Financial Ombudsman Service

complaint

Mr and Mrs R have complained about their discretionary managed portfolios that were recommended by The Royal Bank of Scotland Group Independent Financial Services Limited ("RBS"). They consider the portfolios were unsuitable.

Mr and Mrs R are using the services of a third party to bring their complaint.

background

I issued a provisional decision on this complaint in January 2015. The following is a summary of my provisional decision.

RBS determined that the level of risk that Mr and Mrs R were prepared to take was medium. On that basis it recommended that they appoint a discretionary fund manager to manage a portion of their assets based on this level of risk. The discretionary manager met with Mr and Mrs R and carried out its own assessment of the level of risk that Mr and Mrs R were prepared to take. It reached the same conclusion as RBS i.e. that Mr and Mrs R were prepared to take a medium level of risk. It then managed Mr and Mrs R's portfolios on this basis.

There has been a lot of discussion about which of the two parties, the fund manager or RBS, should deal with the complaint. There is no hard and fast answer to this question and the answer will depend on what actually happened.

However, before apportioning blame it must first be established whether there is blame to apportion. Having considered all of the evidence I was not persuaded that a medium level of risk represented a higher level of risk than Mr and Mrs R were prepared to take. I also considered that this level of risk was not unsuitable based on their circumstances.

Mr and Mrs R had just sold their business and the net proceeds they received were around £4m. They completed a questionnaire which asked them what their objectives were and how they prioritised them.

The objectives identified were as follows:

- To enhance wealth
- Maintain wealth
- Provide the facility to take an income of £100,000 per year

Mr R had reached retirement age but Mrs R was some way off reaching state retirement. It was recorded that Mr and Mrs R might become involved in another business venture but they had no definite plans. Whilst there was some uncertainty about their future plans Mr and Mrs R were at the time in effect retired investors.

I said that it was true that most investors' caution increases as they approach and reach retirement age. However, the automatic assumption that retired investors should not be advised to invest in risk assets, such as equities, is wrong. Mr and Mrs R were still quite young and would hopefully have many years ahead of them. An investor who at this stage invested only in safe assets such as cash and bonds would see the almost inevitable erosion of the real value of their capital and income due to the effects of inflation. I therefore did not consider that it would generally have been considered suitable advice for Mr and Mrs R to have invested only in low or no risk assets such as cash deposits. I consider it would generally have been considered suitable advice for Mr and Mrs R to have invested a proportion of their assets in risk assets to give them the potential to maintain the real value of their capital and income. However, they would need to be prepared to take this level of risk.

Mr and Mrs R indicated to both the fund manager and RBS that they were prepared to take a medium level of risk. A number of choices were available to them including low risk and also no risk. However, they indicated medium risk. If Mr and Mrs R were not prepared to take any risk, as has been suggested, then it is reasonable to question why they did tell RBS this. Whilst it might be considered that 'medium risk' is a relatively vague concept 'no risk' is a readily understood term.

Mr and Mrs R were also asked to give an indication of the level of return they were looking for from their investments they indicated a level of 3% above that available on cash.

It is correct to say that an income of £100,000 per year or, more accurately, *'the potential'* to draw an income of £100,000 net was identified as a requirement. However as set out above this was not their only requirement. Mr and Mrs R were in also looking for an element of real growth for their capital. It was also recorded that they had sufficient other resources such that there was no immediate requirement to draw an income at this level and it was agreed that for the first year no income would be taken.

Following a meeting between RBS and Mr and Mrs R in April 2008 the adviser's meeting notes record the following:

'no income required for 12 months and actual amounts will be agreed at the annual review meeting. Aim at the moment is to create £90,000 of spendable income.'

'target rate of return is approximately 4.1% for the income requirement and 4% to maintain real value.'

Following the sale of their business Mr and Mrs R were left with a cash lump sum of around £4m. They were advised to invest around half of this sum in a discretionary managed portfolio. I was satisfied that to invest around half of their liquid funds in a medium risk portfolio with an intended timescale of over five years was not unsuitable either for the level of risk Mr and Mrs R said they were prepared to take or for their circumstances. Whilst they were retired they had very substantial cash resources apart from the portfolio and in my view were in a position to take this level of risk with a portion of their assets.

Mr and Mrs R would appear to have no experience of risk based investments before. However, it does not automatically follow that an investor who has no previous experience of such investments cannot make an informed choice to take such a level of risk.

Mr and Mrs R, whilst not apparently having any investment experience, were clearly successful business people who can be assumed to have experience of dealing with professional advisers etc. It was recorded at the time of the advice that Mr R took a *'keen interest'* in investment matters. At the time the investment was made the first signs of the impending financial crisis (whilst it would get considerably worse) were clearly present. Over the first few months of 2008 the stock market had suffered significant falls. Northern Rock had just been nationalised and the major banks had seen their shares prices fall significantly. I consider that an investor who took a *'keen interest'* in investment matters would have been aware of the potential risks and rewards of investing in stock market linked investments. In response to this Mr and Mrs R had arranged their cash savings with reference to the compensation limits available; indicating a degree of sophistication and awareness of events in financial markets.

At the same time as they made the portfolio investment they each invested in a SIPP portfolio which was also to be managed on the basis of a medium level of risk. If, as has been suggested, they were not prepared to take any risk with their investment it is reasonable to conclude that they would have also complained about the very similar advice they received in respect of their SIPPS.

World stock markets fell sharply from the time that Mr and Mrs R made their investments. This fall apparently prompted Mr and Mrs R to liquidate their portfolio and transfer their investments to another wealth manager.

A breakdown of their assets with the other manager from late 2009 (after the transfer of their assets from the discretionary portfolio) shows the portfolio of an investor who was prepared to take a reasonable level of risk with their investments. Holdings included a substantial global equity portfolio, a commodity fund as well as a range of structured products with returns linked to a range of stock markets.

It was therefore my provisional conclusion that the advice Mr and Mrs R received was suitable both for the level of risk they were prepared to take and their circumstances.

RBS had nothing further to add.

Mr and Mrs R's representative, however, felt the complaint should still be upheld. He made the following main points:

- The process by which the level of risk that Mr and Mrs R were prepared to take was flawed.
- He conceded that some form of 'equity based' approach was suitable for Mr and Mrs R.
- It remained his view that Mr and Mrs R's portfolio was not medium risk but significantly higher.
- Redress should be calculated by reference to the FTSE All Share index as this was the proposed benchmark for the portfolio.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have not been persuaded to change my mind about the outcome of this complaint.

I agree with Mr and Mrs R's representative that an income of £100,000 a year could have been achieved by using only deposit accounts or similar. However, this level of income was not the only objective they had. They were also looking to maintain the real value of their capital as well as potentially grow their fund. I am satisfied that to meet these objectives would require them to take a reasonable level of risk with their capital. In the end this was the level of risk that Mr and Mrs R agreed to take. Whilst I do not have the full details of their investments held with the other wealth manager, the portfolio I have seen does not look like the portfolio of a risk averse investor.

I therefore remain satisfied that Mr and Mrs R were prepared to take a medium level of risk and that such a level of risk was suitable for their circumstances.

Mr and Mrs R's representative has reluctantly accepted this conclusion. However, he remains firmly of the view that Mr and Mrs R's actual portfolio was not medium risk but was in reality much higher risk. To support this view he has highlighted a number of the more unusual investments which were held in the portfolio. Mr and Mrs R were advised by RBS to appoint a fund manager to manage a portfolio for them on the basis that they were medium risk investors. In doing so I am not persuaded that RBS has done anything wrong.

Where a fund manager has agreed a mandate with its client I consider that, generally, it would have the primary responsibility for ensuring the portfolio was managed in a way that was consistent with the agreed mandate.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs R to accept or reject my decision before 17 March 2015.

Michael Stubbs
ombudsman