

complaint

Mrs M and Mr S complain Croesus Financial Services Limited (Croesus) mis-sold a property based investment to Mrs S, their mother - and that it failed its duty of care by not contacting her for five years.

background

The background and circumstances of this complaint are set out within my provisional decision of 4 December 2015. A copy of this is attached and forms part of this decision.

Croesus disagreed with my view that it should pay interest at 8% on the proposed compensation.

It said if interest is awarded, it should surely be from the date of acceptance by the client of the redress offer, or if redress is not paid promptly. It also said the proposed interest rate was more than 16 times the prevailing Bank of England base rate over the period since 2011.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

For the reasons outlined in my provisional decision, I uphold this complaint but believe compensation should be limited to the point in 2011 when Mrs S (and Mrs M and Mr S) received new advice.

I have carefully considered Croesus's arguments on the issue of the proposed 8% interest to be added to this compensation.

Firstly, I cannot agree that interest should only be added where a business doesn't pay in a timely fashion. The principle underlying the payment of interest is that where a consumer has been wrongly deprived of a sum of money, the business should add interest from the date at which the consumer should have had access to that money.

In this case, I believe that if Croesus had offered suitable advice in the first place, Mrs S's investment would have been worth a different amount in 2011 (defined as the 'fair value' in the formula below). Therefore Mrs S/her trust have been deprived of that money since then.

It is not possible to say what they would have done with this money. So the 8% simple interest rate is a blended figure designed to reflect a variety of factors and considerations which will inevitably apply in different cases. It is a gross rate before tax is deducted. I am therefore satisfied that the compensation proposed is fair and reasonable.

my final decision

I uphold this complaint, and instruct Croesus Financial Services Limited to compensate the trustees of Mrs S's policy according to the formula set out below.

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 Mrs S/the trustees had not been given unsuitable advice.

I take the view that Mrs S/the trustees would have invested differently. It is not possible to say *precisely* what Mrs S/the trustees would have done differently. But I am satisfied that what I have set out below is fair and reasonable given the trust's circumstances and objectives when the trustees invested.

what it should do?

To compensate the trust fairly it should:

- Compare the performance of the trust's investment with that of the benchmark shown below and pay 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.
- It should also pay interest as set out below.

investment name	Status	benchmark	from ("start date")	to ("end date")	additional interest
Sterling Discounted Gift Trust	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	28 November 2011	8 per cent simple per annum from the difference as of 28 November 2011 to the date of settlement

- Provide the details of the calculation to the trust in a clear, simple format. Income tax may be payable on any interest awarded.

actual value

This means the actual amount 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, it should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other payment out of the investments should be deducted from the *fair value* 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 it totals all those payments and deduct that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- The trustees wanted income with some growth with a small risk to the trust's capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to the trust's capital.
- The WMA index is a mix 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.
- I consider that the trust's risk profile was in between, in the sense that the trustees were prepared to take a small level of risk to attain the trust's investment objectives. So, the 50/50 combination would reasonably put the trust into that position. It does not mean that the trustees would have invested 50% of the trust's money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return the trustees could have obtained from investments suited to the trust's objective and risk attitude.

further information

The information about the average rate can be found in the 'Statistics' section of the Bank of England website under 'Interest and Exchange Rates Data' / 'Quoted household interest rates' / 'Deposit rates' / 'Fixed rate bonds' / '1 Year'. You can find information about the WMA index on the Wealth Management Association or the FTSE Group websites.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M and Mr S to accept or reject my decision before 5 February 2016.

Tony Moss
ombudsman

provisional decision

complaint

Mrs M and Mr S complain that Croesus Financial Services (Croesus) mis-sold a property-based investment to Mrs S, their mother - and that it failed its duty of care by not contacting her for five years.

background

Mrs S met with Croesus in 2005. She was 78, and a recent widow awaiting probate from her late husband's estate. She was looking for inheritance tax advice.

Croesus recommended a £100,000 investment in a Sterling Bond, set up via a discounted gift trust. This investment was in a property fund.

Croesus says it wrote to Mrs S six times within the next five years, offering to review the investment and her overall financial situation.

Mrs S met Croesus in November 2011 (along with Mrs M and Mr S), and agreed to a fund switch. Croesus says it offered a further review in January 2013.

Mrs S complained to Croesus in 2014. It rejected her complaint, detailing the occasions on which it had contacted her to offer further advice.

An adjudicator at this service agreed that Croesus had made regular attempts to contact her, and didn't feel it had failed in its duty of care.

But he did feel the original advice to invest in this product hadn't matched her objectives. He said there was limited available information about Mrs S's existing assets and investments, so it was difficult to see how the advisor had arrived at their recommendation.

He noted Mrs S's attitude to risk was recorded as 'moderate', and Croesus's Fact Find stated that appropriate products would be corporate bonds of good investment-rated companies, Distribution funds, and Cautious funds. By contrast, a property fund was considered a 'moderate to speculative risk'

Taking account of Mrs S's age and circumstances, he felt this product wasn't a suitable recommendation.

He proposed compensation based on a comparison between her investment and one suitable for moderate-risk investors wanting to take a small risk with their capital to try and achieve a reasonable rate of growth.

He set out the details of this proposed comparison.

Croesus didn't object to the principle of the proposed compensation but said this should be limited to the date at which it recommended a switch in funds in November 2011. From this point on, Mrs S's investment was no longer entirely held in property but spread across a wide range of funds, based on a new interview conducted with the trustees.

The adjudicator did not agree.

As no agreement has been reached, this complaint has been passed to me for review.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've seen no evidence that Croesus failed to communicate appropriately with Mrs S or the trustees of this policy, and I'm not persuaded to uphold this aspect of their complaint.

I agree with the adjudicator the original recommendation wasn't suitable for Mrs S's circumstances, and for substantially the same reasons. I also agree with the proposed formula for setting appropriate compensation, and I note Croesus hasn't disputed this.

However, I believe that redress should be based only up until Croesus provided new advice, and the investment was substantially altered, in November 2011. From the evidence I've seen, there was a thorough discussion with Mrs S and the trustees about their investment objectives for the fund, and new advice was provided on that basis.

I have not considered whether that advice was appropriate, as this would need to be the subject of any new complaint. But I am satisfied this was significantly new advice, and that it resulted in a significant switch of funds.

This means the original advice, and the consequences that flowed from it, stopped at this point. And so compensation for any loss should also be capped at this date.

my provisional decision

I currently intend to uphold this complaint, and I intend to instruct Croesus Financial Services Limited to compensate the trustees of Mrs S's policy according to the formula set out below.

fair compensation

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I take the view that the trustees would have invested differently. It is not possible to say *precisely* what the trustees would have done differently. But I am satisfied that what I have set out below is fair and reasonable given the trust's circumstances and objectives when the trustees invested.

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