

complaint

The late Mr C complained that he was given unsuitable advice by Beta 2 Limited. As a result, his pension fund fell in value from £55,500 to £2,500 over a period of 14 months.

The executors of Mr C's estate are now continuing with his complaint.

background

Mr C approached Beta 2 for investment advice for his self-invested personal pensions (SIPP). Mr C's existing pensions were subsequently transferred to the SIPP. It appears that following this, Beta 2 advised Mr C to invest his SIPP in Forex trading.

When the complaint was first made in 2013, Beta 2 Limited didn't provide a business file despite requests being made in August, October and November 2013.

When Mr C died, we agreed to temporarily close the complaint until the Executors could provide the information we needed for them to take over the late Mr C's complaint. In April 2014 we wrote to the Executors and Beta 2 to explain this.

Beta 2 responded to say that it disagreed with the complaint and would provide full reasons if we decided to reopen it.

The Executors obtained the relevant information needed and we wrote to Beta 2 in November 2015 to explain that we had agreed to reopen the complaint. We also asked for the business file within 14 days.

Beta 2 didn't respond, so we sent a follow-up email explaining that we would look at the complaint based on the information available. Shortly after this, Beta 2 replied to say that its insurers would answer as soon as possible. But they didn't.

One of our adjudicators looked at the complaint based on the information available and thought that it should be upheld.

He thought that the evidence showed that Mr C was probably a medium to high risk investor. But he considered that forex trading was speculative and extremely high risk. So he thought that advising Mr C to invest his entire SIPP in forex trading was unsuitable given Mr C's circumstances and attitude to risk.

Beta 2 didn't reply to the adjudicator. So we emailed and sent a letter in December to explain that the case would be passed to an ombudsman because it hadn't responded. Beta 2 didn't respond to the email or letter.

In an attempt to get further information before passing the case to an ombudsman, we emailed Beta 2 again in January asking it whether it wanted to submit any additional information for an ombudsman to consider.

Beta 2 did respond to this email in January to explain that it had further information that it wanted to provide. So we asked it to provide a timeframe for when it would provide this information. But no further replies or information were provided. So the case was passed to me to consider.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator for much of the same reasons.

I note that Beta 2 has had several opportunities to provide information or explain if or whether it disagreed with the adjudicator's assessment of the complaint. That information hasn't been forthcoming.

So I have to consider the complaint based on the information available. And I agree with the adjudicator that Mr C was probably a medium to high risk investor. And as a result, advice to invest his entire SIPP in something extremely high risk was unsuitable. I haven't seen any evidence to suggest that Mr C was willing to take this amount of risk with his SIPP. And his background in property development wouldn't have helped him understand the very significant risks involved in forex trading.

So I'm satisfied that the advice Beta 2 provided to Mr C was unsuitable and his estate should be compensated for that.

fair compensation

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

I take the view that Mr C 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 C's circumstances and objectives when he invested.

what should Beta 2 Limited do?

To compensate the estate of Mr C fairly, Beta 2 Limited must:

- Compare the performance of Mr C'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.

Beta 2 Limited should also pay interest as set out below.

If there is a loss, Beta 2 Limited should pay such amount as may be required to Mr C's estate because the SIPP no longer exists.

But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using the late Mr C's marginal rate of tax at retirement.

For example, if Mr C was a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of

tax. However, if Mr C would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

The executors of Mr C's estate should tell Beta 2 Limited what rate of tax Mr C was paying when he retired.

- Pay to Mr C's executors £200 for the trouble and upset this matter has caused.

Income tax may be payable on any interest awarded.

investment name	benchmark	from ("start date")	to ("end date")	additional interest
£55,500 SIPP investment	FTSE WMA Stock Market Balanced Total Return Index	date of investment	The date death benefits paid out	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.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mr C wanted capital growth and was willing to accept some investment risk.
- The WMA Stock Market Balanced Index currently comprises 67.5% UK and International Equities which I believe gives a reasonable proxy for the kind of returns that may have been achieved in funds that were invested in line with Mr C's attitude to risk.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My decision is that Beta 2 Limited should pay the amount calculated as set out above.

Beta 2 Limited should provide details of its calculation to the executors of Mr C's estate in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask the Executor's of Mr C's estate either to accept or reject my decision before 11 April 2016.

Alessandro Pulzone
ombudsman