complaint

Mr and Mrs M complain about the advice given by Straight Talk Financial Planning Ltd ("STFP") to invest in an Arch cru fund.

background

Mr and Mrs M were advised to invest in Arch cru funds by STFP in September 2007. The funds ran into difficulties and were suspended in March 2009.

In December 2012 the then industry regulator, the Financial Services Authority (FSA) (now Financial Conduct Authority (FCA)), published a policy statement: '*Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds*'. The statement set out how businesses that recommended Arch cru funds should review that advice. It also explained how to calculate compensation, if the review concluded that the advice wasn't suitable.

The FSA's redress scheme started on 1 April 2013. Firms had four weeks to write to all clients for whom they advised, arranged or managed Arch cru investments. STFP wrote to Mr and Mrs M as required and they replied, opting in to the scheme.

The scheme rules said that firms had to tell their clients the outcome of the review by 9 December 2013. STFP didn't reply by this date. So Mr and Mrs M referred their complaint to this service.

One of our adjudicators investigated the complaint under the rules of the scheme. These rules are called the CONRED rules and are in the FCA's Handbook. He thought the complaint should be upheld. In summary, he said:

- He didn't think the Arch cru fund was sold as a high risk product.
- The Arch cru fund appeared to make up about 34% of Mr and Mrs M's portfolio. This weighting unbalanced their portfolio and meant the risk wasn't spread.
- The evidence showed that Mr and Mrs M were reliant on income from their investments. The Arch cru Investment Portfolio did provide income - but the level of income wasn't fixed. Under the scheme rules, this meant that the advice was unsuitable.

STFP didn't agree and made the following points:

- The Arch cru fund only made up about 6 – 7% of Mr and Mrs M's portfolio. This was because the adjudicator wasn't aware of a £22,050 bond and £50,000 in another fund.
- Mr and Mrs M had a "*medium risk*" approach towards investment risk and the investment into Arch cru when seen as part of the whole was in line with this.
- The fund information provided by Arch cru was *"approved for distribution by Capita, HSBC Mellon and one assumes the regulator…"*. It was therefore reasonable to hold these funds as part of an investment portfolio.

STFP also provided a copy of the suitability report it produced at the time the investment was recommended.

Our adjudicator considered STFP's points and the new information. But he didn't change his view. He said:

- He acknowledged that the portfolio weighting was about 6 – 7% taking into account the two further investments. But this didn't make the Arch cru sale suitable.
- Tests one and six of the CONRED scheme were still not met and therefore advice to invest in Arch cru funds was unsuitable.

The CONRED guidance says that a suitable benchmark should be chosen for use in calculating compensation. The guidance sets out three different benchmarks (called comparators). Our adjudicator felt the most suitable comparator in this case is comparator 3.

Our adjudicator gave both parties the opportunity to provide further comments or evidence. STFP didn't reply. Mr and Mrs M commented on the poor service they said they received from STFP.

my findings

I've considered all the available evidence and arguments in order to decide whether the advice to invest in Arch cru was suitable. As our adjudicator explained, the complaint is covered by a regulatory redress scheme. So I think it's right that I look at it in accordance with that scheme guidance, rather than the DISP rules which I would usually apply. Having done so, I'm going to uphold this complaint.

I can see that Mr and Mrs M accepted STFP's invitation to have their investment reviewed. But I can't see that the review happened. So I'll look at what the outcome would have been if the review had been carried out.

The following comment by the FSA is relevant in my view:

> *"A reasonably competent IFA, based on the material the IFA either had or should have had, should have concluded that these funds were high-risk investments and therefore only recommended them to consumers who were willing and able to take this level of risk."*

So I need to decide whether Mr and Mrs M wanted to take a high level of risk with the money they invested in the Arch cru fund. And this applies regardless of how much risk they were willing to take with other funds.

There isn't much written evidence in this case. But the recommendation letter I've seen didn't say the Arch cru funds were high risk. It refers to Mr and Mrs M as "*medium risk*" investors. And it doesn't say that the Arch cru investment would be a high risk part of their overall portfolio.

The FCA has said that the assets held by the Arch cru funds weren't consistent with a medium risk approach. Not only was the Arch cru fund high risk but the assets were non-mainstream, such as unlisted debt. I don't consider it was suitable for medium risk investors like Mr and Mrs M.

Another of the CONRED tests is that the firm must have taken reasonable steps to ensure consumers had the necessary experience and knowledge to invest.

Mr and Mrs M's only other investments at the time appears to have been a single premium investment bond and one other fund. STFP hasn't shown that Mr and Mrs M had ever had any similar products.

I haven't seen anything to show that STFP made clear to Mr and Mrs M the risks of investing in the fund. The recommendation letter gives no detail about it. Specifically, I haven't seen that STFP explained the risk to the capital invested, the exchange rate risk, the credit risk, the governance risk, the liquidity risk, or the valuation risk.

Mr and Mrs M were retired and living on their pensions at the time of the advice. I don't think they would have agreed to invest in the Arch cru fund if they'd understood the risks.

I conclude that, in accordance with the scheme guidance, the advice given to Mr and Mrs M to invest in Arch cru was unsuitable. STFP should therefore compensate Mr and Mrs M.

The FCA's CONRED guidance explains how to calculate compensation. It sets out three possible benchmarks, with which to compare the performance of the Arch cru investment. I agree with our adjudicator that Comparator 3 is appropriate in this case.

Comparator 3 represents a return equal to a 50/50 combination of the APCIMS Balanced Index and the IMA Mixed Investment 40-85% Shares sector. I consider this the benchmark that most closely matches Mr and Mrs M's stated objective to invest on a medium risk basis.

I am enclosing a copy of the FCA's redress calculation.

my final decision

I uphold this complaint.

Straight Talk Financial Planning Limited should:

- Pay to Mr and Mrs M the total loss set out in the FCA redress calculation.
- If not paid within 28 days from the date Straight Talk Financial Planning Limited receives Mr and Mrs M's acceptance of this final decision, interest should be added at 8% simple from the expiry of the 28 day period to the date of settlement.

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

Louise Bardell
ombudsman