

## **The complaint**

Mrs W complains that she was mis-sold an ISA by Bank of Scotland plc (BoS) – she states that the investment fund carried a higher level of risk than she was willing to take.

Mrs W's complaint has been brought by a third party however for the sake of clarity I will refer to all correspondence received as having come from Mrs W.

## **What happened**

On 18 September 2007, Mr and Mrs W met with an adviser from BoS. A fact find was completed, and Mr and Mrs W's circumstances were discussed.

A recommendation was made for Mr and Mrs W to invest in a joint Personal Investment Plan (PIP), a Guaranteed Growth bond and ISAs. In respect of the ISA, Mrs W was provided with an illustration for £4,000 ISA investment, showing that the fund would be invested 100% in the Cautious Managed Fund. It outlined the charges, and projected returns based on assumed growth rates.

On 20 September 2007, Mr and Mrs W were sent a Financial Report, explaining the recommendations made to them and the reasons for the recommendations. The report confirmed that Mr and Mrs W had declined the opportunity to further consider the recommendations because they appreciated the nature of the products recommended, and had discussed them by phone with the adviser prior to processing the investments. The report confirmed Mrs W's Personal Risk Profile to be Cautious/Medium and explained how the investments recommended met Mr and Mrs W's objectives. It explained that the ISA would be invested in the Cautious Managed fund, and included detail relating to the fund itself – that the fund aimed to maintain 51% in UK shares and would be actively managed to maintain the asset mix. The report stated that the fund did contain some investments which would individually have a higher risk rating than Mrs W's agreed risk profile however the adviser believed that the combined effect of all the investments within the fund resulted in an overall managed fund classification of cautious medium. The report went on to explain why the investments recommended would be suitable for Mrs W.

Mrs W went ahead with the investment of £4,000 into the ISA which she maintained until 13 December 2010 when she surrendered it. She received approximately £4,300.

In March 2023, Mr and Mrs W submitted a complaint to BoS. The complaint focused on their belief that the investment advice provided to them in 2007 carried too much risk, and as such was unsuitable for them. Their complaint related to the PIP and ISA investments.

On 6 April 2023, BoS issued their final response to Mr and Mrs W. Having carried out an investigation, they agreed that the PIP was invested in a way that was unsuitable for Mr and Mrs W, and carried out a loss calculation which was offered to them. However, they did not agree that the ISA recommendations were unsuitable, and did not uphold this element of the complaint.

Mrs W remained dissatisfied – having reviewed the equity content of the Cautious Managed fund, she believed that it was inappropriate for her given her cautious attitude to risk, and referred her complaint in respect of the ISA to this service.

Our investigator reviewed the complaint. Having done this, they were not persuaded that the recommendation for Mrs W to invest in an ISA in a fund aligned with a cautious risk profile was inappropriate, and did not uphold the complaint. Unhappy with this, Mrs W has requested her complaint to be reviewed by an ombudsman, therefore it has been referred 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.

Mrs W initially complained about the mis-sale of a PIP and an ISA, specifically that they carried a higher level of risk than she was willing to accept. BoS upheld the complaint about the PIP, however it did not uphold the complaint relating to the ISA.

This decision therefore focuses only on the element of the complaint relating to the ISA. The main thrust of the complaint is that the ISA was invested in a way that was not appropriate for Mrs W's cautious attitude to risk.

The investment recommended for Mrs W's ISA was the Cautious Managed Fund. The fund factsheet from March 2007 shows the investment objective of the fund was to achieve long term growth by investing in a managed portfolio of equities investing mainly in the UK and fixed interest investments such as corporate bonds and gilts. At that time, it was invested 52.6% in fixed interest, with the rest in a mixture of equity assets. The IMA Sector categorisation of the fund was Cautious Managed, and the fund manager's comments on the fund fact sheet confirmed that the fund maintained a defensive stance, with exposure to UK equities held at slightly below that of the benchmark. Due to the fact the fund had only been in existence for a year, there were no past performance figures available.

Mr W says she was a cautious investor. Her responses to two questions in her attitude to risk questionnaire support this;

- *"I am looking for high investment growth. I am willing to accept the possibility of greater losses to achieve this."* To which Mrs W responded *"I strongly disagree with this statement"*
- *"I want my money to be safe even if it means lower returns."* To which Mrs W responded *"I strongly agree with this statement."*

Having reviewed the fact find containing the full set of responses relating to Mrs W's Personal Risk Profile, the responses, whilst not totally consistent, appear to indicate someone who is not particularly comfortable with risk, despite the profile being assessed as Cautious/Medium. When this is the case, it would be expected that the responses would be discussed with the investor, to clarify their understanding and agree an investment approach. The file suggests that this conversation did take place.

The notes in the fact find reference the discussions held relating to risk. They state *"had a lengthy discussion about risk and although PRP [Personal Risk Profile] is cautious/medium quite a few answers contradicted. Some were answered looking for high gains, others safe and secure. When questioning this, it was clear there [sic] overall approach was cautious/cautious med, but keen to take a risk with some money"*. The notes do not differentiate between Mr and Mrs W in relation to this.

I note that at the time of the recommendation, Mrs W held approximately £133,000

personally on deposit with another £54,000 held jointly with Mr W. The amount invested into the ISA which is subject to complaint was £4,000 (due to the fact Mrs W had already utilised her cash ISA allowance) – which represents less than 3% of Mrs W's available funds. Given the fact that the notes state that the discussions held relating to investment risk indicate that Mrs W was generally cautious, but willing to take a risk with some money, I do not think it is unreasonable that a recommendation would be made for her to invest a small proportion of in an investment towards the higher end of her assessed risk profile (albeit still within a fund categorised as cautious). As such I don't agree that the fund invested into was too high risk for Mrs W's identified attitude to risk and investment objectives.

In her complaint, Mrs W has raised the point that the adviser recorded her to be an experienced investor because she had previously held an endowment policy. The notes from the meeting with the adviser in September 2007 confirm that Mr and Mrs W were treated as experienced because they had "*gone to the FSA to complain about the misselling of his [my understanding is that the policy was held jointly] endowment*", and "*understood the factors that affected it, poor stock market returns and charges*". However, I disagree with this assumption. The fact that Mrs W had previously owned an endowment jointly with her husband did not mean that she was an experienced investor. In general, I don't think this would be a fair statement to make – having taken out an endowment does not necessarily furnish someone with investment experience.

I wasn't present at the meeting that took place therefore cannot be certain what was discussed, nor the exact amount of knowledge or experience Mrs W had at the time. Therefore, I must take into account what I think was more likely than not to be the case. I cannot say with any certainty that the endowment previously jointly held by Mrs W had provided her with any particular level of experience in relation to investments and the implications of these.

The notes further state that Mrs W had already withdrawn her funds from her bank in order to invest straight away but the adviser stated that as a minimum he would call the following day after presenting the Key Features Document (KFD) and illustration providing overnight reflection time. The fact find confirms that the adviser did carry out this follow up call. I am of the opinion that Mrs W's actions indicate that she was motivated to move forward with some sort of investment with the aim of meeting her objective of capital growth and was satisfied with the amount of information provided to her as part of the advice process. I note that the KFD provided outlines the risk factors, including the fact that the value of the investment could go up and down, and that she may get back less than she invested. I therefore think it is fair to conclude that Mrs W was provided with sufficient information for her to have made an informed investment decision and to understand the implications of investments that carried an element of risk and was motivated to do so. If she was uncomfortable with the level of risk involved, I would have expected Mrs W to raise her concerns during the conversation with the adviser relating to risk, or when he called the following day prior to the investment proceeding. There is no evidence to suggest that she did this.

Taking all of the above into account, I am satisfied that the investment recommendation was suitable for Mrs W's investment objectives and attitude to risk. It therefore follows that I don't uphold Mrs W's complaint.

### **My final decision**

For the reasons stated above I do not uphold Mrs W's complaint relating to the suitability of her ISA.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 21 May 2024.

Joanne Molloy  
**Ombudsman**