

## The complaint

Mr and Mrs W complained that Legal & General (Portfolio Management Services) Ltd (L&G) gave them unsuitable investment advice which resulted in them being exposed to more investment risk than they were comfortable taking.

## What happened

Mr and Mrs W sought investment advice from L&G in 2001. They were both in their thirties at the time and employed, bringing home a joint net monthly income of £2,275. They had two financial dependents and around £875 net monthly disposable income. Mr and Mrs W owned their own home subject to a mortgage. They had £2,350 in deposit-based savings and wanted to grow their money with their children's future in mind, thinking ahead to when they grew up and wanted to go to university or buy a car. Mr and Mrs W were prepared to accept "medium" investment risk.

L&G recommended them to invest as follows:

- £1,500 lump sum in Mr W's ISA – UK Recovery fund (later renamed UK Active Opportunities Trust)
- £850 lump sum in Mrs W's ISA and also £45 per month into a regular savings plan – UK Recovery fund (later renamed UK Active Opportunities Trust)

In 2021, Mr and Mrs W complained to L&G after seeing poor returns on their investment which they felt didn't match returns on other medium risk investments. During the course of correspondence they asked to see the point of sale paperwork, and this led to Mr and Mrs W complaining that they were invested in a fund that was too risky for them and didn't reflect their 'medium' attitude to risk as recorded in the fact find at the time of the sale.

L&G explained that the Active Opportunities fund they invested in had been merged into a different fund sometime between 2011 and 2014, but that the risk profile of both funds was essentially the same although risk was now described differently.

Mr and Mrs W brought their complaint to this service where it was considered by one of our investigators.

Our investigator recommended that the complaint should be upheld. He felt L&G's investment advice had been unsuitable because their portfolio meant they had all of their money invested in risk-based assets which effectively put them at higher risk of investment loss than was suitable for a medium risk investor.

L&G disputed the investigator's view and argued that this service didn't have jurisdiction to consider the complaint. The case came to me.

I issued a decision explaining why I was satisfied that I could consider the complaint.

After receiving my jurisdiction decision, L&G provided us with additional paperwork including a key features document, application forms and other post sale communications.

L&G also said:

- L&G only offered two funds lower in risk, but neither were suitable as Mr and Mrs W wanted a 'medium risk' fund.
- The L&G Cash Trust was only available as a maxi ISA, which they couldn't hold due to ISA rules. A medium risk fund with L&G was the only option available to them.
- Mr and Mrs W also had a joint asset worth £35,000 although it isn't clear from the adviser's handwriting what this was.
- Mr and Mrs W signed Key Features documents and the application form declaration confirming they understood the risks that the return wasn't guaranteed and they may get back more or less than their investment.
- The advice was suitable.
- Mr and Mrs W complained about the advice in 2008, which L&G didn't uphold. The review of the point-of-sale documents now completed supports the decision not to uphold the complaint in 2008.
- Despite Mr and Mrs W's complaint not being upheld they have remained invested all these years.
- Mr and Mrs W didn't complain about the fund following the merger in 2014 into the L&G UK Special Situations Trust.
- Mr and Mrs W's complaint was mainly about the performance of the fund.

This led to our investigator issuing a second view. He still thought it was unfair for L&G to have recommended putting Mr and Mrs W's entire investable amount in a fund that carried 100% risk-based assets and wasn't diversified enough. He didn't consider that information showing Mr and Mrs W had £35,000 in assets made a difference to his view as it looked like this was a reference to the value of their household goods and other possessions.

So our investigator recommended that the complaint should still be upheld.

L&G didn't agree and asked for an Ombudsman to review the complaint. It mainly said:

- although 100% of Mr and Mrs W's funds may have been invested, the amount invested was low. The level of their disposable income at £875 per month meant that within three months they'd have more saved on deposit than they invested. Within six months, they'd have had a balanced portfolio of investments and cash deposits at a roughly equal level.
- It was struggling to find another L&G fund that could have been recommended alongside the L&G UK Recovery Trust to diversify the risk, that would have offered the same risk level and meet their investment objective of growth only. The remainder of L&G's fund range at the time either offered a higher risk environment which would have been inappropriate or offered income or a blend of income and growth, which wasn't what they wanted.
- When Mr and Mrs W were informed after their complaint in 2008 that L&G didn't believe their investment was mis-sold, they failed to bring that complaint to this service at the time or change their investment. Even if they still wanted to invest for their long term goals, it's reasonable to suggest if they were unhappy with their investment, they'd have moved their money into a more suitable environment to meet their profile or sought advice about this. It would therefore be unfair to consider L&G liable for any compensation after the date of their 2008 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.

'Dealing first with the question of jurisdiction, L&G has acknowledged that it gave permission for this service to look at the complaint raised by Mr and Mrs W and also that, under DISP 2.8.2A, it can't withdraw that permission. It has however said that I should also take into account that Mr and Mrs W brought a complaint about the sale in 2001 which it refuted in 2008. L&G said it would have provided the right for Mr and Mrs W to refer their complaint to this service at the time, which they failed to do. L&G says this means I should '*...apply DISP 2.8.2R in the sense that this element of the complaint has been brought to your service outside the timescales described in the rule, and you wouldn't be able to look at the original advice.*'

I've thought carefully about what L&G says. Unless a business consents or there are exceptional circumstances, we can't look at a complaint referred to us more than six months after the date on which the business sent the complainant its final response on the matter. But it isn't disputed by L&G that it has already consented to us looking into the complaint Mr and Mrs W have brought to us about what happened in 2001 when it sold them this investment. So it remains my view that I can consider this complaint.

And after looking at the complaint afresh, I'm upholding the complaint. I'll explain my reasons.

Mr and Mrs W's priorities were to invest a lump sum and save regularly in order to be able to provide their children with financial help in the future. They didn't have any investment experience. Their total savings amounted to some £2,350 held in a building society account. They had a £90,000 mortgage on their home valued at £95,000 and an outstanding £10,000 car loan.

There's mention in the fact find of Mr and Mrs W having £875 net monthly disposable income, but there's no detailed information about Mr and Mrs W's monthly expenditure to show me how this figure was arrived at.

It's not clear what discussion took place around their attitude to risk, although I can see that the advisor ticked boxes on the fact find that show they were recorded as having a 'medium' attitude to risk.

But I can't see that having a sum set aside to cover emergency spending needs or large unplanned expenses was discussed or recommended. Mr and Mrs W had two pre-school age children, so it seems to me they could reasonably anticipate having to face the likelihood of increasing outgoings for many years to come. They had relatively modest annual earnings and the fact find records that they had no particular expectation that their incomes would do more than keep pace with inflation.

I think it would have been important for Mr and Mrs W to have some readily accessible savings put aside before they committed to a longer-term lump sum investment, especially bearing in mind the likely increasing financial demands of raising a young family. Their total savings amounted to approximately a single month's worth of their joint earnings. Without having some money set aside in a savings account which they could access without notice and without penalty I don't find Mr and Mrs W had the capacity to risk loss on their investments.

I don't consider that having £35,000 in unspecified assets is a good enough reason to think that Mr and Mrs W might've had some additional capacity for loss which wasn't accounted for. And although L&G states that it cannot read the handwriting on the fact

find where the £35,000 assets are noted, as the investigator stated, it appears that these assets were recorded as being 'chattels'. On balance, my view is that assets held in this form are unlikely to have been quickly and easily realisable in the event that Mr and Mrs W had needed some funds in an emergency.

Whilst the ISAs could have been surrendered at any time, their value wasn't guaranteed, especially in the short to medium term. They were intended to be held over the medium to long term and whilst this matched Mr and Mrs W's investment objective it risked them getting back less than they invested if they needed to surrender their ISAs early – which they might have needed to do if they had a need for cash.

Mr and Mrs W were already paying into a Legal & General Mini Stocks & Shares ISA for their mortgage requirements. But I think it's fair to say their investment experience was limited. So I think it was likely to have been more difficult for them to understand the risk they were taking by having all their savings tied up in investments that were effectively designed to be locked away for the long term.

In coming to my provisional decision, I've taken into account that if Mr and Mrs W had disposable income of £875 per month, within three months they could have saved enough to more than match their existing savings and start building a balanced portfolio of investments and cash deposits at a roughly equal level. But I think Mr and Mrs W should have been advised to build up an emergency savings fund in a bank deposit account *before* they committed any of their money to longer term investment.

I've also thought carefully about why L&G feels it is unfair for it to be held liable for any compensation after the date of Mr and Mrs W's 2008 complaint. But I don't know exactly what L&G told Mr and Mrs W previously or what they understood about their options at the time so this doesn't affect my overall view. I have explained why I consider this complaint to be in jurisdiction. In line with the ombudsman approach to putting things right where a complaint is upheld, I consider it is fair and reasonable for L&G to pay compensation to reflect the financial consequences of its unsuitable investment recommendation in 2001.

So L&G needs to take steps to put things right.'

### **What the parties said in response to my provisional decision**

Mr and Mrs W are happy with what I've said in my provisional decision and L&G has told me it has nothing further to add. 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.

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**

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs W 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 W 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 their needs and circumstances when they invested.

To compensate Mr and Mrs W fairly, L&G must:

- Compare the performance of Mr and Mrs W '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.
- L&G should also pay interest as set out below.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
UK Special Situations Trust (which replaced the Legal & General UK Recovery fund, then the UK Active Opportunities Trust Mr and Mrs W originally invested in)	Not known	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 (if compensation is not paid within 28 days of the business being notified of acceptance)

\*Income tax may be payable on any interest awarded. HM Revenue & Customs requires L&G to take off tax from the interest part of this award. L&G must give Mr and Mrs W a certificate showing how much tax it's taken off if they ask for one.

**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 and Mrs W 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 and Mrs W were assessed as having a medium attitude to investment risk. But, had the adviser discussed their need for having money to cover emergency or unplanned spending, I think it's more likely than not that they would have put their existing savings and the £45 a month investment in a savings account, where they would have had ready access to their money without risking any of their capital – at least until they had built up a sufficient reserve to give them some capacity to absorb investment loss.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs W's circumstances and objectives. It does not mean that they would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.

**My final decision**

I uphold this complaint and Legal & General (Portfolio Management Services) Ltd should pay Mr and Mrs W the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W and Mrs W to accept or reject my decision before 15 February 2023.

Susan Webb  
**Ombudsman**