Financial Ombudsman Service

complaint

On the advice of his IFA, Mr F transferred the benefits of his SIPP with product provider A to a Beaufort Securities Ltd (Beaufort Securities) discretionary fund managed SIPP. Mr F complains that he has suffered significant financial loss as a result of the transfer proceeds being invested in speculative stocks – when it had been agreed he wanted a low risk investment.

background

The IFA's 'Risk Profiler Report' for Mr F dated 7 April 2015 showed that:

- He was aged 64.
- His risk profile was 'Profile five – Low medium risk' out of ten risk profiles overall. This meant that Mr F was about average in how much risk he wanted to take with his investments.
- His attitude to risk meant that he would probably prefer his investment to go up and down less and make more modest returns than risk losing money for higher returns. However, he was probably prepared to accept some falls in order to make higher return than just investing in low-risk investments. This meant that he could make a loss on the amount he invested particularly in the short term.
- An investment portfolio appropriate for this risk level may contain, for example, a balanced mix of lower and medium-risk investments such as cash, bonds and property and higher-risk investments such as shares. While a portfolio like this should rise and fall in value less than a higher-risk portfolio, the value of investments can always go down as well as up.

On 24 April 2015, Mr F signed a Beaufort Securities SIPP application form.

On 25 November 2015, Beaufort Securities wrote to Mr F as a result of him taking an income payment from his flexi-access drawdown fund on 1 August 2015.

Mr F's stockbroking account dated 30 December 2015 set out details of seven investments with a 'book cost' of £314,972.04 and a value of £243,890.52. At least three of those investments appear to have been listed on the AIM Stock Exchange, all of which were showing substantial losses compared to their book value. Another investment appears to have been listed on the ISDX Growth Market.

Included in his complaint letter to his IFA dated 31 December 2015, Mr F said:

- He'd checked online with Beaufort Securities and found the total value was now £249,000, a loss of over £71,000.
- None of the selected investments were in profit. And one (Eastbridge Investments plc) had lost almost 75% of its value. A cursory examination of its financial state showed it had been declining for some time and made a large loss in 2014. He couldn't see how investing a quarter of his pension fund in such a company could be anything but speculation or that it would have any place in a low/medium risk portfolio.

Mr F said on our complaint form that he'd complained to his IFA on 31 December 2015 and the IFA's immediate response was that Beaufort Securities hadn't followed instructions by investing in speculative stocks.

Included in its e-mail to us dated 15 July 2016, Beaufort Securities said:

- On the IFA's 'Risk Profiler Report' for Mr F dated 7 April 2015, Mr F answered '*Agree*' to the question "*To achieve high returns, it is necessary to choose high-risk investments*". And he answered '*Disagree*' to the question '*Compared to the average person, I take lower financial risks.*'
- It had spoken to the Discretionary Fund Manager (DFM) responsible for the stock selection in the portfolio. He had set out reasons as to why he believed '*The client's portfolio was constructed in line with his risk profile and time horizon in mind, as provided to it by his IFA and that the client made investments in April 2015 citing a 10 to 15 year time horizon*.'
- It was rejecting the complaint because the client's portfolio was in line with the risk profile agreed between the client and the IFA. In addition, the performance of the portfolio, designed for a 10 to 15 year period, shouldn't be judged on the first (economically) turbulent year alone - short-term performance can fluctuate considerably in any portfolio.

On 5 August 2016 the adjudicator wrote to Beaufort Securities setting out the reasons why he was recommending that the complaint be upheld.

In its letter dated 28 June 2016 (which we received on 18 August 2016), Beaufort Securities said although it had been established that its DFM invested in Eastbridge and Carduus stock, it had been instructed by the client's IFA to invest. The letter enclosed e-mails and spreadsheets which stated the client's risk and guidance to invest. It therefore believed it had acted within the instructions provided by the IFA - although its DFM could make his own decisions for investing.

On 23 August 2016 and again on 16 September 2016 the adjudicator asked Beaufort Securities to explain why the DFM appeared to be taking instructions from the IFA as to where to invest part of Mr F's pension fund. In addition, he queried if there was a contractual obligation for Beaufort Securities to do so and, if so, for evidence of that. No formal document about investment instructions has been produced.

In his e-mail to us dated 24 January 2017, Mr F said that the only instructions he gave were that he wanted cautious investments and that at no stage was any specific investment mentioned by any party. The first he heard about speculative investments was some months after his only meeting with his IFA when he looked at his account on the Beaufort Securities website. Shortly after that he raised his complaint with us.

In its e-mail to us dated 25 January 2017, the IFA said Beaufort Securities were the DFM and instructed to invest in line with the client's attitude to risk. That was the only instruction provided.

my findings

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

Having done so I agree with the adjudicator that the complaint should be upheld and for the reasons he gave – essentially I don't think the investments selected by Beaufort Securities for Mr F's SIPP portfolio were suitable.

The IFA's 'Risk Profiler Report' for Mr F dated 7 April 2015 showed that his risk profile was identified as '*Profile 5 – Low medium* risk'. The risk scale was made up of 10 profiles overall. The report said that this meant that Mr F was about average in how much risk he wanted to take with his investments.

Beaufort Securities said on page five of that report Mr F answered '*Agree*' to the question '*To achieve high returns, it is necessary to choose high-risk investments*.' But I'd agree with what the adjudicator said –it appears to a general response to a question that anyone could make, irrespective of their level of risk.

In addition Mr F answered '*Disagree*' to the question '*Compared to the average person, I take lower financial risks*'. But I don't think that implied he was prepared to take a high level of risk. Again I'd agree that his answer could also be interpreted to mean that he takes the same level of financial risk compared to the average person.

So I don't think there can be any real dispute that Mr F wanted to adopt a low/medium investment strategy. I don't think the selected investments matched that.

Mr F has highlighted one (Eastbridge investments) that lost almost 75% of its value. It had a 'book cost' of £80,820 with the value of that investment being £22,988.51 as at 30 December 2015.

I've noted what's been said about that investment, which was listed on the AIM market of the London Stock Exchange. I don't see that investing 25% of Mr F's transfer monies in such a company was suitable for someone with an identified 'low/medium' risk profile.

Two other AIM investments in Mr F's portfolio were also showing substantial percentage losses compared to their 'book cost'. Another investment was listed on the ISDX Growth Market (which I understand is a market for earlier stage, entrepreneurial companies).

I don't consider such investments were appropriate for an investor who'd been identified as having a low/medium risk profile. The portfolio was too high risk for such an investor.

I've thought about what Beaufort Securities has said about having taken instructions from the IFA. The emails and the spreadsheets which Beaufort Securities has produced don't really help. And the IFA's told us that the only instruction given to Beaufort Securities was to invest in line with Mr F's attitude to risk.

But even if there was some input from the IFA, Beaufort Securities accepts that its DFM had authority to make his own investment decisions. The DFM knew or ought to have known the level of risk that Mr F had indicated he was prepared to take. If the IFA suggested investments which didn't fit with that and which meant the portfolio's overall level of risk was higher than the low/medium approach Mr F had said he wanted to take, then the DFM should have pointed that out and explained why he was unable to agree with what the IFA was proposing.

Ultimately investment decisions were the DFM's. So Beaufort Securities is responsible for the losses that Mr F's suffered.

my final decision

I uphold Mr F's complaint.

In assessing what would be fair compensation, my aim is to put Mr F as close to the position he'd probably now be in now if he hadn't been given unsuitable advice. I think Mr F would have invested differently. I can't say *precisely* what he would have done, but I'm satisfied what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

To compensate Mr F fairly Beaufort Securities Limited should compare the performance of Mr F's investment with that of the FTSE WMA Stock Market Income Total Return Index (now the FTSE UK Private Investors Income total return index). And pay the difference between the *fair value* and the *actual value* of the investment.

If the *actual value* is greater than the *fair value*, no compensation is payable. *Fair value* is what the investment would have been worth at the end date had it produced a return using the benchmark. Beaufort Securities Limited should provide the details of the calculation to Mr F in a clear, simple format.

If for any reason the SIPP holdings are not realisable at the date of settlement then Beaufort Securities Limited should treat that investment as having a nil value for the purposes of the redress calculation. In return Beaufort Securities Limited may require Mr F give an undertaking that he will pay to Beaufort Securities Limited any benefits from his holdings (as appropriate) as and when they become realisable or realised.

If for any reason it is not possible to augment Mr F's SIPP with any identified redress, Beaufort Securities Limited should pay that amount to Mr F after making a notional deduction for tax at his marginal rate.

I have chosen this method of compensation because Mr F wanted income with some growth and was willing to accept some investment risk. The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return 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.

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 F's circumstances and risk attitude. I understand that Mr F has not used his pension plan to purchase an annuity.

Information can be found on the Wealth Management Association or the FTSE Group websites. Some examples of how the calculation should be carried out are available on our website under 'Publications'/'Online Technical Resource'/'Investment'/'Calculating compensation in investment complaints'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 18 April 2017.

Lesley Stead
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