The complaint

Mr and Mrs A complain that Bradford & Bingley Limited ("B&B") gave them unsuitable investment advice. They say they were advised to invest in a fund which was too risky for them and that they weren't given clear information.

The complaint is brought on their behalf by a claims management company. For ease, I'll refer to everything as if it's been said by Mr and Mrs A.

What happened

In October 1998, Mr and Mrs A sought investment advice from B&B. They had some money in notice savings accounts and investment bonds and £18,000 in an instant access savings account. They said they wanted to invest £9,000 with the potential for capital growth. B&B advised they invested in a fund which I will refer to as "S". S was a distribution fund, managed by a third party, which invested in equities, fixed interest and property.

Mr and Mrs A didn't have any investment experience and they complain that they shouldn't have been advised to invest half of their available free assets in a fund exposed to equities. They say S was too risky for them and that they weren't given clear information about the true risks involved.

B&B said it had provided clear information about S at the time of the sale and, as Mr and Mrs A didn't question it at the time, they must have been prepared to accept the risks involved.

Our investigator recommended that the complaint should be upheld. He concluded that it was suitable for Mr and Mrs A to invest some of their money for the medium to long term and that the investment of £9,000 wasn't too much, based on their circumstances at the time. But the investigator didn't think S was a suitable investment for Mr and Mrs A. He thought it was unlikely Mr and Mrs A were willing, or could afford, to take the level of risk associated with S. He recommended B&B pay Mr and Mrs A compensation by comparing the performance of S with an appropriate benchmark for Mr and Mrs A's investment profile.

B&B didn't agree. It said, in summary, that:

- The fund fact sheet that the investigator has relied on is dated December 2022 and doesn't represent the fund that Mr and Mrs A invested in in November 1998.
- It drew our attention to its earlier submission in which it explained why it thought Mr and Mrs A had been made aware of, and understood, the risks of S.

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.

Firstly, the investigator set things out in detail, so I'm not going to repeat everything again here. Instead, I'll focus on what I think are the key issues. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Secondly, the events Mr and Mrs A complain about took place around 25 years ago. It's not unreasonable that B&B doesn't have a full record of exactly what happened, and Mr and Mrs A can't be expected to clearly remember what was discussed. In circumstances like this, where the evidence is incomplete, inconclusive, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Having considered everything carefully, I find I have come to the same conclusion as the investigator for the following reasons:

Mr and Mrs A had around £52,000 in existing bonds and savings accounts, including £18,000 in an instant access account. They told B&B that they wanted to invest half of the amount held in that instant access account for the medium to longer term, with the aim of growing the capital sum. The investment represented around 17% of their total available assets and they had a monthly income surplus of £150 to £300. As such, I find that they could afford to invest £9,000 for the medium to longer term.

Mr and Mrs A were assessed as having a "cautious" attitude to risk. I've not seen how that assessment was made but, thinking about their financial circumstances at the time and their very limited investment experience, I don't find cautious to be inappropriate. I say this because they didn't have much investment experience and they didn't have much capacity for loss. But I think they could afford to take a small risk with their money, to achieve a better capital return.

Neither party, nor the managers of S fund, have been able to provide the key features, or fact sheet, for S at the time of the sale. But it's clear from B&B's recommendation in 1998 that the underlying investment in S was split between "*equities, fixed interest and property*". Taking into account B&B's assessment of S's past performance as being "*excellent*", I think it's likely that, to achieve that performance, a not insignificant proportion of S would have been invested in equities. But I can't see that the risk of the equity exposure was clearly explained to Mr and Mrs A. I think, on balance, that S represented more risk than they were willing, or could afford, to take.

B&B say the factsheet provided by the manager of S shouldn't be relied upon because it doesn't reflect the fund that was recommended. The current manager of S fund provided the fact sheet which it says is for the correct fund. But it is dated December 2022. I agree with our investigator - whilst the fact sheet gives an idea of what the underlying investment was likely to look like in 1998, it isn't reasonable to place too much weight on it because of the time that's passed. Like the investigator, in arriving at my decision, I've placed more weight on the paperwork which was completed at the time of the sale.

I don't think the reasons why B&B thought S fund was suitable for Mr and Mrs A's investment objectives were clearly communicated. I say this because B&B highlighted that S was chosen because of the "*availability of partial or fixed regular withdrawals*". But Mr and Mrs A's investment objective was capital growth, and they didn't have a need for income.

Overall, and on balance, I don't think B&B's recommendation to invest in S was suitable for Mr and Mrs A.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs A 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 A 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 A's circumstances and objectives when they invested.

What must B&B do?

To compensate Mr and Mrs A fairly, B&B must:

- Compare the performance of Mr and 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.

- B&B should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
S	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, B&B 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments 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 B&B totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs A wanted Capital growth with a small risk to their 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 their 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 and Mrs A's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs A into that position. It does not mean that Mr and Mrs A would have invested 50% of their 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 and Mrs A could have obtained from investments suited to their 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

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

Bradford & Bingley Limited should provide details of its calculation to Mr and Mrs A in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A and Mr A to accept or reject my decision before 2 October 2023.

Elizabeth Dawes
Ombudsman