

The complaint

Mrs K, via her representative Mr R, complains that Regency Investment Services Limited (Regency) did not offer her suitable advice as her personal circumstances were not fully considered. Mr R has said that the charges were excessive and not fully disclosed to Mrs K.

What happened

Mrs K met with an advisor from Regency in June 2017 who was recommended by friends. The advisor completed a fact find which covered Mrs K personal circumstances, her financial arrangements including assets and liabilities and her attitude to risk. These were details were summarised in a letter sent to Mrs K in June 2017.

The advisor followed up this summary letter with a financial report which was sent to Mrs K. This report included his recommendations and how the investments would be held. The report also included details on what fees would be charged.

The advisor also recommended that various bank accounts and other investments be consolidated and these recommendations were carried out. A sum in excess of £1 million pounds was invested with a third-party fund manager on a discretionary basis. The cash was invested in a portfolio with a risk rating of cautious.

The investments were held for a period of around 10 months before Mrs K informed Regency that she wished to withdraw all her assets. Mrs K gave the reason for exiting the relationship as she did not think it was the right option for her.

Mr R complained to Regency in April 2019. This complaint covered various issues including Mrs K's vulnerability, her personal and financial circumstances, costs and fees that were charged and how her assets were invested. Regency investigated the complaint but they did not believe that they had done anything wrong and did not uphold the complaint.

Unhappy with Regency's response, Mr R referred the complaint to the service and one of our investigators reviewed the complaint. Our investigator upheld the complaint as she did not believe that the assets were invested in a portfolio which matched Mrs K's attitude to risk.

Mr R, on behalf of Mrs K, and Regency did not accept the investigator's view and have asked for an ombudsman to look at the complaint.

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.

Having read the submissions from Mr R and Regency, I agree with the view of the investigator for much of the same reasons and will be upholding the complaint.

The complaint raised by Mr R covers various points and these were covered off by the investigator. I will also give my comments on these points.

Charges were excessive

Mr R says that the charges were not fully disclosed or adequately explained to Mrs K. I have reviewed the information that was sent to Mrs K and the charges were disclosed in Regency's letter of 14 June 2017.

The initial fee for the work undertaken by Regency was £7,500. It's a commercial decision by a business on how their fees are set and the service can't comment on whether charges are excessive – this is for the business to set and for the customer to decide if they wish to use the service. Having reviewed the letter of 14 June 2017, I think that the charges were properly disclosed and appear fair and reasonable in the circumstances of what activities they covered.

The letter of 14 June 2017 also details the ongoing service fees and platform fees which would be payable once the cash is invested. I think that these are clear and not hidden.

These charges were also recorded in Regency's Service and Fee Agreement which was signed by Mrs K and dated 27 June 2017. As Mrs K has signed this agreement, I need to assume that she read and understood what fees were to be charged.

I think that the fees and charged were properly disclosed and I will not be asking Regency to do anything else.

Mrs K's status as a vulnerable client

Mr R says that Mrs K was not assessed as a vulnerable client given her age, circumstances and lack of knowledge.

I have looked at what Regency have said on this matter. They have said that although they had not labled Mrs K as a vulnerable client they took careful consideration of her circumstances and provided the care and attention that her circumstances required.

This area has seen significant focus over the last few years and the regulator, FCA has 4 areas where a client may be classed as vulnerable:

- health – disabilities or illnesses that affect the ability to carry out day-to-day tasks
- life events – major life events such as bereavement, job loss or relationship breakdown
- resilience – low ability to withstand financial or emotional shocks
- capability – low knowledge of financial matters or low confidence in managing money (financial capability) and low capability in other relevant areas such as literacy, or digital skills

The fact find questionnaire records Mrs K as 72 and in fairly good health following surgery some years earlier. There was nothing to suggest that her health prevented her from carrying out day to day tasks.

Mrs K was widowed but this was not recent and there was nothing to suggest that there was a recent life event that was affecting her when she met with Regency.

The fact find and financial report details her income and financial liabilities and these were considered when recommendations were made. There was nothing to suggest that Mrs K had poor financial resilience.

Mrs K held investments and multiple bank accounts and Regency recommended that these be consolidated. It is generally accepted that if a client has financial instruments, a certain amount of knowledge or competence in this area can be relied upon. Regency did note this fact in their risk questionnaire but they have recorded that Mrs K was not very familiar when it comes to investments.

I can see that in discussions with Regency regarding further investments using available cash, Mrs K wished to keep cash available rather than being invested. This suggests she was capable making informed decisions on financial matters.

From the documents that I have seen and read, there is nothing that would suggest that Mrs should have been classed as a vulnerable client. I don't think Regency did anything wrong in how they treated Mrs K.

Mrs K's attitude to risk

Mr R says that Mrs K should have been classed as a very cautious investor as she had no financial experience.

When a firm provides advice to a consumer it must assess attitude to risk. This means what risk the consumer is comfortable with – the more risk averse a consumer is, the less risk is taken. If a consumer is happy to take investment risk then a higher degree of risk is taken with the chosen investments.

Regency took Mrs K through their risk questionnaire and although I can't be sure what was said in the meeting as I wasn't there, I will proceed based on the balance of probability of what was discussed.

The risk questionnaire is made of several areas and asks questions. The consumer picks the answer or statement that best suits their understanding or preference. I will assume that the advisor at Regency took Mrs K through this questionnaire and recorded her answers. I can see that Mrs K signed this document.

The attitude to risk is noted as 'cautious' based on a culminative score. A score of less than 19 would class the consumer as 'very cautious'. A score of between 19 and 40 would be recorded as 'cautious'. I note that Mrs K's score was 39 and recorded as 'cautious'.

Having reviewed Mrs K's personal circumstances and financial knowledge, I think that this is a fair and reasonable assessment and I don't think that Regency have done anything wrong in recording Mrs K's responses as being a 'cautious' investor.

Mrs K's income needs were not taken into account and income was not distributed from the investments

Mr R says that Mrs K's income needs were wrongly stated and that her income needs were not followed through. Mr R says that income was not distributed but reinvested.

I have reviewed the income details which were provided to Regency. I note that Mrs's K did not have any liabilities and this is often one of the areas that would require income to be generated from the investments but one of Mrs K's objectives was to generate an income from the investments. Regency's letter to Mrs K 14 June 2017 mentions that the level of

investment income desired could be discussed and in a later letter dated 21 July 2017, the advisor asks Mrs K to confirm what level of income she wanted to take.

Regency have said that further requests were made to Mrs K about the level of income required but the information was never provided by Mrs K. As Regency have asked for this information, I don't think that they have done anything wrong so I won't be asking them to do anything else.

Suitability of advice

When a business provides advice, it will produce recommendations based on the personal circumstances including the consumer's attitude to risk. I have already covered earlier that Regency had classified Mrs K's attitude to risk as 'cautious', I am satisfied that Regency assessed Mrs K's attitude to risk fairly and properly.

Going forward, a business should only recommend investments that correctly match the consumer's attitude to risk. When our investigator reviewed the complaint, they held the view that the fund where the cash was invested, breached the risk definition of 'cautious' and was more appropriate to that of a 'medium' balanced risk investor. I have reviewed this in some detail as it is central to the whole complaint. On balance, I agree with the views of the investigator for the following reasons:

- The guidance text contained in the financial questionnaire that Mrs K completed which records her as 'cautious' says:

Approximately 40% of investable assets will be in equities over the long term although this may fluctuate between 20% and 55% over the investable period.

In 2017, the fund that Mrs K was invested showed that equities made up 40% and a further 23.5% in alternatives. Alternative investments are higher risk investments in nature and the overall composition of the fund needs to be considered. This means that part of Mrs K's fund with equities and alternatives totalled 63.5% which is above the stated 40% guidance for a 'cautious' fund and the upward limit of 55%.

In 2018, the fund that Mrs K was invested showed that equities made up 39% and a further 21% in alternatives. This means that part of Mrs K's fund with equities and alternatives totalled 60% which is above the stated 40% guidance for a 'cautious' fund and the upper limit of 55%.

Having considered the composition of the fund in 2017 and 2018, I don't think that the risk can be classified as 'cautious'.

- The investigator has said that asset allocation can fluctuate from year to year and it can be shown that the allocations in the underlying fund where Mrs K was invested changed. I think that on both allocations there is a disconnect between the attitude to risk that Regency recorded Mrs K as having as the subsequent fund that her assets were invested into.

As the assets were invested into a fund that were more suited to a 'medium or balanced' investor, I think that the advice was unsuitable.

I am aware that Regency placed reliance on a third-party fund manager and Regency did not manage the fund but this outsource arrangement is the responsibility of Regency.

In summary, I think that Regency properly assessed Mrs K's personal and financial circumstances. I think that they disclosed the fees and charges that were payable by Mrs K correctly, but I think that the provision of advice which meant that Mrs K's funds were invested in a fund that carried too much risk resulted in the advice being unsuitable.

Putting things right

In assessing what would be fair compensation, my aim should be to put Mrs K as close to the position she would probably now be in if she been given suitable advice.

I have reviewed the investigator's thoughts on how the position should be corrected and think that it is fair and reasonable in the circumstances of the complaint.

Regency Investment Services Limited should:

- Compare the performance of Mrs K'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.
- pay interest as set out below.
- Provide the details of the calculation to Mr and Mrs N in a clear, simple format.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From (start date)	To (end date)	Additional interest
James Hambro and Partners Cautious Fund	Transferred	For half the investment: FTSE Private Investors Income Total Return Index For the other half: Average rate from fixed rate bonds	Date of investment	Date transferred	8% simple per year on any loss from the end date to 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, you 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. Apply those rates 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.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs K wanted income with some growth with a small risk to her 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 her 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 Mrs K's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs K into that position. It does not mean that Mrs K would have invested 50% of her 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 Mrs K could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

Further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on:

Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by typing 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've explained, I uphold Mrs K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 11 February 2021.

Brian Gray
Ombudsman