

complaint

Mr and Mrs W have complained about advice they received from Henderson Global Investors Limited (“the business) in 2000 to invest £7,000 each in a stocks and shares ISA.

They are represented in their complaint by a third party representative, which has said that:

- Mr and Mrs W wished to invest some of their capital savings for growth, and the adviser emphasised only the positive aspects of the product based on past performance;
- While the adviser asked them the level of the risk they wished to take, he did not explain the different risk levels or how these would be reflected in the assets that were held in the chosen funds.
- Mr and Mrs W told him that they did not wish to risk their capital but wanted to make as much money as possible. They were not made aware that the higher the potential gain, the more their capital was at risk;
- The adviser did not discuss any investment options with them other than the ISA;
- Mr and Mrs W did not consider themselves experienced investors; they were guided by the adviser;
- They were not given all the information they needed to make an informed decision; they were told that the ISA was expected to perform well and that their original capital investment would not be affected. However, when they surrendered the investments in 2011, they found that they had lost a considerable amount of money. If they had known the risks involved, they would not have taken out this product.

Mr and Mrs W each surrendered their investments at a capital loss in December 2011.

In response, the business agreed that the level of risk offered by the Equity Growth Trust and the New Europe Trust funds did present a degree of risk that may have been greater than they would be prepared to take with a ‘medium’ risk approach to investment.

Accordingly, it offered to pay them redress as if 75% of their capital had been invested in the recommended funds and 25% had remained in deposit-based accounts.

Mr and Mrs W’s representative rejected this offer on their behalf and referred their complaint to this service because it maintained that it was the investment funds that represented a greater degree of risk than they were prepared to accept rather than the amount of capital they put at risk. Mr and Mrs W should have been assessed as having a ‘cautious’ attitude to risk.

background

Mr and Mrs W’s complaint was investigated by one of our adjudicators, who concluded that it should be upheld because he was inclined to believe that the recommended funds were not consistent with a ‘balanced’ risk approach to investment. However, he felt that a ‘balanced’ risk approach was not unreasonable for Mr and Mrs W to take. They already held a joint investment bond and experience of an endowment policy in connection with their mortgage.

He did not believe that the amount of capital they placed at risk was unreasonable, given that they retained approximately 71% of their total capital on deposit following the advice. Their investment in the ISAs represented around 23% of their total portfolio and the adjudicator did not feel it was unreasonable for them to adopt a 'balanced' risk approach for this proportion of their capital, given Mr and Mrs W were both still employed and more than 60% of their monthly earnings was disposable income.

The adjudicator departed from the redress offer made by the business because he did not believe that *any* of their capital should have been invested in the two funds. He proposed that redress should be based on a comparison of the return Mr and Mrs received from the actual investment and the return they might have received based on a 'benchmark' rate represented by the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index ('APCIMS index'), which equated to a 'moderate' degree of risk.

In response, the business agreed with the recommendation.

Mr and Mrs W's representative disagreed with the adjudicator's assessment and said that:

- the FTSE APCIMS Stock Market Income Total Return Index was not an appropriate 'benchmark' rate to use for consumers with very limited investment experience;
- a more appropriate comparison would be to place Mr and Mrs W back in the position as if 50% of their capital had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS Index').

In response, the adjudicator accepted that Mr and Mrs W had limited investment experience through a small investment bond and an endowment policy they previously held. While these two investments accounted only for a small proportion of their holdings, they nevertheless represented a degree of risk. Based on the size of the investment and Mr and Mrs W's objective to achieve returns that were greater than the rates offered by their existing deposit-based savings, he was satisfied that a return based on a 'benchmark' rate equivalent to a medium risk investment was appropriate in this case.

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

I have considered all the available evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I find that I agree with the conclusions reached by the adjudicator, and for essentially the same reasons.

My understanding is that Mr and Mrs W were each receiving income from employment and were more than 10 years from their intended retirement age. They enjoyed a healthy disposable income and held approximately 94% of their total capital savings on deposit. Their remaining capital was held in an investment bond.

As Mr and Mrs W did not require an income from their capital, they wished to achieve greater returns on some of their capital than they were then currently receiving from their deposit savings.

I appreciate that Mr and Mrs W might be categorised as 'cautious' investors if they were looking to make a significant investment. However, I am satisfied that the modest amount they wished to invest to achieve potentially greater returns than they were receiving from their deposit-based accounts made it reasonable to assume that they could afford to take a 'medium' risk approach to investment in these products.

I am not persuaded that Mr and Mrs W expected to receive greater returns than they were receiving from their deposit-based savings without any risk to their capital at all, or that this was not explained to them at the time. Mr and Mrs W signed a 'factfind' that recorded their attitude to risk for the purpose of investing for capital growth over the longer term as 'balanced', defined as: "*wants the potential for fairly high growth over the medium-to-long term, but accepts that the value of the initial investment could fall, especially in the short term.*"

While I appreciate that risk profiling tools are now more sophisticated in determining investors' attitude to risk, I am satisfied that this explanation given to Mr and Mrs W left them in no doubt of the degree of risk they had been prepared to take to achieve potentially greater returns.

I do agree with the adjudicator that the actual funds they recommended did represent a greater degree of risk than Mr and Mrs W were prepared to take and that redress should not assume that 75% of their capital should still have been invested in these two funds.

On balance, I am satisfied that redress based on a return Mr and Mrs W might have achieved from a 'medium' risk range of investments is appropriate. If they had put a significantly greater proportion of their capital at risk than 24%, I might have been inclined to reduce (but not remove entirely) the amount of capital they exposed to this degree of risk in their circumstances.

fair compensation

To compensate Mr and Mrs W fairly, Henderson Global Investors Limited should return them as near as possible to the position they would probably now be in if they had not been given unsuitable advice.

I believe that Mr and Mrs W would have invested differently, but it is not possible to say *precisely* what they would have done differently. However, I am satisfied that what I set out below is fair and reasonable given their circumstances and objectives when they invested.

what should the business do?

To compensate Mr and Mrs W fairly, the business should

compare

- the performance of Mr and Mrs W's investment

with

- the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index ('APCIMS index') over the period to the date they surrendered their investment.

If there is a loss at that date, the business should pay this to Mr and Mrs W, plus interest at 8% per annum simple on this loss from the date the investment was surrendered to the date of this decision.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs W wanted to achieve capital growth and were willing to accept some investment risk.
- The APCIMS index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr and Mrs W's circumstances and risk attitude.
- The interest on the loss from the date surrendered is for being deprived of the compensation money since that date.

how to calculate the compensation

The compensation payable to Mr and Mrs W is the difference between the *fair value* and the *actual value* of their investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the date surrendered to the date of settlement. Income tax may be payable on this interest.

actual value

This means the actual value of the investment at the date the investment was surrendered.

fair value

This is what the investment would have been worth at the date the investment was surrendered if it had obtained a return using the method of compensation set out above. To arrive at this value the business should:

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

additional capital

Any additional sum that Mr and Mrs W paid into the investment should be added to the calculation from the point 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 W received from the investment should be deducted from the 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 adds all those payments to the *actual value* and compares that total with the *fair value* instead of periodically deducting them.

further information

The information about APCIMS index can be found in the website of the Association of Private Client Investment Managers and Stockbrokers or the FTSE Group.

decision

My final decision is that I uphold Mr and Mrs W's complaint.

I require Henderson Global Investors Limited to pay them redress calculated on the basis set out above.

If my award is not paid within 28 days of Henderson Global Investors Limited receiving notification that Mr and Mrs W have accepted my decision, simple interest is to be added at a rate of 8% gross a year from the date of this decision to the date of settlement. Income tax may be payable on this interest.

Kim Davenport
ombudsman