DRN-5020954

The complaint

Mrs H and Mr H complained about The National Farmers' Union Mutual Insurance Society (NFU). They said they were given unsuitable advice from NFU about investing in one of its managed funds within stocks and shares ISAs and additionally, in a joint select investment plan.

Mrs H and Mr H said the adviser from NFU didn't accurately assess their circumstances or attitude to risk. They said this led to him recommending unsuitable investments that they have lost money on. They would like NFU to compensate them for this.

What happened

Mrs H and Mr H met with an adviser from NFU on 1 July 2021. They said they arranged the meeting as they wanted to discuss the best way to gain interest on a pot of money, they had accrued from downsizing their property.

Mrs H and Mr H said they remember the meeting and what was discussed about risk. They said they remember clearly that Mr H was opposed to risk, and Mrs H said she didn't mind a little risk. They said they had no experience of investing and little surplus income.

Mrs H and Mr H said they were told by NFU to invest the maximum amount they could into ISAs this being £20,000 each, along with putting £150,000 jointly into a joint select investment plan. They said they had no knowledge of what this entailed. They said they could see they were assessed as being scored 4 out of 6 in terms of their attitude to risk but weren't sure what this, in reality, meant.

Mrs H and Mr H said their investment losses had grown enormous and so they decided at a later date to withdraw their funds. They said they now know the investment was more speculative than they had been led to believe and was not a suitable recommendation for them. They said the risk rating given to them and what was recorded down on the fact find, was not representative of the actual discussion they had with the adviser.

Mrs H and Mr H said they also don't think the charges were set out in a clear way or explained to them. They said there were also a lot of inaccuracies in the fact find report in terms of what their surplus income was at the time, their savings, and the risk they were prepared to take. They said the investments recommended to them were unsuitable for their needs. They complained to NFU about all of this.

NFU said in response that its adviser carried out a fact find in the meeting and documented Mrs H and Mr H's financial circumstances. It said it's adviser relied on what they told him. It said they agreed what their attitude to risk and what their financial capacity was. It said its adviser matched investments to what he had assessed was Mrs H and Mr H's needs to be and their objective.

NFU said Mrs H and Mr H were provided with documents that displayed clearly what the charges and fees were as well as an illustration of what they could achieve with the fund. It then gave reasons why the fund had not performed so well in recent times but said whilst this was the case, the fund had a history of being able to recover loses over time. It said it noted that Mrs H and Mr H had withdrawn and closed their investment when the fund price was at a low point, and it had since recovered from this.

NFU said that its adviser had discussed Mrs H and Mr H's capacity for making a loss and it could see that they said that whilst they would be disappointed with a loss, they confirmed that they would be happy to hold onto the investment until it recovered.

NFU said it didn't think its adviser had done anything wrong and his recommendation was not unsuitable.

Mrs H and Mr H were not happy with NFU's response and referred their complaint to our service.

An investigator looked into Mrs H and Mr H's complaint. He said the crux of Mrs H and Mr H's complaint was that they were advised to take on too much risk. He said they were unhappy with this.

The investigator said he was satisfied Mrs H and Mr H knew they were taking on some risk, but he didn't think they were prepared for the level of fluctuation or financial loss that occurred.

The investigator concluded that the way NFU conducted the assessment of their attitude to risk was contradictory and it went on to rate them with a too high-risk rating. He thinks they had capacity to take some risk however their age and the answers they gave to some of the question asked in the attitude to risk questionnaire meant ultimately, they didn't want to take on that sort of risk and the product recommended was unsuitable for them.

The investigator said the adviser should have questioned them further, especially as they were first time investors. He said if the adviser had understood more how risk averse Mrs H and Mr H were, he ought not to have assessed them at the level they were given and should have recommended a lower risk product.

The investigator said he takes the view Mrs H and Mr H would have invested still but differently and suggested a way NFU could put things right.

NFU is not in agreement with the investigator's view. It said the scripted questions it used were not there to determine the customers attitude towards risk. It said they were used simply to generate discussion on Mrs H and Mr H general appetite to risk. It said it was up to the adviser and customers to agree a risk level and then proposed investment.

NFU said its records are robust in showing the type of investment, the risks involved and discussions around that. It said it can't agree with the investigator that its adviser's recommendation to Mrs H and Mr H was unsuitable.

Because the parties are not in agreement, Mrs H and Mr H's complaint has been passed to me, an ombudsman, to look into.

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.

Mrs H and Mr H's complaint is that they were advised to take on too much risk and that the documentation completed by the adviser was not an accurate record of what was discussed between them. They said the investments they were advised to take were unsuitable for them.

I have looked into what was recorded down at the time and in particular what was discussed between the parties about Mrs H and Mr H's circumstances, their objectives and what their attitude to risk was, in order for them to try and achieve what they wanted.

Mrs H and Mr H have queried how accurate the information the adviser recorded down is. But the financial circumstances put together by the adviser formed the basis of the discussion between the parties, and I think on balance, would have been what was discussed between them at that time.

The adviser from NFU put down in the financial report that Mrs H and Mr H held a joint income of around £1918 a month, with around £728 in disposable income between them a month. They said they had retired and were receiving a state pension along with a small personal pension. They said they had downsized, and this had accrued them some additional money of around £280,000. They said they were looking to receive a return from these funds to supplement their income.

I can see that Mrs H and Mr H had completed generic questions about risk and their attitude towards certain scenarios. Mrs H and Mr H both gave replies to several of these risk-based questions and were then both classified as 4 out 6 on a risk rating scale with 1 being the lowest grading of risk and 6 the highest.

The description for risk level 4 was:

"You are prepared to put money at risk and accept that values can fall but will try to limit the risk of significant losses. You wish to have the potential to significantly outperform bank of building society accounts. Investments like this will rise and fall in value more than investments associated with lower risk levels. You can invest for the longer term. Say five years or more and do not foresee needing to sell your investments earlier. You are comfortable putting around three quarters of your investments into shares of companies in well established markets and the rest in lower risk investments such as bonds. An investor in this risk level is typically someone who has a good level of knowledge of stock market investments".

NFU has told our service that the questionnaires answered by Mrs H and Mr H only formed the basis of wider discussions between the parties about the risk they were prepared to take on, in order to meet their objectives. I acknowledge what NFU has said here and have read what was recorded by the adviser in the summary of ATR box, however I've not seen enough evidence that the advisor fully explored the significance of such a rating with Mrs H and Mr H.

Looking at NFU's description of an investor with a risk profile 4, I don't think this reflects the level of risk Mrs H and Mr H would have been comfortable taking with their money based on their circumstances at the time and what they have said to NFU and our service. And I think the adviser ought to have asked more about this and explained what it was that Mrs H and Mr H were getting into.

I think if NFU had explained, in terms that Mrs H and Mr H were able to understand, the real risk they were being exposed to by accepting its risk rating, then I don't think it is likely that Mrs H and Mr H would have gone on to accept NFU's recommendations. Put simply, I don't think the risk rating NFU attributed to Mrs H and Mr H accurately reflected who they were as potential investors. They were in reality novice investors with no previous investment experience and were in retirement just looking for some additional income from their capital.

I can't see how NFU could have considered them to have a good level of knowledge of the stock market or think that it would be suitable to recommend to them what it did.

I don't think it's likely that Mrs H and Mrs H would have invested through their ISA's and select investment plan into the Mixed portfolio 40-85% fund with so much of their available capital – if NFU had done enough to ensure they had a sufficiently clear understanding of investment risk to be able to make an informed decision. As I have already said, they were not experienced investors and have said on a number of occasions their aim was to obtain some interest on their capital for their retirement. I find that the actual risk they were prepared to take was, in all likelihood, rather lower than the 4 grading they received. When I look at the fund they did invest in and were recommended and the asset allocation that made up this fund, this being over 85% in a variety of equities including emerging markets and worldwide equities, I can't see how NFU would have considered this to be suitable for Mrs H and Mr H, based on what they told it at the time and what they have said since.

In coming to my decision, I've thought very carefully about the fact that it was entirely Mrs H and Mr H's own decision whether or not to accept NFU's recommendation, and that they would have told the adviser at the time that they wanted to proceed under the terms described by it. But I think the onus was on NFU to find out more than it did on this occasion, in order for it to make a more suitable recommendation and to equip Mrs H and Mr H with the knowledge and understanding that they needed to be able to make a reasonable investment decision.

My conclusion is that the recommendation made by NFU was not suitable for Mrs H and Mr H – and had this unsuitable recommendation not been provided, they would not have gone on to invest as they did, but I do think they would have invested in something else, as they were looking to get a return from their capital, albeit with much lower risks being taken. So, I uphold this complaint and NFU now needs to take steps to put things right.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs and Mr H as close to the position they would probably now be in if they had not been given unsuitable advice. I take the view that Mrs and Mr H 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 Mrs and Mr H's circumstances and objectives when they invested.

What must NFU do?

To compensate Mrs H and Mr H fairly, NFU must:

- Compare the performance of Mrs H and Mr H'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.

- Mrs H and Mr H invested £20,000 each in a stocks and shares ISA and £150,000 in a joint Select Investment Plan. So, invested a total of £190,000 with NFU. All of this investment was then put into NFU's Mixed Portfolio 40-85% shares C fund. It is all of this amount, this being the £190,000 invested by Mrs H and Mr H, that NFU should compare as I have described here.

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

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mixed Portfolio 40-85% shares C fund	No longer in force	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 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, NFU 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:

- Mrs H and Mr H wanted Income with some growth with 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 Mrs H and Mr H'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 Mrs H and Mr H into that position. It does not mean that Mrs H and Mr H would have invested 50% of their 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 H and Mr H could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold Mrs H and Mr H’s complaint. My decision is that The National Farmers' Union Mutual Insurance Society should pay the amount calculated as set out above.

The National Farmers' Union Mutual Insurance Society should provide details of its calculation to Mrs H and Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H and Mr H to accept or reject my decision before 9 December 2024.

Mark Richardson
Ombudsman