DRN-4692029

The complaint

Mr and Mrs G have complained about the advice they were given to invest, by Sesame Limited in August 2001.

Mr and Mrs G are being represented with this complaint by a claims management company.

What happened

In August 2001, Mr and Mrs G were advised to invest a total of £20,000 by an advisor of Sesame. £7,000 of this was invested into an Individual Savings Account (ISA) and £13,000 was invested into a mutual fund outside of an ISA.

In July 2022, Mr and Mrs G complained about the advice they'd received to invest into the fund. They confirmed they were happy with the ISA advice they'd been given. Amongst their complaint points, they said they'd limited investment experience previously, had been left with an insufficient cash reserve and that they had insufficient capacity for loss.

Sesame initially responded to say that Mr and Mrs G had brought their complaint too late. However, an ombudsman at this Service has already decided that we can consider this complaint as it was brought in time. Sesame then went on to maintain that the investment advice was suitable. They said it matched the consumers attitude to risk, circumstances and needs.

Our investigator looked into it. She felt the investment advice was unsuitable. She said Mr and Mrs G weren't left with sufficient cash reserve after the investment advice and due to their circumstances, didn't have sufficient capacity for loss that the investment might bring. She also noted that Mr and Mrs G still had significant liabilities such as a mortgage and personal loan at the time of the advice.

Mr and Mrs G accepted the view of the investigator, but Sesame did not. They said Mr and Mrs G were left with sufficient cash reserves. They felt the recommended OEIC fund matched the objectives and attitude to risk of Mr and Mrs G. They said the liabilities didn't have long left to run and the repayments for them were manageable.

As no agreement was reached, the case has been passed to me for a 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.

Having done so, I agree with the investigator that this complaint should be upheld. Let me explain why.

Due to the amount of time that has passed since this advice was given, we understandably don't have much information from the point of sale. However, I have been provided with the recommendation letter, fact find document, risk profile questionnaire and application form. I have based my decision on these amongst other evidence provided by both parties.

Mr and Mrs G's circumstances at the point of sale were that they were both 59 years old. Mr G was receiving some pension income but still employed. Mrs G was employed part-time but recorded as looking to retire and do some freelance work the following year.

Their children were adult and not dependent on them. They had a joint net monthly income of approximately £2,400, with recorded monthly outgoings of £1,400. Although the notes of the outgoings are very limited and not detailed. They had liabilities including approximately £34,000 outstanding on their mortgage. This appears to have had two years left and Mr and Mrs G appear to have had an endowment policy in place for the outstanding balance. There is nothing on file to suggest this wasn't expected to be sufficient. Mr and Mrs G also had an outstanding personal loan for £7,000 with two years outstanding on it.

Mr and Mrs G were not recorded as having any other investments other than a previous years ISA with an approximate value of £9,500. There is conflicting information as to how much this left Mr and Mrs G with as a cash reserve. The fact find document states £30,000 but the recommendation letter states £24,000 and that following this advice, Mr and Mrs G were left with approximately £4,000 on deposit. I am more persuaded on a balance of probabilities that the more precise figure (£24,000) in the recommendation letter was correct.

Mr and Mrs G were recorded as having a "balanced" attitude to risk, wanting capital growth from the investment and scoring 5 out of 8 on a risk factor. However, based on their circumstances at the time through the information presented to me, I don't think the advice to invest in this fund outside of an ISA was suitable.

Mr and Mrs G were being advised to invest too much of their available assets. Leaving them with insufficient cash reserves. I am not surprised to see that they made a withdrawal after less than one year of investment. And surrendered the whole long-term investment after just four years. Despite how Mr and Mrs G classified their attitude to risk, I don't think they were in a position to take the risk that this investment presented. They were close to retirement, with no fixed details of what their income would be at that time. They still had outstanding mortgage and loan liabilities that needed to be met, for at least two more years. This was a long-term investment, which invested up to 85% in UK and international equities.

In summary, I don't think the advice to invest in this fund outside of an ISA was suitable. It carried more risk than they were able to take. It didn't leave them with sufficient cash reserves and they didn't have the capacity for the loss that it might bring. Especially as their circumstances were likely to change in the short term, whereas this was a long-term investment.

Putting things right

Fair compensation

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

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

What should you do?

To compensate Mr and Mrs G fairly you should:

- Compare the performance of Mr and Mrs G'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.

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

- Pay Mr and Mrs G £250 for distress caused by the total loss of the investment, as well as being advised to invest too much of their available capital in a fund which was above their capacity for risk.

- Provide the details of the calculation to Mr and Mrs G 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
The Fidelity Portfolio Fund	No longer exists	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	Ceased to be held	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, 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 withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if you total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs G wanted capital growth, but only had the capacity for a small risk to their 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 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 and Mrs G's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs G into that position. It does not mean that Mr and Mrs G would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Investment ceased to be held year on any loss from the end date to the date of settlement.

  Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs G could have obtained from investments suited to their 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

My final decision, is that I uphold this complaint. Sesame Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G and Mr G to accept or reject my decision before 26 April 2024.

Yoni Smith
Ombudsman