complaint

Mr K complains about his investment in a MetLife Limited (formerly AIG Limited) Premier Access Bond (PAB) using the Enhanced Variable Rate Fund (the Enhanced Fund). He says that:

- The Enhanced Fund was marketed as a cash product but it invested in 'securities' that themselves invested in the US housing market.
- MetLife failed to monitor and control the fund and it had a poor investment strategy.
- MetLife recommended that he seek advice. Because of this he feels MetLife should bear the associated costs of this and his personal time.
- Due to the closure of the Enhanced Fund he needed to make alternative arrangements via a loan to access his money. He feels MetLife should pay the interest he has been charged.
- It is unfair for MetLife to say it will not consider claims after 2008.

I should explain that Mr K initially complained against American Life Insurance Company (trading as AIG Life). But AIG Life's assets and liabilities were subsequently transferred to MetLife Limited following a Part VII transfer of business under the Financial Services and Markets Act 2000. So I shall refer to the respondent financial business as MetLife.

background

Briefly, Mr K has made a significant investment into the Enhanced Fund. He was advised to do this by a separate business of independent financial advisers.

On Monday 15 September 2008 (the day Lehman Brothers filed for Chapter 11 bankruptcy protection) MetLife Life suspended withdrawals from the Enhanced Fund for a period of 3 months owing to the large number of withdrawal requests it had received following media speculation over the weekend of 13/14 September about the financial viability of American International Group (AIG), the American insurer which owned AIG Life.

MetLife sent consumers an email in October 2008 regarding these events. This email outlined the situation with the fund and I note that it says that consumers should seek independent advice.

MetLife subsequently announced that it would close the fund at the end of the three-month suspension – on 15 December 2008 – because of the large volumes of withdrawal requests.

Following the announcement MetLife divided the fund in two, moving the first half (the cash elements of the fund) into the Standard Fund which investors could withdraw – known as the *'initial switch'* – and offering investors a choice about what to do with the second half.

Investors could:

- surrender their investment or move it to the Standard Fund (known as the *'exit plan'*) by selling assets early at the best achievable market prices, which because of market conditions meant investors would receive less than the paper value of their investment. Investors could withdraw their money from the Standard Fund if they wished; or

- keep their investment (known as the *'maturity plan'*) in a new fund – the Protected Recovery Fund (*the PRF)*, with a guarantee that on 1 July 2012 policyholders would receive at least the full value of their investment as at 14 December 2008.

Mr K opted for the maturity plan, and so the second half of his investment remained in the PRF.

Mr K has provided an invoice which shows he received advice from an independent financial adviser about the MetLife situation over late 2008 and in 2009. He also entered into a loan agreement using the PAB as security to fund a business opportunity. Mr K is seeking redress for these costs.

After the complaint was referred to us, the adjudicator has concluded over two letters that it should be rejected. He said that:

- MetLife had acted reasonably, given the circumstances, and within the terms of the fund when it suspended, and then closed, the Enhanced Fund.
- It was not unreasonable for MetLife to suggest that consumers seek third party advice. However, he saw no indication that MetLife had agreed, or implied, that it would pay any associated costs of this advice.
- Following the same reasoning, he did not consider MetLife should be liable for any associated losses Mr K may have suffered.

Mr K has confirmed that he does not accept the adjudicator's conclusions. He has informed us that he has been repaid the interest he paid on the loan he started and so this part of the complaint is resolved. However, he still considers the complaints he made about the MetLife's actions, the advice he received and the related costs should be considered. Because the adjudicator's conclusions were not accepted by Mr K, the complaint has been referred to me for review.

my findings

I have considered all of the evidence and arguments very carefully from the outset, including Mr K's responses to the adjudicator's conclusions, in order to decide what is fair and reasonable in the circumstances. Having done so, I have come to the same conclusions as the adjudicator, and for materially the same reasons.

I have considered Mr K's complaints separately starting with the information provided by MetLife at the time of sale, which he considers was misleading.

a) product literature

MetLife produced a brochure about the PAB. As might be expected the document is re-assuring about MetLife ('*one of the UK's leading providers of flexible investment solutions*') and its investments ('*combining strong performance with an emphasis on secure investment, we offer a wide range of funds, using MetLife's financial size and strength to negotiate the best rates from the financial markets on behalf of our policyholders'*).

In its description of the fund MetLife explained:

> *'The Premier Access Bond is a single premium life assurance Bond offering a range of unit linked funds that invest in a variety of financial and money market instruments in order to generate gross equivalent returns that are competitive against bank and building society deposits.'*

MetLife included a Key Features Document in the brochure. The purpose of such a document is to provide key headings outlining the product, its aims, the investor's commitment, risks, general questions and answers and charges. I would emphasise that when reviewing this document (and others in the brochure), it is important to bear in mind that Mr K received professional advice from a third party, whose role it was to ensure that he understood the nature of the investment and the associated risks, and that it was suitable for him.

The Key Features Document described the *'Risks Factors'*, which included the following:

- *Your investment, and the return from it, is only as secure as the selected range of assets purchased by the funds you choose. Your investment is only at risk if any of these financial instruments fail to meet their obligations.*

- *The value of your investment can go down as well as up and you may get back less than you put in.*

- *If large numbers of Bonds are encashed at the same time, the funds may incur costs in selling assets prior to the intended maturity date to meet these encashments, and these costs may cause a fall in the unit prices and therefore the return on your Bond. Alternatively MetLife may defer encashments for up to three months if it considers that this would be more beneficial to Bondholders generally. This would only happen in very exceptional circumstances.*

The brochure also provided the following information about the Enhanced Fund:

> *'The Enhanced Variable Rate Fund ("the Enhanced Fund") is similar to the Standard Fund but is aimed at achieving a slightly higher growth rate by investing in more sophisticated assets issued by a wide range of companies. The fund offers a high degree of safety by holding the highest quality assets commensurate with its enhanced yield.*
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> *The fund's main objective is to produce a competitive return by investing in a wide range of high quality assets, while maintaining a high degree of safety. Unsurprisingly, the fund will contain many of the same names as the Standard Fund, with most of the fund invested in assets issued by financial institutions. The Enhanced Fund will contain exposure mainly to AAA and AA rated assets, with the reminder in A rated assets, and will use a wide range of high quality instruments issued by the companies identified.*

The fund should achieve a higher yield than the Standard Variable Rate Fund because it has access to:

(i) a wider range of companies…The companies are subject to strict quality checks and are still considered to be very safe investments.
(ii) a wider range of instruments issued by the companies identified. These assets will have a slightly higher yield as they have a smaller target market and may be more difficult to sell before they mature. However, as the fund usually purchases assets to hold until maturity, it is in a position to take advantage of any yield enhancements.
(iii) a greater amount of sophistication …
(iv) assets with slightly longer periods to maturity. This enables the fund manager to take advantage of a positive sloping yield curve which rewards longer investments with higher yields.

Although the fund carries slightly more risk than the Standard Fund it should still be considered to be a cautious fund. Although the criteria are clearly wider than those of the Standard Fund, the fund places high importance on the preservation of capital.'

MetLife also published information about the fund make-up in regular updates - which would have been available to Mr K's advisers but perhaps not to Mr K. These, amongst other things, gave further information about the constitution of the funds.

The FSA's Final Notice in respect of Coutts & Company (dated 7 November 2011) provides a helpful summary in slightly more accessible terms about the make up of the Enhanced Fund:

'The Fund was invested in financial and money market instruments, including certificates of deposit, bank deposits and commercial paper. However, unlike a standard money market fund, it was seeking to deliver an enhanced return by investing a material proportion of the Fund's assets in:

(1) asset backed securities. These comprised on average 27% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 23% and 15% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 31% and 14%. They were primarily backed by UK residential and commercial mortgages;

(2) floating rate notes. These comprised on average 38% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 30% and 27% in the period 1 February 2008 to 8 August 2008, varying over the Sales Period between approximately 51% and 27%; and

(3) assets which had terms to maturity of between 3 and 5 years. Again, these comprised on average 54% of the Fund's assets between 6 July 2005 and 28 December 2007 and reduced to between 41% and 15% in the period 1 February 2008 to 8 August 2008, varying between approximately 65% and 15% of the Fund's assets.'

In my view, it is (and was) clear from MetLife's own description and from the other information readily available about the fund, that the Enhanced Fund was not a standard money market fund. The fund presented some risk to capital. Investors could lose money if MetLife failed, if the financial instruments failed to meet their obligations, or if it became necessary for the fund to sell assets prior to their intended maturity date to meet the encashment demands on the funds.

I accept that the extent of those risks was not described as fully as they could have been, as the quality of the underlying investments was not clear. However, given the nature of the underlying investments and the significant holdings held, it should ordinarily have been apparent to a professional adviser that liquidity issues could arise, thereby preventing investors accessing their funds in certain circumstances. Of course, that possibility was at least in part reflected in a contractual term that allowed MetLife to defer payments in exceptional circumstances.

Even if the detail of these issues was not apparent to those outside MetLife itself, the special nature of the funds and the opacity of some of the investments was (or at least should have been) clear to any professional adviser. In my view, these factors were (or should have been) sufficient to place a professional adviser on notice that this was not a normal *'cash'* fund suitable as an alternative to normal deposit accounts, but something distinctly more *'exotic'*.

These investments would not – and should not – have appeared to a professional adviser to represent a risk-free approach, nor would they have been suitable for investors looking to invest in cash, or for investors looking for instant access who were not prepared to accept the possibility that they might have to wait to access their money.

As I have noted above, Mr K invested in the PAB as a result of the financial advice he received. Therefore, I consider it is likely that he did not rely solely on the MetLife product literature when making that decision.

Indeed, one of the reasons that investors obtain financial advice is to help them look behind the generalised assurances of product documentation in order to consider whether the particular investment is suitable for their individual investment needs and circumstances. Having obtained advice, it is normally that advice that is critical in the customer's decision making process rather than in isolation any documentation from the provider.

So whilst I have found that elements of MetLife's documentation did not describe the extent of certain risks as fully as they could have been, I am not satisfied that a more detailed representation of the risks of the fund at the time this sale was made would have resulted in Mr K making a different purchasing decision given the advice he apparently received.

b) actions taken by MetLife in September 2008

I have considered the events of September 2008 and the steps MetLife took to restrict withdrawals from the Enhanced Fund. MetLife has told us that, ordinarily, it would have expected to receive withdrawal requests from the Enhanced Fund totalling somewhere in the region of £20 million each day, which would usually be met from the cash reserves contained within the Enhanced Fund.

MetLife has pointed out that on 15 September 2008 – most likely owing to negative press coverage about the stability of its US parent company – it received an exceptionally high number of withdrawal requests.

It therefore appears that MetLife was facing an exceptional and unprecedented demand for withdrawals that could not have been fully met from just the cash reserves within the Enhanced Fund. In the circumstances, it seems likely that the only way that MetLife could have complied with the volume of withdrawal requests it received would have been to dispose of assets in advance of their maturity. In doing so, however, it is likely these assets would have had to be sold at a reduced value – or in some cases it may not have been possible at the time to sell the assets. Clearly these circumstances placed the Enhanced Fund under exceptional stresses and strains. It seems to me that attempting to meet demand for withdrawals may not have been physically possible, or at least could only be achieved by a set of actions that would have crystallised very significant losses across the Enhanced Fund to the detriment of all investors.

In a situation where MetLife could not fully comply with all the withdrawal requests it had received, I do not believe it was unreasonable for MetLife to conclude it needed to take action to meet the demands as fully as possible, while at the same time safeguarding the interests of investors remaining in the fund.

First, MetLife decided to defer withdrawal and switch requests from the Enhanced Fund for a period of three months. This does not appear to have been an unreasonable course of action in the circumstances and is one that was specifically allowed for within the terms and conditions of the investment. Section 8.3 of the investment conditions stated:

> *'If large numbers of switches and/or withdrawals are made from the same Fund at the same time, the Fund may incur costs in selling assets to meet these encashments. Alternatively, the Company may defer switches and withdrawals for up to three months if it considers that this would be more beneficial to Policyholders generally. It is likely that this will only happen in exceptional circumstances.'*

Subsequently, MetLife decided to close the Enhanced Fund. This course of action is also permitted within the investment conditions. Section 6.2(b) stated:

> *'Subject to Condition 6.3, the Company may from time to time … withdraw an existing Fund from availability under these Conditions'*

Section 6.3(c) stated:

> *'In the event of withdrawal of a Fund, the Company will give not less than one month's notice to the Policyholder and will provide information regarding the Funds then available and ask for instructions before the end of such period of notice. If no instruction is received within that time to cancel the Units for switch or withdrawal, the Units of the Fund being withdrawn will be automatically cancelled and the proceeds allocated to Units in the Standard Variable Rate Fund on the Pricing Date immediately following the expiry of that time.'*

MetLife then wrote to all investors in 2008 confirming the available options now it had decided to close the Enhanced Fund. By moving funds into the Standard Fund at the beginning of October 2008, and before the one month notice period had elapsed, it could be argued that MetLife was in breach of the investment's terms and conditions. Once money had been transferred into the Standard Fund, however, it allowed investors immediate access to that part of their capital and I do not believe it could reasonably be argued that this was detrimental to the interests of investors.

In the three months after withdrawals were suspended on 15 September 2008, investors had the opportunity to select a maturity option for the other half of their capital – i.e. wait for it to be returned in full in July 2012, or an exit option – i.e. withdraw it immediately with a significant deduction.

These options were not specifically mentioned in the investment terms and conditions. As stated above, however, MetLife was in a particularly unusual situation and had to find an appropriate outcome for all investors, including those who remained in the Enhanced Fund. In the circumstances, I believe the options offered by MetLife were a reasonable attempt to ensure an orderly closure of the Enhanced Fund. As an alternative, it could have simply sold all of the assets within the Enhanced Fund and paid out to all investors at a significantly reduced value, in accordance with the terms and conditions. Again, I do not believe it could be argued that the decision to allow investors an alternative option was detrimental to their interests.

I appreciate that developments at the end of 2008 must have been very distressing for Mr K. For the reasons I have outlined, however, I am satisfied MetLife acted broadly within the terms and conditions of the investment and in a way that was designed to be as fair as possible for all investors.

I think it is also relevant to note that even if this assessment of the rights provided to MetLife under the rules of the fund is incorrect or otherwise it was the case that the fund managers failed to comply with the fund rules, it is difficult to see what alternative steps MetLife should have taken. It clearly faced in my view exceptional circumstances that warranted it taking action to protect the overall interests of fund investors. Allowing some but not other withdrawals was not a realistic option. So whilst I am very conscious that investors have lost out as a result of these events, I do not see that the fund manager could in September 2008 have avoided those losses in the circumstances. Indeed, I can see that the losses could have been more significant than they have in fact already been.

So, whilst I have sympathy with the circumstances Mr K finds himself in, I do not consider it fair and reasonable to hold MetLife responsible for any investment losses incurred on the basis of its actions in first suspending and then closing the Enhanced Fund.

I accept that Mr K did not have access to a significant amount of his money for some time. But as I have not found that the business acted unreasonably, I do not consider it would be reasonable to award compensation for this. This is in respect of both the cost of advice that Mr K incurred and he cost to his personal time. I note he has been repaid the interest on the loan he took at this time.

I would say at this point that if Mr K has any issues with the advice he was given to invest in the MetLife Plan he should raise this with the business that gave the advice. This business was responsible for determining if the plan and the risk it contained was suitable for Mr K, and also for explaining how it operated.

From the telephone call Mr K had with the adjudicator it seems the main issue remaining is that he feels that MetLife advised him to take advice and so it should bear the costs of this advice. I have noted the relevant letter from MetLife and that it does say that consumers are strongly advised to seek advice. However, MetLife was a product provider and as such did not give financial advice - its products were generally started after advice was given by a third party.

So I consider it was reasonable for MetLife to have suggested investors to seek advice before making any significant investment changes. It is usually considered prudent that consumers take advice before investing, or if circumstances change. However, I do not consider that this was an invitation for it to pay the costs involved. I have also not seen any agreement to this affect.

In his summary of complaint dated 24 August 2012 Mr K stated that from September 2008 he made the decision in order to protect his position he needed to seek advice from a firm of independent financial advisers whom he had been working with. It therefore seems that, regardless of any suggestion by MetLife, Mr K had taken his own decision that it would be sensible to obtain advice and understood the importance of this.

In the circumstances, I do not consider it would be reasonable for MetLife to pay the costs Mr K incurred for the financial advice he was given.

my final decision

My decision is that I do not uphold this complaint and I make no award.

Doug Mansell
ombudsman