

complaint

Mrs A, represented by a Claims Management Company (CMC), complained about advice she had received from Positive Solutions (Financial Services) Limited to invest into a stocks and shares ISA, in a protected fund.

In 2007, she was advised to start monthly contributions of £200, which were increased to £600 following further advice in 2009. Mrs A's representative believes the fund was unsuitable as it wasn't consistent with Mrs A's requirement for greater growth, nor with her risk profile.

background

I issued a provisional decision in which I explained why I thought Mrs A's complaint should be upheld. A copy is attached and forms part of this final decision.

In brief, I felt that given Mrs A's lack of investment experience a recommendation to put £600 a month in a single 'medium risk' fund was unlikely to have been suitable for her. I said this as I wasn't persuaded she was correctly categorised as having a medium attitude to risk. But I noted that even if this had been correct, recommending the same fund twice in my view lacked sufficient diversity. The nature of the fund meant that it was described as being suitable as part of a varied portfolio for a medium risk investor. Mrs A had no other investments.

Mrs A's CMC accepted my decision. Position Solutions disagreed with my view saying, in brief;

- Performance was affecting my view and the investment was being looked at with hindsight. The documentation confirmed that Mrs A was a medium risk investor, happy to take that level of risk having been given all the associated pre-sale documentation confirming the risk. She had approximately 12 years until her anticipated retirement and required as big a fund as possible. This required an element of risk, which was all explained to Mrs A, who was aware she was considered to be a medium investor. This was defined for her and if she had any concerns she could and should have raised this.
- This investment was appropriate for a medium investor. In respect of it not being diversified this was incorrect because as a multi-manager fund there was diversification within the fund.
- The complaint relates ultimately to poor performance of the fund and it's unfair to hold the adviser responsible for this. Mrs A was warned of the possibility of such performance and the recommendation was suitable at the time given Mrs A's stated and agreed circumstances and objectives.

my findings

I've considered all the available evidence and arguments, including the further submissions, to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view that Mrs A's complaint should be upheld.

I note what Positive Solutions has said about Mrs A's categorisation as a medium risk investor and the documentation that was given to her. But I'm still not persuaded that's likely to have been a reasonable categorisation of her attitude to risk, given her lack of investment experience and lack of any clear explanation of how the categorisation was made.

But, as before, in any event I don't think a recommendation to invest what amounted to £7,200 a year in a single fund, albeit a multi-manager fund, was suitable for someone in Mrs A's position. This being so, in all the circumstances I think the compensation set out in my provisional decision represents a fair resolution to the matter.

my final decision

For the reasons given, my final decision is that I uphold the complaint. I direct Positive Solutions (Financial Services) Limited to pay Mrs A compensation as set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 5 February 2016.

James Harris
ombudsman

COPY PROVISIONAL DECISION

complaint

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background

Our adjudicator didn't recommend the complaint should be upheld. In brief, he considered the advice to invest was consistent with Mrs A's requirement to achieve greater capital growth and her circumstances at the time.

Taking into account her healthy household disposable income the adjudicator felt the monthly contribution was affordable and fulfilled her requirement to invest in a tax-efficient environment. He also considered the paperwork explained the features and risks of the recommendation in understandable terms.

Mrs A's representative didn't accept the adjudicator's view. It reiterated that the recommended fund hadn't provided her with the greater growth she had sought due to the nature of the protection it provided for her money. It also argued the fund was a 'lame duck' as a further reason why it shouldn't have been recommended for a second time in 2009.

As no agreement could be reached, this complaint's been referred to me to review.

my provisional findings

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

The paperwork supporting the recommendations is not particularly comprehensive and doesn't appear to have been completed with a great deal of care. So the background to the advice and the details of Mrs A's circumstances isn't wholly clear.

It seems that, although the recommendation in question here was provided specifically to Mrs A, she was actually receiving advice together with her husband. Mrs A had a very limited income herself, but the 'household' income was quite large due to her husband's tax free salary.

It was documented that they were in their fifties and looking to save towards retirement. They don't appear to have had any existing savings or investments, except for two endowments supporting (in part) an interest only mortgage on their residential property. They also owned a couple of other properties.

A large proportion of their monthly disposable income was therefore available for regular savings and/or investment. So in these circumstances it seems reasonable that some of this be committed to an ISA for Mrs A.

It was documented that Mrs A had a 'medium' attitude to risk. But there's no indication as to how this was determined. And given her apparent lack of investment experience it seems unlikely that she would have wanted to accept this level of risk.

This is where the suitability of the advice begins to be called into question. The recommended fund provided a degree of capital protection by offering a 'protected price' that was intended never to fall below 80% of the highest-ever fund price. While this, on the face of it, appears to provide some balance against the potential of stock market losses, the fund was described as being suitable either for a more 'cautious' investor, or for a 'medium' investor looking to balance their portfolio.

So, on this basis the fund probably wasn't suitable for Mrs A if she was a 'medium' investor, as she had no other investments against which to balance it. And if she was actually a cautious investor, which – as noted – I think is more likely, then I'm not of the view that an investment wholly in a fund that could lose up to 20% of Mrs A's money (and in fact more as the 'protection' facility was not guaranteed, so more could be lost) was suitable.

This is further compounded by the 2009 recommendation, which tripled the monthly contributions to £600. The business has pointed to the adviser's 'research' into the fund. But the documentation supporting the second recommendation unusually makes no real reference to the fact that the fund had already been recommended only two years previously. Whether this was because the advice was being given in conjunction with 'new' advice to Mrs A's husband to invest in the same fund is not clear. But in any event the documentation doesn't in my view support a thoroughly and reasonably researched recommendation.

I accept the poor administration and provision of advice, while clearly not desirable, doesn't mean that what is ultimately recommended is *necessarily* unsuitable. But here it seems to have resulted in Mrs A committing a considerable monthly contribution to a single fund that doesn't appear to match her attitude to risk, even where some benefit of the doubt is given to the adviser.

I acknowledge that as a monthly, rather than a lump sum, investment the overall level of risk to Mrs A's money could be considered to be reduced. But I nevertheless don't think it can reasonably be considered suitable for someone in their fifties with no real investment experience, seeking to save for retirement, to commit £600 a month to an investment lacking any diversity and the potential to make quite significant losses.

Had the 2007 recommendation been added to in 2009 with a recommendation that demonstrated some balance by the use of other funds my view might well be different. But as it stands I don't think the advice to invest only in the protected profits fund was suitable for Mrs A.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs A as close to the position she would probably now be in if she had not been given unsuitable advice.

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

what should Positive Solutions do?

To compensate Mrs A fairly, Positive Solutions must:

- Compare the performance of Mrs A'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.

Positive Solutions 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
ISA	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 decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable 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, Positive Solutions 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 Mrs A 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 Positive Solutions 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:

- Mrs A wanted capital growth with a small risk to her 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 her 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 Mrs A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs A into that position. It does not mean that Mrs A would have invested 50% of her 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 Mrs A could

have obtained from investments suited to her objective and risk attitude.

my provisional decision

For the reasons given, I think the complaint should be upheld. My provisional decision is that Positive Solutions (Financial Services Limited should pay the amount calculated as set out above.

James Harris
ombudsman