

complaint

Mrs N believes the investment bond sold to her late mother by Ardtella Consulting Ltd was unsuitable for her. Mrs N is the Executor of her late mother's estate and was also a life assured on the bond. Mrs N is represented in bringing her complaint.

background

The background to this complaint is contained in my provisional decision of 10 August 2015 (copy attached). The provisional decision forms part of and should be read in conjunction with, this final decision.

In the provisional decision I set out that I intended to uphold the complaint and set out my suggested award.

In response to my provisional decision Mrs N's representative replied to say that she accepts my findings and has nothing further to add.

Ardtella has not made any further submissions.

my findings

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

Having done so, and bearing in mind that that I have not received any further submissions that would alter my view, my decision remains the same as set out in the provisional decision.

my final decision

I uphold this complaint and order Ardtella Consulting Ltd to pay the redress set out in my attached provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs N to accept or reject my decision before 19 October 2015.

David Bird
ombudsman

copy provisional decision

complaint

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background

The complaint was considered by one of adjudicators who believed the complaint should succeed. Briefly he said:

- An 'offshore bond' in itself was not necessarily unsuitable.
- At point of sale, Mrs H appeared to have no experience of risk-based investments and all the liquid assets, both in Spain and the UK, were held in cash.
- For all intents and purposes therefore the late Mrs H appeared to be a naïve investor.
- She was aged 86 at time of advice, widowed and in receipt of £4,500 income per month from UK state and company pensions.
- The fact find asked the consumer her risk attitude on a scale of 1 to 10 where 1 is classified as 'low' and 10 'high'. However there was then no detailed description of what this meant.
- He therefore did not believe Mrs H could have made an informed decision to invest.
- The adviser's confidential report confirmed he believed the late Mrs H had a low to medium risk attitude but again there is no real description of what this meant in practical terms.
- The adviser then recommended the late Mrs H invest €100,000 into an Irish Life Portfolio Bond.
- Given the consumer's circumstances at the time, it did not seem reasonable the late Mrs H at her time of life would reasonably wish to increase her exposure to risk.
- The consumer did not have the capacity to recover any significant losses she may incur through exposing her capital to this degree of risk.
- The late Mrs H should not have been advised to expose her capital to this degree of risk.

The representative acting for Mrs N agreed with the adjudicator's findings, Ardtalla did not. Briefly it said:

- At the time the advice was given Mrs H was primarily concerned about inheritance tax and the poor returns being offered by the Spanish banks.
- Another significant issue at this time was the security of monies held within the Spanish banking system and the consumer wanted to explore the alternatives.
- The Offshore Bond was suitable as realistically this was the only viable option for a Spanish tax resident - it also gave more protection and was very tax efficient.
- It endeavoured to match the fund recommendations to the consumer's risk tolerance and a diversified portfolio of equities and bonds was the best way forward - indeed if the investments had been retained they would have performed well.
- The adjudicator felt the consumer should have invested in fixed rate bonds which incidentally were not available in Spain.
- As an alternative, it was prepared to assume the late Mrs N would have invested in a Euribor based account - the average interest rate in 2006 was 3.3984%; in 2007 it was 4.0858% and in 2008 it was 1.993%.
- This gave an average of 3.159% over the 3 years.
- When the funds were switched the value of the bond was €89,940 so the business would be prepared to offer alternative redress of €19,838.

The adjudicator put the offer to Mrs N and her representative.

Mrs N's representative said that she was prepared to accept the offer in principle, but only if Ardtalla added interest to the loss amount from the date the loss was calculated to the date redress was paid.

Ardtalla confirmed it was not prepared to amend its offer and would not add interest to the loss from the date of calculation.

As no agreement about the dispute has been reached, the complaint has been referred to me for review.

my provisional findings

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

I have noted that Ardtalla has already made an offer in settlement of the complaint which, in the main, Mrs N's representative was happy with. The complaint has not been resolved because there is a dispute about whether interest should be applied to the loss calculated in 2008. So I do not believe the parties are far apart in terms of what would reasonably resolve the complaint. I will comment on the offer later in this report but first I would like to consider the suitability of the investment for Mrs H.

I do not agree that investing in equities (or risk-based investments) will always be unsuitable for people over 80; or that there is a rule that you "don't sell equities to 86 year olds". I would have thought that many 86 year olds might wish to take some risk with their money or wish to invest in equities. In fact these were not wholly equity based funds and they did have some fixed interest, cash and property elements. However it would be right to say they, overall, would still be volatile – especially the 'balanced managed fund' which had a 70% equity content.

The crucial issue is whether this investment and the risk it presented was suitable for Mrs H and she likely wished to take the risk involved.

Mrs H does not appear to have had any experience of risk based investments before and all her money seems to have been invested on deposit. It might therefore be questioned why at 86 she would wish to start taking significant risks with very significant amounts of her money?

As the adjudicator said, there is no guide on content on the fact find which gives context to the risk gradings – '3' and '4' are circled. The recommendations themselves were contained in a 'Confidential Report'. This is where there would usually be an explanation of the risks. I agree with the adjudicator that there is little explanation of the risks Mrs H was taking – that was limited to what I would call 'standardised' warnings that returns were not guaranteed and values could 'go down as well as up'. There is no clear explanation of the risk Mrs H was taking or that she could lose a significant amount of her money by investing in these types of investment.

Even then I would say there is a concern about whether, even if '3' and '4' truly represented Mrs H's attitude to investment risk, this investment was a reasonable fit to that. That kind of grading would tend to indicate caution; '3' would generally be associated with low or lower risk. In combination the two funds chosen would I believe present risks which could be generally viewed as higher than Mrs H was apparently noted as willing to accept.

On balance I therefore do not believe this was likely a suitable investment for Mrs H. I am also persuaded that it is more likely that Mrs H did not appreciate the risk she was taking; she did not get a clear explanation of that in my view. Her circumstances do not suggest she was a risk taker and it seems unusual she would wish to place €100,000 of her liquid assets – or about a third of her money – at risk at this time of her life. As I say, it is possible that an 86 year old could wish to take that risk but I do not believe Mrs H likely wished to.

In terms of redress Ardtalla has proposed that the position be compared with a return in line with an average Euribor rate – to reflect a risk free return. Considering Mrs H's circumstances and that she

lived abroad, that seems reasonable. The issue in dispute is whether the loss calculated in 2008 (when I understand the funds were switched or encashed) should accrue interest or a return from that point.

I do agree that some form of return should be added to that money as Mrs H (or now her estate) effectively did not have use of that loss sum since 2008 and did not have the opportunity to obtain any return on it; the effect of the loss does not simply end in 2008. However I do not believe in these circumstances 8% simple interest (which this service would apply in many situations where a previous loss has crystallised) is the best way forward.

Given that this was money that Mrs H simply wished to retain on deposit or achieve a guaranteed return on, I think it would be better to simply apply the same Euribor rates to the loss sum until redress is paid.

my provisional decision

I am currently of the view this complaint should be upheld.

I believe appropriate redress would be for Ardtalla to carry out its current redress calculation to the point in 2008 when the funds were switched or cashed-in but then add annual compound interest to the loss sum from 2008 to the date redress is paid at average Euribor rates (as it has done to arrive at the loss sum in 2008).

Ardtalla would then supply Mrs N with the loss sum calculated in 2008 plus interest on that sum as detailed above.

If Ardtalla considers that it is legally required to deduct income tax from the interest, it must send the relevant tax deduction certificate with the payment. Mrs N can then explore whether that tax can be reclaimed and from what authority.

David Bird
ombudsman