

complaint

Mr and Mrs W complain that Coutts & Company gave them unsuitable advice in 2007 to invest £400,000 in a Clerical Medical offshore bond. This was part of wider advice to invest £1.5 million in a Coutts portfolio.

background

Mr and Mrs W said their previous investments were in cautious funds, mainly gilts, and this advice significantly increased the risk to their money.

An adjudicator at this service said Mr and Mrs W became clients of Coutts in 2006 and the advice notes consistently showed capital protection was an ongoing theme in discussions.

He said the original suitability report recorded that Mr and Mrs W's objective was to ensure their funds grew in line with inflation, ideally by a modest amount more than this. It also noted they wanted long-term capital growth and income protection in real terms. He felt this indicated they were only looking to take a modest risk with this money.

Despite this, he said, the recommended portfolio did not have any capital security but significant equity content with 40% of this in hedge funds. He said this meant their money could fall in value very quickly and by a significant amount – and this is what happened.

He noted that after expressing concerns about the investment in a meeting in 2009, Coutts switched their money from the 'wealth enhancement' portfolio to the 'wealth preservation' one. He felt this suggested they weren't happy with the level of risk the original strategy exposed them to. Overall, he thought the 'enhancement' bond exposed Mr and Mrs W's money to more risk than they'd wanted to take.

Having analysed the wealth preservation portfolio, he felt this better reflected their original objectives and said they should've been advised to put their money in this in the first place.

He therefore proposed Coutts pay compensation based on this by comparing the return they received when they surrendered the investment in 2012 with what they would've got if their money had been invested in the wealth preservation portfolio from the outset. If this showed a loss it should pay this and add 8% simple interest per annum from the date of surrender to the date of settlement of this complaint.

He explained that a business was only required to pay a maximum of £150,000 compensation (plus interest) under our rules. If the proposed compensation came to more than this, and Coutts did not agree to pay the full amount, Mr and Mrs W could accept the £150,000 and seek further compensation through the court.

He acknowledged that Mr and Mrs W made other investments on an execution-only basis which posed significant risk to their money.

Coutts did not agree, and said:

- It has already paid significant redress in relation to the other investment advice given in 2007 (which resulted in Mr and Mrs W committing £1.2 million of their money to various products). When this redress is taken into account, the risk level posed by this investment is acceptable.

- This investment was excluded from the Financial Conduct Authority's review and it feels this advice was largely suitable for Mr and Mrs W.
- They agreed to an investment timescale of five to eight years consistent with the wealth enhancement strategy of this portfolio.
- It wants the ombudsman to take into account the review and findings by a 'skilled person' who concluded that the advice was suitable. The review was a regulatory request and supports Coutts' stance.

my findings

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

In this case I agree with the adjudicator and for the same reasons. I won't therefore repeat all the detailed points he made.

However, it is important to point out that the FCA's decision not to enforce a general review of this particular product has no bearing on whether it was suitable for Mr and Mrs W's particular circumstances and objectives. Equally, while Coutts may have asked a 'skilled person' to review this investment it does not, and cannot mean this service should not assess whether this was a fair and reasonable recommendation in line with our obligations.

From what I've read, I've seen no persuasive evidence that Mr and Mrs W were looking to expose this tranche of their money to the very substantial risk posed by this investment. It seems far more likely that they wanted to take a modest or cautious risk with all their money. Crucially, I've seen no evidence that they had decided to put their money at significantly more risk than previously.

The fact that they were happy, in principle, to commit this money to an investment lasting for five to eight years does not change this situation.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs W as close to the position they would probably now be in if they had not been given unsuitable advice.

I take the view that Mr and Mrs W would have invested differently. I consider they would have invested in the wealth preservation portfolio from outset.

what it should do

To compensate Mr and Mrs W fairly it should:

- Compare the performance of Mr and Mrs W's investment with that of the wealth preservation portfolio, as shown below, 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.

It should also pay interest as set out below.

- Provide the details of the calculation to Mr and Mrs W in a clear, simple format.

Income tax may be payable on any interest awarded.

investment name	status	Alternative investment	from ("start date")	to ("end date")	additional interest
The investments held within the CMI plan	surrendered	Coutts wealth preservation portfolio	date of investment	date surrendered	8% simple per year on any loss from the end date to the date of settlement

actual value

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

fair value

This is what the investment would have been worth at the end date had it produced a return using the alternative investment.

why this remedy is suitable

I have chosen this method of compensation because:

- Mr and Mrs W wanted capital growth with a small risk to their capital.
- The wealth preservation portfolio was more in keeping with their aims and objectives.
- The additional interest is for being deprived of the use of any compensation money since the end date.

If there is a loss by this comparison, Coutts should pay this.

Finally, I want to clarify that the amount of compensation that I can award is limited by law to £150,000 (with any interest in addition to this). An ombudsman can make a non-binding recommendation for any excess above that, and, in this case, I would obviously hope that Coutts pays the proposed compensation even if this is above our legal limit.

But it is highly unlikely that a consumer who accepts an ombudsman's final decision would then able to go to court and ask for further compensation in excess of the award made by the ombudsman. So Mr and Mrs W may want to consider getting independent legal advice if my proposed compensation exceeds our limit.

my final decision

I uphold this complaint and instruct Coutts & Company to pay compensation as outlined above. Under the rules of the Financial Ombudsman Service, Mr and Mrs W must accept or reject my decision before 6 November 2017.

Tony Moss
ombudsman