Financial Ombudsman Service

complaint

Mrs D has complained through a third party adviser that advice she received from a predecessor firm of Scottish Friendly Assurance Society Limited ("Scottish Friendly") in May 2000 to invest £15,000 in an investment bond was unsuitable for her.

Her representative has said she had been told that, following the recent death of her husband (hereafter referred to as "the late Mr D"), who died intestate, Mrs D could only access the proceeds of his policies without probate by reinvesting the proceeds of his policies in the bond.

background

Mrs D's complaint was investigated by one of our adjudicators who concluded that the complaint should be upheld.

He noted that Mrs D submitted documentation which implied that she had been advised to invest her capital sum in a with profits fund, which provided certain guarantees about the rates of bonus she would receive. Scottish Friendly questioned the basis of her complaint when it confirmed that she had been advised to invest her capital sum in a managed fund and an equity fund. It commented that her representative had ignored the evidence it had been provided which confirmed the actual basis of the advice.

Notwithstanding this, the adjudicator felt that that the advice given to Mrs D in May 2000 was not appropriate to her circumstances. She was recently widowed and, while all the existing investments were held in her name might have suggested that she was an experienced investor, Mrs D says that these investments had been arranged by the late Mr D.

Accordingly, the adjudicator believed that she should not have been regarded as having a 'medium' approach to investment risk that justified the choice of these two funds.

In response, Scottish Friendly disagreed with the adjudicator's assessment and said that:

- In addition to demutualisation shares of £13,000, Mrs D was recorded as holding investment bonds valued at £11,000, £10,000 in personal equity plans (PEPs), tax-exempt savings accounts (TESSAs) worth approximately £15,000, £1,000 in an individual savings account (ISA) and £11,000 on deposit;

- It was evident at the point of sale that Mrs D was interested in an investment that offered the prospect of capital growth and, as such, she was prepared to take a risk with her money, and a 'medium' attitude to risk accurately reflected her intentions;

- The documentation completed at the point of sale confirms that the investment risks of these funds were clearly disclosed to Mrs D and it does not accept that she did not imagine the bond offered capital security.

This complaint was reviewed by another adjudicator, who requested an explanation from Scottish Friendly of the statements made by Mrs D that she needed to reinvest the proceeds of the late Mr D's policy in the bond to gain access to this capital.

She also asked why Mrs D submitted promotional literature for the with profits fund, which was dated around three or four years before she received advice, which led her to believe that she was investing in a with profits fund.

Scottish Friendly advised that, before the late Mr D's died, he had invested in with profits funds and, as the literature Mrs D's representative submitted was published in 1996 and 1997, it suggested that this promotional material had been given to the late Mr D before he died. It also confirmed that Mrs D had been granted probate in May 2000 (shortly before she received this advice) and the adviser had been in correspondence with the solicitor acting for the late Mr D's estate. It was unable to confirm why Mrs D needed to reinvest her late husband's capital in order to gain immediate access to it, or that was the only option open to her at the time.

As no agreement could be reached in this complaint, it has been referred to me for review.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

My understanding of Mrs D's circumstances at the point of sale and beyond is as follows.

- She was recently widowed and was not obliged to reinvest the proceeds of the late Mr D's investment to gain access to his capital savings;

- There were a number of investments she already held in her name, including unitised with profits and tax-exempt plans (that were taken out in 1991 and 1992), as well as PEPs and ISAs. Since PEPs and ISAs are not transferrable on death, it is reasonable to assume that these assets were originally held in Mrs D's name, although they might have been arranged by the late Mr D with his capital;

- Mrs D was advised to invest in the managed fund and the equity fund of the bond, and not in the with profits fund;

- Shortly after Mrs D invested £15,000 in the bond, she made a capital withdrawal of £10,000 in June 2001;

- Mrs D had contacted Scottish Friendly in August 2006 to question the value of the investment, commenting that it had suffered a capital loss, without raising a formal complaint about this advice;

- In 2012, the value of the bond gave Mrs D a capital loss of almost £1,000.

While I am satisfied that Mrs D was prepared to invest, I am not persuaded that she had sufficient first-hand experience of risk-based products for her attitude to risk to be recorded as '3' (on a scale of '1' to '4') or 'medium'/'speculative'. She has said that those investments held in her name at the point of sale were funded from the lump sum paid to the late Mr D when his company pension scheme was wound-up.

Mrs D has said that she made the capital withdrew from the bond after approximately 12 months to fund a house move even though she had agreed to invest for long term capital growth.

While it is not clear why Mrs D did not consider redeeming those investments that she already held at the point of sale, rather than withdrawing a substantial sum of money from her bond so soon after she took out the investment. This does not appear to be the actions of an investor who was prepared to take a longer term view by adopting a 'medium'/'speculative' approach to investment. Scottish Friendly has confirmed that, in May 2000, the managed fund invested approximately 75% of its assets in UK and overseas equities and the equity fund invested largely in UK equities, both of which carried a significant degree of risk.

Given the advice Mrs D received came when the estate of her late husband was still being settled, I am inclined to believe that she was not really given sufficient time after this life changing event properly to consider her options.

The adjudicator has suggested that Mrs D should receive redress, if any, on the basis that she would have been prepared to take a small degree of risk with the capital sum available to her and I am satisfied that this appropriately resolves her complaint.

fair compensation

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

I take the view that Mrs D would have invested 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.

On the understanding that Mrs D has retained the investment bond to-date, to compensate her fairly, Scottish Friendly must:

compare

- the performance of Mrs D's investment

with

- the position she would now be in if 50% of her investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA income index')

If there is a loss, Scottish Friendly should pay this to Mrs D.

I have decided on this method of compensation because Mrs D wanted growth with small risk to her capital.

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to her capital. It does not mean that Mrs D 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 the capital.

The WMA income index (formerly the APCIMS income index) is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. I consider it to be a fair measure for a consumer who was prepared to take some risk to get a higher return.

Mrs D's risk profile was in between, as she was prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mrs D could have obtained from investments suited to her objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mrs D into the position she would have been in had she received appropriate advice.

how to calculate the compensation?

The compensation payable to Mrs D is 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.

The *actual value* is the value Mrs D will receive if she terminated the investment on the date of my decision.

To arrive at the *fair value,* Scottish Friendly should work out what 50% of the original investment would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date of investment to the date of my decision and apply those rates to that part of the investment, on an annually compounded basis.

Scottish Friendly should add to that what 50% of the original investment would be worth if it had performed in line with the WMA income index from the date of investment to the date of my decision.

Any additional sum that Mrs D paid into the investment should be added to the *fair value* calculation from the point it was actually paid in.

Any withdrawal or income payment that Mrs D received from the investment should be deducted from the *fair value* calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

my final decision

My final decision is that I uphold Mrs D's complaint. I require Scottish Friendly Assurance Society Limited to pay Mrs D redress on the basis set out above.

If my award is not paid within 28 days of Scottish Friendly Assurance Society Limited receiving notification that Mrs D has accepted this decision, simple interest is to be added at a rate of 8% gross a year from the date of the decision to the date of settlement. Income tax may be payable on this interest.

Kim Davenport
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