

## The complaint

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

Mr 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 Mr 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 joint Guaranteed Growth Bond and ISAs. In respect of his ISA, Mr W was provided with an illustration, showing that 100% of his ISA would be invested 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 you appreciate the nature of the products recommended. You tracked the performance of share based pensions and your endowment policy over the years"* and had discussed them by phone prior to proceeding with the investments. BoS have confirmed that the ISAs started on 19 September 2007, and the PIP on 20 September 2007.

The report explained how the investments recommended met Mr and Mrs W's objectives and confirmed Mr W's Personal Risk Profile to be Cautious/Medium and. It explained that Mr W's 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 Mr W's agreed risk profile however the adviser believed that the combined effect of all the investments within the fund would result in an overall managed fund classification of cautious medium. The report went on to explain why the investments recommended would be suitable for Mr W.

Mr W went ahead with the £7,000 investment into the ISA (and the PIP) which he maintained until 13 December 2010, when he surrendered it. He received approximately £7,500. It is my understanding that Mr W also went ahead with the Guaranteed Growth Bond – as this has not been subject to complaint, I have not been provided with full details of this however as the fact find states that the recommendation in relation to this was accepted, I have no reason to believe the investment did not go ahead.

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. This 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. This outcome was accepted by Mr and Mrs W. However, BoS did not agree that Mr W's ISA recommendation was unsuitable, and did not uphold this element of their complaint.

Mr W remained dissatisfied – having reviewed the equity content of the Cautious Managed fund, he believed that it was inappropriate for him given his cautious attitude to risk and referred his 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 Mr 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, Mr W has requested his 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.

Mr W initially complained about the mis-sale of a PIP and an ISA, specifically that they carried a higher level of risk than he was willing to accept. BoS upheld the complaint about the PIP, however, 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 Mr W's attitude to risk.

The investment recommended for Mr W's ISA was the Cautious Managed Fund. The fund factsheet from March 2007 shows the investment aim of the fund was to achieve long term growth by investing in a managed portfolio of equities 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 managers' 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.

The complaint has drawn out two responses provided by Mr W in his attitude to risk questionnaire which did not support the investment recommended. The Personal Risk Profile statements included;

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

Having reviewed the fact find containing the full set of responses relating to Mr W's Personal Risk Profile and 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”* I note that at the time of the recommendation, Mr W held approximately £133,000 personally on deposit with another £54,000 held jointly. The amount invested into the ISA which is subject to complaint was £7,000 – this represented approximately 5% of Mr W’s personally held available funds. Given the fact that the above notes state that the discussions held relating to investment risk indicated that Mr W was generally cautious, but willing to take a risk with some money, I do not think it was unreasonable that a recommendation was made for him to invest a small proportion of his funds in an investment towards the higher end of his 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 Mr W’s identified attitude to risk and investment objectives.

In his complaint, Mr W has raised the point that the adviser recorded him to be an experienced investor, however Mr W said the fact that he had previously held an endowment did not mean that he was an experienced investor. In general, this would be a fair statement for Mr W to make – having taken out an endowment does not necessarily furnish someone with investment experience.

The notes from the meeting with the adviser in September 2007 (recorded within the fact find document) confirm that Mr W was *“treated as experienced because he had gone to then regulator, the Financial Services Authority [the industry regulator at the time] to complain about the mis selling of his endowment, and that he understood the factors that affected it, poor stock market returns and charges.”* I was not present at the meeting that took place therefore cannot be certain what was discussed, nor the exact amount of knowledge and experience that Mr W had at that time. Therefore, I must take into account what was more likely than not to be the case. I cannot say with any degree of certainty that the endowment previously held by Mr W (and the associated complaint) had provided Mr W with any particular level of experience in relation to investments and the implications of these.

Nonetheless, the notes confirm that a lengthy discussion around risk took place, and specifically reference the contradictory nature of the responses within the risk questionnaire. I am therefore satisfied that regardless of the previous experience held by Mr W, the conversations that took place with the adviser in September 2007 would have resulted in Mr W having a sufficient level of knowledge understand the product being recommended, and the implications of accepting a low level of risk with a small proportion of his investable assets.

The notes further state that Mr W had already withdrawn his funds from his 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 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 Mr W’s actions indicate that he was motivated to move forward with some sort of investment with the aim of meeting his objective of capital growth and was satisfied with the amount of information provided to him as part of the advice process.

### **My final decision**

For the reasons stated above I do not uphold Mr W’s complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 April 2024.

Joanne Molloy  
**Ombudsman**