

complaint

Mrs W complains about the performance of the Strategic Investment Allocation (SIA) Fund in a portfolio provided by Aberdeen Standard Capital Limited ("ASC").

background

In March 2015, Mrs W was advised to invest over £650,000 of personal savings in an ASC Target Return investment portfolio by a third-party independent financial adviser ("IFA"). The target return was LIBOR plus 3% per annum after charges. Whilst the main investments performed well, the SIA Fund (forming around a third of the portfolio) did not, resulting in Mrs W sustaining losses.

Mrs W complains that the portfolio did not achieve its targeted return and the SIA Fund didn't perform as it had been marketed, in particular she argues that the volatile fund did not afford "the highest level of protection". Mrs W says she was exposed to more risk than she wanted and asks for reimbursement of the major miscalculation of the interest rate projection.

ASC maintain that they didn't provide advice and any concerns about the suitability of the portfolio should be directed to Mrs W's financial adviser at the time. This was a "Terms of Business" relationship, where the instruction to open the Target Return portfolio was given by Mrs W's adviser. The adviser undertook a risk assessment and selected the target return. A model was then agreed with ASC, targeted to Mrs W as a medium low risk investor. The overall portfolio was then managed on a discretionary basis in line with the risk mandate, with regular reviews. Ongoing responsibility for the suitability of the portfolio remained with the IFA.

ASC say that Mrs W attended a presentation with her IFA in February 2015, where options were presented. At that meeting Mrs W was told that one third of the portfolio would be invested in the SIA Fund. However, the SIA Fund should not be viewed in isolation. Its diversification offset the risks taken elsewhere in the portfolio, by investing in sources which didn't correlate to traditional asset classes and by hedging strategies to remove exposure from underlying markets.

Historically the target return portfolios had performed well, but ASC accept that the strategies they employed within the SIA Fund during Mrs W's period of investment were largely unsuccessful and the SIA Fund did not perform well. ASC say they were transparent about the fund's performance at the regular review points and whilst that performance was disappointing, overall the portfolio continued to be managed within Mrs W's risk profile. The reviews show that in or around mid-2018 ASC took steps to redress the poor performance, by taking the decision to dispose of some of the SIA Fund and some other assets within the portfolio.

Our investigator considered the complaint. He thought ASC hadn't provided Mrs W with enough information to make an informed decision about how to proceed. He didn't think Mrs W fully understood the risks. Over 80% of the portfolio was invested in equities, which exposed her to a higher level of risk, in contrast to her objective of capital preservation. Further, almost a third of the fund was in a higher risk fund that used complex instruments. Overall, he thought the portfolio wasn't suitable for Mrs W and that ASC should pay fair compensation.

ASC did not agree with the view. They maintained that responsibility for assessing whether the target return portfolio was suitable for Mrs W, fell to her IFA, both initially and on an ongoing basis. Further it was the adviser who recommended ASC as the discretionary investment manager. The SIA Fund should not be viewed as if it were a standalone vehicle. It provided balance and diversification to the overall portfolio, with its express purpose being to reduce overall risk. Further the amounts held within that fund were consistent with the illustrations presented to Mrs W in the proposal documents. Whilst the SIA Fund had not performed as hoped, overall the portfolio had been managed within the mandate for a medium low risk investor.

I wrote a provisional decision in June 2021, in which I provisionally decided not to uphold the complaint. I took into account all the available evidence and arguments to decide what was fair and reasonable in the circumstances of the complaint.

Suitability

I explained at the outset that I would not be considering the suitability of the recommendation to invest and remain invested within the portfolio, which contained the SIA Fund. It was clear from the first page of the investment proposal of February 2015 that ASC were not providing advice to Mrs W. This was qualified in page 3, to confirm that Mrs W's independent adviser would be responsible for assessing suitability of the product. It stated:

"We understand that [name of IFA] will be accepting the risk of the portfolio's investment suitability. To meet this requirement we have an Adviser Agreement in place with [name of IFA]."

Mrs W signed a Private client application in February 2015 and ticked the box which said:

"I acknowledge that Standard Life Wealth (now ASC) has not assessed investment suitability or suitability regarding my wider financial circumstances. My financial adviser has agreed with Standard Life Wealth (now ASC) that they will have responsibility for assessing investment suitability."

The adviser agreement post-dated the proposal and was signed by ASC and the IFA in March 2015. It contained an express term that the IFA accepted full responsibility for investment suitability.

ASC constructed the portfolio based upon information provided by the IFA as to Mrs W's attitude to risk and her objectives. I thought it was for the IFA to assess whether that target return portfolio was suitable for Mrs W's needs considering her attitude to risk, objectives and capacity for loss. So, any complaint about the suitability of the recommendation to invest in and remain invested in the portfolio lies against the provider of that advice.

My provisional decision considered whether investing in the SIA Fund amounted to a breach of the agreed investment mandate and secondly, whether ASC failed to provide the service it should have done in terms of managing the portfolio. I acknowledged that there wasn't an issue in the complaint about sharing of information about performance of the portfolio or about reviews. An ASC manager was in place and quarterly reviews were provided. It also wasn't disputed that poor performance of the SIA Fund was openly discussed. Both the adviser and Mrs W also received annual statements and could access information about performance of the portfolio online.

The SIA Fund

I considered the information from the time. In the proposal document, it was recorded that Mrs W was looking to invest for 3-5 years and had already been identified as a medium-low risk investor where:

“you are prepared to accept a moderate amount of risk over your time horizon. You want to protect the value of your investments but you want them to grow as well. Under normal circumstances you would not expect your investments to fall and rise sharply in value. You accept that, in the longer term a higher level of risk may result in higher returns.”

The personalised proposal document of February 2015 described the portfolio as a, *“portfolio of global equities and corporate bonds, with additional diversification via the SLI SIA Fund.”* For Mrs W’s risk appetite, it gave an example of asset allocation within the portfolio of 15.8% bonds, 50.5% equities, 32.7% in the SIA Fund (volatility management) and 1% in cash. The SIA Fund was as defined as, *“a simple and efficient way of delivering institutional-grade strategies into your portfolios and helps you cope with market volatility”* and examples were given of the currency hedging and investment strategies likely to be deployed within the fund. The aim of the fund was to, *“reduce the overall volatility of the portfolio and smooth investment returns,”* which was consistent with Mrs W’s understanding that it was to provide some protection to the investments.

I had also seen the presentation pack which formed the basis of a presentation about the proposal. A page dedicated to the SIA Fund was at the end of the slide pack, which stated:

“The Strategic Investment Allocation Fund is designed to be used as part of a strategic approach to individual client wealth objectives and should not be considered as a standalone investment.

The fund is designed to generate an absolute return when viewed with other assets in the client’s portfolio. As a result, if other assets in the portfolio are performing well, this fund may not produce a positive return.

The use of derivatives in the fund may result in increased volatility in the fund’s price. Due to the leveraged nature of derivatives, gains and losses can be greater than associated with traditional investment instruments.

The fund will have the ability to hold short derivative positions. This means that the fund will not necessarily follow market trends i.e. if stock markets rise the fund may not do so at the same rate, or at all.”

The slide pack also contained a generic risk warning that the value of investments could go down as well as up and past performance was not a guide to future performance. ASC said that Mrs W should therefore have been aware that the SIA fund held strategies which were different to traditional equity and fixed interest holdings also held in the portfolio. They said that, *“The benefit of this is that when equity markets fall, and fall badly, the SIA fund should cushion the blow. Recent performance does also tell us however, that when equity markets are very strong, the SIA Fund will be weaker. Without the SIA Fund, the portfolio would have been like many other traditional portfolios, with greater level of risk than we understand you were willing to take.”*

Whilst ASC said the purpose of the fund was to counterbalance the portfolio to reduce

volatility when more traditional investments weren't performing, I was mindful that the type of investments within the SIA Fund coupled with the equity exposure might have exposed Mrs W to more risk than the proposal outlined for her. But as I had explained at the outset, I was not considering here whether the investment was suitable for Mrs W's needs.

It was clear from the contemporaneous reviews and correspondence, that the portfolio did not perform as expected and the SIA Fund did not operate as had been anticipated. I didn't doubt that Mrs W was disappointed with the results. ASC acknowledged that the SIA Fund hampered the positive returns from the equity and fixed interest funds. However, the losses since inception fell within the tolerance for a medium low risk investment, invested for the medium term (standing at 1.96% as at September 2020). I had also seen that no guarantees were made as to performance and the risk of the SIA Fund underperforming when other investments were performing well was explained from the outset in the 2015 information, set out above.

The annual reports from 2015, 2016, 2017 and 2018 showed that the split of assets remained broadly in line with the example given in the proposal. The strategies discussed within the reports were also broadly aligned to the information given in the proposal document and I had seen that poor performance within the SIA fund was discussed. By mid-2018 ASC took active steps to reduce Mrs W's exposure to the SIA Fund, dropping it to around 18% of the overall portfolio and to 17.2% by March 2019, by which time earlier losses had begun to be recouped. I had seen that the overall value of the portfolio increased further in 2020.

Conclusion

I hadn't seen anything to show that the strategies deployed by ASC in using the SIA Fund and the subsequent steps taken to reduce exposure to that fund in 2018, were anything other than the legitimate exercise of commercial judgement in managing a portfolio. It was a relevant factor that Mrs W selected discretionary management, so it was for ASC to make the decisions about how to invest the funds. The fact that the risk of underperformance of a particular fund materialised, did not automatically mean that ASC did anything wrong. In the absence of any evidence that ASC mismanaged the portfolio – and the performance of the portfolio and the SIA Fund alone wasn't evidence of this - I was unable to say that ASC had done anything wrong in overall management of the portfolio.

And even if I thought that ASC had managed the portfolio above the risk level in the mandate, I couldn't fairly say now that Mrs W would have done anything different. That's because Mrs W maintained her investment in the portfolio despite regular unfavourable reviews with ASC.

Both parties have received my provisional decision. ASC have not provided any further information. Those acting on behalf of Mrs W have expressed her disappointment at the change in outcome and the financial implications this decision has. No additional submissions or evidence has been provided about the merits of the complaint.

I have now considered matters to reach a final decision.

my findings

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

I don't underestimate Mrs W's disappointment with the outcome in my provisional decision and I apologise for the time it has taken for this outcome to be reached. I'd like to reassure Mrs W that I have independently reviewed the complaint, giving it careful consideration, but I'm not persuaded that there is any new information which changes my decision.

I am sorry to disappoint Mrs W, but for the reasons set out above, I won't be upholding the complaint.

I've noted that Mrs W's representative says funds weren't withdrawn earlier because of advice given by our service. But I've seen that our investigator did explain to Mrs W's representative that we would be able to consider the complaint even if funds were transferred. I think it's helpful to explain that we aren't an advisory service, it was for Mrs W to decide where to invest her funds and I've noted that she had an independent financial adviser at the time. To be clear, whether or not Mrs W transferred her funds earlier doesn't make a material difference to the outcome as it is my primary finding that ASC didn't do anything wrong.

my final decision

For the reasons given above, I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 10 October 2021.

Sarah Tozzi
Ombudsman