

complaint

Mrs E has complained that advice she received from National Westminster Bank Plc ("the business") from January 2008 to invest in the with-profit fund of an Investment Bond ("bond") and in a 'balanced' risk-rated fund of an Individual Savings Account ("ISA") was unsuitable.

She is represented in her complaint by a third party adviser, which has said that:

- The business did not accurately establish Mrs E's attitude to risk, and the underlying assets in the fund do not match her approach to investment. The complex nature and operation of the funds were inappropriate for a 'risk-averse' and inexperienced investor;
- Other, more tax-efficient, alternatives appear not to have been considered or documented;
- Mrs E held capital in cash ISAs and deposit accounts at the time and her objective was to obtain a higher rate of *interest* without risk to capital;
- She was retired and widowed, with a restricted pension income and no liabilities or financial dependents. The adviser did not document sufficient detail of her financial circumstances to justify the advice;
- Many disclosure requirements relating to specific risks, early surrender penalties or market value adjustment (MVA) factors and switching fees were not verbally discussed at the point of sale;
- In April 2008, Mrs E was recommended to increase her investment in the ISA, which gave her little time to assess the performance of an investment she had never taken out before. The information on the second 'fact-find' is inaccurate as it does not include the existence of the investment bond or explain why her deposit holdings had reduced substantially in three months.

Mrs E has surrendered the ISA because she did not understand the nature of the product.

background

In its file submissions, the business included a report from the adviser, in which she states that:

- Mrs E was an intelligent lady who was interested in exploring investment options for an inheritance she had recently acquired to obtain a better return on the rates of interest she was then receiving from her deposit account;
- He recalls that she was content to split her investment between a mainly 'cautious' approach, with a little capital being subject to a greater degree of risk. She fully appreciated that there was risk of capital loss;
- All the key features of each product were explained to Mrs E verbally and in writing;
- The investments were recommended for capital growth, and not for additional income, as her income more than covered her regular outgoings;
- Mrs E contacted the adviser again in April 2008 and agreed to invest a further £4,000 and £3,000 respectively in the existing equity and cash ISA. The nature of these products is not overly complex and Mrs E was more than capable of understanding them. Subsequent contact with her did not indicate any lack of understanding of, or dissatisfaction with, the investments she had taken out.

Mrs E's complaint was investigated by one of our adjudicators, who did not believe the complaint should be upheld.

His view was that the advice was suited to Mrs E's financial circumstances, investment objectives and attitude to risk. Additionally, he did not consider that the nature of each investment was complex or not capable being understood by Mrs E and concluded that the recommendations were not unsuitable.

Mrs E's representative disagreed with the adjudicator's assessment and maintained that the advice she received was unsuitable for the following reasons:

- As a retired, first-time investor, Mrs E was simply looking for a better rate of interest, not a 'medium' risk equity investment;
- The risk analysis undertaken is conflicting in that it records that she had a 'cautious' attitude to risk *and* a 'balanced' attitude to risk. The former is a possibility; the latter most definitely not. There is insufficient evidence to show that Mrs E understood the relationship between risk and reward;
- Some investors with no previous investment experience may take out a risk-based product to see if they have the capacity for loss, but not a client of Mrs E's age;
- The adjudicator had not considered its comments that a more tax efficient solution was available to Mrs E. No warnings were given to Mrs E that a non-qualifying bond could affect her age allowance or that better alternatives were available, such as National Savings, Premium Bonds or fixed interest funds within an equity ISA;
- The advice crossed two tax years and Mrs E should have been advised to utilise her maximum equity ISA allowance, and not the cash element. As she was seeking a better return than she might have received from deposit accounts, there seems no justification for switching to a cash ISA.

In response, the adjudicator said that:

- He was satisfied that Mrs E's age was not a barrier to investment and that all the relevant factors should be considered;
- She had an income surplus and the advice left her sufficient available funds for unforeseen contingencies;
- He considered that the discussions at the point of sale around risk were thorough and Mrs E was advised to invest most of her available capital in the ('cautious') with-profit fund of the bond;
- It was acceptable for an investor to specify two attitudes to risk according to the amount of capital they wished to expose to each degree of risk;
- He did not appreciate Mrs E's representative's point that she should have maximised her equity ISA allowance when it was arguing that she was 'risk-averse'.

Mrs E's representative responded to say that:

- Mrs E's age and personal circumstances made her a vulnerable client and she should have been advised to have a third party present at the point of sale when being asked to consider long term, risk-based investments;
- No comment has been made regarding the 'non-qualifying' status of the bond and its potential effect on Mrs E's invaluable age allowance;
- With regard to maximising her equity ISA allowance, she could have invested in low risk funds that more closely matched her attitude to risk and the adviser did not explain why he had discounted these options;

- Mrs E did not seek advice; she was contacted by the business when placing her inheritance in her bank account. She did not seek risk; she was steered towards it unnecessarily when more tax efficient and capital protected funds were available;
- She maintains she agreed to consider tying money up but not to lose any of it.

As no agreement has been reached in this complaint, it has been referred to me for review.

findings

I have considered all the available evidence and arguments put by the business and Mrs E's representative to decide what is fair and reasonable in the circumstances of this complaint.

Having done so, I have arrived at the same conclusions as the adjudicator and for essentially the same reasons.

I accept that there are shortcomings in the documentation completed by the adviser in his dealings with Mrs E in that her circumstances do not appear to have been fully updated since January 2008. However, I do not consider that these are sufficient in themselves to conclude that Mrs E received inappropriate advice.

Briefly, Mrs E's financial position in January 2008 was that she was retired and widowed, and earning less than £8,000 per annum. However, this gave her a net disposable income of almost £250 per month. In addition, she held around £53,000 on deposit, which included a recent inheritance, and a cash ISA worth approximately £10,500. Her objective was to achieve a *return* on some of her capital, not income, over the longer term for which she was prepared to adopt a 'cautious' attitude to risk for most of her capital and a 'balanced' approach to risk for the remainder.

The representative reported that his impression at the point of sale was that Mrs E was an intelligent lady, and he did not feel that she would require assistance in understanding the nature and terms of the products that were being proposed. Businesses generally followed a practice of suggesting to elderly consumers that they might be advised to be accompanied by a friend, relative or an adviser, or if they were mentally or otherwise impaired. The adviser did not consider that Mrs E required such assistance for any of these reasons.

I acknowledge Mrs E's representative's point about the potential impact of capital gains from the bond on her 'age allowance'. Notwithstanding that this issue (as well market value adjuster and early exit charges) does appear to have been explained to Mrs E at the point of sale, I have considered whether a loss of personal relief was likely to arise whenever she surrendered the bond.

Given Mrs E's annual income, the capital sum invested in the bond and the 'age allowance' limit at that time of £20,900 per annum, the growth shown by the bond would need to be extraordinarily favourable for any gain to adversely affect her personal relief. Even so, if Mrs E did require the proceeds of the bond in the future, this could be managed by tax-efficient part-surrenders across more than one tax year to avoid any possible effect on her personal relief.

Otherwise, if she did surrender the bond in full, any adverse effect on her personal relief is likely to be minimal compared to the gain Mrs E would need to have made to cause this reduction in relief which, in any event, would only apply for the one tax year in which she surrendered the bond. I, therefore, do not believe 'age allowance' is an issue in this case.

It appears that, in specifying both a 'cautious' and a 'balanced' attitude to risk, Mrs E was indicating that she was prepared to take a greater degree of risk with a very small proportion (6%) of her total available capital in the ISA than around the capital she was willing to place in the with-profit fund of the bond. This advice still left around 63% of her capital held in instantly accessible secure accounts, which, in January 2008, she did not appear to need.

I appreciate Mrs E's representative's point that, if she was intent on investing capital 'cautiously' for a return greater than she was currently receiving from her deposit account, she could have utilised her maximum equity ISA allowances (invested in 'cautious funds') rather than invest in the bond or place further capital in the cash ISA.

As it was, Mrs E agreed to invest £20,000 in the with-profit fund of an investment bond, £4,000 in a 'medium' risk fund of an equity ISA and to switch capital of £3,000 from her deposit account to a cash ISA. In this way, she transferred £7,000 from her deposit account to a tax-efficient product, split between a 'medium' risk and a 'capital-secure' investment. Overall, Mrs E invested £24,000 she did not need to access, mainly in a cautious fund, for a potential return that could exceed deposit rates over the longer term. I am not persuaded that this in itself was unsuitable advice.

The business has confirmed that Mrs E then withdrew money from her deposit account for some capital purchasers which reduced her balance from approximately £26,000 to around £13,000, with a further £14,000 held in an instantly accessible cash ISA.

In April 2008, Mrs E was advised to add a further £4,000 to her ISA in the following tax year, which put her in the position of holding approximately 36% of her total capital in a 'cautious' risk bond, 14% in a 'medium' risk ISA fund and 50% in instantly accessible cash accounts. Her representative has argued that more of her risk-based investments should have been held in a 'cautious' fund within an equity ISA using her maximum allowances in both tax years.

However, I am satisfied that the advice Mrs E did receive left her in a position that did not leave her vulnerable financially or exposed some of her capital to a degree of risk she was not prepared to take. It also met her objective of achieving a return over the longer term that could exceed the interest she was receiving from her deposit account.

Mrs E's representative has confirmed that she has surrendered the ISA because *she did not understand the concept*. While it is not made clear what aspect of this investment Mrs E did not understand, my view is that the adviser satisfactorily explained the nature and terms of these investments to her and they were not unsuitable in her circumstances.

I do not dispute that the alternative proposal for advice put forward by Mrs E's representative may have been suitable for her, but this does not persuade me that the advice she actually did receive was unsuitable.

decision

My final decision is that I do not uphold Mrs E's complaint.

Kim Davenport

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