

complaint

Mr R complains about the contracts for differences (CFD) account he held with Union Investment Management Limited (UIM). He considers UIM misled him about the amount of risk involved and he doesn't think the investment was suitable for him.

background

In December 2012, UIM approached Mr R. UIM persuaded him to invest £100,000 in its CFD trading service. He signed a number of forms, one of which was an elective professional client form.

Mr R says that in August 2013, he realised that UIM had lost all his money. They agreed various courses of action to get back his money through trading. But these never materialised.

In April 2015, Mr R complained to UIM. They didn't reply. So he referred his complaint to this service.

One of our adjudicators looked into Mr R's problem. He wrote to UIM several times to get their view and evidence of what had happened. UIM didn't reply.

Our adjudicator thought, on the basis of the evidence he'd seen, that Mr R shouldn't have been classified as a professional client. He also thought that UIM shouldn't have advised someone as inexperienced as Mr R to invest in CFD trading. So he recommended UIM pay compensation.

UIM still hasn't said anything about Mr R's complaint. So it's been referred to me to reach a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've reached the same conclusion as the adjudicator. I explain why below.

UIM haven't given us their file on Mr R's complaint. I understand they've had a number of computer problems and other difficulties. However, I'm satisfied that they've been given ample opportunity to provide their evidence. In the circumstances, I don't think it would be fair for me to delay my decision any longer. I'm therefore issuing this final decision on the basis of the evidence I do have available to me.

I've seen no evidence that Mr R has any past investment or sharedealing experience of any kind. He's told us he hadn't. And UIM hadn't provided anything to suggest that Mr R had sufficient expertise, experience or knowledge to be capable of understanding the risks of CFD trading. So I don't think Mr R should have been classified as an elective professional client. This means that I can look into Mr R's complaint further.

UIM was providing Mr R with a discretionary management service. The rules governing regulated firms providing this service are set out in the Financial Conduct Authority's Conduct of Business Sourcebook. These say that the service has to be suitable for the individual's circumstances and objectives.

Mr R has given his account of his UIM investment. His description leads me to believe that he had very little idea what service they were providing or what they were doing with his money.

CFD trading is a highly speculative activity, with a high risk of loss. It's also leveraged, so losses can exceed the amount originally invested. For this reason, I don't consider that investing a large sum in this service was suitable for an inexperienced investor like Mr R. UIM hasn't provided anything to persuade me that Mr R understood the risks, and on balance, I don't think he did. I'm satisfied he wouldn't have invested if he had.

Mr R has told us more than once that UIM said the most he could lose was 10%. So I'm satisfied that he was prepared to accept this level of loss.

Our adjudicator recommended compensation based on comparing the performance of Mr R's CFD account with the return he could have made by investing in fixed rate bonds. This would be a suitable investment for an investor who was prepared to take only a minimal risk with his money. A 10% loss is greater than the maximum loss likely to be suffered from investing in fixed rate bonds. So I am awarding compensation on a slightly different basis. I explain this below.

Mr R has told us that the amount invested was all his savings. I'm satisfied that he has found the loss of this amount very distressing. He's written to us about the "*emotional trauma*" he's suffered. I think this has also been compounded by UIM's failure to reply to his complaint. I agree with our adjudicator that £500 for this distress is fair.

fair compensation

In deciding what's fair, my aim is to put Mr R as close as I can to the position he would probably now be in without UIM's actions.

Mr R was interested in making his first investment. So I take the view that Mr R would have invested the money – but would have done so differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair given Mr R's circumstances and objectives when he invested.

what should UIM do?

To compensate Mr R fairly, UIM must:

- Compare the performance of Mr R'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.
- Pay interest as set out below. Income tax may be payable on any interest awarded.
- Pay to Mr R £500 for the distress caused by losing all his savings in what he thought was a low risk investment.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
CFD portfolio managed by UIM	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	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

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, UIM 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.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mr R wanted an investment with a small risk to his capital.
- The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his 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 R's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr R into that position. It doesn't mean that Mr R would have invested 50% of his 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 R could have obtained from investments that were suitable for him.

my final decision

I uphold the complaint and direct Union Investment Management Limited to pay the amount calculated as set out above.

Union Investment Management Limited should provide details of their calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R either to accept or reject my decision before 8 February 2016.

Louise Bardell
ombudsman