DRN-4263705

The complaint

Mr S complains that RLUM Limited advised him to invest at too much risk and that it failed to apply the correct redress methodology when working out what compensation it should pay him.

To put things right, Mr S wants RLUM to compensate him by reference to an index that reflects his balanced risk approach.

Mr S is represented by a claims management company (CMC).

What happened

Mr S made the following investments:

- a single lump sum investment of £500 into the US Growth Trust on 10 March 2001
- £260 per month into the UK and European Growth Funds (split equally between the two funds) from 6 December 2000 to 6 January 2004.

In total he invested £10,380 and he encashed all his units on 13 January 2006 for a total amount of £13,094.21.

Mr S complained to RLUM that the investment advice he received was unsuitable because he'd been wrongly advised to invest in high risk overseas stock which didn't reflect his lack of investment experience and his medium level risk approach.

RLUM said Mr S had been provided with relevant point of sale paperwork but didn't address the complaint in any detail. RLUM didn't say whether or not it agreed that the investment was unsuitable. Instead, it worked out whether Mr S had suffered a financial loss using redress calculations it told Mr S it would apply '*if*' it had upheld his complaint. RLUM concluded that Mr S had made a better return from his investment than he would have made if he had invested in less risky investments. So it said that even if it had found that the investment was mis-sold, it would not have offered any financial compensation as Mr S hadn't suffered a financial loss.

Mr S thought that RLUM should work out redress by using a different index that reflects the sort of return he would've received on his investment had he invested in medium/balanced risk stocks and shares (as opposed to the high risk funds he actually invested in and the lower risk benchmark that RLUM had preferred for comparison purposes).

Our investigator looked in detail at the point of sale paperwork to establish what he thought would've been a suitable level of investment risk for Mr S to have taken in 2000/2001. He felt that RLUM hadn't provided suitable advice to Mr S. His view was that whilst Mr S described himself as a balanced investor (indicating he wanted to take a medium level of risk) his circumstances made this level of risk unsuitable for him.

The investigator thought that Mr S's previous investment experience and circumstances at the time made it difficult to see how any investment risk at all was appropriate for him. His view was that RLUM should have advised Mr S that only a small level of risk was appropriate in his circumstances and that even this level of risk was only being considered because Mr S had indicated willingness to take it.

This led the investigator to conclude that the asset mix reflected by the benchmark that the CMC had put forward on behalf of Mr S wasn't reflective of the type of investment that was suitable for him, given that he was someone who should only have been advised to take a small amount of risk. The investigator felt that the asset mix created from the 50/50 benchmark RLUM used better represented the type of investment suitable for Mr S and so was the correct methodology to calculate any financial loss. The investigator said he wasn't proposing to ask RLUM to pay Mr S compensation as he believed the correctly applied benchmark showed that Mr S hadn't suffered a financial loss from the unsuitable advice he received.

RLUM didn't respond to the investigator's view. The CMC replied on behalf of Mr S to say, in summary, that:

- Mr S remains unable to agree with the investigator's assessment and would like an ombudsman to review the case.
- It is clear from the documentation that pension planning was considered and discussed and Mr S already had other plans for retirement.
- In terms of risk, it is also clear that detailed discussions took place regarding this, and Mr S clearly understood what medium risk meant. Mr S confirmed that he was a balanced risk investor.
- There was no issue with regard to disposable income once Mr S retired given the fact that his mortgage would be cleared, and he would also be in receipt of a state pension.

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.

'I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts and I hope this is helpful.

Although the Financial Ombudsman Service doesn't always have power to investigate complaints about events that happened more than six years ago if a financial business doesn't agree, RLUM has said it consents to us looking at this complaint.

The investigator explained to both parties why he thought the investment advice RLUM provided to Mr S was unsuitable. Neither party expressed disagreement with that finding, and RLUM has since told us it had '…*already conceded on the suitability of the advice during our investigation*' before it went on to consider loss assessment. So, I don't need to say more about the background to this complaint or make any findings about what's already been agreed. It's not in dispute that the funds he was invested in represented a high investment risk.

I am proceeding on the basis that all parties agree that the investment advice was unsuitable by reason of the recommended funds being too risky for Mr S. I'm going to concentrate in my decision on what RLUM should fairly and reasonably do to put things right in these circumstances.

Having considered everything very carefully, I have independently come to the same conclusions as the investigator and I agree with the way he has suggested RLUM should put things right.

I'll explain why I say this.

I must look at all the available information and decide what I think is most likely on a balance of probabilities. This means making some reasonable assumptions where there's only limited information.

Central to deciding what RLUM needs to do to put things right is the question of Mr S's risk approach. I've looked carefully at the point of sale paperwork to help me understand this.

The financial review completed by the advisor in November 2000 recorded the following information:

- Mr S was married with a dependent child and his wife wasn't in employment
- he was a basic rate taxpayer with earnings from his employment and some rental income giving him around £300 disposable income each month
- his life savings (shared with his wife) were £10,000 at the time
- Mr and Mrs S had nine years left to run on their pension mortgage
- Mr S had been in a company pension scheme for between 5-10years.
- Mr S needed to make provision in case of serious illness and his existing pension arrangements were unlikely to match plans Mr S had for his retirement
- he had a requirement to build up a lump sum by saving on a regular basis and his investment objective was to maximise capital growth
- he had a balanced attitude to risk.

There is limited evidence to show how RLUM established Mr S's risk approach. But I think it's fair to say that for someone in his position, Mr S wasn't in a position to take any significant risk with his money, given that:

- he was advised to invest almost all his disposable income each month so he had very little spare cash to cover any extra spending needs which were likely to arise from time to time
- he had only six years or so until his planned retirement age, so limited opportunity to make good any investment losses before he stopped working and could rely only on his pension income (which the advisor had flagged up was unlikely to be sufficient for Mr S's needs) plus potentially a small amount of rental income each month
- he had limited savings on deposit to provide for all future unplanned costs or emergency spending (possibly for three people) and, most likely, no opportunity to replenish these out of income – not while Mr S was still working and almost certainly, not when he could no longer rely on monthly earnings.

I've taken into account that Mr S predicted that he would only require 50% of his current earnings to provide a comfortable retirement, but it's hard to see where Mr S would be able to cut down on his usual monthly expenses and outgoings – these appear mainly to be basic household costs and living expenses. Nor is it clear how he could boost his monthly income to help make up for losing his monthly pay. Whilst Mr S would save on having to pay his pension mortgage when this was cleared, this would give him only an extra £119 per month. And even with pension income, including eventually his state pension once he reached qualifying age, in reality, I think Mr S was potentially facing a drop in income that risked leaving him short of enough money to enjoy the comfortable retirement he was hoping for. All in all, I think it's fair to say that, realistically, Mr S's most pressing priority was to save as much of his disposable income as possible whilst he was still in work in order to supplement his retirement. It follows that he couldn't afford to take risk with his savings as his capacity for loss was very limited – in simple terms, he couldn't really afford to lose any money without seriously risking his future financial security.

I think it's broadly reasonable, in these circumstances, that any redress calculation needs to reflect an overall risk somewhere between the medium risk that Mr S said he wanted and taking no risk at all with his money and RLUM's approach to redress here is fair and reasonable.

I say this because taking no investment risk would have better reflected his actual circumstances and I think it likely Mr S would have chosen to take less than a medium risk with his money, had RLUM explained things in a way that helped him to understand that his capacity for loss meant he simply wasn't in a position to take significant risk with his money.

But I've also taken into account the assurances from the CMC that Mr S had a clear understanding of risk and he was comfortable with a balanced or medium risk attitude to risk.

So it's possible that Mr S might still have wanted to take at least some risk with his money.

This means that RLUM needs to work out whether Mr S has suffered any investment loss by comparing his investment return with the sort of return he could have achieved had he invested at a small level of risk.

I consider that the benchmark proposed by RLUM for working out investment loss broadly reflects what would've been an appropriate level of risk for Mr S's investment.

I am aware it has provided some limited information on a spreadsheet in support of its view that Mr S is better off in money terms as a result of acting on RLUM's unsuitable recommendation. But RLUM should still follow the directions below in order to ensure that it has calculated redress correctly in line with the way we would expect it to in these circumstances and demonstrate it has done so.'

What the parties said in response to my provisional decision

On behalf of Mr S, the CMC reiterated its view that Mr S understood and was happy with a medium level of risk. It said that Mr S already had a pension mortgage which it considered to be high risk, and the balanced approach would have included bonds, gilts and fixed interest securities which the CMC says would have offset the risk for Mr S.

RLUM said it had nothing further to add.

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.

I've taken carefully into account everything that's been said in response to my provisional decision.

I'd like to assure Mr S that I've thought carefully about everything again before coming to my final decision. I haven't been provided with any new information that changes what I think about this case. I'd already considered all the main points that have a bearing on the outcome. I appreciate that Mr S might still take a different view to me. But I still think it's fair to award the redress I set out in my provisional decision for all the reasons I explained.

Putting things right

Fair compensation

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

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

To compensate Mr S fairly, RLUM must:

- Compare the performance of Mr S'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.

- If appropriate, RLUM should also pay interest as set out below.

- RLUM should set out its workings in a clearly understandable format showing its calculations.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
US Growth Trust UK and European Growth Funds	Surrendered	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

Income tax may be payable on any interest awarded.

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, RLUM 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- The average rate for the fixed rate bonds would be a fair measure for someone who wasn't in a position to risk capital to achieve a reasonable return.
- 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 S's risk profile was in between. So, the 50/50 combination would reasonably put Mr S into that position. It does not mean that Mr S would have invested 50% of his 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 S could have obtained from investments suited to his needs and objectives and his risk attitude.

My final decision

I uphold this complaint and RLUM Limited should take the steps set out above to put things right for Mr S.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 August 2023.

Susan Webb
Ombudsman