

complaint

Mrs R's complaint concerns advice given by Accalon Associates Limited to invest a total of £43,000 in the Connaught Income Fund – Limited Partnership – Series 1 (the Fund).

background

I issued my provisional decision on 3 October 2013 explaining that I was minded to uphold this complaint and award redress. I have briefly summarised my findings below.

The Fund is an unregulated collective investment scheme (UCIS). There are restrictions on the promotion of UCIS – essentially an adviser is precluded from promoting a UCIS unless an exemption under FSMA (Promotion of Collective Investment Schemes (Exemptions) Order 2001 or COB 3 Annex 5 of COB 3.11 (up to 31 October 2007) or COBS 4.12R (4) (from 1 November 2007) applies.

I was not persuaded that Accalon Associates Limited had adequately demonstrated how Mrs R was assessed to be a suitable candidate for investing in an UCIS or that she fell into any of the exempted categories such that a UCIS could lawfully be promoted to her.

Nor was I persuaded that the investment was suitable for Mrs R. Although the recommendation letter issued in May 2009 did say that the Fund was classified as a UCIS it did not say what this meant in practice. I was also not satisfied that it was adequately explained that a capital loss could result.

In my opinion Mrs R was not a particularly sophisticated investor so was unlikely to have fully understood the nature of the investment being recommended to her and the associated risks. Nor did I consider that she should be classed as an investor who was prepared to accept the degree of risk which the Fund presented.

I concluded that Mrs R would have believed that the Fund carried relatively little risk and that the risks were underplayed to the extent that she believed that her capital was secure.

I pointed out that even if Mrs R's husband was a sophisticated investor, this did not necessarily mean that she could also be classed as an investor who was willing to accept a high degree of investment risk. She had no personal history of speculative or high risk investments.

I therefore considered that the investment was not suitable for Mrs R.

I invited both parties to respond before a final decision was reached.

Mrs R said that she had no further comment to make and that she accepted my provisional decision.

Although Accalon Associates Limited confirmed receipt of my provisional decision it did not make any further comment.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

No further substantive points about the merits of the complaint have been raised. My view remains as expressed in my provisional decision and summarised above. I uphold Mrs R's complaint.

my final decision

My final decision is to uphold this complaint. Accalon Associates Limited should compensate Mrs R as follows:

fair compensation

To compensate Mrs R fairly, Accalon Associates Limited should put her as close to the position she would now be in if she had not been given unsuitable advice.

I think Mrs R would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given her circumstances and objectives when she invested.

what should the business do?

To compensate Mrs R fairly, Accalon Associates Limited should:

compare

- the performance of Mrs R's investment;

with

- the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index ('APCIMS index') over the same period of time.

If there is a loss, Accalon Associates Limited should pay this to Mrs R.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs R wanted growth and was willing to accept some investment risk.
- The APCIMS index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs R's circumstances and risk attitude.

how to calculate the compensation

The compensation payable to Mrs R is the difference between the *fair value* and the *actual value* of her investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

actual value

Ordinarily this would mean the value of the investment if terminated on the date of calculation. But see my below comments.

fair value

This is what the investment would have been worth if it had obtained a return using the method of compensation set out above. To arrive at this value the business should:

- Work out what the original investment would have been worth, if it had performed in line with FTSE APCIMS Stock Market Income (Total Return) index to the date of calculation.

additional capital

Any additional sum that Mrs R paid into the investment should be added to the calculation from the point it was actually paid in so it starts to accrue a return in the calculation from that point on.

withdrawals and income payments

Any withdrawal or income payment that Mrs R received from the investment should be deducted from the 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 the business adds all those payments to the *actual value* and compares that total with the *fair value* instead of periodically deducting them.

further information

- As the Connaught Income Fund is not currently trading the value that should be attributed to the investment is unclear. Nor can Mrs R mitigate her loss by redeeming her investment. So for the purposes of the actual value referred to in the above redress calculation the investment should be treated as having a nil value, provided that Mrs R agrees to Accalon Associates Limited taking ownership of the investment if it wishes to. In that way Accalon Associates Limited would be able to obtain the value of the investment as and when it can be realised.
- The information about APCIMS index can be found in the website of the Association of Private Client Investment Managers and Stockbrokers or the FTSE Group.

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ombudsman