

complaint

Mr and Mrs T complain that Copperstone Financial Services Ltd gave them incorrect advice to invest in risky Business Property Relief investments which wasn't consistent with their attitude to risk.

background

Mr and Mrs T have had a long-term relationship with their Independent Financial Adviser (IFA) Copperstone for over 20 years, with regular six monthly reviews of their finances. They'd been planning to retire from farming for around five years and eventually sold their farm and related assets in 2017. Once they received the proceeds from the sale they contacted the Copperstone adviser to help them with their financial planning.

Several meetings took place shortly after the farm was sold between October and November 2017. During these meetings Mr and Mrs T said that their priority was Inheritance Tax (IHT) liability, but they also didn't want to take too much risk and potentially lose all their capital. They said they also wanted to keep some money available so they could make gifts to friends and family.

So Copperstone recommended Mr and Mrs T invest £250,000 into two discretionary investment Business Property Relief schemes (BPR) – which were invested in unquoted shares. They recommended this was split with £125,000 invested into one company who I'll call 'T' and £125,000 into a second company I'll call 'O' – both in Mrs T's name as she was younger. Mr and Mrs T agreed and the money was invested in November 2017.

In December 2017, Mr and Mrs T complained to Copperstone as they felt the investments they'd taken didn't meet the risk level they were prepared to take. They felt they hadn't been made sufficiently aware of the risks or the companies they'd invested in. So they asked Copperstone to clarify the risk scale they'd used to make their recommendation. They also said they felt they'd only invested in one unlisted company which hadn't diversified the risk.

Copperstone wrote to Mr and Mrs T to say that because the investments were in unquoted companies they couldn't classify them using the normal "1-10" scale. However, Copperstone were happy the investments were low risk as their aim was for capital protection, rather than capital growth so they met Mr and Mrs T's risk profile. Mr and Mrs T remained unhappy and asked this service to look into their complaint.

Our investigator thought the complaint should be upheld. She felt that the investment risk was more than Mr and Mrs T wanted to take. She also felt that Mr and Mrs T had been exposed to volatile industry sectors and that they would've had to keep the investments until they died to receive the IHT benefit – making them inflexible. And she thought that Mr and Mrs T hadn't been made sufficiently aware of the risk to their capital.

Mr and Mrs T agreed but Copperstone didn't. They said they felt the investments met Mr and Mrs T's attitude to risk and they'd fully explained the risks to Mr and Mrs T. They also said Mr and Mrs T's son had been present at the meetings to assist them and help them understand the investments. They also felt that Mr and Mrs T were experienced investors, and had sufficient time before proceeding with the investment to decide if they wanted it or not. They also said the investment wasn't a niche product and that there was no reason to think Mr and Mrs T wouldn't have been able to access their money when they wanted it. So they asked for an ombudsman to review the case.

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 conclusions as our investigator. I'll explain why.

The key dispute here seems to be what was discussed with the advisor in the meetings of October and November 2017. Both parties accept that the conversations took place, but there's a difference of opinion over what was discussed. Although what Mr and Mrs T have told us is plausible, so is what Copperstone have said. And as I can't be sure what was or wasn't covered, I have to consider the other information available to decide what I think is more likely than not to have happened.

Copperstone have provided a comprehensive reply in response to the investigator's view on this case, and I can confirm I've read it and considered it in detail. However, I'll only address the points which I think are the most relevant to this complaint – I don't intend to address each and every point that they've raised.

was the recommendation suitable

The key complaint point seems to be about the advice Mr and Mrs T were given, and whether or not it was suitable for them.

It's not in dispute that Mr and Mrs T wanted to look at IHT planning and I acknowledge this was the main reason for the meeting with Copperstone. But I think it's clear from the evidence I've seen, that Mr and Mrs T also had other objectives which they wanted to be taken into account at the same time – namely their attitude to risk and the ability to access their money when they needed it.

Mr and Mrs T have said they felt their attitude to risk had been established as being a level 4 (moderate/ cautious) on the Old Mutual 1-10 scale asset allocation tool - which they agreed with. However, when they asked what the equivalent risk rating was for the BPR's as they weren't able to see this documented, they were just told it was an additional risk. Copperstone have said that all warnings and risks were given to Mr and Mrs T both verbally and in writing through various documents which Mr and Mrs T had confirmed they'd received. Mr and Mrs T haven't disputed this - just that the information doesn't tell them what they wanted to know. I've seen that Copperstone noted on the suitability report that *"to try and mitigate this potential IHT liability, you are prepared to accept a greater degree of investment risk than your 'attitude to risk' would indicate"*. But I haven't seen an evidence that Copperstone told Mr and Mrs T what it meant by a 'greater degree of investment risk' and how this compared to their usual risk tolerance.

I acknowledge Copperstone feel that they've met their obligations by providing this, but I don't feel this is the case. The adviser has clearly noted that Mr and Mrs T had no previous experience in unquoted investments, and the role of an adviser is to recommend a suitable option based on all the requirements – not just provide information. Copperstone argue that there were four appointments with Mr and Mrs T before the applications were submitted, so they had sufficient time to understand the risks. And that Mr and Mrs T have been incorrectly advised by a third party that these are more risky investments than they are. But I don't agree.

The investment shares are unquoted and therefore subject to the valuation of the businesses involved, and whilst I understand there are specific valuation rules for T and O to adhere to, it's entirely possible that significant adverse market activity could cause simultaneous reductions in assets e.g. property. Therefore making them highly illiquid and difficult to sell, causing the businesses to reduce the share value to a minimum. I've also seen evidence that Copperstone noted that the share values are based on an element of subjectivity, and although they've tried to reassure Mr and Mrs T about the investments by providing the previous performance history, both T and O have said in their documentation that historical performance is not guarantee for the future. So I think it's entirely possible the value of Mr and Mrs T's capital could be reduced to a level they find unacceptable and didn't agree to. And I don't feel Copperstone have acted reasonably towards Mr and Mrs T as they said they wanted to preserve the £250,000 capital for their beneficiaries, when it seems to me that these investments carry a high risk of not achieving that objective.

Copperstone have said Mr and Mrs T are "seasoned investors, with a wide range and long history of investment" – and I don't disagree. However, I do disagree with Copperstone's statement that this wasn't a niche investment product as this type of investment isn't something that's offered to all types of investors. Copperstone knew Mr and Mrs T weren't experienced in this type of investment and they noted in their fact find they hadn't had any previous exposure to unquoted shares. So I think it's reasonable that Mr and Mrs T didn't fully understand the risks of the product they were investing in – as they hadn't been exposed to this type of product before.

Copperstone noted in their suitability report "*Given the potential IHT liability if this capital were to remain in your estate with no relief, you feel that the additional risk associated with this investment is worth taking*". But I think Mr and Mrs T clearly had concerns about the risk level shortly after taking out the BPR's, because they didn't sign the suitability report when they were given it. Furthermore, they've asked Copperstone several times for an explanation on the risk rating of the BPR's, and upon receiving this, still feel so concerned they've felt the need to come to our service. So I think if Mr and Mrs T had been aware of the risk rating or the level of additional risk the report refers to, they wouldn't have been asking for the information since the investment had been made.

Mr and Mrs T have told us that their main concern is that the investments didn't match their attitude to risk, so I think this was as important to them as their IHT liability. I agree that there would certainly have been an IHT risk had the adviser not made his recommendation, but if it wasn't possible to make a recommendation that met all of Mr and Mrs T's objectives then he should've said so. And I don't agree with Copperstone's justification that the risk of IHT liability should've overridden Mr and Mrs T's other requirements. I'm not persuaded there's sufficient evidence to indicate that Mr and Mrs T were happy to take a high or speculative risk with their money in order to mitigate an IHT liability.

I understand that Copperstone feel the BPR's don't have the same level of risk as the AIM portfolios offered by T and O, and in this case the BPR's objective was capital preservation. But I agree with our investigator that the risks involved with investing all of the £250,000 in two companies with unquoted shares was more than Mr and Mrs T were prepared to take. And I'm not persuaded this was a reasonable recommendation for Copperstone to make given Mr and Mrs T had multiple objectives – not just their IHT liability.

Mr and Mrs T have said they're very concerned the investments leave them at risk of losing all the capital they've invested. Copperstone don't feel this is the case. They've explained the investments they've invested in are asset backed, so it's highly unlikely they'd have a

zero value if either T or O should cease trading. I don't disagree with Copperstone's rationale that it's unlikely the underlying assets would have a zero value. However, I don't agree that means Mr and Mrs T's didn't have the potential to lose most or all of their capital.

Copperstone felt that as Mr and Mrs T's son was present at the meetings they'd done what they could to meet their responsibilities for explaining the investment to potentially vulnerable consumers. But there is no suggestion throughout any of the documentation that Mr and Mrs T's son is an experienced investor – and he may also not have fully understood the risks involved with these products either. And in any event, it was Copperstone's responsibility to ensure that Mr and Mrs T had sufficient knowledge and experience to understand the investment. I'm not persuaded it was reasonable for them to rely on the son being present in order to satisfy themselves that they had discharged this obligation.

Mr and Mrs T have also said they were worried they couldn't access their investment capital when they needed it. But Copperstone felt that this had been clearly disclosed in their documentation. I feel that it's clear in the evidence I've looked at that there may be a time delay before Mr and Mrs T can receive their money back. However, this brings me back to my earlier point that Mr and Mrs T also had other objectives which they wanted to be taken into account at the same time as their IHT liability. Copperstone noted in their fact find that Mr and Mrs T *"would however like to have access to the investment should you need the capital in the future"* and I don't feel that this was fully addressed in their recommendation.

Copperstone further justified their recommendation by noting that the consumers had been left with liquid funds of around £466,000 after the £250,000 investment so they could've used these instead. But I don't agree. The adviser noted on the fact-find that Mr and Mrs T were *"considering making considerable gifts in the next few months and have left £300,000 on deposit for this purpose"*. So I think it was clear that a significant amount of the liquid funds had already been earmarked for other uses leaving a real possibility that Mr and Mrs T may need to draw on the £250,000 they'd invested. I've also seen that the adviser recommended Mr and Mrs T invest £250,000 when their IHT liability was only £129,978 - meaning they could've kept an additional £120,000 approximately as liquid funds. So I don't think the adviser's recommendation was suitable for Mr and Mrs T's needs

Mr and Mrs T have said that they weren't happy with the investments as they were invested with one company in each scheme, and that the majority of the investments are within the renewable energy sector. Copperstone don't feel this is the case as they feel there's satisfactory diversification within the underlying company investments. They also told us Mr and Mrs T had previously said that they understood the diversity of the investment and had been misled to believe the BPR's weren't suitable. But I don't agree.

Copperstone have told us that “by controlling different sectors of business through one company, they can keep costs low”. Copperstone also said that the portfolio managers are controlling industry sectors, which implies they’re highly exposed to them and any changes e.g. regulation would have a significant impact on them as key industry players. I’ve looked at the companies T and O have invested in, and I can see that each has only invested in one company who have sub-divided in a few different industries. So I don’t feel this offers the investment diversification Mr and Mrs T have been told they’ll receive. I’ve also seen that T noted under its investment performance that “*there may be limited diversification across sectors and assets*” and O noted it “*will invest in only a small number of companies (in some cases one single company) and all investments may be in one sector. Therefore, there may be limited diversification*”. So I don’t agree the investments are as diverse as Copperstone have said.

Mr and Mrs T said they were worried that the investments were focussed in the same renewable energy sector. Copperstone didn’t agree and listed the different sectors that both portfolios were invested in. I’ve looked at the evidence available and I’ve seen that although the businesses do invest in different sectors, there is a significant cross over of the industries with T investing around 54% of its portfolio in energy and O investing 60% of its portfolio in energy. This leaves Mr and Mrs T with double the exposure to these industries. And as Mr and Mrs T historically spread their investment risk, I don’t think it was reasonable of Copperstone to recommend investments with limited diversification.

IHT benefits received

Copperstone have said they feel Mr and Mrs T have had the benefit of the IHT element since taking out the investment, and if they were unhappy they would’ve sold the shares already. But I don’t agree. Although Mr and Mrs T are technically benefitting at this point from the IHT reduction, the full IHT benefit would only be realised if Mrs T had passed away during the complaint process. I’ve looked at the terms and conditions of the investment and there is no IHT benefit unless the funds are left in the investment until Mrs T dies – which I don’t feel is her intention based on what she’s told us. So I don’t think it’s unreasonable that Mr and Mrs T haven’t taken any action with the investment whilst this investigation has been on-going.

Having considered this case carefully, I don’t think Copperstone’s recommendation was suitable for all Mr and Mrs T’s needs.

putting things right

fair compensation

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

I take the view that Mrs T would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs T’s circumstances and objectives when she invested as I think on balance that Mrs T would’ve invested the money. Although Mr and T were considering mitigating their IHT liability, they were also looking for capital growth and being able to access the money in the future. So I think that if they’d been given advice to invest the money they would’ve taken it – even if the advice didn’t address the IHT liability.

what should Copperstone do?

To compensate Mrs T fairly, Copperstone must:

- Compare the performance of Mrs T's investments with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

A separate calculation should be carried out for each investment.

Copperstone should also pay interest as set out below.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
BPR Schemes 'T' and 'O'	still exists	for half the investment: FTSE UK Private Investors 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)

for each investment:***actual value***

This means the actual amount paid or payable from the investment at the end date.

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mrs T agrees to Copperstone taking ownership of the investment, if it wishes to. If it is not possible for Copperstone to take ownership, then it may request an undertaking from Mrs T that she repays to Copperstone any amount she may receive from the investment in future.

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, Copperstone 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 have decided on this method of compensation because:

- Mrs T wanted capital growth with a small risk to her 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 her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return 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 Mrs T'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 Mrs T into that position. It does not mean that Mrs T 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 T could have obtained from investments suited to her objective and risk attitude.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award:

I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Copperstone Financial Services Ltd should pay Mrs T the amount produced by that calculation – up to a maximum of £150,000 plus any interest set out above.

If Copperstone Financial Services Ltd does not pay the full fair compensation, then any investment currently illiquid should be retained by Mrs T. This is until any future benefit that she may receive from the investment together with the compensation paid by Copperstone Financial Services Ltd (excluding any interest) equates to the full fair compensation as set out above.

Copperstone Financial Services Ltd may request an undertaking from Mrs T that either she repays to Copperstone Financial Services Ltd any amount Mrs T may receive from the investment thereafter or if possible, transfers the investment at that point.

Copperstone Financial Services Ltd should provide details of its calculation to Mrs T in a clear, simple format.

recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Copperstone Financial Services Ltd pays Mrs T the balance plus any interest on the balance as set out above.

This recommendation is not part of my determination or award. It does not bind Copperstone Financial Services Ltd. It is unlikely that Mrs T can accept my decision and go to court to ask for the balance. Mrs T may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs T either to accept or reject my decision before 28 April 2019.

Jenny Lomax
ombudsman