

complaint

Mr G (as the executor of the estate of the late Mr G), through his representative, complains that investment advice from Key Financial Services (KFS) was unsuitable for the late Mr G. He also says KFS's complaint handling has been poor.

background

KFS advised the late Mr G to invest in two unregulated collective investment schemes (UCIS). The EEA life settlement fund (EEA) was suspended in November 2011, and the Axiom legal finance fund (Axiom) was suspended in November 2012.

Mr G says the advice wasn't suitable for the late Mr G, and that the estate is likely to lose money because the funds are now suspended.

Our adjudicator recommended the complaint should be upheld. She wasn't persuaded that the late Mr G was a sophisticated investor, so she didn't think KFS should have promoted the UCIS to him. She found that the late Mr G was a low risk investor, so the investments weren't suitable for him.

The adjudicator said KFS should pay compensation to the late Mr G's estate, based on what his investments would now be worth if he'd invested in line with his circumstances and objectives. She also said KFS should pay £100 for poor complaint handling.

KFS didn't agree with the adjudicator's conclusions so the complaint has been passed to me.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

EEA and Axiom were UCIS, so there were restrictions on their promotion. But in my view, the key consideration here is the suitability of the advice given, not whether the funds could or should have been promoted to the late Mr G.

The suitability letter sent to the late Mr G in 2010 before he invested in the EEA describes him as having a low attitude to risk. Before he invested in Axiom in 2012, his attitude to risk was described as low to medium.

But I think KFS should reasonably have concluded that the EEA and Axiom were high risk investments. They were unregulated and didn't provide the regulatory protections normally offered to retail clients. This ought to have been an overriding consideration.

The funds also aimed to provide a very high return. Risk and reward are inextricably linked. In my view investments offering such a high return (a minimum net return of 8% for EEA, and a target performance of 11% per year for Axiom) at a time when the base rate was 0.5% can't reasonably be assumed to be low or medium risk investments. The Financial Conduct Authority has also described UCIS as being generally high risk funds.

KFS says the late Mr G was an experienced investor who had carried out his own research on the funds. It also says the EEA wasn't complex and was easy to understand.

I accept that KFS's handwritten notes suggest that the late Mr G had done some reading about the EEA fund before he invested. And the fund's assets may not have been hard to understand in general terms. But they exposed the fund to a number of other risks including, amongst others, policy pricing risk, longevity risk, hedging risk and concentration risk. I think there was also a foreseeable risk that it might run into liquidity problems. The underlying assets of the Axiom fund carried similar risks.

So I think it's unlikely that the late Mr G would have fully understood the extent and nature of the risks associated with this type of investment. KFS was giving advice in this case. It was the expert. So it was reasonable for the late Mr G to rely on the advice and suitability of the recommendation from KFS.

My overall finding is that the advice was unsuitable, so the late Mr G's estate should be compensated for this.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put the estate of the late Mr G as close to the position it would probably now be in if the late Mr G had not been given unsuitable advice.

I take the view that the late Mr G would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given the late Mr G's circumstances and objectives when he invested.

what should KFS do?

To compensate the estate of the late Mr G fairly, KFS must:

- Compare the performance of the late Mr G's investments with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

A separate calculation should be carried out for each investment.

KFS should also pay interest as set out below.

- Pay to the estate of the late Mr G £100 for its poor complaint handling.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
EEA and Axiom	still exists	For half of each investment: FTSE WMA Stock Market Income Total Return Index; For the other half of each investment: Average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

for each investment:

actual value

This means the actual amount paid or payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided the personal representatives of the late Mr G agree to KFS taking ownership of the investment, if it wishes to. If it is not possible for KFS to take ownership, then it may request an undertaking from the personal representatives of the late Mr G that they repay to KFS any amount they may receive from the investment in future.

fair value

This is what the investments would have been worth at the end date had they produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, KFS 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. KFS should apply those rates to the investment on an annually compounded basis.

Any additional sum paid into the investments should be added to the *fair value* calculation from the point in time when it was actually paid in.

why is this remedy suitable?

I have decided on this method of compensation because:

- The late Mr G wanted capital growth and was willing to accept some investment risk.
- 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 his capital.
- The WMA index is made up 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 think the late Mr G's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put the estate into that position. It does not mean that the late Mr G would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I think this is a reasonable compromise that broadly reflects the sort of return the late Mr G could have obtained from investments suited to his objective and risk attitude.

my final decision

I uphold the complaint. My decision is that Key Financial Services should pay the amount calculated as set out above.

Key Financial Services should provide details of its calculation to the estate of Mr G in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G's representative, on behalf of Mr G (as executor of the estate of the late Mr G) to accept or reject my decision before 18 February 2016.

Caroline Stirling
ombudsman