

complaint

Mrs H has complained that advice she received from Positive Solutions (Financial Services) Limited in June 2007 to place £20,000 in an investment bond was unsuitable for her.

She is represented in her complaint by a third party adviser, which has said that:

- Mrs H was retired at the time and the advice recommended her to invest almost 90% of her total capital savings in a risked-based investment, thereby leaving her insufficient capital for unforeseen contingencies;
- She was recorded as being a 'medium' risk investor. However, three of the funds, which amounted to 60% of her investment, carried a greater degree of risk than 'medium';
- Her status as a non-taxpayer made an investment bond unsuitable as any gains made by the funds would be taxed, tax which Mrs H could not reclaim.

Mrs H surrendered the bond in July 2010 for a loss on her original capital investment of almost £5,000.

background

Mrs H's complaint was investigated by one of our adjudicators, who concluded that it should be partly upheld because he considered that the advice, which left her with a very small proportion of her capital on deposit, was unsuitable given she was retired and her modest earnings gave her a small disposable income.

While the adjudicator found it conceivable that Mrs H did wish to take a degree of risk, he believed that three of the four funds recommended represented a degree of risk she was not prepared to take as they invested heavily in equities.

He also felt that the amount Mrs H was advised to invest in total was too great given she had committed also £7,000 to a stocks and shares ISA just two months earlier.

He, therefore, recommended that 40% of the capital Mrs H invested in the property fund was reasonable, whereas the balance of £12,000 should have remained in capital-secure accounts. This would have given a more balanced portfolio, with £15,000 remaining in secure areas and the investment bond accounting for a more acceptable proportion of her total capital in a risk-based product.

In response, the business agreed that Mrs H had been advised to leave too little capital on deposit for unforeseen contingencies. However, it also said that:

- It did not accept that the funds recommended provided a degree of risk that was greater than the medium risk approach to investment she appeared to hold;
- The funds in question were categorised as 'medium' risk funds in June 2007 and no account appears to have been taken that the fund managers may have revised their risk profile only in the aftermath of the economic downturn in 2008 and 2009;
- The four funds represented a degree of diversification in the advice given;

- It agreed that too much of Mrs H's capital available for investment was put at risk, leaving her with a minimal sum on deposit after the recommendation.

Accordingly, the business proposed that it was appropriate for Mrs H to have left 25% of her total capital available as an emergency fund, i.e. that she could have invested £13,750 in the bond, and not just the sum of £8,000 the adjudicator felt should have remained invested in the property fund.

The adjudicator put the business's proposal to Mrs H's representative, which rejected this offer, stating that:

- Mrs H was retired, with a very small net disposable income, and a proposal that still left 75% of her capital at risk was unsuitable when she had a limited capacity to replace any losses;
- It agreed with the adjudicator's assessment that Mrs H should not have been advised to invest £12,000 in three funds that presented a large degree of risk to capital that should have remained secure and accessible deposit.

The adjudicator repeated his view that Mrs H was recommended to invest too much capital in risk-based funds *and* that the Artemis UK Growth, Invesco Perpetual Income and Jupiter UK Growth funds provided a degree of risk that was too high for her in any event.

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.

I am inclined to believe that it is reasonable to assume Mrs H may have been prepared to take a degree of risk with some of her available capital, given she maximised her annual allowances in two stocks and shares ISAs in tax years 2005/2006 and 2007/2008. She was considered to have a 'medium' attitude to investment risk, which does not seem unreasonable.

However, I also consider that it was not appropriate to invest almost 90% of her remaining capital in four funds even if they were all categorised as presenting a risk to capital that was consistent with her 'medium' approach to investment. This investment was funded from capital Mrs H held on deposit after she had recently invested £7,000 in a stocks and shares ISA in April 2007. Also, Mrs H was retired on a modest income which gave her a small disposable income and hence gave her little chance of recovering any losses she might incur on this investment.

On balance, therefore, I consider that a smaller proportion of her available capital should have been placed in this product.

I note that the business agrees in principle that the advice which left Mrs H less than 10% of her capital in a secure, instantly accessible account was inappropriate and took the view that it would have been appropriate if Mrs H had retained 25% of her total wealth on deposit.

However, as 25% of Mrs H's total wealth still amounted to less than £10,000, I am inclined to consider an adequate contingency fund in terms of an absolute amount rather than as a percentage of her capital savings. In my view, given she was retired on a modest income, Mrs H should have been given advice which left her more than £10,000 instantly available to her in emergencies, especially as all her other capital was exposed to at least a 'medium' risk.

While I accept that it is not possible to decide with certainty how much capital Mrs H should have retained on deposit, I am inclined to decide that a proportion corresponding to the adjudicator's suggestion of £15,000 would be more appropriate.

As three of the four funds identified by the adjudicator - the Artemis UK Growth, Invesco Perpetual Income and Jupiter UK Growth funds – invest almost wholly in equities, as well as in derivatives and recovery stock, notwithstanding whether their risk profile matches Mrs H's approach to investment, the amount of capital I believe Mrs H should have retained on deposit should not have been exposed to the type of investment risk presented by these funds.

I am satisfied, therefore, that the adjudicator's proposal that the redress should be based on the investment in these three funds provides a fair and reasonable outcome to this complaint.

fair compensation

To compensate Mrs H fairly, the business 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 Mrs H's circumstances and objectives when she invested.

what should the business do?

To compensate Mrs H fairly, the business should

compare

- The performance of Mrs H's investment in the Artemis UK Growth, Invesco Perpetual Income and Jupiter UK Growth funds to the date she surrendered the investment;

with

- The position Mrs H would be in if 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 on its website over the same period of time.

- If there is a loss, the business should pay this to Mrs H;

and

- pay 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:

- Mrs H wanted to achieve a reasonable return without risking any of this proportion of her capital;
- Mrs H was prepared to invest for a longer period of time – but with some flexibility.
- The average rate would be a fair measure given Mrs H's circumstances and objectives. 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 her capital.
- The interest on the loss from the date she surrendered the investment is for being deprived of the compensation money since that date.

how to calculate the compensation

The compensation payable to Mrs H 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.

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

actual value

This means the actual value of the investment at the date Mrs H surrendered the investment.

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. To arrive at this value the business 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 the bond was surrendered.
- The rate for each month is that published at the end of the previous month.
- Use the rate for each month to calculate the return for that month.
- 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 surrendered.

additional capital

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

withdrawals and income payments

Any withdrawal or income payment that Mrs H 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 the average rate can be found in the “statistics” section of the Bank of England website. It is available under the section headed “Interest and Exchange rates data / quoted household interest rates / fixed rate bonds / one year”.

decision

My final decision is that I uphold Mrs H's complaint.

I require Positive Solutions (Financial Services) Limited to pay Mrs H redress calculated as set out above.

If my award is not paid within 28 days of Positive Solutions (Financial Services) Limited receiving notification that Mrs H has accepted this 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.

Kim Davenport
ombudsman