

complaint

Mrs A has complained about the advice she received from Co-operative Bank Financial Advisers Ltd to encash her existing ISAs and reinvest the proceeds, together with monies held on deposit, into an investment bond. Her representative says on her behalf that the advice was unsuitable.

background

The adjudicator upheld the complaint concluding that Mrs A should not have been advised to encash her ISAs. She said that the product recommended by the business was not suitable as she did not consider there was justification for placing any further capital at risk given Mrs A's circumstances. She also considered that the capital protection could have been achieved without encashing her ISAs.

The business did not agree and said that it had already conceded that the advice to cash in Mrs A's ISAs and replace them with an investment bond was unsuitable. However, it has said that the investment bond Mrs A was advised to invest in was suitable as she wanted to include an element of capital protection. The business calculated redress on the basis that she should have invested this money in the same fund but within the ISA wrapper. It offered redress on the basis of the tax relief Mrs A had lost as a result of surrendering her existing ISAs and the extra charges she has incurred.

I issued a provisional decision upholding the complaint. I was not persuaded that consolidating Mrs A's investments, or the capital protection aspect of the new investments would have been sufficient reason for her to take out the new investment. On balance I considered it likely that if Mrs A had not received the advice she would have kept her existing investments where they were and left the top-up funds on deposit. So, I concluded that Co-operative Bank Financial Advisers Ltd should compensate Mrs A accordingly.

Mrs A accepted the provisional decision. Co-operative Bank Financial Advisers Ltd did not accept my findings. It said that its initial offer of compensation was fair and reasonable and referred to points it had made previously.

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 I issued my provisional decision.

At the time of advice Mrs A was in her seventies, retired and a widow. I understand from her representative that she was contacted by the business via a third party. It seems therefore that rather than seeking out advice in relation to her financial affairs the business contacted her in order to offer its services. I also consider that given her circumstances she was a fairly vulnerable customer. Although Mrs A had some existing investments I am not persuaded that she had any significant level of investment experience.

At the time the advice was given Mrs A had monies held on deposit, monies invested in two ISAs and in a with-profits bond. She did not have a large income and she had a relatively modest amount of disposable income.

The business has stated that she wanted to surrender her existing ISA's as she wanted to consolidate her investments and in order to obtain some capital protection.

I am not persuaded on balance that consolidating investments would have been a sufficient reason for Mrs A to take out this new investment. In particular I take into account the disadvantages of taking out this new investment as opposed to keeping her existing ones. By taking out this investment Mrs A would be subject to initial charges plus an increased management charge, she would lose the tax benefit afforded by her ISAs and become subject to surrender penalties in the first five years which she did not have on her existing investments.

The business has also said that they recommended this product as Mrs A wanted an element of capital protection. Whilst I consider that Mrs A would have been attracted by a product which protected her capital I am not persuaded on balance that she properly understood the level of protection provided, or the disadvantages of surrendering her existing investments. I am not convinced that the overall effect of the change to her investments was made clear to her.

The policy she was advised to take out was designed to provide capital protection however it only provided 80 percent capital protection, and charges could mean that the consumer would get back less than 80 percent. In addition this was not a guaranteed amount of protection and it could be affected by extreme market conditions. I take into account that although the money invested in her existing ISA's was already at risk, the capital which came from deposit was in a secure environment. So by taking monies held on deposit and investing them in this product Mrs A was increasing the risk to that part of her capital rather than protecting it.

The money invested in her existing ISA's was invested in three funds; invested primarily in corporate bonds. Two of those three funds were invested primarily in investment grade corporate bonds. The business asked a third party to assess its recommendations and it recorded that the ISAs that were surrendered were rated as 5/6 and the recommended product was rated 5. Mrs A's representative has said that the risk ratings provided by Trustnet indicate that there was only a slightly higher risk posed by the surrendered investments than the new investment. It does not appear therefore on balance that there was a substantial difference in risk between the surrendered investments and the investment recommended. In addition because Mrs A was taking a significant amount from a deposit account I am not persuaded on balance that the recommended product reduced her risk overall, or that if it did, that this was by a significant amount which made surrendering her existing investments worthwhile.

Even if there was a slight reduction in risk overall this had to be weighed against increased charges, loss of tax relief and the fact that she would not be able to easily access the capital sum as there were surrender penalties in the first five years.

I note there is some reference in the documentation to Mrs A being unhappy with her existing investments. I am not convinced on balance that she was unhappy with the investments and I note that the documentation from the point of sale indicated one of those had significantly increased in value from when she took it out in 2005.

Overall I am not persuaded on balance that the recommendation to surrender her existing investments and invest this money together with monies on deposit in the recommended product was suitable. I consider that if Mrs A had not received unsuitable advice she would

have in all likelihood left her finances as they were. I consider it likely on balance she would have kept her existing investments and kept the other monies on deposit.

So I consider that in order to compensate Mrs A the business should pay Mrs A the value of her existing ISAs as if she had kept them invested until the date of my decision minus the proportion of the surrender value of the Sterling bond attributable to those ISAs when invested.

The business should also pay Mrs A the amount she would now have if she had left her money on deposit at the rate of that deposit account minus the proportion of the surrender value of the Sterling bond attributable to the monies from deposit when invested. So compensation of F where:

A= value of ISA A if kept invested until date of my decision
B= value of ISA B if kept invested until date of my decision
C= value of monies if kept on deposit until date of my decision
D= A + B + C
E= surrender value of Sterling bond at the date of my decision
F= D – E

The business should also pay Mrs A compensation for the loss of tax relief that she had on her ISA investments. I consider it reasonable for the business to calculate this amount as it has done in its offer to the consumer.

my final decision

For the reasons outlined above my decision is that the complaint is upheld and Co-operative Bank Financial Advisers Limited should pay compensation calculated as set out above.

Julia Chittenden
ombudsman