

complaint

Mr and Mrs F consider that they were mis-sold an offshore investment bond by J H International Consultancy Ltd in 2001 (a representative of Sesame Limited at the time). They have stated that they were not advised beforehand that this was an unregulated collective investment scheme (UCIS) and that it represented a high risk. Because of this, they have experienced difficulties in accessing their money.

background

The adjudicator was of the view the complaint should be upheld. This was because the arrangement recommended to Mr and Mrs F in 2001 consisted of UCIS and was therefore subject to restrictions as to who it could be promoted to. The adjudicator felt that Mr and Mrs F did not have sufficient understanding and experience of the type of investments recommended to them and the risks involved.

Accordingly, the adjudicator proposed that Mr and Mrs F should have their capital returned to them, with the addition of a return on this based on the performance of the WMA income total return index and the average rate for fixed rate bonds (published by the Bank of England). As it appeared the funds had been suspended and Mr and Mrs F may not have been able to recover part of their capital, the adjudicator suggested that a nil value be used for the encashment value of any suspended fund. The business could, if it wished, take ownership of the suspended investment, the adjudicator stated.

Sesame did not dispute the suitability assessment and calculated redress accordingly. Mr and Mrs F queried the calculated redress figure, however, and it subsequently came to light that Sesame did not consider that a £40,000 payment into the bond in September 2007 should be included within the redress calculation. This was because its representative had not been directly involved in Mr and Mrs F's decision to make this further payment into the bond.

In response, the adjudicator stated that her view that the £40,000 payment should form part of the redress calculation because it was a replacement of funds that had previously been withdrawn from the bond a short while before the further investment was made.

However, Sesame disagreed with the adjudicator because any advice to reinvest the additional sum had not been provided by its representative.

As an agreement could not be reached concerning this additional investment, the complaint was referred to an ombudsman for review.

In the intervening period, we were informed that the investment had been encashed. Because of this, the adjudicator wrote to both parties to the complaint with an amendment to the proposed redress which would take into account the recent surrender of the investment. In essence, this meant that the financial loss would be calculated up to the date of surrender of the bond and simple interest at 8% per annum would be added to this loss from then until the settlement date. Additionally, there would also no longer be any requirement for a nil-value to be used for the surrender value or the transfer of ownership of the bond to Sesame.

Neither party has submitted substantive additional representations or objections to the redress amendment proposal.

my findings

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

Sesame has not disagreed with the adjudicator's findings that the recommendation for the bond in 2001 was unsuitable. Therefore, I do not propose to focus on the wider circumstances that led to the advice and subsequently the complaint by Mr and Mrs F or the suitability assessment already undertaken.

Rather, it seems that the issue for me to consider concerns the redress calculation and whether or not an additional payment made by Mr and Mrs F in 2007 should form part of this.

I note that the bond was established in September 2001 for £50,000 on the advice of the Sesame representative. Mr and Mrs F have confirmed that they withdrew £21,800 in April 2003 to help their daughter purchase a property which they subsequently bought from her in January 2005. They have said that they withdrew a further £22,000 from the bond in June 2007 with the intention of paying this back as soon as the property they had purchased from their daughter was sold. After the property was sold in August 2007, they then repaid £40,000 into the bond in September 2007.

Mr and Mrs F have said that they did not receive any advice from the Sesame representative or anyone else when deciding to invest the additional £40,000 in September 2007. They have said they engaged a new financial adviser in July 2012 and this was when they learnt that the bond may not have been suitable for them. They first raised their complaint the following month in August 2012.

I am satisfied that the business responsible for originally taking out the bond was no longer a representative of Sesame in 2007 when the additional investment was made and in any event did not directly advise Mr and Mrs F about this further investment. But I have to consider whether this further investment, even though it occurred six years later, came about because of the initial advice.

The available evidence does not suggest that Mr and Mrs F were advised or influenced by a third party to invest this further sum in 2007. It seems to me that they took the decision to make this further investment themselves and in the same funds as before. Also, it appears the further investment was a very similar amount to the earlier two large capital withdrawals and was made very soon after the last large withdrawal - it took place only two months after the second £22,000 withdrawal had been made. Therefore, it does not seem to me that Mr and Mrs F viewed the £40,000 as a fresh investment for which they needed to seek new advice in terms of where it should be invested. Rather it would appear to have been a replacement for previous withdrawals made a very short while beforehand.

I also note that Mr and Mrs F stated on the Sesame complaint information form that they only held bank accounts and endowment policies at the time of the advice in 2001. The suitability letter from August 2001 only referred to Mr F's pension arrangements and that they had £54,000 on deposit with £50,000 of this to be invested in the bond. They were described in this letter as preferring "lower risk options". The significance of this is that it seems to me that they were more likely to rely on financial advice, as they did in 2001 and 2012, when making important financial decisions. As they reinvested the sum of £40,000 in 2007 without any financial advice, this does very credibly indicate to me that they viewed this as simply replacing what they had previously invested.

For the avoidance of doubt, I would have reservations about reaching the same conclusion had Mr and Mrs F for example made a later personal decision to place significantly more money into the investment, thereby markedly increasing their exposure to risk above that which had been originally recommended. Alternatively, had a different type of higher risk investment been chosen, it would similarly be difficult to reasonably argue that Sesame should be held liable for a different exposure to risk over which its representative had had no influence.

However, in this instance, the amount reinvested – into the same funds - was very similar to the two large withdrawals previously taken and so the previously recommended investment position had simply been restored.

As such, for the reasons stated I am satisfied that the further investment should be deemed to be a replacement of the money previously withdrawn from the bond and therefore a direct consequence of the unsuitable advice given in 2001.

fair compensation

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

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

what should Sesame do?

To compensate Mr and Mrs F fairly, Sesame must compare the performance of Mr and Mrs F's investment with that of the benchmark shown below.

The compensation payable to Mr and Mrs F is the difference between the *fair value* and the *actual value* of Mr and Mrs F's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Sesame should also pay Mr and Mrs F any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Friends Provident International Bond	surrendered	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	date surrendered	8% simple p.a. on any loss from the end date to the date of settlement

actual value

This means the actual amount paid 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, Sesame 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. Those rates should be applied to the investment on an annually compounded basis.

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

Any withdrawal, income or other payment out of the investment 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 Sesame totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because Mr and Mrs F wanted income with some growth with a small risk to their 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 their 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 Mr and Mrs F's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs F into that position. It does not mean that Mr and Mrs F would have invested 50% of their 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 Mr and Mrs F could have obtained from investments suited to their objective and risk attitude.

The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

My final decision is that I uphold the complaint. My decision is that Sesame Limited should pay the amount calculated as set out above.

Philip Miller
ombudsman