

## **complaint**

Mr and Mrs W's complaint is about the investment portfolio they set up for a grandchild through N W Brown & Company Limited ("NWB"). The investment was made under a bare trust and they are the trustees.

In particular, they say:

- NWB did not follow the agreement made with them in July 2012 of the asset allocation for the investment.
- This caused the performance of the investment to be below the relevant benchmark.
- NWB did not handle their complaint appropriately.

## **background**

Both Mr and Mrs W were existing clients of NWB and had already held a number of investments with the business. They were experienced investors who had previously held professionally managed investments.

In July 2012, they decided to set up an investment under trust for their grandchild. For the purposes of this investment, they were prepared to take a medium risk.

Mr and Mrs W agreed the investment should be managed on a discretionary basis. But it was also agreed that an investment approach along the following lines should be adopted:

- 20% - Cash/Fixed Return
- 60% - UK Equities
- 20% - Overseas Equities

But in September 2013 the adviser wrote to Mr and Mrs W confirming the actual holdings. This confirmed the trust monies had been invested using the following split:

- 17% - Cash/Fixed Return
- 22% - UK Equities
- 57% - Overseas Equities
- 4% - Cash

The adviser also proposed to make changes and invest the portfolio in the following manner:

- 7% - Cash/Fixed Return
- 60% - UK Equities
- 30% - Overseas Equities
- 3% - Cash

Mr and Mrs W complained to NWB in February 2014. Although NWB made an offer of compensation, Mr and Mrs W remained dissatisfied. So they referred the complaint to this service.

One of our adjudicators reviewed the complaint, and thought it should be upheld. In summary, he said:

- NWB had not followed the agreed mandate.
- He was satisfied the actual composition of the underlying assets in the trust were considerably different from the agreed mandate.
- NWB was also slow in investing the capital, taking several months to do so.
- Mr and Mrs W didn't respond to the adviser's letter proposing the change to the way the trust would be invested. But this didn't mean they agreed with the adviser's suggestion.
- The proposed changes were still very different from the agreed mandate.
- NWB should compensate the trust accordingly. He explained how he thought the loss should be calculated.
- The adjudicator also felt NWB did not handle the complaint well, as it failed to respond within the regulator's guidelines.
- He thought NWB should pay Mr and Mrs W £100 in recognition of the trouble and upset caused to them by not following their instructions and not responding to the complaint appropriately.

NWB disagreed with the adjudicator: In summary, it said:

- It had carried out Mr and Mrs W's instructions. They had indicated they were pleased with the results.
- It was unfair to assume all money would be invested on day one, as Mr W had told NWB to invest slowly.
- Mr W had a previous complaint when he said NWB had invested too quickly. But he was now complaining NWB invested too slowly.
- Mr W was pleased with what NWB was doing.
- Some of the portfolio was noted as a global category investment. But only one third was exposed to UK equities.
- NWB was satisfied it had done everything Mr and Mrs W has asked of it.
- Mr W had pushed NWB towards investing in Asia. He only complained when he realised he was wrong.
- It had followed the regulator's rules when dealing with the complaint.
- Mr W had said he did not wish any further contact regarding the complaint. NWB took that to mean the matter was closed.
- NWB made Mr and Mrs W a goodwill gesture by offering a payment to them because they were now unhappy.
- The proposed remedy put forward by the adjudicator is the same as the proposition initially rejected by Mr W.

Mr and Mrs W also provided some further comments, in light of NWB's response. They said:

- Mr W had not made an earlier complaint about investing money too quickly.
- They did not agree they had been pleased with the performance of the portfolio.
- Mr W had expressed satisfaction over his own investments. But they had only said in August 2013 they were pleased to see the grandchild's trust was in positive territory.
- Their original complaint was about the timing of the investments. But this alone did not explain the poor performance of the trust portfolio.

The matter has now been passed to me for consideration.

## **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 note NWB say Mr W has made a complaint in 2008. However, this decision only concerns this complaint and does not take into account any previous complaint Mr or Mrs W may have made.

It seems clear that when Mr and Mrs W decided to set up the trust, they reached an agreement with NWB how this should be invested. I have set this out above. While NWB would be operating the investment on a discretionary basis, it should have done so in line with the agreed approach.

But, for whatever reason, it did not do so. I say this because the NWB adviser confirmed in a letter on 13 September 2013 that the actual investments were made up of 17% in cash/fixed return, 22% in UK equities and, 57% in overseas equities. The remaining 4% was held in cash. So I am satisfied the original agreement was not followed. Also, I think the make-up of the portfolio meant it was exposed to more risk than Mr and Mrs W wanted.

I also note the adviser wrote to Mr and Mrs W with a view to changing the construction of the investment. Mr and Mrs W did not respond to this letter and NWB took this as agreement to the suggested change to the portfolio. But I don't think it was reasonable to take the lack of response as their agreement with the adviser's suggestion. There could be no certainty they had seen the letter and been able to consider the proposed changes.

The proposed change to the construction of the portfolio in September 2013 was that it would hold 7% in cash/fixed returns, 60% in UK equities, 30% in overseas equities and 3% in cash. Having considered the original mandate, I am satisfied this approach also exposed the portfolio to more risk than Mr and Mrs W wanted. This is bearing in mind that as well as agreeing a general investment split, Mr and Mrs W were assessed as being medium risk investors. I think the proposed changes exposed them to a higher degree of risk.

I note NWB has said the overseas categorisations are artificial. This is because it believes that 70% of the portfolio was categorised as "global" and one third of that was exposed to UK equities. However, I think the individual investments it has referred to still have a large proportion of their underlying assets in overseas equities. So it remains my opinion this was not in line with Mr and Mrs W's wishes.

I appreciate Mr and Mrs W were experienced investors who had held investments through NWB in the past. But they approached NWB to act on their behalf on respect of their grandchild's investment. It is also clear they had an investment approach in mind for the trust monies. For the reasons I have explained, I think NWB failed to follow that approach.

I have also considered the points about the timing of the investments within the portfolio. I note when he wrote to Mr and Mrs W in August 2012, the adviser said he process of buying the investments could take between six and twelve months. It's not clear that Mr and Mrs W wanted the investments to be made slowly over a particular period. On the other hand, they don't seem to have objected to the suggestion.

But in any event, I have not seen clear evidence why it was necessary to take as long as it did to fully construct the portfolio. Unless there is a specific cause for a delay in making the investment, it would be reasonable to expect the capital to be invested as soon as possible.

NWB has said the stock market was rising during the period it was investing the funds. But this does not explain why it was appropriate to delay making the investments. By doing so, and leaving the capital in cash, a growth opportunity would be missed. So I am satisfied redress should be calculated on the basis the investment was made from the date the trust started.

NWB has also disputed the method proposed by the adjudicator for measuring the investment return the trust could have achieved. But it is not possible to know precisely how the money would have been invested if the agreed mandate had been followed. So I think it is fair and reasonable to use the FTSE WMA Stock Market Balanced Total Return Index as a proxy. This also takes account of the fact Mr and Mrs W were happy to take some risk and have a reasonable proportion of the trust in equities, both UK and overseas.

I accept NWB says it was under the impression Mr W said he did not want any further contact with them. But I think it should have issued its final response letter anyway. I say this because I have seen no evidence Mr and Mrs W had withdrawn their complaint.

So I agree with the adjudicator that Mr and Mrs W should receive £100 for the trouble and upset they have been caused. This also takes account of the loss of expectation they will have experienced because NWB failed to follow the mandate agreed at outset.

### **fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put the trust as close to the position it would probably now be in if the agreed mandate had been followed.

I take the view the trust would have been invested differently. It is not possible to say *precisely* how it would have been invested differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs W's circumstances and objectives for the trust.

### **what should NWB do?**

To compensate the trust fairly, NWB must compare the performance of the trust's investments with that of the benchmark shown below.

The compensation payable to Mr and Mrs W as the trustees is the difference between the *fair value* and the *actual value* of trust. If the *actual value* is greater than the *fair value*, no compensation is payable.

NWB should also pay Mr and Mrs W as trustees any interest, as set out below. Income tax may be payable on the interest awarded.

In addition, NWB should pay Mr and Mrs W £100 for causing them trouble and upset, which would have resulted from the loss of expectation of seeing their investments for their grandchildren losing out on expected growth.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Mr and Mrs W's grandchild's trust	transferred	FTSE WMA Stock Market Balanced Total Return Index	date of investment	date transferred	8% simple p.a. on any loss from the end date to the date of settlement

***actual value***

This means the actual amount paid or payable 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 benchmark.

***why is this remedy suitable?***

I have decided on this method of compensation because Mr and Mrs W wanted capital growth and were willing to accept some investment risk.

The WMA 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 balanced 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 and Mrs W's circumstances and risk attitude.

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

***my final decision***

I uphold the complaint. My decision is that N W Brown & Company Limited should pay the amount calculated as set out above.

N W Brown & Company Limited should provide details of its calculation to Mr and Mrs W in a clear, simple format.

In addition, N W Brown & Company Limited should pay Mr and Mrs W £100 for the trouble and upset they have been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs W to accept or reject my decision before 5 November 2015.

Doug Mansell  
**ombudsman**