DRN-4841763

Financial Ombudsman Service

The complaint

Mr B complains that he was misadvised by Applewood Independent Limited (‘*AIL*’) in October 2021 to place £20,000 into a stocks and shares ISA.

What happened

Mr B and his partner Ms L contacted AIL in October 2021 to undertake a review of their financial circumstances, notably in relation to their combined cash savings and the eventual repayment of their joint interest only mortgage. Ms L also had three personal pensions that were reviewed by AIL. It is the investment advice given to Mr B that is the subject of this specific complaint.

Following gathering of information by AIL and subsequent advice, Ms L was sent a pensions transfer advice letter on 15 October 2021. Mr B and Ms L were also sent a ‘reasons why’ letter on 24 November 2021, which set out AIL’s overall recommendations. Thereafter, Mr B agreed to place £20,000 into an ISA. Ms L also accepted the proposal to set up an ISA and a unit trust (totalling £80,000), as well as the transfer of her pensions. All of the investments were placed into the Applewood Independent Growth 8 Portfolio, a split of 11 funds held within a Fidelity platform.

Unfortunately, over the course of the following months, the values of the investment funds dropped. On 23 May 2023, Mr B and Ms L complained to AIL about the investments, and the advice they’d received in 2021. The complaint set out how that they felt misled into taking out their investments meaning that AIL’s advice had caused them both a considerable financial loss. In summary, they said:

- Ahead of their annual review, AIL sent them a portfolio review in November 2022 – this was the first time they realised that their investments had made a significant loss.
- In relation to Mr B and Ms L’s ISAs and the unit trust, the overall loss was 18.7%.
- After the annual review, they agreed with AIL to rebalance the portfolio to seek to recover the loss to date.
- However, by May 2023, the loss was still in excess of 13%.
- They had taken the view to make the investments rather than pay off their mortgage – and AIL had influenced that.
- However, due to the rise in interest rates over the same period, their monthly mortgage has increased by more than £1,000 per month.
- They feel that the decision to make the investment alongside their failure to pay the investment sums off of their mortgage had caused them a combined loss that was (at that time) in excess of £22,000.
- With reflection, their initial meeting of 1 November 2021 was just an AIL sales pitch.
- The annual review meeting in November 2022 was frustrating and a further form of sales speech about the failing investments.
- AIL insisted that the sort of returns they’d receive on their investments would be circa 6-8% per annum.
- Though an unorthodox and questionable risk assessment was undertaken for Ms L, they have no recollection or evidence for one being completed for Mr B.

- In any event, they question the appropriateness of the recommendations for the investments based on the risk level, which was too high.
- The worst predicted loss on the investments given in the recommendation documentation was just over 7% - this was misleading.
- Despite the rebalancing, they are also dissatisfied with the performance and management of the chosen funds for their investments.
- They were sent a great deal of paperwork, whereby the approach taken was to over-inform them and bind them to advice by including copious caveats and jargon.

In July 2023, AIL rejected the complaint. It split the complaint into six main aspects:

1. In respect of the mortgage, it had been a decision for Mr B and Ms L as to whether to invest part of their capital or to pay off some of their mortgage. AIL noted that it was discussed how interest rates at that point had been very low; Mr B and Ms L were happy to continue paying the mortgage and to take the risk of the payments increasing, based on the fact that there were no indications from the government or from the finance industry that the mortgage would become more expensive or certainly as expensive as it has. It was also discussed how investment returns would hopefully be better over the longer term than the mortgage rates of interest.
2. The investment loss was part and parcel of taking a short term view, and the one year period in particular question was one of the worst economic periods across the previous decade. However, the losses of 19% from that 12 month period, were up by nearly 10% into early 2023. Unfortunately, that was due to a period of unforeseen volatility where even extremely low risk investments such as gilts suffered losses in excess of those sustained by Mr B and Ms L's investments. Appropriate risk warnings were given to Ms B and Ms L in the suitability reports covering the fact that their investments could fall as well as rise and notably in completing their risk questionnaire, Mr B and Ms L confirmed that they would be concerned if their portfolio fell by more than 20% over a one-year period.
3. AIL apologised if the November 2021 meeting came across as a sales pitch, and that had not been its intention. Though returns of 6-8% per annum had been discussed – because that was AIL's chosen portfolio's track record over the last decade – these were set out with a long term view, balanced against fluctuations and some losses.
4. It felt the risk assessment had been appropriately undertaken – and whilst it was put to Ms L first (because she was also undertaking pensions transfers), the answers for Mr B were also recorded and reflected in the recommendation/reasons why letter.
5. AIL appreciated that Mr B and Ms L felt the volume of information in the written documentation was unnecessary, but it had a regulatory requirement to ensure that it provided certain information to them. Overall, AIL was satisfied that it had gone through the paperwork with Mr B and Ms L to ensure they understood it.
6. The perceived confidence of AIL's adviser at the November 2022 review meeting was misunderstood. Any statement of positive returns was in relation to clients holding portfolios in excess of ten years – and those clients to date had seen positive returns on their invested funds. Nonetheless, its adviser could not find profits where they do not exist, and Mr B and Ms L had been reviewing their returns over a snapshot of a very unfortunate economic period. A period of poor financial returns couldn't have been foreseen by AIL, but the risks relating to that were made clear to Mr B and Ms L.

AIL said in conclusion, that as its risk warnings detailed, markets could go up as well as down and it could not be held accountable for that. It remained of the view that the risk level was appropriate and in line with Mr B and Ms L's instructions, and the funds had been fairly chosen with high quality managers along with appropriate diversity. Unfortunately, the nature of investing was such that an investor could not expect to make money every year and over the longer term the losses will be recovered, with a view to achieving desired performance levels in excess of returns made in deposit-based savings.

Mr B and Ms L remained unhappy and they referred their complaint to us. Whilst the matter was awaiting review at this service, Mr B explained that in January 2024, AIL had asked for Ms L and Mr B to complete updates to their ongoing attitude to risk. They sent their answers to risk profiling questions back to AIL that month.

Mr B explained that the answers to the questions now yielded a risk rating of 2 out of 10 – which the adviser explained wouldn't be suitable for any portfolio based investments at all. He therefore contended that if this same process had happened in 2021, they might not have invested at all and perhaps left their funds where they were – in a mix of cash-based savings accounts and premium bonds. Either way, Mr B said he and Ms L felt that their risk profiles cannot have been properly assessed in the first place.

An investigator from this service then reviewed the complaint. He felt that it should be upheld.

Firstly, he set out that though Mr B and Ms L's objectives and future plans in relation to paying off their interest only mortgage in the coming medium term had been discussed, he did not believe that AIL had given them mortgage advice – because its client agreement made clear that it did not do so. He felt the informed decision not to use their savings to pay a lump sum off of their mortgage was a choice that Mr B and Ms L had made independently.

Secondly, he did agree with AIL that the poor performance of the investment over the short term could not have been reasonably foreseen, and that it was a possible consequence of investing – something AIL had made Mr B and Ms L aware of.

However, our investigator otherwise believed that the complaint ought to succeed. He said that whilst he was satisfied that Mr B had the capacity to invest some of his money for the medium to long term, the recommendation he received comprised an assessment placing his capital at too much risk. Mr B hadn't got any investment experience, and he wasn't reasonably prepared to sustain the capacity for loss based on a 'high' risk rating.

Mr B accepted the investigator's principal view that the complaint ought to succeed. He and Ms L added some further submissions that they felt were relevant but unaddressed by the investigator. They said:

- They did make their position explicitly clear in the first meeting that their investment was for a short to medium term, not a long term. This was because they wanted to pay their mortgage off in around five years.
- If the advice is unsuitable, they ask if the charges also be refunded for that advice.
- The investigator said that Mr B's risk profile was accepted or agreed as an 8 out of 10 – but only Ms L had a risk profile undertaken in 2021.
- Ms L's risk profile was also completed on her behalf by the AIL adviser.
- The January 2024 risk questionnaires represent their true tolerance for risk – which is low.
- They hadn't decided what to do about their mortgage until after they met with AIL – even if it doesn't give mortgage advice. The adviser's projections of anticipated returns then influenced their decision to use the funds for investing rather than debt repayment.
- They are also now very close to having to surrender the investments to pay some money off their mortgage.

AIL disagreed with the investigator's view on the complaint. It asked for the complaint to be referred to an ombudsman. It made some further written submissions, noting:

- Both Mr B and Mrs L had the level of education and professional expertise to understand the importance of the financial questions put to them at the time of the advice.
- It therefore had a reasonable basis for believing they had answered questions about their risk tolerance, risk appetite and capacity for loss to be honestly and knowledgeably.
- There were no inconsistencies in the answers given in the risk profiling that might indicate or have given AIL cause to believe there was a lack of understanding.
- Mr B was a member of a final salary pension scheme and had held shares before – so he did have some exposure to investing, rather than being a first-time investor as suggested.
- Any investor would have understood the volatility of investments from the information supplied of historical performance and national or world events such as Brexit or the pandemic.
- The investments – totalling £100,000 – represented less than half of the available funds Mr B and Ms L had on deposit, in premium bonds and in shares held by them.
- The risk ought to be viewed in that context, given their significant amount of funds retained in deposits.
- The suitability report does show discussions about Mr B and Ms L's attitude to risk. They signed the paperwork and agreed to the documentation at that time. If this wasn't an accurate reflection of the discussion, they could have told AIL.

Mr B also made some additional written comments for an ombudsman's consideration. I haven't repeated them all here, and much of the content was reiterations of his and Ms L's position. Some additional points said:

- Neither his nor Ms L's employment history gives any professional standing relevant to investing.
- Their risk profiles in January 2024 were 2/10 – below the 3/10 threshold for any Applewood portfolio.
- The risk profile was filled in for Ms L by the adviser and duplicated for Mr B.
- Holding some shares and workplace pensions didn't give either of them any experience of the new investments they were taking out.
- Their combined savings were just over £180,000.
- Although it is correct that they had approximately £2,000 monthly surplus income above their fixed outgoings, that money was effectively accounted for; they needed to allocate that money either for mortgage overpayments, or savings for the intended repayment on the mortgage in five years' time.
- Surely AIL's responsibility should have been to take every personal and financial factor into account (not just a series of short questions) for example, their ages; their lack of experience in financial awareness and decisions; their intentions; their previous and clearly evidenced saving strategy of using premium bonds; and a huge financial overhead in terms of the interest-only variable rate mortgage.
- He and Ms L would ask that if the case is upheld, that any interest should be based on 1.99% above Bank of England base rate because they would have otherwise paid the investment money to their mortgage.
- They also seek compensation for the impact on them in terms of their time, stress, and upset caused by having to deal with AIL and 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.

I'd like to thank both parties for their patience whilst this matter has awaited review by an ombudsman. I also note that Mr B and Ms L referred their complaint collectively to this service. However, the combined complaints about different products have now been split three ways – in respect of Mr B's investment, Ms L's investments, and Ms L's pensions.

To be clear, this complaint concerns just Mr B's investment. A separate decision has been sought for Ms L's investments, and a different ombudsman has issued a decision in respect of her pensions as well. There will of course be similarities across the wording used in the background and the findings of the complaints as they arise from the same circumstances and both parties have made collective submissions, but I can confirm this complaint has been considered separately on its own facts.

In reaching my decision, I will take into account relevant law and regulations, regulator's rules, guidance, standards and codes of practice, along with what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete, inconclusive or contradictory, I'll make conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence before me and the wider surrounding circumstances.

Having looked at everything before me, I am upholding this complaint. I'll explain why below.

I have carefully reviewed all of the documentation from the time of the advice and recommendations made by AIL in late 2021. In summary, AIL recorded that Mr B was in his late forties at the time of the advice. He and Ms L were cohabiting, had no financial dependents and were both said to be in good health. Mr B was employed, a higher rate tax payer and Ms L self-employed. They had a combined income of around £6,000 per month with an average disposable income of about £2,000. Their home was valued at around £725,000 and AIL recorded that they had other assets (primarily cash, premium bonds and some shares) of around £225,000. They did not hold any other investments. Their main liability was an interest only mortgage of approximately £302,000, that had a remaining term of five years.

Mr B and Ms L both say that the approaching remaining mortgage term had necessitated a review of their finances. They also dispute some of the accuracy of figures used in the fact find, though Mr B does accept he followed up the reasons why letter to confirm that the information recorded appeared correct.

I don't believe the recommendation to take out an investment ISA was unsuitable itself insofar as the type of investment considered for Mr B. It seems to me, on balance, that he and Ms L wanted to place their capital into investments where there was a greater possibility of achieving higher returns than the limited amount open to them leaving a large cash sum in cash deposit accounts. They had sufficient means, without dependants and with notable disposable capital on deposit, to take some level of risk of the nature set out by the recommendation. I also make that conclusion with particular reference to their outstanding mortgage, which was tracking at 1.99% above the historically low 0.1% base rate.

Regulatory requirements necessitated that AIL needed to obtain appropriate information regarding Mr B and Ms L's knowledge and experience in the investment field relevant to the advice, their financial situation, and their investment objectives in order to make the recommendation it did.

Once presented with the option of an investment ISA, I do believe on balance that Mr B likely wanted to go ahead with the investment and that on the information I've seen, both he and Ms L were in agreement with recommendation in the circumstances of their specific financial situation and recorded investment objectives. The fact find documentation shows that Mr B and Ms L intended to pay their mortgage off with both a combination of deposits and investment returns.

However, I am not persuaded that AIL's recommendation was fairly or reasonably made in respect of Mr B's approach to risk or his risk tolerance, given his and Ms L's circumstances.

I realise there is dispute around the risk assessment. Though there is evidence of the meetings in the form of recordings and documentation, there is no recording available of the first meeting. I cannot therefore reach a conclusive finding on exactly what was said between the parties at the first meeting in 2021. Mr B contends this was only undertaken for Ms L. AIL says it was undertaken for both of them.

What followed from the meeting was an assessment by AIL of Mr B and Ms L's appetite for risk. AIL says it concluded that they both had a risk appetite of 8 out of 10 (with one being the lowest and 10 the highest scores). The risk rating was defined as:

> "*You would like to take a high level of risk with your investments and are comfortable with the fact that they can increase and decrease in value significantly. You are happy to take a much higher level of risk than a typical medium risk investor to look for potentially higher returns over the* ***medium to longer term*** *[my emphasis]. You are comfortable with investing predominantly all of your portfolio in higher risk areas such as the stock market and accept that your capital will fluctuate in value substantially.*"

It is this rating that determined the Applewood Independent Growth 8 Portfolio fund choice, with a rating of eight effectively meaning that more than 80% of the assets in the underlying funds were comprised of equities.

AIL has also provided us with a risk assessment document which is dated 1 December 2021 and signed by Mr B. Whilst the declaration given there says "*I agree with this assessment of my current risk profile based on the information I have supplied above and in relation to the investment*", I am not satisfied that the answers given (which then were used to accord with the risk level of 8/10) truly reflected the information gathered in the meeting as replicated on the fact find notes, and that it contrasts with the reasons why letter.

One question on the risk assessment for both Mr B and Ms L was "*Which statement [of four] best describes your objectives for this investment?*". For both of them, the chosen answer was *"I want to achieve higher medium term returns than inflation. I understand there may be occasional extended periods where my investments might fall in value*". On Ms L's questionnaire, it was handwritten by the adviser that they required "*growth – 5 yrs*".

However, each of the risk assessments have a first question which says "*When do you need this money, or how long do you want to hold on to this investment*? In this box, the adviser wrote "*25 years*". That answer was used in conjunction with the other questions to reach a risk rating out of ten. I consider that to be a flawed assessment, where the intended term is notably incorrect.

It also contrasts notably from the reasons why letter, which fluctuates over the term throughout the recommendations. In respect of attitude to risk, it says:

> "*We discussed your answers to a questionnaire, the indicative score from which is 8 out of 10 for both of you; and*
>
> *You have been investing in equities and other asset classes over the last few years understand the ups and downs of the market and wish to invest for the medium to long term; and*
>
> *We have discussed the level of risk that you wish to take during our meeting and how that particular level of risk can affect what type of returns you can expect to make over the short (0-5 years), medium (5-10 years) and longer term (10+ years);*"

I accept Mr B (and Ms L) had the capacity to take risk with the invested funds because they didn't need the capital or income to fund their lifestyle; they had excess income from their combined employment and self-employment. But this doesn't mean there was no limit to the risk they could be suitably advised to take, particularly when the funds were earmarked to repay their debt in the short to medium term.

Much of the justification for the risk rating above is based on a long term holding of the investments. In its response to our service, AIL has suggested that Mr B and Ms L were prepared to "*take the risk with the investment to have it to perform and reduce the return instead of paying the mortgage off*". I have not seen any objective evidence of that. At the longest, Mr B and Ms L were looking at the shortest end of medium term investments, in the hope of preventing their cash reserves being eroded due to inflation.

AIL's role was to understand Mr B's [and Ms L's] needs. It was in a good position to have analysed, tested and challenged their aims, versus their requirements – which were to repay the mortgage at the end of its term. Accordingly, I don't believe that Mr B and Ms L's risk profiles were properly ascertained, the recommendation made was not consistent with their actual appetite and importantly their stated capacity for risk. For example, the adviser had the option of considering funds starting from ratings of 3/10 which had far less exposure to equities and an asset allocation that offered a greater balance of lower risk assets and fixed interest securities. That those portfolios didn't perform well over the same period was set out by AIL with the benefit of hindsight. I would still have expected to see due consideration of lower risk funds.

AIL asserts that both Mr B and Ms L were experienced professionals in their own right and so, would've understood the risk assessment questions and process. I don't find that their professional background automatically determines them as particularly knowledgeable on investments. Contrastingly, aside from holding some shares, they had no recorded investment experience of products using portfolios of this nature.

I am persuaded that their reliance on the adviser's expertise in these circumstances was likely. I also take the view that I don't think Mr B and Ms L likely understood the particular risks that the choice of funds for their investments entailed. I'm not satisfied that they appreciated or understood that the underlying investment were made up primarily of both UK and global equities, or that the risk was made properly clear to them – given it was spoken about in contradicting terms in the reasons why documentation.

Like the investigator before me, I don't believe either Mr B or Ms L were given sufficient information in order that they could properly understand and appreciate the risks and benefits, such that they could make a balanced and informed choice about the fund choices for their particular investment or whether they ought to consider a lower risk investment elsewhere. I'm not satisfied that AIL did enough to demonstrate that the advice to place Mr B's funds in the 8/10 risk level portfolio was reasonable. I therefore uphold this complaint.

Finally, I have given consideration to Mr B's recent comments that he and Ms L might not have considered their investments at all, had they truly appreciated the amount of risk they were exposed to by the choice of portfolio funds. They say they'd have otherwise simply overpaid their mortgage. However, I am not persuaded of this – and I believe it is said with a degree of hindsight, given the notable downturn in the value of the investments and the substantial increase of interest rates in the year after their advice. I have already summarised above that I believe, on balance, that Mr B and Ms L wished to proceed with their investments and they were reasonable and affordable proposals of themselves. It follows that I don't agree that any redress should be based on the mortgage rate of interest.

It isn't possible to say precisely what Mr B and Ms L would have done in 2021 had they been advised about the asset allocation of the different funds, and been able to apply these against their actual (undetermined) approach to risk. I am persuaded that it's most likely they would still have gone ahead with the investment recommendation given their overriding objective to achieve greater returns beyond the base rate for deposit accounts at the time; but I find it more plausible that they'd have done so in lower risk portfolios that provided a more cautious approached to risk given their financial objective relating to their mortgage and their lack of means to absorb volatility beyond a shorter to medium term. I have set out the means of establishing this by assessing what would be 'fair compensation' below. I have done this on the basis that the investment is still in force – as no evidence has been supplied to the contrary to date.

Putting things right

Fair compensation

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

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

What must AIL do?

To compensate Mr B fairly, AIL must:

- Compare the performance of Mr B'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.

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

- Pay to Mr B £150 for distress and inconvenience caused. Mr B has explained how the situation has been upsetting due to the impact of the volatility of the investment, which has occurred following AIL's risk assessment.

- Repay the advisor's fees together with simple interest at 8% a year, from the date the fees were paid to the date of the settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Applewood Independent Growth 8	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, AIL 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 B 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 B'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 B into that position. It does not mean that Mr B 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 B could have obtained from investments suited to his objectives and risk attitude.

My final decision

I uphold the complaint. My decision is that Applewood Independent Limited should pay the amount calculated as set out above.

Applewood Independent Limited should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to either accept or reject my decision before 20 November 2024.

Jo Storey
Ombudsman