

complaint

Mr O's complaint is about advice given by Caledonia Asset Management Limited (Caledonia) to invest in Arch cru.

background

In May 2008 Caledonia advised Mr O to invest £25,000 in the Arch cru Investment Portfolio. The investment was made as part of Mr O's self invested pension plan (SIPP) portfolio.

At the time of the advice Mr O was retired but continued to work part time. Apart from his salary, he had investment income from a property portfolio. He was also receiving income from his SIPP.

He was a moderate risk investor. This was defined as someone with a significant proportion of capital placed in investments that had the potential for growth and/or income growth.

The adjudicator who initially investigated this complaint reviewed the advice in line with the regulatory redress scheme guidance published in December 2012 by the then regulator. The adjudicator concluded that the advice was not compliant because Mr O was not willing to take a high degree of risk with the sum invested in Arch cru.

I didn't agree. In my provisional decision (dated 30 September 2015) I said that Mr O was prepared to have part of his capital invested, since he was a moderate risk investor. This didn't mean that all the investments in his portfolio should be of a moderate risk profile - the portfolio should have an appropriate mix of low, medium and high risk investments, so that its overall risk profile was moderate.

I added that the Arch cru investment was made following the sale of existing funds and reinvestment in other funds. Although Mr O wasn't willing to invest any further money into other investments, there was nothing to suggest that he was unwilling to reinvest the money from the sale of existing funds.

I agreed with the adjudicator's findings that:

- The risk profile of the portfolio after the advice matched Mr O's attitude to risk.
- The portfolio was sufficiently diversified after the advice to meet Mr O's investment objectives.
- Mr O wasn't reliant on income from the Arch cru investment – he was still employed and also had investment income.
- Mr O had the capacity to bear the risk of investing 6.6% of his portfolio in Arch cru.
- Caledonia took reasonable steps to ensure that Mr O had the experience and knowledge to invest in Arch cru. Mr O earned income from a property portfolio and also from a partnership with a third party. Prior to the advice, he had also invested in a number of high risk funds.

Caledonia accepted my provisional decision and said that it had no further comments to make.

Mr O didn't agree and said:

- His salary from part time work was £800 per annum. He never took a salary from his share of a property portfolio, which at the time consisted of four flats. He was also a 50% owner of a company that owned four flats, with a salary of £500 per annum.
- These properties were owned with the aim of selling them when they fell vacant. When the bank demanded its loan back he managed to pay off his share with great difficulty. Caledonia was aware of this. No income was available from those sources.
- Apart from his state pension, his only source of income was a bond paying 6.5% interest on the proceeds of £450,000, from the sale of his family home. He also had around £75,000 in a PEP. This had to be encashed, along with part of the SIPP, to repay the bank loan.
- Although he wanted his portfolio to grow, he didn't take up some recommendations made by Caledonia after what happened with the bank loan. Caledonia told him that Arch cru was a good investment for him. He wasn't aware that the investment was high risk – if Caledonia had told him that, he wouldn't have invested in it.
- It's unacceptable for me to take the view that Caledonia didn't have a duty to make him aware that Arch cru was a high risk investment if it didn't alter the risk profile of the portfolio overall.

my findings

As this complaint is part of the regulatory redress scheme I am required to assess it in line with the consumer redress scheme guidance (CONRED) and not in accordance with the Dispute Resolution Handbook's (DISP) rules (under which our service usually considers complaints). This means that I have to follow the specific guidelines set out in the guidance in order to determine whether the advice was compliant or not. In this particular case, I have to consider six questions.

The first requires me to determine whether Mr O was willing to take a high degree of risk with the sum invested. I think he was. He was a moderate risk investor and part of his SIPP portfolio was invested in high risk funds. Although he wanted no further investments, this applied to the cash deposits remaining in his SIPP and not to the proceeds from the sale of some of the funds.

The second question is was the risk profile of the portfolio after the advice suitable. I concluded that it was because it had a mix of various funds which, overall, meant that the portfolio had a moderate risk profile. I still think that was the case.

The third question is about whether Mr O's portfolio was sufficiently diversified. Again, I consider that it was, as it included a mix of cash, low, medium and high risk investments.

The fourth question is whether Mr O was reliant on income from his Arch cru investment. I've noted what Mr O has said about the income that he was getting. But I don't think that changes anything. Although he was receiving income from his SIPP, he wasn't relying on income from the Arch cru fund.

The next question is about Mr O's capacity to bear the risk of investing 6.6% of his portfolio in Arch cru. Given that approximately £193,500 (53%) of the portfolio remained in cash, I think that Mr O had the capacity to bear that risk.

The sixth question is whether Caledonia took reasonable steps to ensure Mr O had the experience and knowledge to invest in Arch cru. The adjudicator concluded (and I agreed) that Mr O did. I took into account Mr O's occupation before he retired and that he had a property portfolio. He had also invested in a number of high risk investments prior to Arch cru. And he'd been given relevant Arch cru literature.

But I also noted that Caledonia gave a 'below moderate risk' rating to Arch cru. So it was arguable that Caledonia had led Mr O, wrongly, to understand that the fund wasn't high risk. The regulatory guidance says that '*tends*' to indicate that the advice was non-compliant. And that might be the outcome in some cases. But '*tends*' allows for the possibility that, in other cases, that won't be enough on its own. In such cases I'd look to the other aspects of the matter and the questions I've considered above.

In my view, although Caledonia gave the impression that this fund wasn't a high risk investment, it wasn't an unsuitable investment for Mr O's portfolio – it had an appropriate mix of investments and overall it was in line with Mr O's risk profile.

I've borne in mind Mr O's comments that he wouldn't have invested if he'd been told it was high risk. But he'd previously accepted that, as part of his moderate risk profile, some funds in his portfolio could be higher risk. That didn't change. So Caledonia could still have reinvested the money from the sold funds into higher risk investments, provided that, overall, the portfolio remained moderate risk.

I'm sorry if it wasn't clear but I didn't say, in my provisional decision, that Caledonia wasn't under any obligation to tell Mr O that Arch cru was a high risk investment. Caledonia should have made him aware of that. What I said was that a moderate risk portfolio should have an appropriately diversified mix of low, medium and high risk investments. If the overall risk profile of that portfolio is of a moderate risk, then it is suitable for Mr O.

Mr O has said that, if he'd been told that Arch cru was higher risk, he wouldn't have invested. But, as I've said, his portfolio did include other higher risk funds. Bearing that in mind, and that the amount invested represented a relatively modest percentage of Mr O's total SIPP portfolio, I think it's difficult to say, without the benefit of hindsight, that Mr O wouldn't have been prepared to invest if Caledonia had identified that the Arch cru fund was higher risk and made that clear to Mr O.

my final decision

I do not uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 14 December 2015.

Lesley Stead
ombudsman