

complaint

Mr and Mrs H have complained about the advice that they have received in 2003 and 2007 to invest into an AXA Sun Life Investment Bond. AXA (Friends Life Services Limited now have responsibility for this advice) advised them to invest in the Reserve Fund in 2003 and across the Property and Index-Linked Funds in 2007. Specifically, their representative has stated Mr and Mrs H were not prepared to expose their capital to risk; therefore the recommended investment funds were unsuitable.

background

I issued my provisional decision on 3 September 2015, in which I explained why I thought the complaint should succeed. A copy of my provisional decision is attached and forms part of this final decision.

Friends Life responded and said that Mr and Mrs H had been informed on two occasions (2003 and 2007) that the funds did not provide a capital guarantee. If I understand the submission correctly it says Mr and Mrs H have the benefit of hindsight in making their complaint and my decision absolves them of any responsibility.

Mr and Mrs H confirmed that they agreed with my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As I said in the provisional decision, I recognise that there are certain warnings in the literature provided at the time about there not being a capital guarantee. However I also noted at the time that there was evidence that Mr and Mrs H did require security. Bearing that in mind and the amount of money invested, I was of the view that Mr and Mrs H did not likely understand the risk to which they had put so much of their money. On balance I remain of that view and do not believe the advice was likely suitable for them.

I therefore uphold the complaint.

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 should Friends Life Services Ltd do?

To compensate Mr and Mrs H fairly, Friends Life Services Ltd 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 investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Friends Life Services Ltd should also pay interest as set out below.

Income tax may be payable on any interest awarded.

| investment name | status | benchmark | from ("start date") | to ("end date") | additional interest |
|-----------------|-------------|------------------------------------|---------------------|------------------|--|
| Investment Bond | surrendered | average rate from fixed rate bonds | date of investment | date surrendered | 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, Friends Life Services Ltd 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 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, income or other payment out of the investment should be deducted from the *fair value* 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 Friends Life Services Ltd totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because:

- Mr and Mrs H wanted to achieve a reasonable return without risking any of their capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs H's circumstances and objectives. It does not mean that Mr and Mrs H would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- 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 Friends Life Services Limited should pay the amount calculated as set out above.

Friends Life Services Limited 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 and Mrs H to accept or reject my decision before 13 November 2015.

Ref: DRN0487777

David Bird
ombudsman

copy provisional decision

complaint

Mr and Mrs H have complained about the advice that they have received in 2003 and 2007 to invest into an AXA Sun Life Investment Bond. AXA (Friends Life Services Limited now have responsibility for this advice) advised them to invest in the Reserve Fund in 2003 and across the Property and Index-Linked Funds in 2007. Specifically, their representative has stated Mr and Mrs H were not prepared to expose their capital to risk; therefore the recommended investment funds were unsuitable.

background

The adjudicator originally assigned to the complaint recommended it should succeed in part. In summary, he had noted that the paperwork completed in December 2003 had recorded that Mr and Mrs H's requirement at the time had been to achieve greater growth and their risk profile had been recorded as "*Highly Secure*."

In his opinion they were inexperienced investors and although there had been some reference to the risk attached to this fund, it is likely they had been influenced by this risk profile. And, in his opinion, it had implied a degree of capital security. In 2003, the Reserve Fund had invested principally in fixed-interest securities with the remainder of the fund investing into cash, properties and equities. The adjudicator had considered that the risk attached to the fund had not been consistent with the risk profile.

In March 2007, Mr and Mrs H's risk profile had been recorded as '*Balanced*' representing an elevation in risk from '*Highly Secure*.' On this occasion, the adjudicator had considered the suitability report presented to them in March 2007 had highlighted that their capital had been exposed to investment risk, therefore he had been persuaded it is likely they had been willing to accept a degree of risk. He did, however, consider the amount invested into the bond at this time had been too great.

In its final response dated April 2013, Friends Life accepted that the recommendation to invest into the Property Fund represented a greater risk than they had been prepared to accept, but the Index-Linked Fund had not. The adjudicator has noted the latter fund invested in fixed-interest securities with the majority of the fund investing into Gilts. He had considered that this fund had not been inconsistent with Mr and Mrs H's circumstances and

requirements, nor inconsistent with their risk profile. If they had invested into this fund alone, the adjudicator would have been satisfied this would not have been unsuitable.

Mr and Mrs H accepted the adjudicator's assessment, but Friends Life did not. In response, it stated its adviser would have established their risk profile in 2003 using an investment fund guide and it had provided a description of each risk rating. If they had not been prepared to expose their capital to risk, they had the opportunity to select the '*Protected*' risk rating, or invest into a capital protected product that had been available at the time.

The complaint was reviewed by a different adjudicator. He thought that the recommendation to invest in the Reserve Fund in 2003 was suitable despite Mr and Mrs H's attitude to risk being recorded as Highly Secure.

In respect of the recommendation to invest in the Property Fund in 2007 he agreed with the adjudicator before him.

Mr and Mrs H's representative did not agree with the adjudicator's assessment and stated that a fund which contains equities cannot be stated to have no potential for loss and therefore is not secure by nature.

Friends Life accepted the adjudicator's opinion in respect of the 2003 recommendation. However, it did not agree with the proposed redress and stated that a comparison based on Bank of England base rate plus 1% as originally offered in 2013 was fair and reasonable given the clients circumstances. Furthermore, it was unlikely to be greatly different to the 12 month fixed rate method.

As no agreement has been reached the complaint has been referred to me for review.

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.

I believe it is likely that Mr and Mrs H did not wish to take much, if any, risk with their money. Even at the date of the first advice, they were in their 50's, had modest income and savings and had seemingly never invested in risk-based products before. By the time of the second advice it seems Mrs H had actually retired. In 2003 they were noted as being "Highly Secure" in terms of risk. It was also noted on the advisers recommendation letter that,

"We established that you wish to have both the security of deposit type accounts and the potential for greater returns from equity based investments."

That statement does tend to suggest that Mr and Mrs H felt the capital security of deposit accounts was important to them.

I would say however that, towards the end of that letter, it is stated that the Reserve fund does not offer any element of capital protection.

So I think it's fairly clear that, give their circumstances and what was noted at the point of the first advice, Mr and Mrs H did not want to take much risk. The important question then is how little risk and what risk did the funds recommended present?

I should say firstly that I believe it is highly unlikely, given their background and resources, that Mr and Mrs H were 'balanced' risk in 2007 (if that means 'medium risk' or the acceptance of the risk that comes with equity based funds). There is no persuasive explanation as to why they would suddenly wish to increase their risk level at that point and take that level of risk with what little money they had.

So, given that, I have considered the advice they were given and the funds they were recommended to invest in.

In terms of the Property Fund I think Friends Life have recognised that this is unlikely to have been suitable for Mr and Mrs H. It is one asset class that does present the risk of significant capital reduction as well as the possible suspension of the funds and 'embargoes' on withdrawals in certain circumstances. Given the circumstances I have discussed I believe Friends Life was right to uphold this part of the complaint and this fund was not suitable.

That leaves the Reserve Fund recommended in 2003 and the Index Linked Life fund in 2007. Both of these funds are quite similar. Both invest in Gilts and fixed interest (mainly bond) assets. The Reserve Fund can invest in equities but from what I can see it has never done so whilst Mr and Mrs H held it. They are therefore funds very much at the lower end of a risk spectrum and invest in very conservative assets. They would not normally present the risk of significant capital loss. They could however be *some* loss as the underlying assets are subject to supply and demand and their sale value can change. There is also the risk of no gain (as compared to interest based deposits).

Given this, Mr and Mrs H would effectively have to be risk averse for these funds to unlikely have been suitable for them, which is what they clearly say they were. Their circumstances and what has been noted could suggest that. Conversely I have noted that the documentation Mr and Mrs H were given does say some capital loss can occur and/or the value is not guaranteed.

This is a finely balanced complaint. Having considered the matter carefully I am currently inclined to uphold it in its entirety. Although, save the property fund, Mr and Mrs H were not taking much risk and the other funds could have been suitable, I do not believe they likely were. Given all the circumstances I have discussed I very much doubt that Mr and Mrs H would have wanted to commit so much of their money to these investments if they thought or knew they could lose money.

They committed over half their money in 2003 and increased that to over 60% in 2007. Given their age and all the circumstances I have discussed I believe it more likely that they would not have done that if they had thought they were putting their capital at risk. They did not have much money and it had obviously taken them a lifetime to accumulate it. I doubt they would have wished to place so much of it at risk, even if that risk was very low. This is what they have said and I believe their version of events is the more likely.

my provisional decision

I currently intend to uphold the complaint

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 think Mr and Mrs H would have invested differently. It is not possible to say *precisely* what they would have done, 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 should Friends Life do?

To compensate Mr and Mrs H fairly, Friends Life 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 investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

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If there are a large number of regular payments, to keep calculations simpler, I will accept if

Friends Life 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:

- Mr and Mrs H wanted to achieve a reasonable return without risking any of their capital.
- The average rate for the fixed rate bonds would be a fair measure given Mr and Mrs H's circumstances and objectives. It does not mean that Mr and Mrs H would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to their capital.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My award is made on the basis that the investment has now been fully surrendered. If it has not then the parties should let me know.

my provisional decision

I uphold the complaint. My provisional decision is that Friends Life Services Limited should pay the amount calculated as set out above.

David Bird
ombudsman