

## **complaint**

Mrs A is complaining about advice she received from RLUM (CIS) Limited in February 2010 to invest £5,100 in a unit trust ISA. A third party representative raised a complaint on behalf of Mrs A about the suitability of the investment.

## **background**

Following a meeting with a CIS representative in 2010, Mrs A invested £5,100 in a unit trust stocks and shares ISA. Her investment was split equally between two funds – UK Growth and European Growth. In August 2012, Mrs A transferred approximately £5,400 from the disputed ISA into an ISA with another provider and concluded that the funds she had originally invested in were higher risk than she was led to believe.

A third party representative raised a complaint with CIS on behalf of Mrs A about the suitability of the investment. CIS did not uphold the complaint, stating in summary that it considered Mrs A was provided with all the information and risk warnings at the time.

Dissatisfied with the response, Mrs A's representative referred her complaint to this service.

The adjudicator recommended that the complaint be upheld. He concluded that the available evidence did not demonstrate how Mrs A's "adventurous" risk profile had been ascertained. Although it was acknowledged that there were no affordability issues in making the investment, given Mrs A's circumstances, in particular her lack of investment experience, the adjudicator was not persuaded that she would have been prepared to take that level of investment risk.

He recommended that a calculation be undertaken to compare the performance of Mrs A's investment with the position she would 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 APCIMS (now WMA) Stock Market Income Total Return Index ('WMA index') over the same period of time.

CIS did not agree, however, stating the following in summary:

- It had undertaken a loss calculation using a notional Bank of England (plus 1%) rate of return, which had determined that no loss had been suffered. This was the same basis which had been undertaken for Mrs A's husband's complaint, and the adjudicator had in that instance accepted the "no loss" outcome.
- The adjudicator's comments regarding affordability were noted and it was further stated that Mrs A's investment into the European Growth Trust represented approximately 4% of her available savings and approximately two months' worth of her and her husband's overall net disposable income. It was not deemed to be unreasonable for Mrs A to have chosen to take a higher risk with a small proportion of her overall savings.
- Only £2,550 was invested in the "adventurous" fund (the European Growth Trust). The remaining £2,550 was invested in a "balanced" fund (the UK Growth Trust).

- There was no reason for the adviser to have incorrectly identified Mrs A's attitude to investment risk and the business was entitled to take the risk classification which was recorded on the financial fact-find at face value.
- The suitability letter issued in February 2010 defined the attitude to investment risk which was identified during the sales process.
- Mrs A later transferred her ISA to a Stocks & Shares ISA with a different provider. This demonstrated some financial acumen in 'shopping around' for an alternative investment holding (whilst her CIS Stocks & Shares ISA was showing a positive return) and that she was still prepared to take an investment risk.
- Mr A also had existing investments in stocks and shares and he was present at the sales meeting.

As agreement has not been reached on the matter, it has been referred to me for review.

### **my findings**

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

As noted by the adjudicator, according to the fact find Mrs A had an "adventurous" attitude towards risk. At the point of sale, Mrs A was 59 years old, married, and working part time with an income of £12,000 per annum. She had joint disposable income with her husband of approximately £1,200 and no mortgage outstanding. Mrs A held £7,500 on deposit and £50,000 on deposit jointly with her husband. Mrs A had existing pension provision, but had no previous investment experience as such.

I would therefore concur that it is not entirely clear as to how, or why, Mrs A would reasonably have been recorded as an adventurous investor. It is fair to say that every investor in higher risk products must have a "first time", but I have also considered the timing of Mrs A's apparent willingness to begin exposing her savings to higher levels of risk. Given her age at the time and proximity to retirement, it would seem unlikely to me that Mrs A would have chosen this point in her life to begin taking higher risks with her savings, even taking account of the actual proportion invested.

That is not to say that I would rule out the possibility that Mrs A was willing to take some risk with the amount concerned, and I note the comments relating to the later transfer to another stocks and shares ISA and Mr A's apparent experience in stocks and shares. However, it is also the case that Mrs A would in any case have needed to transfer to another stocks and shares ISA if she was to maintain the beneficial tax status and the transfer was seemingly partly an exercise in reducing her exposure to investment risk.

I have also noted the comment relating to only half of Mrs A's ISA being invested in the "adventurous" European Growth Trust, but it is worth noting that the other half was not invested in a lower risk fund, such as corporate bonds or gilts, to offset these higher risks, but rather in the equity-biased UK Growth Trust.

I also accept that the investment would have been affordable for Mrs A and that she was arguably in a *position* to take a degree of risk with some of her investments, but on the basis of the available evidence, I am not persuaded that she had intended to take the level of risk

associated with the recommended ISA funds. As such, I am of the view that the complaint should succeed.

### **my final decision**

My final decision is that I uphold the complaint.

### *fair compensation*

In assessing what would be fair compensation, I consider that my aim should be to put Mrs A 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 A 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. I have noted the business' comments that a comparison using Bank of England plus 1%, as used for Mr A's complaint, demonstrates no loss, and that this would be appropriate for Mrs A's complaint also, but it is not in my view inappropriate to apply the benchmark which is now used to ensure consistency across these types of situations.

To compensate Mrs A fairly, therefore, RLUM (CIS) Limited should:

compare

- the performance of Mrs A'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, CIS should pay this to Mrs A.

I have decided on this method of compensation because I consider it likely that Mrs A wanted growth over the longer term and would have been prepared to expose her capital to a small degree of risk.

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 A 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 A'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 A 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 A into the position she would have been in had she received appropriate advice.

*how to calculate the compensation?*

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

The actual value is the amount Mrs A received at the date transferred.

The fair value is what the investment would have been worth if it had obtained a return using the method of compensation set out above.

To arrive at the fair value, CIS 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 transferred and apply those rates to that part of the investment, on an annually compounded basis.

CIS 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 transferred.

Any additional sum that Mrs A 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 A 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 CIS totals all such payments and deducts that figure at the end instead of periodically deducting them.

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

Philip Miller  
**ombudsman**