

complaint

Mr and Mrs E are being represented by a claims management company. Their complaint about Northern Bank Limited concerns the advice they received to invest in ISAs and an OEIC. Their representative says the investments were unsuitable, particularly in relation to the risks involved and the fact all of their money was put into a single fund.

background

Following discussions with an adviser in 2007, Mr and Mrs E invested a lump sum of £100,000 in an OEIC and two ISAs. All three investments were placed in the CF Danske cautious managed fund.

I have previously issued my provisional decision explaining why I considered Mr and Mrs E's complaint should be upheld in part. In summary, I was satisfied the recommended investment was reasonable for a part of the money available. But I did not believe the assessment of their attitude to risk was particularly consistent with their circumstances and I did not believe they should have been advised to invest such a large part of their capital in this particular fund. I also expressed concern that all of the money available for investment was placed in a single fund. To resolve the complaint, I proposed Northern Bank should pay compensation based on the assumption half of Mr and Mrs E's money had been placed in a lower risk investment.

I invited both parties to let me have any further comments they wished to make. Both parties disagreed with my provisional decision and confirmed Mr and Mrs E cashed their investments in at a significant loss approximately 18 months after they were made.

Mr and Mrs E's representative says they were not willing to accept any risk whatsoever to their capital as evidenced by their decision to cash in their investments at such an early stage. It believes the complaint should be upheld in full and that compensation should be calculated on the basis that Mr and Mrs E would have instead invested their money in fixed-rate deposit bonds, which is what they did with the investment proceeds. Northern Bank made a number of further points. In particular:

- it has explained the sales process followed with Mr and Mrs E, including the approach used to assess their attitude to risk;
- it says Mr and Mrs E were only advised to invest around a third of their capital, the remainder of which was held in deposit accounts;
- and as a result only around 13% of their capital was invested in equities;
- it says the CF Danske cautious managed fund is considered a low to medium risk fund, which invests up to approximately 40% in equities and 60% in bonds and/or cash; and
- it provided further information about the team responsible for managing the fund.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including all responses to my provisional decision, my conclusions remain as set out previously for essentially the same reasons.

The key issue to consider in this complaint is whether the investment advice given to

Mr and Mrs E was suitable for their circumstances and requirements. In my provisional decision, I took the view they were not experienced or sophisticated investors and were therefore very much dependant on the advice they received. Northern Bank has confirmed it is not disputing this.

I have considered the information Northern Bank has provided regarding the approach used to assess Mr and Mrs E's attitude to risk. Unfortunately, the questionnaire provided is only a sample and does not include the specific answers given by Mr and Mrs E. It is not my intention to question the process by which Northern Bank assesses the risks potential investors are willing to accept. But as previously explained, in this particular case I do not believe the assessment of Mr and Mrs E's attitude to risk as 'medium' was particularly consistent with their circumstances. Aside from the fact they do not appear to have had any investment experience, I am conscious they were retired with a modest monthly income and had no obvious means to replace any investment loss.

I believe the fact they cashed their investments at a loss so shortly after making them rather than waiting in the hope markets improved only supports my view Mr and Mrs E were not willing to expose large parts of their capital to a significant degree of risk. I do not believe their actions are particularly consistent with investors who are willing to accept significant market fluctuations in the hope of achieving a greater return.

While I do not believe Mr and Mrs E were willing to expose a large part of their capital to any significant degree of risk, I also do not believe it was wrong to recommend some of their money was held in risk-based investments. Mr and Mrs E had generated a considerable sum from downsizing their home. And the documentation provided indicates there was some discussion about risk and that they were looking to achieve returns in excess of deposit accounts.

The recommended fund had a sizeable equity content, including overseas equities with additional currency risk. I note Northern Bank's comments about how the fund is rated and it is not my role to question that. Instead, I must consider whether the fund was suitable for Mr and Mrs E in their particular circumstances. And while I believe the fund was appropriate advice for part of their money, I do not believe they should have been advised to invest as much as a third of their capital in this way. As Northern Bank has pointed out, I am aware a lot of Mr and Mrs E's money was not invested, but I still believe a third of their capital was a significant proportion.

I also previously expressed concern about the fact that all of the money being invested was placed into a single fund. While I appreciate this was a fund of funds, and I have noted Northern Banks' comments about the way the fund is managed, the fact remains that decisions about which individual funds are selected within the fund of funds is down to a single management team.

Mr and Mrs E were investing a relatively large sum and this certainly afforded the adviser an opportunity to diversify their assets across a range of funds run by different management teams. Aside from the concerns I have already expressed regarding the suitability of the fund for Mr and Mrs E in view of the risks involved, I am not satisfied the advice to invest all of this money in a single fund led to the creation of a suitably balanced and diversified portfolio.

In conclusion and on balance, I think it was reasonable to advise Mr and Mrs E to invest some of their money in the way they did. But I also believe the advice to expose such a large part of their capital to this degree of risk, particularly as it all went into a single fund, was unsuitable for them. And that is the reason I am upholding this complaint.

fair compensation

To compensate Mr and Mrs E fairly, Northern Bank should put them as close as possible to the position they would probably now be in if they had not been given unsuitable advice. With suitable advice I think they would only have invested £50,000 in the cautious managed fund, with £7,000 each (total £14,000) of this amount invested in ISAs.

I think Mr and Mrs E would have invested the remaining £50,000 that went into the OEIC differently. It is not possible to say *precisely* what they would have done, but I am satisfied what I set out below is fair and reasonable given Mr and Mrs E's circumstances and objectives when they invested.

I have noted the comments of Mr and Mrs E's representative about the proposed method for calculating compensation. And if I were satisfied they were not willing to put the money invested at any risk at all, I may well be adopting the approach it has suggested. As explained above, however, I do not believe the evidence supports the conclusion that Mr and Mrs E were entirely risk-averse.

what should Northern Bank Limited do?

To compensate Mr and Mrs E fairly, Northern Bank Limited must compare the performance of £50,000 of Mr and Mrs E's investment into the OEIC with that of the benchmark shown below.

The compensation payable to Mr and Mrs E is the difference between the *fair value* and the *actual value* of Mr and Mrs E's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Northern Bank Limited should also pay Mr and Mrs E any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
OEIC	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement

actual value

This means the value generated by £50,000 of Mr and Mrs E's investment into the OEIC at the end date.

fair value

This is what £50,000 of the amount invested in the OEIC would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Northern Bank 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. Those rates should be applied to the investment on an annually compounded basis.

why is this remedy suitable?

I have decided on this method of compensation because I believe Mr and Mrs E wanted capital growth with a relatively low risk to their capital.

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 their capital.

The WMA index is a mix 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 consider that Mr and Mrs E's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs E into that position. It does not mean that Mr and Mrs E would have invested 50% of their money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr and Mrs E could have obtained from investments suited to their objective and risk attitude.

The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

My final decision is that I uphold this complaint in part.

I direct Northern Bank Limited to pay Mr and Mrs E compensation calculated using the method set out above.

Jim Biles
ombudsman