DRN-4189010

The complaint

Miss M complained that Clydesdale Bank Plc trading as Virgin Money ('VM') gave her unsuitable advice to invest £25,000 into two products - a unit trust and a stocks and shares Individual Savings Account ('ISA').

Miss M brings her complaint via a claims management company ('CMC').

What happened

When Miss M received a capital sum of £25,000, she sought investment advice from VM. After discussing her circumstances, investment objectives and risk approach, VM summarised its recommendations in August 2000 in a 'Personal Financial Report'. It recommended an investment of £20,000 into the Stockmarket Growth fund and £5,000 into the Sheltered Growth fund. This left Miss M with around £2,700 in deposit based savings. In the event, Miss M invested £25,000 into the Stockmarket Growth fund. In 2002, she transferred £7,000 into an ISA before encashing her VM investments in 2006, making a capital loss of around 15%.

The investigator didn't recommend that the complaint should be upheld. He concluded that as Miss M had declined VM's initially recommended approach, it wouldn't be fair to hold VM responsible for a choice that Miss M freely made that wasn't in line with the initial recommendation.

Miss M did not agree. On her behalf, alongside other comments, the CMC said, in brief summary, that:

- it wasn't clear how VM had identified Miss M's attitude to risk or how this was justified when it clearly didn't match her personal and financial circumstances
- Miss M was an inexperienced investor and she was over-exposed to investment risk
- Miss M was saving for a deposit for her first property and although she wanted growth to help build a deposit, that goal needed to be balanced against the risk of potential loss and a reduction in the amount she would have available to use for a deposit.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

‘In 2000, when Miss M came into a capital sum of £25,000, she was in a junior position at the start of a career, still living at home with her parents and she had no dependants or liabilities.

On a scale of risk that VM described as follows: *secure 0, cautious 1, Balanced 2, Ambitious 3, Speculative 4,* it was agreed following discussion that Miss M’s attitude to risk was ‘ambitious’ – so, well towards the top of VM’s risk scale.

The description for this risk level was ‘*Customer is prepared to accept a greater degree of risk with their capital and to invest in equities in order to achieve a potentially higher return over the medium to long term i.e. 5 years or more’*.

VM hasn’t provided me with anything to show in detail how it explored Miss M’s attitude to risk. I have seen no evidence that any questions VM asked Miss M about risk were enough for her to be able to understand that investing her money in stocks and shares meant she might not get back as much money as she put in and she was putting her deposit money at risk –quite significant risk according to VM’s own assessment, which seems about right, looking at the product information VM has provided.

Looking at VM’s description of someone with an ambitious risk profile, I don’t think this reflects the level of risk Miss M would have been comfortable taking with her money had VM explained, in terms that Miss M was able to understand, the real risk that she could potentially have less money to put towards buying her own home – which is what happened.

Given that Miss M’s investment capital had come from her share of a trust fund, this was a one-off opportunity and any losses weren’t easily replaceable. She was a novice investor with no previous investment experience and I’ve seen nothing to make me think that Miss M had any clear understanding of the concept of investment risk versus reward. Although she wanted to grow her money to boost funds for a deposit, that aspiration needed to be balanced against the real risk of potential loss impacting adversely on her plans to buy a home. Looking at her financial situation overall, I think she wasn’t in a position to accept the risk associated with the recommended investments. So I find that VM’s original recommendation wasn’t suitable as it would have put too much of Miss M’s deposit money at too high a risk.

I've taken into account that VM said Miss M had no immediate plans to move or purchase a property at the time of sale. But Miss M’s circumstances and financial situation would have been reason enough for this to be a relevant consideration when the advisor was thinking about Miss M’s likely needs at the time he was providing advice. And had a specific question been asked about this, I've no good reason to think that Miss M wouldn’t have said she planned to use the money for a deposit at some future date.

Miss M didn’t choose to accept the advisor’s initial advice which would have put £5,000 into the slightly lower risk Sheltered Growth fund. But this makes no overall difference to the outcome.

But for VM's initial advice to invest £20,000 into the Stockmarket Growth Fund, I don't think it's likely that Miss M would have invested £25,000 into this fund – or that she would have wanted to invest such a substantial proportion of her investment pot in the recommended funds if VM had done enough to ensure she had a sufficiently clear understanding of investment risk to be able to make an informed decision. But she was not an experienced investor and I find that the actual risk she was prepared to take was, in all likelihood, rather lower than '*ambitious'*.

In coming to my decision, I've thought very carefully about the fact that it was entirely Miss M's own decision whether or not to accept VM's recommendation. I see things this way:

- The onus was on VM to equip Miss M with the knowledge and understanding that she needed to be able to make a reasonable investment decision.
- The investment choice she made was significantly at odds with her need to save for a deposit – or indeed, to protect the value of her limited capital for whatever future capital requirements she might have, which the advisor could reasonably have expected to include a number of possibilities over the course of her lifetime.
- The advisor was aware that Miss M was minded to put the whole £25,000 into the Stockmarket Growth Fund, against his advice. This didn't reflect VM's 'model portfolio' and was a more risky option than the advisor had assessed as suitable.
- I would have expected to see a more robust record reflecting that this wasn't something VM endorsed or could recommend. The handwritten comments on the revised recommendation now proposing the £25,000 investment in line with Miss M's stated wishes simply say: '…*spoke at length regarding the option to invest the full amount of £25k into SGF (Stockmarket Growth fund)… which you understand is different from ideal solution'*.
- I agree with that assessment so far as it goes. And I would say Miss M's investment decision didn't seem reasonable given the mis-match between her particular circumstances and investment objectives as compared to the level of risk to which her investment was exposed.
- This reinforces my provisional view that the most likely explanation for Miss M making such a risky investment decision for the whole of her investment pot is that her lack of investment experience and the advisor's failure to properly ascertain her needs and objectives or explain risk and reward in understandable terms in order to accurately establish her risk approach, resulted in an unsuitable recommendation.
- On the strength of that unsuitable recommendation, Miss M was prompted to take even more risk with her investment, tempted by the prospect of a higher return but with no apparent appreciation or understanding that the investment risk was commensurately higher.

The Personal Financial Report did include a warning that the value of a Unit Trust or a stocks and shares ISA was not guaranteed and would fluctuate, but I think it is unlikely that Miss M, as a novice investor, would have fully understood the risks involved. So this does not change my conclusion that the initial recommendation was not suitable for Miss M – and had this unsuitable recommendation not been provided, Miss M would not have gone on to invest as she did.

So I am planning to uphold this complaint and tell VM to take steps to put things right.'

What the parties said in response to my provisional decision

Both Miss M and VM have told me that they have nothing further to add.

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.

I'd like to thank both parties for all the information that has been provided about this matter. Given that I've not received any further evidence or comment that changes my mind about this complaint, I confirm the conclusions I reached in my provisional decision.

Putting things right

fair compensation

In assessing what would be fair compensation, my aim is to put Miss M as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Miss M 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 her circumstances and objectives when she invested.

what should VM do?

To compensate Miss M fairly, VM must:

- Compare the performance of Miss M's investments 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.

- A separate calculation should be carried out for each investment and the details of the calculations sent to Miss M in a clear, simple format.

- VM should also pay interest as set out below.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISA	No longer exists	For half the investment: FTSE WMA Stock Market Income total return index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Unit Trust	No longer exists	For half the investment: FTSE WMA Stock Market Income total return index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Income tax may be payable on any interest awarded.

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, VM 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:

- I have found that Miss M most likely would have wanted capital 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 their capital.

- The FTSE WMA Stock Market Income total return index (after 1 March 2017 the FTSE UK Private Investors 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 Miss M'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 Miss M into that position. It does not mean that Miss M 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 Miss M 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.

My final decision

I uphold this complaint and direct Clydesdale Bank Plc trading as Virgin Money to take the steps I've set out above to put things right for Miss M.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss M to accept or reject my decision before 17 July 2023.

Susan Webb
Ombudsman