Financial Ombudsman Service

complaint

Mr C complains that Moneywise Independent Financial Advisers Limited ("Moneywise") made a recommendation to transfer his ISA, which he accepted, but then it failed to invest the monies as it had recommended. He complains the business failed to carry out his instructions. Mr C says that because the money remained as "cash" instead of being reinvested he has lost the return on that money.

Mr C also complains about the business incorrectly investing the money in three funds in 2009.

background

Our adjudicator investigated the complaint and did not recommend it should be upheld. He considered that in the period between the initial advice being given and the receipt of the money, the adviser had recommended a more cautious approach than originally suggested.

The adjudicator concluded the adviser told Mr C about the revised approach which he appeared to accept at the time.

Mr C did not accept the adjudicator's conclusions. He said Moneywise had been more interested in his pension investments than the ISA investments and had failed to show the same focus and urgency, despite the adviser knowing the key objective was to have money available to repay his mortgage in 2011. Furthermore he had only moved the ISA because the adviser had said they could do better than the existing investments.

The complaint was later reviewed by another adjudicator who reached the same conclusions.

As the matter remains unresolved it has been referred to me for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint, including any representations received since the adjudicator issued his view.

Mr C met with an adviser in 2008. He had an outstanding mortgage that was due to end in 2011 and he needed to ensure he had sufficient capital to pay off this mortgage. He and his wife had two endowments and money invested in ISAs. The provider of his existing ISA had indicated that it was not on course to achieve its target maturity value. Mr C therefore sought the advice of the business as to how he might achieve the amount required in the three years remaining until he was due to pay off the mortgage.

The business wrote to Mr C in July 2008 with a preliminary recommendation to transfer the ISAs to a Wrap platform and for the money to be invested in the Income and Growth Cautions portfolio. This recommendation was set out fully in a further letter in August 2008.

The ISAs were transferred to the Wrap platform in October 2008. However, the money was not invested in the recommended portfolio. In October 2008 Mr C emailed the business and asked for an update stating:

"Can I safely assume that we are at the stage where we are just waiting for a cheque and that it has not been immediately put back into the market to suffer further losses in the short term."

The business responded indicating that the money was sent and received in cash and would sit in cash until the decision was taken to invest. It stated:

"*So, like your pension, it is out of the market now waiting for the best time to get back in. So in the short term it is secure!!"*

In November 2008 Mr C asked for an update on when the business felt it would be a good time to get back in the market. The business responded indicating that it felt it was still worth remaining in cash due to volatility and that the early part of 2009 would be the likely time to review this, although it was keeping an eye on the situation.

In January 2009 the business sent Mr C some further information about fund choices and stated it wanted Mr C to think about where he wanted to invest, with the possibility of getting back in the market later that month.

In February 2009 the business wrote to Mr C indicating that his ISAs still remained in cash and that with the short time frame and current *conditions "the equity market seems too much of a risk as this stage".* It then proposed alternative investments and fixed interest investments.

I am satisfied on balance therefore that there was some discussion between the business and Mr C about keeping the ISAs in cash until such time as the situation of the market was clearer. I am also satisfied that Mr C understood and accepted this.

Whilst with the benefit of hindsight we may be able to say that Mr C would have better off if the business had advised him to invest straight away, the advice given has to be viewed with regard what was known at the time. I also have to take into account that Mr C needed to pay off his mortgage and did not have a long time frame to invest. I am satisfied that the business in advising him to keep the money in cash was trying to prevent Mr C sustaining large losses which he might not be able to recoup over the relatively short time frame he had to invest.

Mr C has said he was willing to take some risk with his capital as he wanted to achieve more growth because he intended to use the money to repay his mortgage. However, I consider it likely that he would have wanted to preserve, as far as possible, the capital he had already built up in the ISA because he needed that money for a very specific purpose.

In February 2009 the business mistakenly invested the monies in Mr C's ISA in three funds.

I am satisfied the business accepted at a relatively early stage that an error had been made.

The documentation indicates that it was agreed between Mr C and the business that the money would remain invested up to a certain period of time in the hope that the investments would provide a reasonable return. The business agreed that if a loss was made it would reimburse Mr C and that if the investments made any gains he would keep the gains made.

Two of the funds were sold fairly quickly with the third being retained until 2011. Overall Mr C made a gain on the three funds.

I am not persuaded on balance therefore that Mr C experienced a financial loss as a result of the mistake made by Moneywise in February 2009.

In around March 2009 there was some discussion between Mr C and the business about Mr C making overpayments on his mortgage. Mr C indicated in an email that they had agreed he would use a sum from the ISA to top up the monthly payments.

In around April 2009 the business recommended that Mr C invest in a settlement fund. Mr C accepted the recommendation and kept the money invested for around one year making a positive return.

In around August 2009 Mr C decided to take full control of the funds in which his ISA was invested as he felt Moneywise was not taking active steps to increase his capital growth.

I can appreciate Mr C's frustration as he felt he had missed out on an opportunity to make a return on his capital between 2008 and 2009. However, I do consider he reached this conclusion with the benefit of hindsight. I am satisfied that at the time when these discussions were taking place the future performance of the markets was fairly uncertain and that Mr C needed his capital to repay his mortgage in the near future. I consider that the business made a judgment based on what was known at the time. Overall, I am not persuaded therefore that the advice given was unsuitable in the circumstances.

my final decision

For the reasons outlined above my decision is that I do not uphold this complaint and make no award.

Julia Chittenden
ombudsman