment about wanting a "slightly better return" than available from savings leads me to think they were towards the lower rather than the higher end of the spectrum of risk.

Of the £25,000 to be invested it records that this came about from accumulated savings from salary and it was to be 100% invested into the Property Fund and as I've mentioned above, Mr and Mrs M didn't wish to make any regular withdrawals.

The advice

ReAssure has given us a copy of Portfolio Bond Funds Key Features document which I appreciate is dated 2008 but is the nearest available document to the time of the sale. It includes a 'risk meter for all funds' from high risk down to minimal risk.

The L&G Property Fund is classified within the 'moderate risk' level which says;

“What is the moderate risk category?

If you've got a moderate attitude to risk, it's likely that you already have an interest in investing and are comfortable with the ups and downs of the stock market.

Other people with this attitude to risk often share a number of common traits.

- You're happy to put a significant proportion of your money in shares or other unpredictable investment types
- You accept that there's a real risk of losing your money, but this is balanced with the prospect of greater growth
- You're likely not to mind investing outside the UK
- You might have an interest in and knowledge of the stock market
- You understand the general risks involved with investing

Moderate risk funds take risks to provide greater returns. They tend to contain higher risk fixed interest investments, shares and commercial property. These may be outside the UK."

The aim of the Fund is recorded as being;

"To maximise the return from a portfolio of freehold and leasehold interests in UK commercial and industrial property. This includes industrial warehouse buildings, shopping units, retail warehouses and office blocks. The fund will also invest in indirect property vehicles to diversify the portfolio and manage liquidity levels effectively."

The fund is given a fund specific risk definition number '14' but those were defined on the reverse of the document which hasn't been provided. However L&G's current Property Fund shows the fund specific risk 'headlines' as being that property can be difficult to buy and sell – cash builds up waiting to be invested – or property having to be sold for less than expected as well as delayed payment so the fund may be able to delay paying out.

My opinion is this is a reasonable long held understanding of property funds in that those risks are usually implicit in most property funds so I don't think there would have been a significant difference in the fund specific risks between the time Mr and Mrs M invested to the current day.

There's nothing to show me Mr and Mrs M held any other investments or had any other investment experience. And ReAssure hasn't told us of any further financial dealings with or investments it recommended to Mr and Mrs M so as far as ReAssure's relationship with Mr and Mrs M went this was a one off and stand-alone investment.

While Mr and Mrs M may have had joint assets of £400,000 I don't know what these were – but because of their age and Mr M being retired I don't think it's unreasonable to assume this amount included the value of Mr and Mrs M's home. And I note the application says the sum came about as a result of accumulated savings from salary. So, on the face of it Mr and Mrs M's financial circumstances looked stable and the sum of £25,000 invested wasn't a large proportion of Mr and Mrs M assets and it looked affordable.

However, the sum was solely invested into one fund – the Property Fund – which was classified as a moderate risk investment. I'm not convinced Mr and Mrs M matched ReAssure's definition of the traits of being a moderate risk investor as defined above or were willing to take such a level of risk. While I think it likely they were willing to take some risk for the potential of capital growth I don't think they were willing to take the level of risk implicit in the Property Fund.

And equally, being invested in only one fund, and only one asset class which could be illiquid, I think unnecessarily increased the level of risk that Mr and Mrs M were exposed to. And for the returns they have said they were looking for; I don't think there was any need to take such a level of risk. Mr and Mrs M could have potentially achieved the capital growth they were looking for from exposure to a lower level of risk and more diversified investments than the Property Fund offered.

So, for these reasons, and in the particular circumstances of this complaint, I think Mr and Mrs M's complaint should succeed as the advice was unsuitable for them. To put the matter right, I need to put Mr and Mrs M, as far as possible, in the financial position they'd be in if they had been suitably advised.

My role isn't to retrospectively say what the suitable advice would have been. There were many ways Mr and Mrs M could have invested and it's not possible for me to now say precisely what they 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 and Mrs M would have been able to achieve with suitable advice.

Putting things right

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

I take the view that Mr and Mrs M would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs M's circumstances and objectives when they invested.

What must ReAssure do?

To compensate Mr and Mrs M fairly, ReAssure must:

- Compare the performance of Mr and Mrs M's investment with that of the benchmark 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.
- ReAssure 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
L&G Property Fund	No longer exists	FTSE UK Private Investors Income Total Return Index	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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs M wanted Capital growth and were willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr and Mrs M's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

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

ReAssure Limited should provide details of its calculation to Mr and Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr M to accept or reject my decision before 4 November 2022.

Catherine Langley
Ombudsman