

complaint

Mr and Mrs C, represented by a third party, complain about the advice they received from Towry Limited to invest in the Towry Law Wealth Management Strategic Mixed Risk Portfolio. In summary, they are concerned that the investment did not match their attitude to risk.

background

I issued a provisional decision on 3 July 2014, a copy of which is attached to this final decision. In this provisional decision, I was minded to uphold the complaint. I invited the parties to provide any further submissions which they wish to make within one month.

Mr and Mrs C's representative confirmed it considered the provisional findings to be correct, and made no further comments.

Towry disagreed. In summary, it reiterated it believed the investment was suitably diversified. It further explained:

- the complaint brought by Mr and Mrs C's representative was speculative, and it would not have been pursued by Mr and Mrs C after such a long time had it not been made by the representative, which is a claims management company.
- the level of risk recorded on the '*Financial Planning Questionnaire*' was chosen by Mr and Mrs C themselves, as the documentation allowed them to select their own risk profile.
- given Mr and Mrs C assessed their own attitude to risk, had they not felt secure enough to take the level of risk, they would not have selected the Mixed Risk Portfolio.
- to provide growth in real terms Mr and Mrs C had to select an investment that would carefully manage volatility. The 'mixed' risk has since been retitled as 'moderate' risk, and Towry's Chief Investment Officer has undertaken a documented assessment of why this risk level is, in effect, a low risk investment.
- whilst it is accepted 41% of Mr and Mrs C's total holdings were placed into equities, a valuation undertaken later in 2007 determined the chosen individual equity holdings to have increased in value.

my findings

Though I have given a summary of the further submissions above, I have considered all of the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so, I have come to the same conclusion as my provisional decision. I shall explain why.

I cannot agree the fact a number of years have passed since the matters complained of by Mr and Mrs C or that it has been pursued by a representative must determine the complaint is unmerited. Mr and Mrs C have appointed their representative, as they are entitled. Since Towry has not sought to argue I cannot look at the complaint under the time limits within our rules, I do not consider this timing to be a material factor in my final assessment of the complaint.

I have considered the explanation of the selection of the risk profile by Mr and Mrs C. However, whilst the selection of risk levels were indicated by a box being ticked, I note the

handwritten entries in the '*Financial Planning Questionnaire*' were completed by Towry's advisor. Furthermore, the section of the document establishing '*Your Objectives and Attitude to Risk*' specifically says:

"This section is best completed as part of the discussion with your Wealth Advisor".

Even if I were to accept Mr and Mrs C had completed any of the questionnaire themselves, it remains the case that there is no clear evidence as to how the risks of the portfolio selected were explained to Mr and Mrs C, in particular, the volatile nature of the investment given they had little experience with investments of this type. Though Towry has now sought to clarify the risk profile, I am still not persuaded this explanation was clearly provided to Mr and Mrs C at the time they sought advice, such that they realised the genuine possibility of losing their capital.

Finally, I appreciate in its later 2007 report concerning Mr and Mrs C's portfolio, Towry has clarified the value of the equities within the investment had increased. Nonetheless, I do not consider this to determine the product suitable in the wider circumstances, for the same reasons I did not assess the suitability of the advice against the eventual loss suffered by Mr and Mrs C at the time it was surrendered.

For the reasons given, I remain of the view the complaint ought to be upheld. I have set out how the redress for this complaint should be calculated as below.

fair compensation

To compensate Mr and Mrs C fairly, Towry should put them as close to the position they would probably now be in if they had not been given unsuitable advice.

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

what should Towry do?

- Compare the actual performance of Mr and Mrs C's investment to the return the investment could have obtained using the benchmark set out in the table below.
- The compensation payable to Mr and Mrs C is the difference between the fair value and the actual value of Mr and Mrs C's investment. If the actual value is greater than the fair value, no compensation is payable.
- Towry should also pay Mr and Mrs C any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Mr and Mrs C's investment	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average	date of investment	date of surrender	8% simple p.a. on any loss from the end date to the date of settlement

		rate from fixed rate bonds			
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actual value

This means the actual amount paid from the investment at the date of surrender.

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, Towry 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.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs C wanted capital growth with a small risk to their 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 their 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 Mr and Mrs C's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs C into that position. It does not mean that Mr and Mrs C would have invested 50% of their 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 Mr and Mrs C could have obtained from investments suited to their objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

average rate element

To arrive at this value Towry should:

- Find out the average rate for fixed rate bonds, as published by the Bank of England, for each month from the date of investment to the date transferred.
- The rate for each month is that shown as at the end of the previous month.
- Use the rate for each month to calculate the return for that month on 50% of the investment.
- The calculation should be carried out on an annually compounded basis; that is, with the return added to the investment at each anniversary.

WMA income index element

To arrive at this value Towry should:

- Work out what 50% of the investment would have been worth, if it had performed in line with FTSE WMA Stock Market Income Total Return index to the date of surrender.

additional capital

Any additional sum that Mr and Mrs C paid into the investment should be added to the calculation (split equally between average rate element and WMA income index element) from the point in time when it was actually paid in so that it starts to accrue a return in the calculation from that point on.

withdrawals and income payments

Any withdrawal or income payment that Mr and Mrs C received from the investment should be deducted from the calculation (split equally between average rate element and WMA income index element) 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 Towry adds all those payments to the *actual value* and compares that total with the *total fair value* instead of periodically deducting them.

my final decision

I uphold this complaint. I direct Towry Limited to calculate any compensation owed to Mr and Mrs C as set out in the calculation above. I make no further award.

Jo Storey
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr and Mrs C, via their representative, have complained about advice they received in 2007 from Towry Limited to invest £11,000 into stocks and shares individual savings accounts ('ISA's') and £19,000 in the J S & P Towry Law Wealth Management Service. Both investments were placed into the Strategic Private Mixed Risk Portfolio.

In summary, it has explained Mr and Mrs C had limited investment experience, and Towry failed to correctly establish their attitude to risk ('ATR'). It also considers Towry's recommendation unsuitable since it involved Mr and Mrs C placing a significant proportion of their total holdings at risk. Finally, it explained since Mr and Mrs C surrendered their investment for a significant loss after just two to three years, this was indicative of Mr and Mrs C not understanding the investment they had taken out.

background

Our adjudicator did not recommend the complaint be upheld. He considered the product matched Mr and Mrs C's attitude to risk; they were given sufficient information about the risks associated with the investment. He also was of the view Mr and Mrs C were in a position to take such a risk to achieve the returns they desired.

Mr and Mrs C's representatives disagreed with this opinion, and ask for an ombudsman to review the complaint. In summary, it said:

- Mr and Mrs C were inexperienced investors, with no understanding of their alleged 'mixed' attitude to risk;
- the investment represented an unreasonable percentage of Mr and Mrs C's limited income;
- Towry failed to correctly diversify the investment.

Towry responded to these additional points, noting:

- Mr and Mrs C were given a choice in choosing their attitude to risk when completing the Financial Planning questionnaire;
- the amount invested was reasonable and the provision for an emergency fund was considered;
- diversification was provided from the underlying funds within the Towry portfolio.

Since the complaint remains unresolved, it has been passed to me for consideration.

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.

Mr and Mrs C's representative made some submissions in respect of the loss suffered by Mr and Mrs C, which caused them to surrender their investment after a short period. I should firstly explain that a complaint about investment performance is not something which can ordinarily be considered by the Financial Ombudsman Service. As such, my decision will not be based upon whether Mr and Mrs C's investment performed in line with its perceived expectations. That having been said, I accept it may be one of a number of factors when considering of the suitability of Towry's advice.

Therefore, in reaching my conclusions I have carefully considered whether the investment recommended was suitable for Mr and Mrs C's financial circumstances and was consistent with the amount of risk they were prepared to take with their money.

At the time Mr and Mrs C sought advice in 2007, it seemed they had little to no previous investment experience. Mr and Mrs C were aged in their fifties, and wished to grow their capital to support their retirement aged 65. They contacted Towry after receiving an inheritance payment, which they had left in a deposit-based account. Outside of such accounts, they held one endowment savings plan, and £1,000 of shares. Further, they appear to have had a very modest income, with Mrs C's income being partially comprised of state benefits.

Prior to meeting with Towry, it seems Mr and Mrs C had preferred to retain their savings in a secure environment. I accept Mr and Mrs C sought advice to look at ways in which their current limited returns could be improved. However, I am not persuaded Mr and Mrs C would have wanted to take the degree of risk which Towry recommended.

The '*Investment Recommendations*' document supplied by Towry set out the breakdown of the assets within the recommended Mixed Risk Portfolio. It shows that 41% was to be in equities with most of these being overseas equities. I consider it reasonable to suggest Mr and Mrs C's investment was exposed to a considerable degree of risk. That is not to say such a portfolio cannot be suitable for more inexperienced investors or those with more modest savings and investments. However, in this instance I am not persuaded that Mr and Mrs C were likely fully aware of the types of risks they were being exposed to. Even if they had fully understood them, given their documented objectives, I am not satisfied they would have considered they were in a secure enough position to take such risks.

On its '*Financial Planning Questionnaire*', Towry's advisor noted Mr and Mrs C held a '*mixed*' attitude to risk. However, there is no clear evidence to suggest how this risk was established or selected, or what Mr and Mrs C actually understood from this categorisation. The explanation of the risk was:

"You are prepared to accept the possibility of moderate losses in order to achieve your investment return goals. You accept the need for controlling loss through low volatility securities such as fixed income securities and commercial property but appreciate the need for a sufficient equity exposure in order to enhance the returns over the long term."

I am not satisfied, in light of Mr and Mrs C's limited investment experience and modest incomes, that they would have truly appreciated the degree of risk involved in the investments compatible with the definition above. Further, there does not seem to have been any evidence to show how this risk profile was reached, given it was at odds with Mr and Mrs C's previous experience.

The description of the mixed attitude to risk goes on to confirm:

'In most years we would expect annual returns in the range -7% to +18% but we cannot guarantee they will not be outside this range.'

I can appreciate how Mr and Mrs C may have understood from this projection that the downside to the investment may be somewhat limited compared to the upside. However, there was a very real risk of substantial losses and volatility, which is supported by Mr and Mrs C having chosen to surrender their investment after a relatively short period.

In summary, I am not persuaded that Mr and Mrs C were prepared to expose their limited savings - which had been intended to provide valuable income in retirement - to such a degree of risk. I do not consider the advice to have been suitable in Mr and Mrs C's circumstances.

I have therefore considered the appropriate method of compensation that should be applied.

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my provisional decision

I am currently minded to uphold the complaint against Towry Limited, and award compensation as set out above.

I now invite the parties to let me have in writing any further submissions they may wish to make within one month, after which time I will issue my final decision.

Jo Storey
ombudsman