DRN-3724481

The complaint

Mr H complains The Royal London Mutual Insurance Society Limited ("Royal London") gave him inappropriate advice to invest in a UK growth fund in 1998 and 1999.

Mr H's complaint is made by his attorney. Also he is represented by a claims management company. But I'll refer below to Mr H when referring to things said or done by Mr H or on his behalf by his attorney or his representative.

What happened

I have the adviser's notes from 1999 ("the notes") and a fund brochure but no advice letter and nothing from 1998. I've assumed Mr H's situation in 1998 was similar to 1999.

In 1998 Royal London advised Mr H to invest £6,000 in a UK growth fund ("the fund"). Figures a year later suggest this might have left Mr H with around £12,000 in cash savings. In 1999 Royal London recommended he pay £250 per month into the fund. As a result he paid in another £5000 in total – leaving him roughly £7000 in cash.

Mr H has said his cash came at least in part from his share of the sale of a property he'd owned with his ex-wife.

The adviser's notes say Mr H was in his mid-forties, living with his parents and he's said he'd been there for some years since a divorce. The notes suggest he was paying rent or board and had a variety of other ordinary living expenses. His spare income was recorded as less than £80 per month after his expenses, which included £300 per month for leisure. This was all based on earnings of over £16,000 per year. In terms security in retirement, Mr H had good pension provision and had been with the same employer for more than 20 years.

The notes say Mr H had one dependent and also say the dependent lived elsewhere and (contradictorily) was not dependent on Mr H. Mr H's recorded objectives included ensuring his dependent was provided for, saving for the future and building up his savings. The notes say the purpose of the 1999 advice was to build up savings in a flexible, tax-efficient way.

The notes say the adviser thought Mr H's emergency funds adequate for his circumstances. According to the notes, Mr H was aware he should keep his money invested for the *"medium to long term".* The adviser explained he may benefit from 'pound cost averaging'. As a result he decided in 1999 to invest his money on a monthly basis rather than as one lump sum.

Mr H was recorded as having PEPs or unit trusts worth almost £10,000 in 1999. It's doubtful his 1998 investment had grown to that figure, so this figure is incorrect unless he also had other investments. Royal London hasn't given details of any other investments Mr H might have had. Mr H has said he didn't have anything else, except for his cash. I've proceeded here on the basis that Mr H didn't hold or have experience of other risk investments. If he did have something else, it doesn't help me as I don't know what it was.

As well as the fund, the fund brochure offered an income fund and a specialist equity fund. Mr H was assessed in 1999 as agreeing to a *"balanced"* attitude to risk. There's no other description of this there or in what I have, nor details of the other options. But I expect there was some further explanation of this available or given at the time. The term ‘balanced’ is usually used to refer to what is also often referred to as ‘medium risk’.

We’ve no factsheet from the time to show exactly how the fund was invested. But a brochure dated between the sales says it aimed for *“above-average”* capital growth and invested in a diversified range of UK shares. I’ve assumed it invested substantially or mainly in larger UK companies, which make up most of the UK market. It wasn’t a specialist fund, so its holdings aren’t likely to have been concentrated in any specific narrow sector or in smaller companies but diversified instead across a range of sectors. Its growth focus likely made it a bit riskier than income funds that emphasise established companies and steady dividend streams.

Mr H cashed-in the fund in 2006. He says this was to meet expenses arising from a house move. He says this move hadn’t been planned at the time of the advice.

Mr H got back less than he invested. The loss on the 1998 investment was just over 15%. The loss on the 1999 investment was greater but more difficult to calculate as it wasn’t funded by a lump sum. Mr H has said he accepted the losses as he’d been told the fund was an investment that could lose money.

In his complaint, Mr H has said he was advised to take too much risk considering his lack of investment experience. He has also said that health issues he was suffering following and related to a relationship breakup some years earlier meant he wasn’t in the right state of mind to make important financial decisions at the time.

I issued a provisional decision on 17 August 2022 summarising the circumstances as I have above. I explained why I was planning to uphold Mr H’s complaint. I said I’d consider anything more Mr H or Royal London wished to send me by 14 September. Mr H responded saying he didn’t have anything more to add. Royal London hasn’t sent anything new for me to consider.

As the complaint wasn’t resolved informally, it has been passed to me for a final 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.

Having done so, and in the absence of any persuasive new points from Mr H or Royal London, I’ve arrived at the same conclusions as I did in my provision decision. So I’ve decided to uphold Mr H’s complaint. I’ll explain why.

I don’t know exactly how the meetings came about but it seems it was due to Mr H receiving funds from a property sale and that Mr H wouldn’t have expected to get funds like that again – he didn’t have another property or any other assets he could sell to raise more funds.

Likewise, his work income was average but his net disposable income of less than £100 a month was limited. So Mr H had some disposable income to make up investment losses, but it was limited - and it would take him considerable time to build up more funds of the kind he was investing.

The £11,000 Mr H invested was substantial in that context. Also, it left him with no other assets, apart from his pension – which wasn’t due for a great many years - and £7000 cash.

It isn’t clear if or the extent to which Mr H’s dependent relied on him financially at the time –

and if or the extent to which this contributed to Mr H's limited disposable income position. But his recorded objectives show he wished to make good his responsibilities towards a dependent. In my view those responsibilities were likely to call on more rather than less of Mr H's income as time went on – at least for the medium term.

A change in Mr H's living arrangements in future in the short or medium term was also likely to increase rather than decrease his ongoing costs. I accept what happened later in this regard was more than five years later and neither the particular change nor its timing was anticipated at the time of the advice. Even so, whether or not in 1998 or 1999 a change in Mr H's living arrangements was the most likely possibility, in my view it was still a realistic possibility in Mr H's circumstances – and if it did happen it was unlikely to enhance his ability to build up savings and capital.

So the sums Mr H invested were substantial in his circumstances. He lacked assets and had limited disposable income. Significant losses on the funds he was investing would've had a significant impact on his finances overall.

The effect of the advice was that all the invested funds were invested into shares. In my view that was a risky approach in Mr H's circumstances. I say this taking into account all I've said above about the particular characteristics of the fund and the shares in which it invested.

I appreciate that amongst funds investing entirely in shares, there were riskier funds available. But there were a range of risk bearing alternatives that didn't involve as much risk as the fund Mr H was advised to invest in. For example, mixed funds with some shares but also other assets like property or lower risk bonds. The income fund here would've carried a little less investment risk, for instance, although it was still very highly focussed on equities.

That said, if Mr H wished to take what in his circumstances was a fairly aggressive approach to the investment of the major part of his available assets, he was of course entitled to do so. But advice to do so would not be suitable unless Mr H understood the risk - not just that loss could arise but also the level of risk his investment in the fund presented.

I've considered whether more likely than not Mr H appreciated the level of risk he was taking by investing in the fund. Before I do so, I'd briefly mention that I've considered what he has said about having insufficient ability at the time to make these sorts of financial decisions, but what I have from the time in my view lends no support to this idea and I'm not persuaded that Royal London was wrong to give Mr H investment advice in 1998 or 1999.

I don't know exactly what was said in 1999 about risk or what Mr H understood by it, but it is clear Mr H did understand the risk he was agreeing to meant he could lose money. He has explained this is why he didn't think the advice was faulty when he cashed in the fund at a loss. Also it was clear the money would be invested in the stock market. The fund brochure says the stock market can fall as well as rise. I think all this also supports that Mr H knew he could make a loss. But given his lack of experience of stock market investment, I don't think this shows he necessarily understood the degree of risk the fund carried – or understood how that risk was higher than some other available risk-based investment options.

Given Mr H's inexperience, I don't think the word *"balanced"* will have conveyed much on its own about the degree of risk involved in a fund invested entirely in shares. I don't think that the use of that word means Mr H will most likely have understood how risky the fund was. There will likely have been some additional explanation around the term, but I don't know the detail of that. The notes that we have from the time don't really throw any light on that. His objective of building up savings, for example, doesn't say anything about his wish to take investment risk. It is an objective that could've been achieved in various ways that involved some risk without the level of risk of a fund investing entirely in shares.

The fund's aim was to achieve above average growth. Above average growth tends to imply above average risk. There's nothing in what is recorded about Mr H's risk attitude that suggests he was given to understand he was taking above average risk. Of course *"above average"* doesn't mean much without reference to what is being averaged. The brochure didn't say what average the fund was trying to beat. Perhaps 'above average' meant no more than that the fund would try to do well. But if the fund did aim to take more risk to beat average returns from funds with similar investments, in my view this would add weight to the case that the fund was unsuitable rather than suitable for Mr H in his circumstances.

I note that the loss Mr H made on the fund didn't at that time make him think the advice he'd received was faulty. I've thought about this carefully. In my view a loss of the kind Mr H made was less likely but still possible with a suitable, less risky fund. So in my view Mr H's reaction or lack of reaction to the loss doesn't mean he properly understood the degree of risk involved with the fund at the start or that it was suitable for him. On balance it isn't enough to make me think that most likely the degree of risk was properly conveyed to and understood by Mr H at the start or that this level of risk was suitable for him.

I also recognise that notes were made in 1999 that Mr H *"realised after our discussion that he may benefit from pound cost averaging and wants to put his money in on a monthly basis"*. In my view this means there was a discussion of how contributions made at times when values are lower will buy more units – which means the fact the value of the fund can fall and rise was discussed. It also shows that Mr H chose to take slightly less risk at that time in 1999, compared to 1998, by spreading out what he intended to invest. But I think it is going too far to conclude that this evidence shows Mr H understood the degree of risk he was taking as a result of investing in a fund investing entirely in shares – or understood how such a fund was risker than some alternative available risk-based investment options. For one thing, nothing in the note points directly to that conclusion.

I appreciate that some paperwork used at the sale is no longer available. But what we do have doesn't, overall, help me think the fund was a suitable fund to recommend to Mr H in his circumstance or that Mr H understood the degree of risk he was taking by accepting that advice. In saying this I bear in mind that the fundamental details I've noted above of Mr H's situation at the time, wouldn't be altered by more paperwork. On balance I don't think the fund was suitable for Mr H or that Mr H did understand the degree of risk it involved.

Not much consideration seems to have been given in 1999 to any future plans Mr H might have had regarding his living arrangements. Maybe he firmly intended for things to remain as they were, but if that were so I think it would've been worth recording. I don't overlook that if his living arrangements changed, Mr H might also have needed access to at least some capital. But I think the cash he had available in case of unforeseen needs was a reasonable amount – given, for example, his lack of specific spending plans. Also the evidence supports that Mr H was made aware the invested funds should be invested for longer than the short term. So what I find unsuitable here isn't that Mr H was advised to invest in a longer-term risk-based investment, but the level of risk the selected fund presented for him in his circumstances.

Based on what I've seen, and taking into account all the arguments that have been presented, I don't think in Mr H's circumstance the fund was a suitable recommendation for the investments he made and I'm not persuaded he understood the degree of risk he was taking by accepting that advice. So I uphold the complaint.

Putting things right – fair compensation

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

I think Mr H 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 H's circumstances and objectives when he invested.

What should Royal London do?

To compensate Mr H fairly, The Royal London Mutual Insurance Society Limited must:

- Compare the performance of Mr H'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.

- The Royal London Mutual Insurance Society Limited 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 growth fund	No longer in force	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.

Any additional sum that Mr H paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr H wanted capital growth and was prepared to take some risk with 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 has a significantly lower amount invested in shares than the fund recommended to Mr H and has exposure to other less risky asset types.

- I'm satisfied the index is a suitable comparator, given Mr H's circumstances and the evidence we have of his willingness to take risk, including his reaction to the loss in 2006.

I'd mention that until the calculation is carried out it is not possible to say whether this lower level of risk would’ve produced a better or worse result for Mr H. If the result is no better, then no redress would be due.

My final decision

For the reasons I’ve given, I uphold this complaint.

The Royal London Mutual Insurance Society Limited should put things right by carrying out the calculation set out above and paying Mr H any redress it shows is due.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 28 October 2022.

Richard Sheridan
Ombudsman