

complaint

Mrs P complains that RLUM Limited sold her an investment mini Individual Savings Account (ISA) that was unsuitable to her circumstances.

background

An adviser from RLUM visited Mrs P and her husband at home in 2004. As a result of that meeting, he recommended that Mrs P should put £100 per calendar month into an investment ISA. The money was to be divided equally between a UK Growth Trust Fund and a US Growth Trust Fund.

Mrs P paid into the investment until 2012 when she surrendered it because she realised that the value of the funds was less than she'd expected. She complained to RLUM in 2014 through a representative as she said the investment wasn't suitable for her at the time and she hadn't understood the risks involved.

RLUM rejected her complaint so she came to this service. The adjudicator who investigated the complaint thought it shouldn't succeed. Mrs P disagreed and asked for her complaint to be reviewed by an ombudsman. I felt the complaint should be upheld and issued a provisional decision explaining why.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Since I issued my provisional decision, both sides have confirmed that they have no further comments and so my reasoning remains unchanged.

Mrs P's attitude to risk (ATR) is noted in RLUM's documentation as 'balanced'. But I can't see how the adviser made his assessment of her ATR. At the time of the sale, Mrs P was in her mid-thirties with four children. Her only personal income was child benefit. It appears that she had a joint repayment mortgage with Mr P and they had a joint emergency fund of around £2000. The fact find indicates that she had a joint net disposable income of just under £300 with her husband which was due to increase by around £200 in the near future as they paid off a loan. There is mention of a joint endowment policy but the details of this are unclear. It's not for me to assess Mrs P's ATR, but I can't see, on the evidence provided, that the adviser did properly assess Mrs P's ATR during the meeting or why her ATR was established as 'balanced'.

The investment that was recommended included 50% in a foreign currency growth fund. Two years later, the US Growth Fund was re-categorised to a higher risk category. RLUM acknowledges this but explains it was because of a change in the risk scale rather than a change in the risk posed by the fund. The adviser could only advise on the risk categorisation at the time of the sale. But because I'm not persuaded that Mrs P's ATR was properly assessed as balanced, I don't think the recommendation was suitable for her at the time. I note as well that similar advice for a slightly different fund was given to Mr P at the same time and that RLUM upheld his complaint about the suitability of the product. As far as I can see, the main difference between the two complaints was the actual performance of the funds rather than the risk levels.

Mrs P had limited income, a number of dependents and a relatively small emergency fund for her circumstances in 2004. She surrendered the investment in 2012 when she realised that her money wasn't secure. She says she now has a cash ISA. Although the documentation mentions risk, I'm not persuaded that the adviser really made Mrs P aware of the risks associated with her investment and the choice of funds. Although there is mention of a joint endowment policy, the details of this are unclear and I note that Mr and Mrs P had a repayment mortgage at the time. I'm not persuaded that the existence of an endowment policy shows that Mrs P was an experienced investor. It seems likely to me that Mrs P wouldn't have taken the investment if she'd understood that she could lose money as well as gain. Therefore I believe this complaint should be upheld.

fair compensation

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

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

what should RLUM do?

To compensate Mrs P fairly, RLUM must:

- Compare the performance of Mrs P'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.

RLUM should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
ISA	surrendered	average rate from fixed rate bonds	date of investment	date surrendered	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, RLUM should

use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if RLUM totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs P wanted to achieve a reasonable return without risking any of her capital.
- The average rate for the fixed rate bonds would be a fair measure given Mrs P's circumstances and objectives. It does not mean that Mrs P would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- 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 RLUM Limited should pay the amount calculated as set out above.

RLUM Limited should provide details of its calculation to Mrs P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs P either to accept or reject my decision before 19 February 2016.

Susie Alegre
ombudsman