DRN-3730244

Financial Ombudsman Service

The complaint

Mrs A complained that ReAssure Limited (when it was trading as Legal & General 'L&G') gave her and her late husband unsuitable investment advice.

This complaint is brought on behalf of Mrs A by a claims management company but to keep things simpler, I'll mainly just refer to Mrs A as the complainant.

What happened

Mr and Mrs A sought investment advice from ReAssure in 2007 after they were prompted to speak to a financial adviser.

Acting on ReAssure's recommendation, in February 2008, Mrs A and her late husband invested a lump sum of £30,000 in a discretionary managed portfolio bond.

It was agreed Mr and Mrs A had a cautious attitude to risk and that they were looking to invest as they wanted their funds to have greater potential for growth compared to conventional deposit-based savings accounts.

They invested in L&G Life Gartmore MM Cautious Fund, L&G Property Fund and Invesco Perpetual Corporate Bond Fund until August 2011 when Mrs A requested to switch to the L&G Life MM Income Fund. As far as I am aware, the whole of the investment went into this fund.

She surrendered the investment in March 2012 and received £30,539.

Mrs A felt that, as inexperienced investors, she and her late husband were advised to take too much risk when investing.

When Mrs A complained to ReAssure, it said her complaint was out of time and it was too late to complain about what happened in 2007. An ombudsman decided that we could investigate Mrs A's complaint. So one of our investigators looked into what happened.

Our investigator didn't recommend upholding the complaint. She felt overall that ReAssure's investment recommendation had been reasonable as it broadly reflected Mrs A's risk attitude and met the recorded investment objective of capital growth.

Our investigator was satisfied that Mrs A had ample emergency cash savings to fall back on if needed. So she didn't feel she had seen enough to uphold the complaint.

Mrs A disagreed. She mainly said that as a first time investor with a large amount to invest, the risk level recommended was too high. She said she didn't express any interest in investing into commercial property – that was the suggestion of the adviser who explained it to be low in risk. Mrs A was aware some risk was necessary in order to achieve the potential for greater returns but said the Property Fund in particular was not within the realms of a cautious investor.

Mrs A asked for an ombudsman to review the complaint.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"Having thought about everything I've seen and been told, I've reached different conclusions to our investigator. I'll explain why.

When thinking about whether ReAssure gave Mr and Mrs A suitable investment advice, keeping in mind that all investment carries some degree of financial risk, I've thought about the following key questions:

- were Mr and Mrs A in a strong enough financial position to be able to invest? If so,
- thinking in particular about the amount invested and the risk this involved, was the investment advice ReAssure provided suitable for Mr and Mrs A?

With this approach in mind, I've thought about Mr and Mrs A's financial situation in 2007 when ReAssure provided investment advice and made its recommendations to Mr and Mrs A.

I don't know the full extent of discussions about their financial situation. But looking at ReAssure's Fact Find document completed during meetings in November and December 2007, when Mr and Mrs A sought advice from ReAssure they had around £42,000 in a deposit account, made up of cash savings and an inheritance. Mr and Mrs A were self-employed and even though Mr A was close to retirement age, they told the advisor they both wanted to keep working as long as possible in their business which provided a net joint monthly income of £1,400. They didn't pay any mortgage or rent. Their general food, household bills and other living costs brought their monthly expenditure to around £900.

So it looked like Mr and Mrs A would've had disposable income of £500 each month.

There's nothing to suggest they expected to have any large expenses or that they had any big spending plans for their money. They were happy with their monthly income and expenditure levels.

So I think it's fair to say that Mr and Mrs A looked to be in a position where they could afford to invest some of their savings with the aim of capital growth.

The advisor had recommended Mr and Mrs A should keep an emergency fund of £2,800. In the event, Mr and Mrs A chose to keep cash savings of £12,000 on deposit.

ReAssure recommended Mr and Mrs A to invest the remaining £30,000 they had available.

I don't think the amount they were recommended to invest was too much for them in their particular circumstances. And so I've gone on to think carefully about whether the portfolio ReAssure recommended was suitable for Mr and Mrs A's needs -which seems to me to be the central part of Mrs A's complaint.

Mr and Mrs A told ReAssure they were familiar with National Savings and Stocks and Shares (although it doesn't appear they had any real experience of investing in stocks and shares). So I think it's fair to say their financial experience was limited. ReAssure needed to take this into account and ensure Mr and Mrs A were given the advice they needed to understand their investment options before accepting the recommendation.

ReAssure has produced paperwork including a Fact Find document showing that Mr and Mrs A were asked a series of detailed questions to find out what they thought about their financial situation and what they wanted their money to achieve for them.

Mr and Mrs A both signed the Fact Find document on 4 December 2007 so I think it is reasonable to rely on the information to reflect what was discussed at the time.

The relevant part of the Fact Find describes various levels of risk and prompts the adviser to take some time to consider things fully with clients. And it does look to me as if risk was considered in some detail.

Mr and Mrs A said they were disappointed with the returns on their deposit based savings and wanted to have some additional growth potential over and above what their money could earn in a deposit account. It appears that there was some discussion about different types of investment including stocks and shares. National Savings were discussed and discounted by Mr and Mrs A.

Mr and Mrs A accepted ReAssure's recommendation and elected to invest £15,000 each in total made up of £9,900 in L&G Property Fund, £10,200 in L&G Gartmore MM Cautious Fund and £9,000 in Invesco Perpetual Corporate Bond Fund.

Some of the 2007 paperwork is no longer available – that's unsurprising after so long. But information from 2008 about these funds shows the Property fund was categorised as moderate – the other two funds were cautious (which fits with the other information I've seen).

It's recorded that the overall level of risk Mr and Mrs A wanted to take with their money was 'cautious'.

ReAssure categorised a cautious risk as : *"You are willing to invest in non-cash assets and are comfortable that there may be some exposure to the stock markets."*

Like our investigator, based on this description, I think it was fair for ReAssure to recommend Mr and Mrs A to invest in funds rated cautious.

But I have concerns about the suitability of the recommendation made to invest in the L&G Property Fund which was rated as having a moderate risk.

On a scale that rated risk levels (as 'minimal'-'cautious'–'moderate'-'high'), the adviser assessed Mr and Mrs A's attitude to risk as 'cautious' – which was just one level above minimal, which was only suitable for people who wanted to invest in cash deposits.

That seems reasonable to me in terms of reflecting Mr and Mrs A's circumstances and likely attitude to risk.

I say this because I think it is apparent from the Fact Find notes that Mr and Mrs A were wary of stocks and shares – they mentioned to the adviser they'd heard "many horror stories" about this type of investment. This suggests to me that they were quite cautious with their money and not likely to want to take on very much extra risk even in the pursuit of a better return on their money.

I'm mindful also that Mr and Mrs A wanted to keep back from their investment pot around four times as much money as the adviser recommended would be prudent to allow for unexpected costs or emergency spending. Although Mr and Mrs A had told the adviser that they weren't expecting to have any large costs or big items of expenditure they still kept back an amount equivalent to around nine months' joint income. The fact Mr and Mrs A were anxious to ensure they had a lot more cash to hand than the adviser thought their circumstances required to my mind reinforces the other indications that they were quite anxious investors unwilling to take much of a chance with their money.

So, to my mind, it's hard to understand how ReAssure could justify recommending Mr and Mrs A to invest around a third of the money they had set aside for investment in a fund with a moderate risk rating – keeping in mind that, relatively speaking, they didn't have a substantial investment pot nor were Mr and Mrs A practised investors looking to develop a portfolio. I think all the signs were that they simply wanted to grow some of their money without taking on any serious level of risk.

The Fact Find records that having also discussed other areas available for investment, including commercial property and fixed interest securities, Mr and Mrs A were happy to accept these within their portfolio as they liked the idea of having a balanced and diversified mix of investments. ReAssure provided a range of documents to Mr and Mrs A which showed information about the various funds available to invest in which covered the spectrum of risk. Mr and Mrs A were also presented with illustrations showing how their money could grow – although it was stated that the figures were examples only and not guaranteed. It explicitly warned: "You could get back more or less than this."

But I can't see anywhere that ReAssure made it clear to Mr and Mrs A that the net result of accepting its recommendation to invest in the Property Fund would mean that around a quarter of their money in total would be at a higher risk than the level at which the adviser had identified they were comfortable. I can't see that 'moderate' risk was explained to them in terms tailored towards helping Mr and Mrs A to understand relative risk. For instance, explaining to them that investing in property was likely to be at least as risky as investing in some stocks and shares – which the adviser already knew posed risks that Mr and Mrs A weren't keen on.

Given that investing in commercial property was more risky than keeping their money in 'cautious' rated funds, which more closely reflected Mr and Mrs A's attitude to risk, I would expect to see in the point of sale paperwork more evidence that this was fully explained to Mr and Mrs A – and that they had properly understood the risk they were taking with their money in the Property Fund.

I don't think it's likely that happened because Mrs A told us that she thought her investments were 'low' risk. Mrs A has said the idea of investing in commercial property came from ReAssure and it wasn't something she or her husband had previously considered. So I don't think she would've had any particular reason to choose this investment other than at the recommendation of the adviser – and I'm not persuaded by what I've seen so far that it's likely Mr and Mrs A would've chosen the Property Fund if the adviser had properly made them aware of the risk they were taking with their money.

I've taken into account that ReAssure said that although the Property Fund was classed as 'moderate' risk, in each risk category there was a range of risk and, in reality, the Property fund wasn't significantly riskier than the L&G Gartmore MM Cautious fund. And it made up only a third of Mr and Mrs A's portfolio so the overall risk was mitigated and still mostly cautious.

But I still think it's fair to say that Mr and Mrs A gave clear indications that they were nervous about taking risk – and investing in property was always going to be riskier than was likely to be suitable when they had demonstrated a cautious attitude to risk.

It's noted in the Fact Find that '.. *After our discussions about the benefits of a balanced and diversified portfolio, you were prepared to accept a limited exposure to stocks and shares. We also discussed other areas available including commercial property and fixed interest securities which you were happy to accept within your portfolio as you liked the idea of having a balanced and diversified portfolio.'*

I appreciate that the higher risk fund potentially gave Mr and Mrs A access to a higher return, in addition to spreading their investment risk. But I don't feel that ReAssure has shown me enough overall to allow me to say it has sufficiently justified why it was suitable to advise Mr and Mrs A to invest in a fund with a risk rating above 'cautious' – when it had established they had a cautious approach to risk and all the indications were that this accurately reflected the limit of their risk attitude.

Based on all the information I've seen and been told, I think it's more likely that Mr and Mrs A would've chosen not to invest in the moderate risk Property Fund had it been adequately explained to them that even if the potential returns were correspondingly higher, investment in property wasn't low risk.

So, I am planning on upholding this complaint in part – to be clear I've only found that the advice to invest £9,900 into the 'Legal & General Property Fund' was unsuitable.

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

I think Mr and Mrs A would have invested differently. It is not possible to say *precisely* what they would have done, but I think it's likely that the funds invested in the property fund would most likely have gone into the other two cautious funds – likely on a broadly equal split basis – so 50% in L&G Gartmore MM Cautious Fund and 50% in Invesco Perpetual Corporate Bond Fund. Or otherwise, into other investments that reflected their cautious attitude to risk.

I set out in my provisional decision the way I expected ReAssure to put things right.

What the parties said in response to my provisional decision

I have heard nothing further from Mrs A.

ReAssure told me it has nothing further to add and it will await my final decision.

The deadline for responses has now passed so I think it's reasonable for me to proceed with my review of this complaint.

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.

We’ve set out our approach to dealing with complaints on our website and I’ve kept this in mind while deciding this complaint.

I’d like to thank both parties for all the information that has been provided about this matter and ReAssure for responding to my provisional decision.

Given that I’ve not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

To compensate Mrs A fairly, ReAssure must:

- Compare the performance of Mrs A’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.

- ReAssure 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
Legal & General Property Fund’	No longer in force	For half the investment into this: L&G Gartmore MM Cautious Fund and for the other half, in Invesco Perpetual Corporate Bond Fund.	Date of investment	Date L&G Property Fund switched or 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 withdrawal from the Legal & General Property Fund should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I’ll accept if ReAssure totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs and Mr A wanted Capital growth with a small risk to their capital.

- The performance of the cautious funds they also invested in at the same time would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- I consider that Mr and Mrs A's risk profile was cautious, in the sense that they were prepared to take only a small level of risk to attain their investment objectives. So, the redress I have proposed would reasonably put Mrs A into that position. It does not mean that Mrs A and Mr A would have invested all their money necessarily in the other cautious funds they invested in. But, I consider this a reasonable compromise that broadly reflects the sort of return Mrs and Mr A could have obtained from investments suited to their objective and risk attitude."

My final decision

I uphold this complaint and direct ReAssure Limited to take the steps I've set out above to put things right for Mrs A.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 28 October 2022.

Susan Webb
Ombudsman