complaint

Mrs H is represented by a claims management company in bringing her complaint about advice she received from ProAktive Financial Services Limited ("ProAktive") in 2004 to invest £10,000 in an investment bond. She has said the advice to surrender her existing with-profits bond with another provider and reinvest in the new bond was unsuitable and not compatible with her attitude to risk.

background

I issued a provisional decision in respect of this complaint on 21 May 2014 (copy enclosed). In summary, I confirmed I was minded to uphold the complaint and explained the method of compensation I intended to apply. I invited both parties to provide me with any further comments by 24 June 2014.

ProAktive failed to provide a response. Mrs H's representative reverted back, indicating that it agreed with my findings.

my findings

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

However, as I have received no further submissions that persuade me to alter my opinion, this remains as set out in my provisional decision.

fair compensation

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

I take the view that Mrs H 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.

To compensate Mrs H fairly, ProAktive must

compare

- the performance of Mrs H's investment

with

- the position she would now be in if 50% of her investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA income index').

If there is a loss, ProAktive should pay this to Mrs H.

I have decided on this method of compensation because Mrs H wanted growth with small risk to her capital.

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to her capital. It does not mean that Mrs H would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to the capital.

The WMA income index (formerly the APCIMS income index) is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. I consider it to be a fair measure for a consumer who was prepared to take some risk to get a higher return.

Mrs H's risk profile was in between, as she was prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mrs H could have obtained from investments suited to her objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mrs H into the position she would have been in had she received appropriate advice.

how to calculate the compensation?

The compensation payable to Mrs H is 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.

The *actual value* is the value Mrs H will receive if she terminated the investment on the date of my decision.

To arrive at the *fair value,* ProAktive should work out what 50% of the original investment would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date of investment to the date of my decision and apply those rates to that part of the investment, on an annually compounded basis.

ProAktive should add to that what 50% of the original investment would be worth if it had performed in line with the WMA income index from the date of investment to the date of my decision.

Any additional sum that Mrs H paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mrs H received from 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 the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

my final decision

I uphold the complaint. My decision is that ProAktive Financial Services Limited should pay Mrs H the amount calculated as set out above.

If my award is not paid within 28 days of ProAktive Financial Services Limited receiving notification that Mrs H has accepted my decision, simple interest is to be added at a rate of 8% gross a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Mrs H is represented by a claims management company in bringing her complaint about advice she received from ProAktive Financial Services Limited (ProAktive) in 2004 to invest £10,000 in an investment bond. She has said the advice to surrender her existing with-profits bond with another provider and reinvest in the new bond was unsuitable and not compatible with her attitude to risk.

background

Our adjudicator recommended the complaint should be upheld. He considered:

- the adviser did drive the change from the existing investment bond;
- the adviser had been inconsistent when recording Mrs H's attitude to risk;
- the letter setting out the reasons for the advice had been issued some two months after the advice had been acted on; and,
- Mrs H was given misleading information when she was told she could access her funds at any time.

The adjudicator suggested a method ProAktive should use to calculate fair compensation. ProAktive did not accept the adjudicator's findings. It said the information in the complaint made by Mrs H's representative did not match her situation and it changed its approach when it referred her complaint to this service. ProAktive also pointed out Mrs H had been left with approximately £21,000 in readily accessible savings accounts. It noted that the value of the recommended investment was more than in the original bond.

As agreement could not be reached, the complaint has been passed to me for review.

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.

I appreciate there are two distinct versions of what happened at the time the advice was given. Although ProAktive suggests it was not responsible for Mrs H surrendering her original bond, and this was her idea, I am not persuaded this is correct.

It does not appear Mrs H had any major concerns about her with-profits bond, but was attracted by an article ProAktive apparently placed in the local press about such investments. As I understand it, this led her to contact ProAktive.

The notes made by the adviser imply that Mrs H was disappointed with the poor bonus rates her bond was receiving and poor service provided by the bond supplied. However, I consider it is likely these concerns would have caused by information provided by the adviser.

I also note the suitability letter the adviser sent Mrs H indicated that the main purpose of the report was to review Mrs H's existing investments to ensure they were achieving capital growth. It also contained the statement:

"As you are aware, I am recommending that you replace one or more of your existing financial policies with this new policy."

Given the above and other statements in the letter, I am satisfied Mrs H surrendered the with-profits bond following advice she was given, rather than this being her intention when she sought advice.

I have considered if the advice she received to reinvest the proceeds of the policy was suitable.

Mrs H was assessed as being prepared to take an investment risk that was between “cautious” and “cautious to realistic”. However, in the letter her attitude to risk is described as “cautious to balanced”.

In considering this point, I am mindful that Mrs H was in her seventies and retired. The capital in the with-profits bond represented about a third of her available capital, with the remainder in deposit accounts. Although she was not taking an income from the capital, it was possible she may need to do that in the future.

I am therefore not persuaded it is likely Mrs H was prepared to take much risk with her capital, not least because she would probably find it difficult to replace any loss.

The adviser recommended Mrs H reinvest the proceeds of the with-profits bond in a new bond using a property fund. However, I am not persuaded this was compatible with the risk she was prepared to take. Further, the capital was now concentrated in one asset type and one fund, whereas the with-profits fund would likely have contained a mix of asset classes.

The property fund could also suffer significant changes in value, and I am not persuaded Mrs H wished to have such an element of volatility with her capital.

There was a market value reduction of about £900 applied to the surrender value of the with- profits bond. Therefore, Mrs H had to make up the difference to the amount invested of £10,000 from her savings.

In all, I am not persuaded the advice was suitable for Mrs H, and so I have come to the same conclusion as the adjudicator that the complaint should be upheld. However, I am minded to apply a different method of redress to that he proposed.

Although I consider Mrs H had a low attitude to risk, I am not persuaded she was risk averse. I therefore consider any redress should take this into account, and have set out below what I consider to be fair compensation in this case.

fair compensation

To compensate Mrs H fairly, ProAktive should put her as close to the position she would probably now be in if she had not been given unsuitable advice.

I think Mrs H 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 ProAktive do?

To compensate Mrs H fairly, ProAktive should compare

- the performance of Mrs H’s investment

with

- the position she would now be in if 50% of her investment had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index (‘WMA income index’)

If there is a loss, ProAktive should pay this to Mrs H.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs H wanted growth with small risk to her capital.
- The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The WMA income index (formerly the APCIMS income index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.
- The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to the capital invested. The WMA income index would be a fair measure for a consumer who was prepared to take some risk to get a higher return.
- I consider that Mrs H'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 her into that position.
- It does not mean that Mrs H would have invested 50% of her money in cash and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs H could have obtained from investments suited to her objective and risk attitude.

how to calculate the compensation

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

actual value

This means the value of the investment if terminated on the date of my decision. If the investment has been encashed, the parties should inform me accordingly when responding to this provisional decision.

total 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. It is the total of 'average rate element' and 'WMA income index element'.

<u>average rate element</u>

To arrive at this value ProAktive 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 of my decision
- 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
- work out the value to the date of my decision

<u>WMA income index element</u>

To arrive at this value ProAktive 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 my decision

additional capital

Any additional sum that Mrs H 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 Mrs H received from the investment should be deducted from the calculation (split equally between average rate element and WMA 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 ProAktive adds all those payments to the *actual value* and compares that total with the *total fair value* instead of periodically deducting them.

my provisional decision

I uphold the complaint and am minded to 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.