DRN-5378839

The complaint

Mr L has complained about the investment advice he received from The Prudential Assurance Company Limited ('Prudential'). Mr L says he was mis-sold products that didn't meet his needs. The advice incurred costs of 3% and the investments performed poorly.

What happened

Mr L had been a customer of Prudential since 1985 when he took out personal pensions. In 2020/2021 Mr L, along with his wife, sought advice from Prudential about their finances pending their retirement. As a result of that advice Mr L moved his existing ISAs and cash totalling £31,000 into a Prudential fund. Mrs L didn't proceed with the recommendation she was given, so this complaint deals solely with the advice given to Mr L. He became increasingly disappointed with the investment and stopped the ongoing advice service he received from Prudential in February 2023 and raised his concerns.

Prudential responded to Mr L's complaint in its letters of 29 December 2023 and 23 January 2024. Prudential said;

- At the time of the advice Mr L was holding a high level of cash and was concerned about low interest rates. He had no plans for the funds and wanted them invested in a tax efficient manner. He had sufficient income plus other cash savings and was happy to invest for five years plus. He also wanted ongoing advice which wasn't available with his current product provider.
- Mr L's attitude to risk was categorised as Low to Medium Risk. He confirmed he understood the different levels of risk but wanted to take a higher risk so took a Medium risk approach. Mr L was looking for growth potential above inflation and was prepared to take a moderate risk of capital loss to achieve that goal.
- Natural return funds and Smoothed funds were discussed. Mr L chose the former as he was comfortable the funds may experience fluctuations but wanted the best growth when compared to Smoothed funds.
- Mr L was advised to transfer his existing ISAs into one Prudential stocks and shares ISA as this met his objective for potential growth in a tax efficient manner. The ISA was to be invested into the Prudential Risk Managed Passive 3 fund as it matched Mr L's medium attitude to risk and was a passive fund as Mr L didn't want to incur the costs of an actively managed fund.
- Market conditions had been challenging which had impacted on the performance of the investment, but Mr L had been made aware it may fluctuate. As Mr L wasn't happy with the performance, in January 2022 it was recommended he switch to the Risk Managed Active 3 fund which was actively managed. There had been no change in Mr L's attitude to risk. The fund was medium risk and aimed to achieve long term total return.
- There was no evidence to suggest Mr L was advised the performance of his Prudential ISA would outperform Mrs L's identical investment which had been left with the previous provider.

- The Ongoing Advice Service and all the associated charges had been explained to Mr L.
- Mr L could access his fund and make one-off withdrawals if he needed to.

In response to Prudential and in bringing it to the Financial Ombudsman Service, Mr L said he didn't want ongoing advice and nor did he want a long-term investment of at least five to ten years before he could see any return. His main objective was to spend all his money before he reached the age of 80. He already had long term investments that would have performed better than the advised investments (as Mrs L had retained her identical investments, he was able to compare the two) and which could have been topped up with cash held.

Mr L said no one in their sixties would cash in long term investments and start from scratch with identical products that would take 10-15 years to show any return. He had no children or heirs and wanted to enjoy the money while he was fit enough to do so. The advice only benefited the adviser rather than Mr L during his lifetime and he was assured the initial costs would be outweighed by the performance of the investment recommended, which didn't prove to be the case.

Our investigator who considered the complaint thought it should be upheld;

- She thought Medium risk was too high a risk for Mr L bearing in mind his responses to the attitude to risk questionnaires.
- Considering Mr L's circumstances, objectives, and attitude to risk she didn't think the funds recommended were suitable for him. The equity and bond allocations were heavily weighted overseas.
- The decision to increase his exposure to risk wasn't something the investigator expected to see from an inexperienced investor like Mr L.
- £30,000 invested for the long term was a substantial amount bearing in mind Mr L's circumstances were to change upon retirement, and he wanted to use his money while he was still fit and healthy enough to do so.
- Mr L didn't have the capacity for loss despite his cash reserves.

Prudential didn't agree with the investigator. It said Mr L had 25 years of investment experience and had seen rises and falls in values over the longer term of the funds which demonstrated his understanding of how equity investment works. It wasn't fair to compare Mr L's Prudential investment with those he previously held and over such a short term. The attitude to risk questionnaire was only a starting point with a customer and the adviser acknowledged Mr L provided some answers which were more cautious than others. The resulting discussion around the different risk profiles was documented and Mr L felt medium risk best suited his goal for the investment which showed an understanding of the risk he was prepared to take.

Despite his retirement Mr L's net disposable income was healthy which helped with the decision making for the amount to be invested and attitude to risk. Pensions were due in the short term. It didn't agree the investment decision was adviser led. It referred to another round of advice for Mrs L where her attitude to risk was Low to Medium and she remained at that level despite having a similar discussion as Mr L had.

Prudential asked for the complaint to be decided by an ombudsman, so it has been passed to me.

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.

After doing so, I've reached the same conclusions as the investigator and broadly for the same reasons. I'll explain why.

Mr L's circumstances

Prudential completed a 'fact find' detailing Mr L's circumstances and investment objectives etc on 9 October 2020. It recorded the following;

- Mr L was 65 years of age, employed but was to retire shortly when his state pension started. He was married and had no children or financial dependents.
- Along with Mrs L, Mr L owned his mortgage free home valued at £150,000. He had no liabilities or debts.
- Mr L was in good health and wanted to enjoy his retirement along with his wife, travelling in their motor home.
- Mr L's monthly income was £1,800 and joint outgoings were £1,681 per month.
- Mr L held cash and investments totalling £32,300 made up of £8,700 in a stocks and shares ISA, £12,000 in National Savings Premium Bonds and £11,592 in a cash ISA. Jointly with his wife Mr L held £33,700 in cash and £55,000 in National Savings Income Bonds, the latter for which was ringfenced to buy a motor home.
- It was recommended that emergency savings of three times the monthly outgoings of £5,043 be held in a bank account and Mr and Mrs L held in excess of this.
- Mr L had approximately £146,000 in personal pensions held with Prudential. He didn't have an employer pension.

Further advice was given in January 2022 and the fact find was updated;

- Mr L had retired in July 2021.
- Mr L held personal pensions with Prudential which remained valued at around £146,000. Mr L's income derived from his state pension of £800 per month.
- Mr and Mrs L's joint monthly expenditure was £1,619 and they had a shortfall of £820 which they covered with their savings.
- Retention of emergency funds of £4,857 was advised and Mr and Mrs L held in excess of that.
- Mr L now held total assets in his sole name valued at £50,509. £30,509 was in his Prudential stocks and shares ISA, £20,000 in National Savings Premium Bonds. He jointly held £12,500 in bank accounts and £5,000 in National Savings Income Bonds.

Mr L's investment experience and attitude to risk

Mr L completed an Attitude to Risk Questionnaire in October 2020. The outcome score was 26 out of a total of 63 which categorised Mr L as a 'Low to Medium Risk Investor'. However, further comment says;

> 'HAVING READ THE DESCRIPTORS WOULD BE HAPPIER TAKING A MEDIUM RISK APPROACH'

Under the ‘Supporting Notes’ section of the fact find also completed on 9 October 2020 and replicated in the suitability report, regarding attitude to risk it said;

> ‘We completed the ATRQ questionnaire and discussed your responses to some of the questions as some of them were answered more cautiously than others. You confirmed that the answers were an accurate reflection to your attitude to investment risk. Your score indicated that you were a low-medium risk investor. I then provided you with the description of the low-medium risk descriptor with the higher medium risk and the lower low risk descriptors.
>
> We then discussed each of these in detail to ensure that you had full understanding of the potential risks for each one. You confirmed that you understood the differences and having read the descriptors you felt comfortable taking a higher risk therefore a Medium risk approach.
>
> We discussed the term of the plan and the ATRQ. You confirmed that you have no immediate plans for the monies and therefore they will be invested for the short/medium term, as may be required in retirement years for discretionary spending. However, the impact on your ATRQ as a result of this is unchanged as you consider the Medium approach to be the most appropriate at the current time of uncertainty due to the pandemic. You confirmed that you will review this in future years.
>
> You agreed with Medium risk as you are looking for growth potential above inflation and are prepared to take a moderate risk of capital loss in order to try to achieve this goal.’

According to Prudential’s definitions, a Low to Medium Risk Investor was looking for;

> ‘an investment that provides you with the potential for a better return than cash deposits. You would prefer an investment that gives the potential for steadier overall growth rather than erratic fluctuations in value. You accept there is a fair risk of loss to your capital. You appreciate that the value of your investment will fluctuate over your intended investment term, but to a lesser extent than a medium risk investor would expect.’

And for a Medium risk investor;

> ‘You are looking for growth potential above inflation and are prepared to take a moderate risk of capital loss in order to try to achieve this goal. You are willing to invest funds where more emphasis is placed on performance of stock markets. You accept that there will be frequent and sometimes sudden fluctuations in the value of your investment over your intended investment term. You are aiming for higher potential growth and accept the higher associated risk of loss compared to lower risk funds. You are aware that there are also other funds with higher potential growth but you are uncomfortable with carrying a higher potential for loss.’

Mr L answered a further attitude to risk questionnaire in January 2022 which resulted in the same score, but he was again classified as a Medium risk investor.

The fact find of 9 October 2020 recorded that Mr L’s ‘Previous Investment Experience Category’ was ‘Limited Experience’ and went onto say;

> ‘You have held stocks and shares ISA for 25 years. You decided to invest these funds as you were concerned with poor rates of interest being offered on deposit accounts, and you wished to have the benefit of beating inflation. Ongoing advice has not been available in recent years but you followed the performance via your annual statement. As a directly linked investment you have seen rises and falls, overall you feel happy with the concept of investment.
>
> When you did experience losses this was not a concern as you take a longer term view with regards to these funds.’

It went on to say;

> ‘We discussed in detail our brochure “Our Approach to investment planning”. We discussed the various asset classes, including cash deposits fixed interest, property and shares. You understood the potential advantages of diversifying your pension funds across the different asset classes so that losses in one sector may potentially be offset by gains in another. You understand the concept of risk and reward in that taking greater risks with your capital could lead to higher returns but could also lead to greater losses. You also appreciate the nature of a multi asset investment approach and favour fund options with a bias toward reducing volatility and producing steady & consistent long term returns.’

While it’s not clear to me why there was reference to Mr L’s pension funds, overall for this investment, Mr L was assessed as being a Medium risk investor but with ‘Limited Experience.’

However, I’m not persuaded that Mr L should have been exposed to a Medium level of risk for his ISA which I’ll explain further.

I should also clear up one point referred to by Mr L. The earlier fact find did say;

> ‘You have several paid up personal pensions with Prudential. You confirm that you have seen fluctuations with regard to your [employer’s] pension and are guaranteed an income when taken. With regards to your Prudential pensions you have seen consistent returns via smoothing, and have been pleased with this over the years.’

The above is incorrect. Mr L didn’t have an employer pension. The pension being referred to was for Mrs L, but I note when the fact find was later updated this was corrected and I can’t see this had any impact on the advice given.

<u>The advice and was it suitable</u>

> <u>*January 2021*</u>

Further to discussions with Mr and Mrs L the adviser sent her suitability report on 26 January 2021 which was to focus on Mr L’s savings and investment needs and detailed what had been recorded on the fact find previously completed by the adviser.

It said Mr L had a high level of cash on deposit earning very little interest which concerned him along with it being devalued by inflation. It said he was aware of market risk but thought that a better option than inflation risk. The suitability report said Mr L had no timescales as he currently had sufficient income and other cash savings if required and was willing to invest for five plus years.

Mr L had an investment budget of £30,300 made up of his existing stocks and shares ISA held elsewhere, his cash ISA of £11,592 and new money of £10,000. He was advised to invest in the 'Link Prudential ISA' which it said would meet his goal of investing for growth potential and he did not have a specific goal for the money other than providing the opportunity to achieve higher returns.

The suitability report said the Prudential Risk Managed Passive 3 fund matched Mr L's medium attitude to risk, and Mr L preferred the 'Directly Linked Funds' which would give the best chance for growth at the lowest cost as it was a passive fund. The risk that 'the value of an investment can fluctuate and is therefore not guaranteed. You may not get back the full amount of your original investment' was given.

The Prudential Risk Managed Passive 3 fund was positioned in the middle of the five multi-asset funds offered. It was a fund of funds investment and invested 50.29% in bonds, 43.10% in shares, 2.80% in property, 2.07% in infrastructure and 1.71% held in cash. I don't consider the portfolio to be outside of what could reasonably be expected of a medium risk investment.

However, I am not satisfied that a medium risk investment was suitable for Mr L taking account of his circumstances. I don't think it was the right time in Mr L's life to increase the level of risk to which he was exposing his capital to loss considering his upcoming retirement. Once retired Mr L wouldn't be able to refinance any capital losses from income and I don't think he was in the position to accept that increased level of capacity for loss.

I should first say the medium risk profile refers to doing better than inflation but the CPIH (the Consumer Prices Index including owner occupiers' housing costs) for the eight years before Mr L was advised at its highest only reached 2.8% and had generally been around only 2.5% or less over the past 20 plus years with a couple of peaks in 2008 and 2011 and was only around 1% at the time he saw the adviser. I acknowledge it is an unknown and it rose significantly from March 2021 to October 2022, but it seems unlikely that inflation would have been that big a driver for Mr L at the time of investment such that he would necessarily have chosen significant fluctuations (Medium) over steady growth (Low Medium).

I appreciate Mr L agreed to the investment recommendation. Mrs L emailed the adviser on 22 January 2021 so say 'We've decided to go with just [Mr L's] at the moment, as we discussed as an option today. Probably with your first recommendation assuming that's the one with the best return albeit a little riskier…' This does show some awareness on Mr L's part that the recommendation was riskier, but I'm satisfied that, as identified by Prudential, Mr L only had 'Limited Experience' when it came to investments. And I think, because of this, he was reliant upon his adviser.

I say this because of the limited stock market exposure Mr L previously had. Mr L did have pensions with Prudential, but these were long term. In any event, I note these were 'smoothed' where Prudential's aim was 'to provide a smoothed return over the medium to long-term (5 to 10 years or more)' so those investments wouldn't have reflected the daily stock market volatility which Mr L would be exposed to with his new investment.

The only other stock market exposure Mr L had was his stocks and shares ISA of around £8,700, where it was recorded he hadn't received any advice for some time and only reviewed the annual statements to follow the performance. I don't know what assets were held in that ISA or what level of risk Mr L was exposed to, but I think because of Mr L's identified 'Limited Experience' he was seeking guidance from his Prudential adviser about how he should invest. And I'm not persuaded an increase from Low Medium – which was established by Mr L's completion of the attitude to risk questions – to a Medium level of risk was right for him. I think the adviser should have taken more account of Mr L's investment experience, upcoming change in circumstances and his investment objectives. I think he would have been better advised not to have increased his attitude to risk to Medium.

And by increasing his level of risk, the amount of capital Mr L had exposed to medium investment risk (excluding his pensions) increased more than three times from £8,700 held in his stocks and shares ISA to £30,500. And this increase was at the expense of the very low risk investments of cash and a cash ISA. Post the investment, while Mr L's exposure to Premium Bonds increased by £8,000 to £20,000, which would have allowed him a financial cushion, but this came from the cash he jointly held with his wife which had reduced from £33,700 to £12,500. And the motor home purchase – which I appreciate was bought with ringfenced funds – had reduced the value of the jointly held Income Bonds from £55,000 to £5,000. So, the jointly held low risk assets had reduced from £88,700 to £17,500.

Even if I am wrong on that point, I still don't find the investment recommended to be suitable for Mr L's circumstances, which were about to change shortly after the initial investment was recommended when he was to retire in July 2021. Clearly this would have a significant impact on his circumstances, and I don't think this was sufficiently taken into account. The October 2020 fact find recorded that Mr L had;

> '…no immediate plans for the monies and therefore they will be invested for the short/medium term, as may be required in retirement years for discretionary spending.'

Clearly it was recognised at the time that Mr L wanted to invest for the short/medium term as the funds may be needed for him to be able to finance and enjoy his retirement while he was still healthy enough to do so.

I think there is a contradiction between what Mr L wanted – as recorded above – compared to the investment he was recommended of five years plus. I don't think it's unreasonable for me to say that the generally accepted time periods for short term investment is considered to be between one and three years and for medium risk between two and five years. So, the furthest ahead Mr L was looking to invest for was five years and not five years plus. And this tallies with Mr L's comments that he wanted to spend his funds, in particular travelling in his motor home while he was still able to. So, I think it's more likely he was looking for the short/medium term timeframe rather than five years plus, which would be for the longer term. I'm not satisfied Mr L was looking for a longer term investment timeframe of five year plus. And I'm not persuaded those funds should have been invested at a medium level of risk over such an investment term.

<u>*January 2022*</u>

The 28 January 2022 fact find identified there was a shortfall between Mr L's state pension income and his expenditure, but I note this was addressed under the retirement planning where it said;

> 'We discussed your income requirements in retirement and the projected income for your existing pension plans. This showed you have sufficient provisions at the current time because your state and Personal Pensions coupled with [Mrs L's] state, [employment] and personal pension will be sufficient to meet your monthly expenditure. You should review this regularly.'

The fact find records that Mr L revisited the attitude to risk questionnaire and despite the resulting score identifying him as a Low Medium risk investor he confirmed his preference was to remain a Medium risk investor.

However, the fact find also recorded Mr L wasn't happy with the performance of his Passive investment and 'therefore recommendation to active' – the Risk Managed Active 3 fund. Mr L was happy to remain invested in Directly Linked funds due to the cost when compared to smoothed funds but 'you are aware that the fund will experience fluctuations but wanted your funds to have optimum chances to achieve the best growth and also at the lowest charges being applied.'

The fund was invested 46.63% invested in bonds, 40.14% invested in shares, 7.29% in property, 3.49% in other investment assets and had 2.45% held in cash. Again, I don't find that the fund to be invested outside of a medium risk remit.

But I remain of the view, for the reasons given above, that Mr L wasn't a medium risk investor. His circumstances hadn't changed to suggest otherwise, and I think the adviser should have advised Mr L against taking a medium attitude to risk for his investments.
In defence of Mr L's investment decision being adviser led, as suggested by the investigator, and how it assessed risk Prudential has said the attitude to risk questionnaire was just the starting point in assessing a customer's attitude to risk. It referred to Mr L's increase of risk from Low Medium to Medium and compared it to the advice for Mrs L, where her attitude to risk was Low to Medium and she remained at that level despite having a similar discussion to that of Mr L.

But I haven't seen evidence to support that. The fact find records that as a result of Mrs L's response to the questionnaire she was a Low risk investor but after being given the descriptors by the adviser Mrs L confirmed she was a Low Medium risk investor. So, similar to Mr L, I'm persuaded this shows Mrs L increased the level of risk she was willing to be exposed to after speaking with the adviser.

There also seems to be a further discrepancy in the investment timeframe for Mr L. The fact find recorded;

> 'Whilst the funds will be invested in excess of 15 years we [considered?] increasing the level of risk however this was discounted as you are not prepared to take any further risk and are happy taking the Medium risk approach.'

While this note isn't altogether clear, one point it does make clear is that the funds would be invested for 15 years plus which is well outside of the 'short/medium' term previously identified or the five years plus quoted in other documents. If Mr L had extended the timeframe he was willing to invest for I would have expected this to have been noted, as there is a significant difference in the length of investment time between short and long term investment terms.

It's clear that Mr L wanted capital growth, but I don't think this should have been at the expense implicit in the medium level of risk he was exposed to. Overall, and taking into account Mr L's circumstances, objectives and how important this money was to him, I think his money was exposed to risks I'm not persuaded he was willing or able to take and should have been advised against.

I am satisfied that the risk Mr L was exposed to wasn't suitable for him taking account of his personal and financial circumstances that I've already outlined. The risk he was exposed to was in my opinion unnecessarily high for the growth he wanted.

So, taking all the above into account, and in the particular circumstances of Mr L's complaint, I'm upholding it for the reasons given and Prudential needs to put the matter right.
My role isn't to retrospectively say what the suitable advice would have been. There were many ways Mr L could have invested and it's not possible for me to now say precisely what

he would have done. So, in line with our long-standing approach, I think it's more appropriate to use a benchmark to assess the type of return Mr L would have been able to achieve with suitable advice.

Putting things right

To compensate Mr L fairly, Prudential must:

- Compare the performance of Mr L'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.

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

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Link Prudential ISA	Still exists and liquid	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 of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable 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, Prudential 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:

- Mr L wanted capital growth with a small risk to his 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 his 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 L's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr L into that position. It does not mean that Mr L 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 L could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that The Prudential Assurance Company Limited should pay the amount calculated as set out above.

The Prudential Assurance Company Limited should provide details of its calculation to Mr L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 4 April 2025.

Catherine Langley
Ombudsman