Financial Ombudsman Service

complaint

Mrs A’s complaint concerns advice that was given to her over a number of years by Skipton Financial Services Ltd (“Skipton" hereafter). She is being represented by a relative, who says the adviser failed to record accurate details of Mrs A’s circumstances, and recommended investments Mrs A did not understand and which posed more risk than she was in a position to take.

background

I issued my provisional decision on this case in July 2014, a copy of which is attached, in which I confirmed I was minded to uphold the complaint in part. Briefly, I considered the advice given in 2005 to invest in a Prudential Distribution Bond and in 2010 to invest in Cofunds to be inappropriate for Mrs A.

I recommended that for the Prudential bond and the Cofunds investments the business compare the position Mrs A would now be in if 50% of her investment had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index (‘WMA income index’).

Mrs A’s representative responded to my provisional decision. Although he noted Mrs A believed she had been mis-sold all her bonds as they contained too much risk, she was prepared to accept the provisional decision.

The business also responded confirming that although it was still of the view that the Prudential bond was not unsuitable, it would accept my provisional decision. It had calculated that the redress in line with the methodology that I prescribed amounted to £3,073.43.

my findings

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

As I have received no substantive responses to my provisional decision, I see no reason to alter my previous conclusions.

my final decision

I uphold the complaint in part and now require Skipton Financial Services Ltd to pay Mrs A compensation as set out in my provisional decision.

If Skipton Financial Services Limited does not make the payment within 28 days of Mrs A accepting this decision it must add interest at 8% simple (taxable) from the date of this decision to the date of payment.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Mrs A's complaint concerns advice that was given to her over a number of years by Skipton Financial Services Ltd ("Skipton" hereafter). She is being represented by a relative, who says the adviser failed to record accurate details of Mrs A's circumstances, and recommended investments Mrs A did not understand and which posed more risk than she was in a position to take.

background

To summarise briefly the advice that was given:

In 2004, Mrs A encashed an existing investment and along with £30,862 from her deposit account invested £15,000 into a Legal & General Distribution Bond and £20,000 into a Capital Secure Triple Asset Bond.

In 2005, Mrs A invested £16,000 into a Prudential Distribution Bond and £4,000 into an Investec Cautious Managed fund. The capital for this was derived from the maturity proceeds of a deposit bond.

In 2010, Mrs A was advised to encash the Legal & General Bond, the Prudential Distribution Bond and a unit trust and invest the proceeds into various funds with Cofunds.

Mrs A's representative complained to Skipton in September 2009 as outlined above, but it did not uphold the complaint. It did not agree it had failed to accurately record Mrs A's circumstances, and believed these represented what Mrs A had told the adviser. It also considered that the investments it had recommended matched Mrs A's circumstances and requirements. As Mrs A's representative did not agree, the matter was referred to this service.

An adjudicator considered this complaint. Although he was unable to find any evidence to suggest that the advice given in 2004 or 2005 was unsuitable for Mrs A, he was not satisfied that the advice given in 2010 was suitable and recommended that this element of the complaint should be upheld. He also proposed how redress should be calculated.

The business agreed to the adjudicator's assessment and confirmed it was prepared to pay redress as suggested.

However, Mrs A's representative did not agree with the assessment and reiterated that she had no experience with investments. He was confused why the 2010 advice had been upheld due to Mrs A's age, but not the other two sales.

As the matter remains unresolved, it has been passed to me for consideration.

my provisional findings

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

Advice in 2004

In 2004, Mrs A was retired and apparently receiving a pension and some additional income from her investments. She was married, but it is recorded she did not wish to disclose details of her husband's circumstances as they kept their finances separate. So advice was given on the basis of the information Mrs A had provided.

Mrs A is recorded as being the owner of a property which was mortgage free, but her representative maintains this is not correct because she was living in rented accommodation. However, I have no reason to believe that the adviser has made an incorrect note of this aspect of Mrs A's circumstances, and I am mindful that this information is also the same for the advice given in the following years.

In addition, the letters the adviser sent Mrs A explaining the recommendations all stated that Mrs A owned her property, and it does not seem Mrs A ever challenged or questioned this. I note her representative has told us Mrs A did not read the letters. However, I am unable to hold Skipton liable if that was the case.

Mrs A was recorded as holding just over £80,000 capital in a variety of areas; including on deposit, in National Savings and unit trusts/ISAs.

Although Mrs A's representative has said Mrs A had a need for income, this is not reflected by the documentation at the time. Rather, it seems Mrs A wished to invest for growth over the medium to long term. Had she required an income, I have no reason to doubt that she could have been given advice in order to achieve this.

It was recorded that Mrs A wanted to keep £20,000 free of risk to capital, but was prepared to invest £15,000 in a less cautious area where capital and returns were not guaranteed. The category was the third of four, with adventurous being the highest. I note what Mrs A's representative has said about the categories. I have not placed too much emphasis on the risk assessment, but considered whether the recommendations were suitable in view of Mrs A's overall circumstances.

Mrs A was advised to invest £20,000 into a Capital Secure Triple Asset; which was split 1/3 into a fixed rate bond and 2/3 into an account which guaranteed capital return but where the growth was linked to FTSE and Halifax House Price Index.

Mrs A was also advised to invest £15,000 into a Legal & General distribution bond.

On balance, I am inclined to agree that there is little in Mrs A's circumstances to indicate that the recommendations were unsuitable.

Advice in 2005

The information recorded for Mrs A in 2005 is largely the same as the previous year. Again it was recorded she wanted to invest for growth. I note the risk tolerance section had changed. It was recorded she wanted to invest £20,000 in medium (low) risk, now the third category of seven. I do not agree this change suggests the assessment made in 2004 was necessarily incorrect, but rather reflects a different way Skipton was then determining a consumer's attitude to risk.

Mrs A was advised to invest £16,000 into a Prudential Distribution Bond and £4,000 into an Investec Cautious fund. The source of the funds was from short term deposit based accounts.

Although I am not persuaded it was unsuitable to invest a relatively modest amount into a cautious fund, I am concerned about the investment in the distribution bond.

As noted above, Mrs A had invested a significant proportion of her capital in a similar fund only a year earlier. It seems she was pleased with how this had performed, and so was favourably inclined to make a further investment. However, I am not persuaded this was an appropriate reason for this recommendation. This is not least because Mrs A's experience of being invested this way had been very short term.

In addition, the capital had come from what seems to have been a relatively secure area, and so by investing in the distribution bond it increased the risk to her capital overall. I think the advice left a disproportionate amount in similar products leading to a lack of diversity.

For this reason, I consider that the Prudential bond was inappropriate for Mrs A's needs.

Advice in 2009/2010

As Skipton no longer disputes the advice was inappropriate, I have not considered this further save to say that I agree the investments represented more risk than it is likely Mrs A wished to take. Although I understand Mrs A's representative disagrees with the adjudicator's assessment, he has not made any further points about this part of the advice.

I have therefore set out below how I consider redress should be calculated in this case.

fair compensation – Prudential Bond

To compensate Mrs A fairly, Skipton should put her as close to the position she would probably now be in if she had not been given unsuitable advice.

I think Mrs A 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.

what should Skipton do?

To compensate Mrs A fairly, Skipton should

compare

- the performance of Mrs A's investment

with

- the position she would be in if 50% of her investment had produced a return matching the average return from fixed rate bonds and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA income index') over the same period of time

If there is a loss, Skipton should pay this to Mrs A

AND

pay interest on this loss from the date the investment was surrendered.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs A wanted growth with small risk to her capital.
- The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The WMA income index (formerly the APCIMS income index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.
- 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 the capital invested. The WMA income index would be a fair measure for a consumer who was prepared to take some risk to get a higher return.

- I consider that Mrs A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put her into that position.
- It does not mean that Mrs A would have invested 50% of her 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 Mrs A could have obtained from investments suited to her objective and risk attitude.
- The interest on the loss from the date surrendered is for being deprived of the compensation money since that date.

how to calculate the compensation

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

If there is compensation to pay, simple interest should be added to the compensation amount at 8% each year from the date surrendered to the date of settlement. Income tax may be payable on the interest.

actual value

This means the actual value of the investment at the date surrendered.

total 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. It is the total of 'average rate element' and 'WMA income index element'.

<u>average rate element</u>

To arrive at this value Skipton 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 surrendered
- the rate for each month is that shown as at the end of the previous month
- use the rate for each month to calculate the return for that month on 50% of the investment
- 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 surrendered

<u>WMA income index element</u>

To arrive at this value Skipton should:

- Work out what 50% of the investment would have been worth, if it had performed in line with FTSE WMA Stock Market Income Total Return index to the date surrendered

additional capital

Any additional sum that Mrs A paid into the investment should be added to the calculation (split equally between average rate element and WMA income index element) from the point in time when it was actually paid in so that it starts to accrue a return in the calculation from that point on.

withdrawals and income payments

Any withdrawal or income payment that Mrs A received from the investment should be deducted from the calculation (split equally between average rate element and WMA income index element) 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 Skipton adds all those payments to the *actual value* and compares that total with the *total fair value* instead of periodically deducting them.

fair compensation – Cofunds investments

To compensate Mrs A fairly, Skipton should put her as close to the position she would probably now be in if she had not been given unsuitable advice.

I think Mrs A 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.

what should Skipton do?

To compensate Mrs A fairly, Skipton should

compare

- the performance of Mrs A'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 and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA income index')

If there is a loss, Skipton should pay this to Mrs A.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs A wanted growth with small risk to her capital.
- The average rate is the rate for fixed rate bonds with 12 to 17 months maturity (as published by Bank of England). The WMA income index (formerly the APCIMS income index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds.
- 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 the capital invested. The WMA income index would be a fair measure for a consumer who was prepared to take some risk to get a higher return.

- I consider that Mrs A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put her into that position.

- It does not mean that Mrs A would have invested 50% of her money in cash and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs A could have obtained from investments suited to her objective and risk attitude.

how to calculate the compensation

The compensation payable to the consumer is the difference between the *total fair value* and the *actual value* of her investment. If the *actual value* is greater than the *total fair value*, no compensation is payable.

actual value

This means the value of the investment if terminated on the date of my decision.

total 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. It is the total of 'average rate element' and 'WMA income index element'.

<u>average rate element</u>

To arrive at this value Skipton 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 shown as at the end of the previous month

- use the rate for each month to calculate the return for that month on 50% of the investment

- 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

<u>WMA income index element</u>

To arrive at this value Skipton should:

- work out what 50% of the investment would have been worth, if it had performed in line with FTSE WMA Stock Market Income Total Return Index to the date of my decision

additional capital

Any additional sum that Mrs A paid into the investment should be added to the calculation (split equally between average rate element and WMA income index element) from the point in time when it was actually paid in so that it starts to accrue a return in the calculation from that point on.

withdrawals and income payments

Any withdrawal or income payment that Mrs A received from the investment should be deducted from the calculation (split equally between average rate element and WMA index element) 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 Skipton adds all those payments to the *actual value* and compares that total with the *total fair value* instead of periodically deducting them.

my provisional decision

My provisional decision is I uphold the complaint in part and require Skipton to pay Mrs A redress as set out above.

I now invite the parties to let me have in writing any further submissions they may wish to make within one month, after which time I will issue my final decision.