

The complaint

Mr and Mrs S have complained about the advice they received from Invest Southwest Ltd (Invest Southwest) to invest in an Open-Ended Investment Company (OEIC). They believe the advice was unsuitable because as they were exposed to a higher level of risk than they should have been.

What happened

Mr and Mrs S were both clients of Invest Southwest and held a number of investments with the firm including a pension portfolio and ISAs. The focus of this decision is the investment into an OEIC. The advice was provided on 27 April 2021 and recommended Mr and Mrs S invest £200,000 into the OEIC which comprised of the following asset allocation:

- Corporate bonds – 3.5%
- Government Bonds 41.5%
- Overseas Equity 41%
- Property 2%
- UK Equities 12%

At the time of the sale Mr S was 67 years old and Mrs S was 62. Mr S had recently been diagnosed with a serious illness. They were in a financially robust position. They had a net disposable income of just over £6,000 per month. They held a significant amount of cash in savings and had a further £100,000 set aside in cash for emergencies. They also held numerous other investments with other providers of varying risk profiles from fixed securities and trackers to international equity.

They had been investing (with advice) for several years and also held a number of rental properties. They also had no outstanding liabilities.

What brought about this specific investment was the sale of one of their rental properties. They wanted to invest £200,000 of the sale proceeds. Their objective was capital preservation, but they also wanted to generate enough growth to help them live comfortably in retirement. They also stated to Invest Southwest that intended to invest for the long term but they also wanted an investment that would provide them with instant access to the cash should they need it.

Invest Southwest assessed Mr and Mrs S as having a risk appetite at the low end of cautious to medium.

Mr and Mrs S have said Invest Southwest was negligent in its advice particularly in including the Baillie Gifford funds in the OEIC. They have said they have since discovered these funds in particular were very volatile in nature and not recommended by the industry for cautious investors.

They have said the funds have grossly underperformed having lost around £24,000 in a matter of months against an increase in the market. They feel Invest Southwest should have known at the time the funds were unsuitable for them.

Mr and Mrs S brought their complaint to this service after Invest Southwest didn't uphold it. The complaint was assessed by one of our investigators who felt it should be upheld because the recommended fund was too high risk for them.

I issued my provisional findings in March 2024 where I set out my reasons why I thought the complaint couldn't be upheld. And extract is set out below and forms part of this decision:

I must make it clear in the first instance that in deciding this complaint I have looked at the advice Mr and Mrs S were given, considered their overall financial position to decide on the information I have whether the advice was suitable taking all of those aspects into account. I know in Mr and Mrs S' most recent submission to this Service they have stated that Invest Southwest made "inaccurate" and "inflammatory" statements including assertions about their investment experience, Mr S' need for advice and his employment status at the time. Mr and Mrs S feel invest Southwest has also intimated that they are serial complainers. They've also said that the individual responsible for responding to this complaint had no understanding of the discussions they had with their adviser.

However, I can assure Mr and Mrs S that any comments aside from the technical aspects of this complaint have not played a part in my considerations. I must be completely objective when deciding any complaint. so, the factors I must consider are building a picture of a consumer's investment experience, capacity for loss/risk, their objectives at the time and whether the advice that was provided was suitable taking all of those factors into account. Turning now to the suitability of the advice, it is clear that Mr and Mrs S wanted to protect their capital as much as possible. However, they also wanted to invest for growth. Given their ages I would generally expect to see a fairly conservative approach to investing used because the average person must preserve as much wealth as they can due to not working in retirement. However, this isn't set in stone and does vary depending upon the consumers financial position. Mr and S appear to be in the rare position of being financially strong. So it seems they could take an element of risk with the monies to amplify the level of growth they would be able to achieve. This doesn't mean I think they were in a position to lose money nor does it mean I think its acceptable or them to have been given unsuitable advice. It just means that each situation is subjective dependent upon the position of the investors. And in this case the advice they were given and the spread of asset types they invested in appear in my view to be largely suitable for them specifically at that time.

The risk levels of the investment must be considered as a whole. Taking account of the spread of assets within the OEIC, I think this allowed Mr and Mrs S to safely invest whilst allowing for a good level of growth if the markets worked in their favour. I know Mr and Mrs S had a particular issue with the Baillie Gifford funds. But these were not the only funds within the OEIC.

The OEIC looks to be balanced between safer investments and riskier investments which is the type of asset allocation I would expect to see for investors in their position. Baillie Gifford did drop in performance – there can be no doubt about that. But I don't think this is something the adviser could have predicted.

Investment funds fluctuate all the time in value – that is the nature of investing. But it is down to the adviser to efficiently and effectively predict whether a downturn is something that will continue or not. The decision will be based on a number of different factors such as experience, history of the fund and industry information. But it isn't an exact science and therefore sometimes an adviser doesn't get it exactly right.

They don't have a crystal ball so it is unreasonable to expect the adviser in this complaint to know the downturn of Baillie Gifford was going to continue as it did.

If the adviser thought the fund would recover, then its reasonable he would have advised to remain in it.

And while I appreciate what Mr and Mrs S have been told by other advisers since they made the investment isn't something I can rely on. The comments are made with the benefit of hindsight and seems to be very subjective in my view.

Furthermore, my role isn't to decide on what the best advice was for Mr and Mrs S – it is to decide whether the advice given was suitable given their circumstances. And in this case I think it broadly was.

Its also important to point out that OEIC is designed to remain invested over a longer term than Mr and Mrs S kept it which will also obviously affect the value and growth. In the first few years of set up an investment will fluctuate especially if the market is struggling due to external factors as was the case here. Keeping an investment invested for a longer term allows it the chance of more stability.

So while Mr and Mrs S have said the adviser knew they would need access to the funds at short notice all the paperwork concerning the OEIC recorded that the advice was to be for the medium to long term, usually five years plus. I have seen several notes from the time of the sale that states "you have told me you intend to invest these funds for the long term" therefore they clearly knew this and so should have understood that only until around five years would they start to reap any benefits from the investment.

The OEIC, as an investment vehicle overall also met with their requirements for an investment product that would allow them to invest but would also allow them access to cash at short notice if required.

Overall I am of the view that the OEIC, when looked at as a whole was suitable in terms of risk exposure for the consumers given their specific circumstances at the time. It met with their objectives and in my view provided a balance of assets which as a whole met their attitude for risk. It is very unfortunate they suffered a loss of not an insignificant amount but I am not persuaded this was due to any negligence by Invest Southwest or because the advice was unsuitable. I think Invest Southwest provided the advice based on its experience also taking account of the fact that any knee jerk reactions to a downturn in a fund's performance would also have a negative effect on the overall investment. I am also satisfied that the OEIC itself met Mr and Mrs S' needs and objectives for investing.

Invest Southwest accepted my provisional findings.

Mr and Mrs S didn't accept my provisional findings and responded with comments which I have summarised below:

- The provisional decision hasn't addressed the complaint points that Invest Southwest failed to act properly, or at all, when Mr and Mrs S raised concerns about the investments.
- The provisional decision states that at the time of the investment Mr and Mrs S had a net monthly disposable income of £6,000 and held trackers, fixed securities, and international equity investments. This is not correct. The only equity investments still held in 2021 were with Invest Southwest and, in response to family circumstances, they had sold two of our investment properties to give them quick access to capital.

- The fact find issued on 27 April 2021, was a re-dated version of the fact find completed in July 2019 and so was out of date. It stated that Mr S was employed when he had been retired for well over a year. It grossly overstated Mr S' income, it incorrectly failed to record that an investment property had been sold to fund the investment, and it overstated the disposable net monthly income. These shortcomings were pointed out to Invest Southwest in a phone call, and Mr and Mrs S declined to sign the document. An updated document was discussed but never prepared.
- The provisional decision does not address the fact that all the equity funds selected by Invest Southwest, not just the Baillie Gifford funds, covering a total of 53% of the total investment, were in high-risk funds and were assessed at either 6 or 7 out of 7 on the industry standard risk scale.
- The fall in value of the Baillie Gifford funds (and indeed all the equity funds in the OEIC) could be predicted. The fact that interest rates and inflation were set on a steep upwards curve in 2021, when the investment was made, was an absolute given and the adviser was negligent in selecting high risk funds, that were heavily invested in highly indebted companies that were very vulnerable to rising interest rates.

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've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

Having reviewed all of the information again as well as the additional lengthy submissions provided since the provisional decision was issued, I remain of the view that the recommended funds in the OEIC were suitable for Mr and Mrs S.

It's important to make clear that the Financial Ombudsman Service is an evidence-based service. Much of Mr and Mrs S' submissions are very emotive and while I fully appreciate their strength of feeling which is born out of the loss in value of their investments, I must remain objective and neutral and base my findings on the evidence I have in front of me that can be substantiated.

I acknowledge that the fact find which underpinned the advice to invest in the OEIC was initially completed in 2019. So the ages of Mr and Mrs S stated in the provisional decision are incorrect. Mr S was 67 and Mrs S was 62. As a part of this I also acknowledge that their financial positions were different to that recorded on the fact find. However, the small changes to their financial positions don't affect the outcome of this complaint.

Updating a previous fact find is a normal process of any business that has longstanding clients. Having looked at the document from 2021 I can see notes had been added updating some of the facts recorded including the sale of the buy to let property and the changes in their incomes. So I am satisfied that the updated information is what I based my findings on and doesn't ultimately change my conclusions.

Furthermore, there is no reference to Mr and Mrs S not accepting the figures and refusing to sign the fact find. In fact I have seen an email from Mr S from May 2021 where he confirms that having reviewed the document he would like to proceed.

Its also worth noting that during the COVID lockdown many firms, Invest Southwest included, changed some internal processes as a result - one of these being the removal of the requirement for wet signatures to documents including fact finds. Which may explain the lack of signature on the document I have seen. But the key point is that nowhere is it recorded by Invest Southwest or Mr and Mrs S that they refused to sign the fact find from 2021 because they disagreed with its contents.

Mr and Mrs S say that their adviser could have selected different funds and I agree he could have. But my role isn't to judge what the best advice could have been, but it is to judge whether I think the advice was largely suitable for them and in line with their stated objectives. Which as I have explained, I think it was.

I acknowledge their strength of feeling and I appreciate their investment has lost value but this doesn't always mean the advice was unsuitable. For that specific time and their specific circumstances, which is a very important consideration, I think the advice was largely suitable. It may be worth noting that at the point of advice Baillie Gifford discovery had outperformed the benchmark and over the course of the last ten years the fund has produced a 51.18% return.

This also illustrates why time in the market is so important for any investment. As stated in my provisional findings I think the fact the OEIC wasn't invested for the long term affected its ability to grow in value. Market cycles and unexpected events are the reason that any investment is long term - so if it falls at any point it has a chance to recover. Mr S also changed the spread of assets on an almost continued basis which didn't allow the OEIC to stabilise thereby potentially affecting its ability to grow.

With regard to whether Invest Southwest could have reacted sooner to Mr and Mrs S' concerns I accept that it is possible however I don't think this point impacts the crux of this complaint. Furthermore, there is a significant amount of correspondence between Mr and Mrs S and Invest Southwest over the years they remained working together and from all that I have seen I don't think Invest Southwest unnecessarily delayed in responding to any of their concerns.

I would like to make it clear that contrary to what Mr and Mrs S think I have *not* stated in my provisional findings that it was acceptable for Invest Southwest to recommend high risk funds because Mr and Mrs S had other wealth and had the capacity to absorb losses. I certainly do not think that someone's wealth makes unsuitable investment advice acceptable. However, an investor's financial position does play a part in me assessing that advice as I must take account of all of the investor's circumstances. And having done that, in my view Mr and Mrs S' financial position was such that the advice for the assets within the OEIC were largely suitable for them taking account of their needs and objectives at the time.

Overall, as already set out in my provisional decision the overall risk of the OEIC must be considered rather than each fund. And in the context of Mr and Mrs S' financial circumstances and needs and objectives and as they wanted to invest for some growth its reasonable to me that the OEIC contained some higher risk equity funds with these being balanced out by the lower risk assets within the OEIC. This how an investment must work to balance safety along with the potential for some growth. I also am satisfied generally with the level of interaction Invest Southwest had with Mr and Mrs S throughout their time together.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S and Mr S to accept or reject my decision before 28 October 2024.

Ayshea Khan
Ombudsman