complaint

Miss A complains about advice received in 2012 from Nationwide Building Society to invest a substantial amount in investments she says were too risky for her. She says that the adviser assured her that the recommended investments posed no risk to her capital.

background

I issued my provisional decision on this case on 5 September 2013 in which I set out my intention to partially uphold the complaint. I provisionally concluded that the business should compensate Miss A as if she had not invested in the M&G Property Portfolio and the Newton Balanced Fund and had instead invested that money in a minimal risk environment.

Miss A responded stating in summary;

- Miss A showed no interest in (what she thought were) savings tied up for more than one year and she was very adamant about it. It was the adviser who chose the amount. Her intentions when she got herself organised were to put half of her savings into another building society because she felt it was better not to put all her eggs in one basket.
- The adviser did not mention the word “shares” to Miss A, had she done so Miss A would have made her exit immediately.
- The first paragraph on page three mentions that Miss A was willing to take some risk but Miss A is not and was never willing to take any risk whatsoever with her hard earned savings.
- It is against Miss A’s nature to get involved in anything to do with gambling. She has never even bought a lottery ticket’.

The business responded and accepted my provisional 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 further representations received since I issued my provisional view.

At the time the advice was given Miss A was retired and 70 years of age. Miss A had a substantial amount of assets however prior to the recommendations they were all held in deposit based accounts, so at minimal risk. The fact find records her money came from saving over a very long period of time and a recent inheritance. The adviser has indicated that Miss A was emotional during some of the sale process because of the passing away of her sister. Miss A has indicated this was a difficult time for her as her sister had passed away but she has stated in response to my provisional decision that she was not emotional.

Miss A was advised to invest a substantial sum in a Unit Trust/Open Ended Investment Company and a stocks and shares ISA. The business points out that the investment represented around 18 percent of her assets and says in effect that this was a small percentage.

However, I consider that this was not an insignificant percentage of Miss A’s assets to remove from their minimal risk environment and place at risk. I say this because Miss A had no previous investment experience; her money was all held on deposit (including a small percentage in a cash ISA). In addition this money came from Miss A saving over a long period and an inheritance from a close relative. Miss A has stated she did not want to gamble away her late sister's money. I consider it likely therefore in the circumstances that Miss A would have been wary about the amount of risk she wanted to take with any investment. In addition although Miss A had a reasonable amount of disposable income this investment was a large sum so losses may well have been difficult to replace. Also because Miss A was retired she was unlikely to have been able to obtain any additional income.

Miss A has described how she was approached by one of the business' employees when she visited the business to pick up some cheques. It seems therefore that the business initiated the contact and that Miss A did not go to the business with the intention of investing a substantial sum of money. She says the business pointed out that her money was not earning much interest in the account it was in. This does not seem to me to be an unreasonable thing for the business to have said. I consider it likely on balance that Miss A did want to try to obtain a better return on her money than she was currently achieving. However, the issue for me to determine is whether she wanted to take to the risk posed by the business' recommendations for investment with a substantial lump sum.

The adviser met with Miss A on three occasions over a fairly short space of time. A fact find was completed setting out Miss A's circumstances and objectives. The adviser recommended investment of a substantial lump sum in a mixture of low risk and medium risk funds. The adviser set out her recommendations to Miss A in a suitability letter which it appears was presented to Miss A at the third meeting when I understand she filled out forms to take out the investments. I am not persuaded therefore that Miss A would have had an opportunity to read and digest the recommendations at length.

Miss A has stated in recent correspondence that she would not have understood what a unit trust or open ended investment company was and has asked to see a copy of what she signed. I have asked the business to provide her with any signed documents. However I do not consider that it is necessary for me to see the application forms which would have been signed by Miss A in order to determine this complaint because I am satisfied that Miss A was provided with a suitability letter which used these terms. I appreciate the point Miss A makes, and I am satisfied that she would not have been familiar with this terminology. I consider that the suitability letter did give an explanation regarding how the investments worked however I am not convinced that Miss A would have understood the overall level of risk posed by the investments recommended or the risks posed by the different funds recommended.

Miss A has stated that she was not willing to take any risk. However I consider she would have understood from the suitability letter that the level of return on her capital was not guaranteed and that the total of her capital was not guaranteed. But, I am not persuaded that she would have necessarily understood that all of the lump sum was at risk and the level of risk posed. I note the suitability letter makes reference to accepting the possibility of losing some of what is invested for the prospect of better growth and accepting a greater risk with some of her money.

I also note that the adviser has indicated that Miss A was emotional at the time of the third meeting. I consider in the circumstances described by both parties at the point of sale that it was likely Miss A was affected by her sister's passing away and therefore in a fairly emotional state. I consider that her emotional state together with the short time between the second meeting (when a full fact find was completed) and the third meeting when the recommendations was presented, would have not put her in a good position to take in and understand the information being presented to her.

I consider on balance that if Miss A had properly understood the nature of what was being recommended and the risks posed she would not have invested such a substantial sum or invested in the funds which are referred to as medium risk. I consider those investments posed more risk than she was willing to take. I note that Miss A complained about the advice received only around two months after the investment was made.

I consider that given Miss A's lack of investment experience and her circumstances generally that the recommendation to invest this amount of money in the way recommended posed more risk than she was willing to take and was not suitable in the circumstances. I note she says that she was not willing to take any risk. However I am persuaded on balance that she was willing to take some risk with a small proportion of her money in order to try to obtain a better return. I am not convinced on balance that she did not realise that any of the money she was advised to invest was at risk. I note the suitability letter makes reference to her accepting a greater risk with some of her money. But, I am not persuaded that Miss A understood the level of risk posed by the investments recommended.

I consider therefore that the business should compensate Miss A on the basis that Miss A did not invest in the funds it has referred to as medium risk and instead that money had been invested in a minimal risk environment. I consider this would be fair and reasonable in the circumstances and it would mean that the overall amount of money invested in low risk funds was closer to 10 percent of her overall portfolio.

I note Miss A has made reference in her response to the adviser increasing the amount in her cash ISA. It does not seem to me that this is something that has previously formed part of this complaint and in any event it does not affect my conclusion on this complaint.

fair compensation

To compensate Miss A fairly, Nationwide should put her as close to the position she would probably now be in if she had not been given unsuitable advice in relation to part of the lump sum invested.

I think Miss A would have invested part of the lump sum differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given her circumstances and objectives when she invested.

what should Nationwide do?

To compensate Miss A fairly, Nationwide Building Society should

compare

- the performance of part of Miss A's investment (the amounts invested in the M & G Property Portfolio and Newton Balanced Fund)

with

- the position Miss A would now be in if that part of her investment had produced a return matching the average rate for fixed rate bonds with 12 to 17 months maturity as published by the Bank of England

If there is a loss, Nationwide should pay this to Miss A.

why is this remedy suitable?

I have chosen this method of compensation because:

- Miss A wanted to achieve a reasonable return and was only prepared to take a low risk with some of her capital.
- Miss A was prepared to invest for a longer period of time – but with some flexibility.
- The average rate would be a fair measure given Miss A's circumstances and objectives. It does not mean that Miss A would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to her capital.

how to calculate the compensation

The compensation payable to Miss A is the difference between the *fair value* and the *actual value* of the part of her investment identified. If the *actual value* is greater than the *fair value*, no compensation is payable.

actual value

This means the value of the investment as at the date of my decision.

fair value

This is what the investment would have been worth if it had obtained a return using the method of compensation set out above. To arrive at this value Nationwide should:

- find out the average rate for fixed rate bonds, as published by the Bank of England, for each month from the date of investment to the date of my decision
- the rate for each month is that published at the end of the previous month
- use the rate for each month to calculate the return for that month
- the calculation should be carried out on an annually compounded basis; that is, with the return added to the investment at each anniversary
- work out the value to the date of my decision

additional capital

Any additional sum that Miss A paid into the investment should be added to the calculation from the point it was actually paid in so that it starts to accrue a return in the calculation from that point on.

my final decision

For the reasons outlined my decision is that the complaint should be partly upheld and Nationwide Building Society should pay Miss A compensation as set out above.

Julia Chittenden
ombudsman