

complaint

Mr and Mrs D are being represented by a claims management company. Their complaint about Co-operative Bank Financial Advisers Ltd ("CIFAS") concerns advice they received between 2007 and 2009, which they do not believe was suitable for them. In particular, their representative believes they were advised to cancel existing investments when it was not in their interests to do so.

background

Following advice from a CIFAS adviser:

- in 2007, Mr and Mrs D invested £42,000 in a Fidelity bond. This was funded by cashing in two CIS individual savings accounts (ISAs) (worth around £18,000 in total) and two Legal & General bonds (worth around £25,000). Cashing their existing bonds resulted in exit penalties of around £1,100. I understand this investment was held until Mr and Mrs D cashed it in 2012.
- in 2008, they invested £54,000 in a Norwich Union bond. This was funded by cashing in an existing Legal & General bond, which resulted in an exit penalty of nearly £3,000. I understand this investment was held until Mr and Mrs D cashed it in 2013.
- in 2009, they invested £25,000 in a Prudential bond. This was funded by cashing in an existing Sterling bond worth around £18,000, which resulted in an exit penalty of around £1,000. The remainder of the investment was funded by money held on deposit. I understand this investment remained in force at the beginning of 2014 and it is not currently clear whether Mr and Mrs D have cashed it since.

I previously issued my provisional decision (an extract of which is attached and forms part of this final decision) explaining why I considered Mr and Mrs D's complaint should be upheld. I invited both parties to let me have any further comments they wished to make.

CIFAS accepted my provisional decision.

Mr and Mrs D said they had no concerns about their existing investments before they met the adviser and would have left things as they were but for his advice. They believe compensation should be based on a comparison between their original investments and those that replaced them.

Mr and Mrs D's representative also raised further points on the issue of how compensation should be calculated.

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 reconsidered the case, including all responses to my provisional decision, my conclusions remain as set out previously for essentially the same reasons.

This decision is not intended to set a precedent for future complaints. I must consider each case on its own merits. My aim here is to reach an outcome that I believe is fair and reasonable in the particular circumstances of Mr and Mrs D's complaint. I will not attempt to

address every single point that has been raised in this decision, but rather to concentrate on the issues I believe are central to the outcome.

There is no dispute the advice Mr and Mrs D received was unsuitable and that is why I am upholding their complaint. The issue I must consider is how fair compensation should be calculated. My aim is to return Mr and Mrs D as close as possible to the position they would be in but for the unsuitable advice they received. I am not endorsing any calculation provided by CIFAS. I explained in my provisional decision that I did not know whether its previous calculations had been completed on the exact basis I am proposing.

It is difficult to know what Mr and Mrs D would have done but for the advice they received. I note they believe they would have kept their existing investments, but these comments are made with the benefit of hindsight. And whether or not they were unhappy with their existing investments, the adviser was entitled to recommend they alter these if he felt something else would be more suitable.

I am not persuaded switching investment providers was likely to be beneficial due to the penalties and costs involved. But it would potentially have been quite reasonable for the adviser to have recommended free fund switches within the same bonds. And if he had done, I have no particular reason to believe Mr and Mrs D would not have agreed. Even if they had left their investments as they were between 2007 and 2009, it is also possible Mr and Mrs D would have altered their arrangements later on.

It is for these reasons I am not proposing compensation is based on a comparison between the performance of Mr and Mrs D's original investments and those that replaced them. Instead, I think a fair approach is to use an assumed rate of growth to assess the amount Mr and Mrs D might have achieved if they had received suitable advice. And to compare this with the amount achieved by the investments they were sold.

I believe the benchmarks I am proposing are a reasonable means of assessing the returns Mr and Mrs D might have otherwise achieved for the reasons set out in my provisional decision. I do not agree with their representative's view these benchmarks are not appropriate to use in this situation.

I am aware of the penalties and costs Mr and Mrs D incurred in switching investment providers. I remain satisfied the most appropriate way to account for these is to ensure the relevant comparison is made between the fund values (not the surrender values) of the original investments (plus the assumed return using the relevant benchmarks) and the surrender values of the replacements.

The amount Mr and Mrs D took out of ISAs in 2007 was relatively small and I understand they were not higher-rate taxpayers at the time. As this money appears to have been returned to ISAs once they began cashing in their investments made between 2007 and 2009, it is not clear the temporary loss of ISA status caused a quantifiable loss. As for any lost ISA opportunities above this, Mr and Mrs D would have had to switch out of their existing investments to benefit from these and that is something they say they would not have done.

I have considered the comments of Mr and Mrs D's representative about the amount of additional compensation I proposed. This was intended to cover the trouble and upset caused by delays in CIFAS's response to their complaint, as well as the inappropriate advice

they received and temporary loss of ISA status for a small part of their money. Awards for trouble and upset are particularly difficult to assess, but I still believe a moderate payment of £400 is fair in this case.

my final decision

My final decision is that I uphold this complaint.

I direct Co-operative Bank Financial Advisers Ltd to pay Mr and Mrs D compensation as set out in my provisional decision. This includes additional compensation of £400 for their trouble and upset, which is payable whether or not the detailed calculations show they have been disadvantaged by the advice they received.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs D to accept or reject my decision before 7 April 2015.

Jim Biles
ombudsman

extract from provisional decision:

my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. There is no dispute the advice Mr and Mrs D received was not appropriate. The issue I must consider is how fair compensation should be calculated.

When we uphold a complaint, the principal aim of any award we make is to return a consumer to the position he/she would have been in but for the inadequate advice they received. In this case, that means my approach to calculating compensation will be very much determined by what I think Mr and Mrs D would have done with their money if they had not been advised to switch investments in the way they were.

It is possible Mr and Mrs D would have retained their existing investments as they were. But the sales documentation records they had some concerns about how they were performing and I must consider the possibility they would have altered things anyway. They could have done this either by switching into alternative funds with the same provider where possible or cashing in the investments and reinvesting the proceeds. In view of the costs incurred in switching investments, I consider it is more likely any changes would have been achieved by switching funds with the existing providers where possible. It is also possible Mr and Mrs D could have done a combination of these things, that is retaining their original investments initially and then altering them at a later date.

With this in mind, I do not necessarily believe a simple comparison of Mr and Mrs D's replacement investments with what would have been achieved by their original investments is appropriate. Taking everything into account, and in the absence of any compelling evidence about what they would have done instead, I believe it would be more appropriate to calculate whether Mr and Mrs D have been disadvantaged by the advice they received with reference to an assumed rate of growth. In other words, to compare the value of the replacement investments with the values of their existing investments at the time they were cashed in, plus an assumed rate of growth to reflect the return Mr and Mrs D could have achieved if they had made alternative arrangements.

I understand the concerns of their representative that Mr and Mrs D are compensated for the costs incurred switching their investments. Those costs include the exit penalties on their original investments, the set-up charges on the replacement investments and any exit penalties incurred on recently cashing in those investments. I believe the most appropriate way to account for these costs is to ensure the relevant comparison is made between the fund values (not the surrender values) of the original investments (plus growth) and the surrender values of the replacements. This is an important point and it is not clear whether CIFAS' previous calculations were conducted on this basis.

I do appreciate some of the money Mr and Mrs D invested in 2007 was realised by cashing in ISAs and that this money lost the beneficial tax status at that point. But I am also conscious the amount actually taken out of ISAs was relatively small and that the actual benefit of investing in an ISA (compared with a non-ISA equivalent) is relatively minor for nil- rate or basic-rate taxpayers. I also note from the comments of Mr and Mrs D's current adviser that this money appears to have been returned to ISAs once they began cashing in the investments made between 2007 and 2009. In these circumstances, I do not currently believe it has been demonstrated that the temporary loss of ISA status on the money Mr and Mrs D withdrew from ISAs in 2007 has led them to suffer a quantifiable loss.

If I am interpreting the correspondence correctly, the view that compensation is due for the lost ISA status appears to be grounded in the belief that Mr and Mrs D should have been advised to invest more in ISAs than they already had invested this way in 2007. And while I do understand that view, I have already said that I cannot be sure about what Mr and Mrs D would have otherwise done with their money with suitable advice or that any of this would have been put into ISAs. As I have said

above, I think it is very possible Mr and Mrs D would have largely left their existing investments as they were, at least initially, with any changes made by switching to alternative funds with the original providers where possible.

fair compensation

To compensate Mr and Mrs D fairly, CIFAS should put them as close as possible to the position they would probably now be in if they had not been given unsuitable advice.

I think Mr and Mrs D would have invested differently. As I have outlined above, I do not believe it is possible to say precisely what they would have done, but I am satisfied what I have set out below is fair and reasonable given their circumstances and objectives when they invested.

what should CIFAS do?

- Compare the actual performance of Mr and Mrs D's investments to the return they could have instead obtained using the benchmark set out in the table below.
- The compensation payable to Mr and Mrs D is the difference between the fair value and the actual value of Mr and Mrs D's investment. If the actual value is greater than the fair value, no compensation is payable.
- A separate calculation should be carried out for each investment.
- CIFAS should also pay Mr and Mrs D any interest, as set out below. Income tax may be payable on the interest awarded.

<i>investment name</i>	<i>status</i>	<i>benchmark</i>	<i>from ("start date")</i>	<i>to ("end date")</i>	<i>additional interest</i>
Fidelity bond	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement
Norwich Union bond	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement

Prudential bond	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my final decision	8% simple p.a. from date of decision (if compensation is not paid within 28 days of the business being notified of acceptance)
-----------------	--------------	--	--------------------	---------------------------	--

for each investment:

actual value

This means the actual amount paid or payable (that is the surrender value rather than the fund value if the two are different) from the investment at the end date.

fair value

This is what Mr and Mrs D’s money would have been worth at the end date had it produced a return using the benchmark. The assumed growth should be applied to the actual fund value of Mr and Mrs D’s surrendered investments at the date of surrender, not the surrender value. For the balance invested from their cash reserves in 2009, the assumed growth should simply be applied to the additional amount invested (calculated as the difference between the £25,000 invested with Prudential and the surrender value of the Sterling bond).

To arrive at the fair value when using the fixed rate bonds as the benchmark, CIFAS should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 that Mr and Mrs D paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal, income or other payment out of the investment 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 are a large number of regular payments, to keep calculations simpler, I will accept if CIFAS totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- I believe Mr and Mrs D wanted income with some growth without a high level of 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 WMA 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 D's risk profile was in between, in the sense that they were prepared to take some risk to attain their investment objectives, but not a high risk. So, the 50/50 combination would reasonably put Mr and Mrs D into that position. It does not mean that Mr and Mrs D 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 D could have obtained from investments suited to their objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

if the Prudential investment has been cashed in

If the Prudential bond has already been cashed in, the above calculation should be used to identify the extent of any investment loss at the date of encashment. Simple interest at the rate of 8% per year should then be added to the investment loss from the date of encashment to the date compensation is paid. Income tax may be payable on the interest.

additional compensation

In my view, the conduct of CIFAS has caused Mr and Mrs D some trouble and upset and additional compensation for this is merited. Not only were they given poor advice that may have resulted in them being disadvantaged and losing the ISA status for part of their money. It also appears CIFAS' response to their complaint was significantly delayed because it was passed to the wrong part of the organisation in the first instance. I currently believe a moderate compensation payment of £400 is fair and reasonable. This would be payable on top of any compensation calculated in line with the above approach.

my provisional decision

My provisional decision is that I currently intend to uphold this complaint. I currently propose to direct Co-operative Bank Financial Advisers Ltd to pay Mr and Mrs D compensation calculated using the method set out above. I also propose to direct it to pay additional compensation of £400 for their trouble and upset.