DRN-5536957

The complaint

Mr and Mrs H complain about the suitability of the advice they've been given by Redmayne-Bentley LLP regarding their investment portfolio, made up of two stocks and shares ISAs and a general investment account.

What happened

In 2017 Mr and Mrs H inherited a portfolio of investments, worth around £310,000 which was already being managed by Redmayne-Bentley. Mr and Mrs H met with Redmayne-Bentley in June 2017 to discuss whether the portfolio was suitable for them or if any changes needed to be made. They were advised to invest the portfolio at a low-medium level of risk and agreed to an Advisory Managed Service.

Over the years they were advised to invest in various funds and shares. In August 2021, they were advised to invest in two investment trusts called Digital Infrastructure 9 and Gore Street Energy which subsequently lost a lot of their value. After they experienced the loss, Mr and Mrs H spoke to other advisers, who have expressed concern about some of the investments in the portfolio, given they are cautious investors, so they raised a complaint.

Redmayne Bentley didn't uphold the complaint, explaining that the losses to the portfolio were due to the general market movements. They said all the investments were considered low-medium risk. As Mr and Mrs H remained unhappy, they brought their complaint to this service. An investigator at our service considered the complaint and found it should be upheld. She said the make up of the portfolio overall represented more risk that Mr and Mrs H had been willing to take. She said Redmayne Bentley should compare the performance of the portfolio with a benchmark that measured returns based on a mixture of fixed rate bonds and the FTSE UK Private Investors Income Total Return Index.

Mr and Mrs H agreed with the investigator's opinion, but Redmayne Bentley didn't. In summary they said:

- The equities involved were lower risk, it didn't involve commodity funds, absolute return strategies or private equity and volatility had been taken into account when choosing investments.
- Regarding the redress, they felt it would be fair to deduct their fees from the calculation. They also disagreed with the benchmark recommended by the investigator as they wouldn't have advised investment in fixed rate bonds.
- They said that in 2023 they had advised Mr and Mrs H to add an element of fixed interest securities into their portfolio but this hadn't been taken up, so they felt the calculation should end when that advice was given.

As the investigator wasn't persuaded to change her opinion, the complaint has been passed to me for a final 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.

When looking at whether Redmayne-Bentley have made suitable investment recommendations for Mr and Mrs H, I've considered whether they were reasonable taking into account Mr and Mrs H's objectives, circumstances, investment experience and attitude to risk. Any information given to Mr and Mrs H needed to be fair, clear and not-misleading, in particular when agreeing to follow the recommendations from Redmayne-Bentley, so they could make informed decisions.

I've kept in mind that investments were made in the context of a portfolio and not in isolation. This means that a singular investment may be higher that Mr and Mrs H's risk tolerance – but in the portfolio context, this may be balanced out by lower risk assets. So, while Mr and Mrs H's complaint focuses on the alternative investments, I need to consider the rest of the investments too in order to decide whether Redmayne-Bentley's advice was fair and reasonable. This also has a bearing on any redress I might award – as I'm looking at the portfolio as a whole, rather than just the funds mentioned.

I've considered the paperwork from 2017 onwards to see what was discussed and agreed. At the time, the adviser completed a fact find and a recommendation letter which recorded Mr and Mrs H's circumstances and investment experience, which shows:

- Mrs H was in her late 50's and Mr H was in his late 60's and had a "*basic*" knowledge and experience of investments.
- They held £37,000 on deposit.
- They'd recently inherited the portfolio of £310,000 which represented more than 75% of their liquid assets.
- They were planning to invest for more than ten years generally to help in retirement.
- Their other investments were in property – their aim with this portfolio was to beat the returns paid on cash and capital preservation in line with inflation.

In 2017 Mr and Mrs H also completed an attitude to risk questionnaire, which shows:

- They agreed they were prepared to miss out on potentially larger gains if it meant there were less fluctuations in the value of their investments.
- They were prepared to accept 10% losses over five years – though in the notes made by the adviser, Mr H in particular was more willing to accept up to 20% losses.
- They disagreed with the statement "*I can accept a greater risk of loss with my investments in order to improve the chance of achieving high returns*"
- If they experienced a loss of 12% in a 12-month period, they would do nothing, anticipating a recovery (rather than sell or invest more).
- When asked what they'd be willing to do to increase the likelihood of improving returns by increasing risk, they said they would be willing to take a little more risk with some of their money – which was the second most cautious option of five options.
- They'd prefer an investment that grew by a much smaller amount, but was steady from year to year, rather than an investment that saw larger fluctuations.

This led to Mr and Mrs H being recorded as having a low-medium attitude to risk (though I note this phrase seems to have been used interchangeably with the word cautious). In my view, it's clear from the above that Mr and Mrs H were inexperienced investors, with only a high-level knowledge of the types of investments and different amount of risk involved.

I've considered the information they were given in 2017 about the types of assets that they might expect as low-medium investors, and the risk that would involve. I can see that in the welcome letter sent in 2017, the adviser referred to the Guide to Investment Objectives and

Risk to help them understand the level of risk agreed. In the 2017 version of that guide, Redmayne-Bentley said:

"Redmayne-Bentley's approach to broad asset allocation seeks to reduce risk by creating where possible, a diversified portfolio, and if applicable, using a range of asset types across different sectors and geographical regions…

A Low/Medium Risk mandate is suitable if you are seeking capital and/or income growth whilst mitigating the potential for capital loss. You are likely to be conservative by inclination, relatively risk averse and looking for an investment approach to provide a real return aiming to do better than a high street deposit account, whilst accepting that the value of the investments can fall.

A Low/Medium Risk portfolio will normally be invested with more emphasis towards the financial instruments listed in categories 1- 3. The portfolio may include financial instruments from higher rated categories but should maintain a bias towards categories 1 to 3 (see pages six and seven).

If you agree a Low/Medium Risk mandate you are likely to have a small capacity to absorb potential shortfalls in income and/or capital (due to fluctuations in value) to meet specific time-bound objectives."

I've considered the types of assets that they would have expected to invest in, based on the categories set out in the guide – as the definition mentions the assets would primarily be from categories 1 to 3, I've focused on those. The guide set out the following:

- Category 1:
    - Sterling investment grade government bonds and prime corporate bonds.
    - Collective investment funds containing sterling high grade government and corporate bonds.
- Category 2:
    - Sterling and non-sterling investment grade, high grade and prime government and corporate bonds.
    - UK large cap equities.
    - Collective investment funds containing the above bonds and/or developed markets equities (large cap), and those that invest in UK Infrastructure.
- Category 3:
    - Sterling mid-grade corporate bonds, non-sterling high grade corporate bonds and high grade permanent interest bearing shares or perpetual subordinated bonds.
    - UK mid cap equities, overseas developed market large cap equities.
    - UK collective investment funds investing in developed market mid cap equities, Low grade sterling government and corporate bond funds, UK property funds, exchange traded commodity funds and split capital investment trusts.

In later versions of this guide, a low-medium (cautious) attitude to risk is described as someone who would have no more than 55% of equities in their portfolio.

From the statements I have there was a consistent holding of single company shares, plus investment in funds that predominantly invest in equities, and no fixed interest securities. I understand that Mr and Mrs H were prepared to invest in blue-chip stocks within their portfolio so are largely happy with the holding of single company shares in large cap developed markets which seem to be in line with categories 2 and 3.

Redmayne-Bentley has not provided documentation or commentary on every investment held in the portfolio over time. The earliest statement I have access to covers 30 September 2020 to 31 March 2021, which shows 50.27% in UK equities 1.67% in a multi-asset fund that may have contained fixed interest securities, 9.97% in property funds, 18.48% in infrastructure funds investing in both UK and worldwide companies, and 17.67% in global equity funds. There's no suggestion that the portfolio was made up of substantially different asset classes prior to that – and I note Redmayne-Bentley has said it was equity based throughout their management of it.

Information has been provided about the recommendation made in 2021 to invest in two investment trusts. From the information provided I can see the factsheet for the Digital Infrastructure 9 investment trust says: "*This Product is intended for institutional, professional, professionally advised and knowledgeable investors who understand, or who have been advised of the potential risk of investing in companies with shares admitted to trading on the Specialist Fund Segment of the Main Market of the LSE.*" I've seen no evidence that Mr and Mrs H were made aware of these risks, or that they had the required knowledge and experience in that area.

It's a niche fund, investing in infrastructure for global data transfer and data storage and I've seen no evidence that Mr and Mrs H were made aware of the risk particular to that sector. I also understand that it had only recently been listed – risks particular to newly listed companies weren't explained.

Gore Street Energy is an investment trust that invests in special purpose vehicles focusing on energy storage projects using lithium-ion battery technology and other forms of energy storage technology. The fund typically seeks legal and operational control through direct or indirect stakes of up to 100% in each special purpose vehicle. They also used gearing and hedging strategies.

Again, this is niche, and I've seen no evidence of Redmayne-Bentley making Mr and Mrs H aware of the risks involved in the sector, or the risks involved in special purpose vehicles. While the shares in the trust fund themselves are listed, it appears that the fund invests in private equity.

While a suitability letter was issued in 2021, it didn't explain any of the risks particular to these investments. Nor did it explain how it would fit in with the existing portfolio in terms of the overall risk being taken. It simply stated the adviser had considered those elements and that it was aligned with Mr and Mrs H's attitude to risk and objectives. Based on the evidence I have, I'm not convinced Mr and Mrs H knew enough about the different types of investments that those funds could invest in, in order to reasonably consent to those more unusual funds being included in the portfolio.

After those investments were made, 38.5% of the portfolio was in UK large cap shares, 1.68% in a multi-asset fund that may have contained fixed interest securities, 4.47% was in property funds, 13.62% in global equity funds, and 39.16% in infrastructure funds, investing in both UK and worldwide companies.

Redmayne-Bentley has said the portfolio was managed on an entirely equity-based model prior to Mr and Mrs H inheriting it, and they continued that afterwards. In my view that's at odds with the way Redmayne-Bentley described their approach to investing regarding diversification of asset types using investments in the range of categories. There were no category 1 investments held in the portfolio, nor were there any bonds from categories 2 and above, or funds that invest predominantly in bonds, held at any point as far as I can tell.

As mentioned at the start of my findings, in general portfolios need to be considered as a whole – a low-medium risk investor's portfolio may contain some investments that are low risk, some at low-medium and some at medium risk. Provided there's a reasonable balance that overall meets their attitude to risk, that's the accepted general approach in industry. Here, I'm not convinced there was a reasonable balance - the portfolio wasn't in line with the level of risk that was described in 2017 as it was not made up of a mixture of the types of investment a more cautious investor would expect.

It's unusual in my experience for inexperienced investors, who want to take a lower than medium amount of risk, to have all their investments in shares and funds that invest primarily in equities. It's even more unusual for those funds to be only recently established, and/or in specialist areas. Based on Redmayne-Bentley's own risk categories in 2017, the portfolio seems to be more in line with a medium risk attitude to risk as that doesn't include category 1 in its core asset types.

Redmayne-Bentley have said that generally the low-medium risk mandate was their lowest – but I note that they were providing a bespoke advisory service. So simply because a low-medium risk category was chosen, they also need to make sure that the investments were suitable for their clients. That means taking into account the information Mr and Mrs H had given in their attitude to risk answers, which clearly indicate a desire for less volatile investments. I'm not persuaded that a portfolio made up entirely of directly held listed equities and funds that invest in both private and listed equities meets Mr and Mrs H's stated attitude to risk.

In my view, it may be suitable for an investor to take more risk than their initial attitude to risk might suggest, provided the adviser ensures they give clear fair and not misleading information about the additional risks, in order to allow them to make an informed decision. Based on the suitability letters I've been presented with, I can't see that has happened here.

Overall, I'm convinced that the portfolio involved a mixture of investments at a higher level of risk than Mr and Mrs H were willing to take from the start. In addition, I'm not convinced they were made aware of the different risks involved in many of the assets included in the portfolio, so couldn't reasonably have made an informed decision to invest in them. I've considered how this should be put right, and I agree with the redress put forward by the investigator. To address Redmayne-Bentley's specific points about this:

- They shouldn't deduct their fees from the returns under the benchmark. As I've found unsuitable advice was given, and as Mr and Mrs H have already sought alternative advice, which will incur or will likely incur fees to put the matter right, it would not be right for the business that gave unsuitable advice to keep its fee. The intention is to ensure that Mr and Mrs H do not pay twice, not that no fee should have been charged.
- The end date of the calculation should not be in 2023 as the relationship was still ongoing and the unsuitable investments were still held after that point. In 2023, Redmayne-Bentley did not advise Mr and Mrs H to sell their holdings in the unsuitable companies, merely to invest a small portion in bonds. So that advice did not change the overall level of risk they continued to take.
- The benchmark chosen is one that I consider fair and I've not been persuaded in the circumstances to choose a different one. It isn't designed to reflect the exact types of investments Mr and Mrs H should have been advised to invest in, rather it produces a return in line with the sorts of investments that met their attitude to risk.

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs 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 Mr and Mrs 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 Mr and Mrs H's circumstances and objectives when they invested.

What must Redmayne-Bentley do?

To compensate Mr and Mrs H fairly, Redmayne-Bentley must:

- Compare the performance of Mr and Mrs 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.

- Redmayne-Bentley 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
whole portfolio	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 Mr and Mrs H became clients 28 June 2017	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, Redmayne-Bentley 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Redmayne-Bentley 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 Redmayne-Bentley totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs 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 Mr and Mrs 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 Mr and Mrs H into that position. It does not mean that Mr and Mrs 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 Mr and Mrs H could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Redmayne-Bentley LLP should pay the amount calculated as set out above.

Redmayne-Bentley LLP should provide details of its calculation to Mr and Mrs H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H and Mrs H to accept or reject my decision before 12 September 2025.

Katie Haywood
Ombudsman