complaint

Mr E complained that London Stone managed his share dealing account "*in a self-serving, unacceptably high risk and irresponsible manner*", and that it placed unauthorised trades on his account. He said the trading strategy the firm used was inconsistent with his financial experience, the agreed investment objectives and his risk tolerance.

London Stone was previously known as Goldman Securities Limited, but I will refer to it as London Stone throughout this decision.

background

The circumstances of this complaint are that:

- Mr E opened a London Stone account in the summer of 2010. He completed the firm's account opening documentation, including two retail client information forms.
- Over the next three months, Mr E made several deposits to his account. In all £190,000 was committed to the account from savings of about £250,000. Over a hundred trades were booked to the account. Commissions of about £55,000 were paid.
- Many of the trades were on a T20 basis.
- One of those trades was a long position in a company that was then suspended.
- Mr E then asked London Stone to stop trading on his account.
- London Stone carried out further trades to close out Mr E's positions.
- Mr E says that he lost nearly £70,000 over the ten weeks he traded through London Stone.

An adjudicator issued an assessment of this case in June 2012. His conclusion was that this case should be upheld, on the grounds that T20 trading strategy was very high risk and therefore unsuitable for Mr E. The adjudicator recommended London Stone refund Mr E's original deposit, plus (or minus) an amount to reflect the performance of the FTSE 100 and FTSE 250 indices over the relevant period.

London Stone did not agree with the adjudicator's opinion. In summary, it said:

- The advice and trading activity was in line with Mr E's attitude to risk, as he wanted "*a low to medium risk with regards to the types of companies that he was trading in [and] … a high risk profile with regards to the investment vehicle… (i.e. T20 trading)*".
- While "*T20 trading has been made to appear highly speculative this is simply not true…T20 trading is…suitable to almost all investors, particularly those who have traded in products such as CFDs previously*".
- Mr E had made clear that he did not want income or dividends; he traded on a T20 basis because he "*wanted to speculate and was looking for capital growth*". His

investment objectives were "*short term…capital growth…T20*", which "*all point [to his] desire to accept a degree of speculation in the hope of higher profits*".

Mr E broadly agreed with the adjudicator's conclusions.

Because the adjudicator's conclusions were not accepted by both parties, the complaint was referred to me for review.

my findings

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

I issued a provisional decision in this case in March 2013. I said I agreed with the adjudicator that Mr E's complaint should be upheld. However, I had come to that conclusion for different reasons – and as a result my proposed redress was also slightly different.

I considered that it was not completely clear whether the account was operated on an advisory basis at all times or sometimes on a discretionary basis, but in either case London Stone had a duty to ensure the investments made were suitable for Mr E. In particular, it had to ensure that the investments were suitable bearing in mind his attitude to risk and his capacity for loss.

Mr E completed London Stone's Client Information Form ('the first form') and told it he was interested in "*low risk*", "*high risk*" and "*new*" shares. The box for medium risk was not ticked. Two days later, he completed an identical form ('the second form') and added that he was also interested in "*medium*" shares.

A short while later, following at least one telephone conversation with Mr E, London Stone sent him a Private Client Profile ('the third form'). The form had only two questions that included the word 'risk'. The first was,
"If you have a current stock portfolio split what % of it is in low risk FTSE 100, medium risk FTSE 250 and what % is in high risk (AIM)?

Mr E's answer was 0% for each.

The other question was,
"With your new portfolio at what % of your portfolio do you want in low, medium or high risk?"

The answer involved completing percentage figures in boxes labelled FTSE 100, FTSE 250 and AIM. Mr E answered 50% FTSE 100, 50% FTSE 250 and 0% AIM.

The form recorded that Mr E's *'time horizon'* was less than one year, and that he wanted to invest in the following *'products'*
'*Standard stocks and shares (T3)*
T20 (extended settlement trading):'

No risk rating was specified for those *'products'* or any other.

It is not clear how much investment experience Mr E had. On the first form, he ticked a box to say he had "*limited*" experience of trading "*shares, bonds and funds*". On the second form,

he said he had spent at least 20 years "*studying the stock market*". The third form also says he had more than 20 years experience, but described his knowledge as "*basic*".

Given the above, I considered that it is not clear how much risk Mr E wanted to take. I considered that he was prepared to put some of his money at risk, and that he said he was interested in low and medium risk shares. However, it is unclear whether he realised the additional risks associated with short term trading.

I considered that there is nothing on the form to indicate that a multifaceted approach to risk - as recently put forward by London Stone - was explained to Mr E, understood by, and agreed with, him. London Stone says that the client was asked to agree the level of market risk that was acceptable as one matter and product risk as another and it is only in combination that attitude to risk is properly assessed. I did not consider that the evidence showed that matters were agreed with Mr E in those more involved terms.

London Stone accepts that short term trading involves more risk than standard trading even where the underlying security is a lower risk security. It is not clear that Mr E properly understood this and that the losses he might experience could be so large and run up so quickly.

At the time Mr E opened his account, the information he gave to London Stone about his financial circumstances seems contradictory. On the first form, he said his income was less than £25,000 per year and he had no assets at all. On the second form, his income was recorded as between £25,000 and £50,000 per year, and again he said he had no assets. On the third form, his income is stated as being £20,000 per year – but his total assets were recorded as £280,000 (£250,000 in cash, and personal property worth a further £30,000).

Mr E's son, who has been assisting him in bringing his complaint, agreed that Mr E did indeed have £250,000 in cash at the time the account was opened. That would mean the £190,000 Mr E transferred to London Stone over a very short period represented around two thirds of his assets.

Mr E was retired, with a very limited capacity for replacing lost capital. In view of his circumstances I considered that a short term, relatively high risk strategy was inappropriate for him. I was not persuaded that he could afford to take the risks associated with T20 trading.

The purpose of redress is to put a person who has been wronged into the position he would be but for the wrong that is being remedied. In this case it is far from clear what Mr E would have done with reasonable advice. He had some appetite for risk but clearly not for the losses that taking higher levels of risk with significant amounts of his savings might well involve. At Mr E's stage of life speculating with a very significant part of his life savings was not advisable. Perhaps therefore some investment at market risk on a longer term basis may have occurred or even some more speculative investments on a very considerably more restricted scale - something akin to a bit of a 'flutter' for enjoyment.

During the time of Mr E's trading with the firm the FTSE 100 and FTSE 250 - which are the *'products'* Mr E ticked on the form, performed well - rising by about 9%. I did not however consider that Mr E would reasonably have invested all of the funds he made available in

such a way as to match that level of risk, or performance, of those indices with reasonable advice.

It seems more likely that with reasonable advice Mr E either would not have invested with London Stone at all - or would have put much more modest sums at risk. There is of course no guarantee that the sums put at risk would have performed well.

After much thought, it seemed reasonable to me in this case to award redress equal to Bank of England base rate plus 1%. On the one hand Mr E could probably have achieved a higher return on the significant sum he had available using a fairly standard savings account. On the other hand if he had put some money at risk it is likely that he would have enjoyed some gains but also some losses - certainly his experience with the firm at the time would tend to suggest that at least some losses would have been suffered despite generally rising markets. But those losses ought to have been modest because of a more modest level of trading. Bearing these matters in mind an average overall modest positive level of growth does not seem unreasonable.

In all the circumstances my view was that the performance of the investments with the firm ought to be compared to the result the same monies would have achieved had they grown in line with Bank of England Base Rate plus 1% from the time of investment to the time the account was closed and Mr E's money and/or investments transferred to him or his new broker or investment manager. From this should be deducted the value as at the time the account was closed as well as any other payments out to Mr E.

In addition interest should be paid on the above redress at the rate of 8% simple interest from the time of the closure of the account to the time that the redress is paid to Mr E.

Mr E agreed with my provisional decision. London Stone said that it had no further submissions that it wanted to make in response to my Provisional Decision.

I have considered the matter further and my view remains unchanged - except in one respect - from those set out in my Provisional Decision and summarised above. The one, additional, matter is that I also consider that a payment in respect of the distress and inconvenience caused to Mr E is also appropriate. London Stone was informed that I was considering making this additional award and again it had no comments on this point either.

my decision

I uphold Mr E's complaint.

I direct London Stone to carry out a calculation comparing:

- The performance of the investments made with it by Mr E from the date of the deposits made to the account to the time the account was closed and Mr E's money and/or investments transferred to him or his new investment manager.
- The return the same money would have achieved had it grown in line with Bank of England Base Rate plus 1% on the same basis as above.

I also direct London Stone to provide Mr E with a copy of that calculation.

If the above calculation shows Mr E has suffered a loss as at the time the account was closed I award Mr E compensation equal to that sum.

London Stone is also to pay interest at the rate of 8% simple interest per year on the compensation from the time the account was closed to the date of payment of the compensation to Mr E.

I also award Mr E £200 compensation for the distress and inconvenience he has suffered as a result of London Stone's inappropriate advice and the significant financial loss it caused him.

Philip Roberts
ombudsman