

complaint

Mr W complains that Handscombe Financial Planning Ltd mis-sold an investment in an Arch cru fund to him.

background

In 2008, Mr W received advice from Handscombe to invest £20,000 in the CF Arch cru investment portfolio income fund. In 2009, the Arch cru funds ran into difficulties.

In December 2012, the industry regulator, the Financial Services Authority (FSA) (now Financial Conduct Authority (FCA)) published a policy statement called "*Consumer redress scheme in respect of unsuitable advice to invest in Arch cru funds*" in response to what it described as "*widespread mis-selling*" by advisers. This set out how businesses that recommended Arch cru funds to their clients must review that advice. It also explained how to calculate compensation, if the review found the advice wasn't suitable.

Handscombe reviewed the advice provided to Mr W and concluded that it was suitable. Mr W referred his complaint to this service.

I issued a provisional decision on 19 October 2015. In summary, my findings were:

- I thought it was fair to consider the complaint in accordance with the FCA's guidance for its redress scheme. The rules which apply to that scheme are called the CONRED 2 rules and are in the FCA's Handbook.
- For an Arch cru investment to be considered suitable, it must satisfy all the CONRED 2 tests. But I thought this complaint hinged on the first of these tests: "*The consumer was willing to take a high degree of risk with the sum invested*".
- The test wasn't whether Mr W was ever willing to take a high risk with his investments. A year earlier, he had agreed to a risk profile under which 20% of his investments would be in high risk areas.
- But just because he was willing to take a high risk with some of his money, doesn't mean he was prepared to take a high risk with this particular fund. Mr W has told us that the fund was recommended as low risk.
- It doesn't appear that Handscombe provided a letter of recommendation. But I considered carefully the evidence from the adviser's detailed meeting notes.
- I'd seen no evidence that suggested Mr W wanted to take a high risk with this fund.
- The notes described the fund as an alternative to property funds. Handscombe sent a letter in mid-2007 in which it classified various property funds as either "*low risk*" or "*very low risk*". So if the Arch cru fund was fulfilling the role of a property fund in his portfolio, then it would follow that it was in a low risk category as well.
- The use of the phrase "*lower volatility*" than share-based funds also suggested a lower rather than a higher level of risk.
- My conclusion was that Handscombe hadn't formed an accurate view of the high risk nature of the fund.
- I'd also seen no evidence that the substance of the risks of the Arch cru fund were explained to Mr W. It was an unusual fund, investing in private equity. It was therefore exposed to different risks because of the non-mainstream assets it held. These should have been explained to Mr W.
- My provisional view was that Handscombe didn't recommend this fund as a high risk investment forming part of the high risk portion of Mr W's portfolio. Under CONRED 2, this means that the advice was unsuitable.

- Handscombe should therefore compensate Mr W so as to put him in as close as possible to the position he would have been in if he'd received suitable advice.
- I thought the most appropriate benchmark to use to calculate compensation from those set out by the FCA was Comparator 2.

Mr W accepted my view. Handscombe disagreed and made the following points:

- If the fund had been presented as low risk, this would have been recorded in the meeting notes.
- The meeting notes recorded that the fund was recommended to provide higher returns than bank interest rates and an alternative to property funds with "*lower volatility than when investing in pure share-based funds*". There was no mention of low risk just a comparative of lower volatility.
- They felt I had added a "prepared to" test to the "willing to take a high risk" test in the CONRED rules.
- Copies of all meeting notes were sent to Mr W. So he could have disputed any inaccuracies.
- There was no evidence that Mr W didn't want to take a higher risk with this money.
- "*Lower volatility compared to shares*" didn't mean low risk. It was comparative.
- There was no evidence that the risks weren't explained to Mr W.
- If I found that the fund had been recommended to Mr W as low risk, then Comparator 2 was wrong, as that was suited to a medium risk profile.

my findings

I've reconsidered all the available evidence and arguments in order to decide whether the advice to invest in Arch cru was suitable. As this complaint is part of the regulatory redress scheme, I'm required to assess it in line with the redress scheme guidance ("CONRED") rather than the DISP rules which I would usually apply. Having done so, I've not been persuaded to change my provisional view. So I'm going to uphold it.

In cases such as this where the evidence is limited and inconclusive, my role as an ombudsman is to base my findings on the balance of probabilities, that is, what I think is more likely than not to be the case in the circumstances.

Handscombe has rightly pointed out that there's no clear evidence of how the investment's risk level was described. What we know is that it was described as an "*alternative to property funds*" and "*lower volatility than when investing in pure share-based funds*". As I explained in my provisional decision, these phrases both suggest to me a lower level of risk rather than a high level. I said this partly because there was evidence that other property funds were said by Handscombe to form a low risk part of Mr W's portfolio. I accept that the phrase "*lower volatility*" is used in comparison with share-based funds. But the point is that the Arch cru funds were actually higher risk than share-based funds.

Our approach to the UK Arch cru funds is set out in a published decision on our website. Our view – and that of the FCA – is that competent advisers ought to have recognised the Arch cru funds were high risk. Handscombe were the experts in this case. It was their role to decide if this fund was suitable and describe it accurately to their customers. CONRED 2 Annex 13 part 6.6 (2) says "*a firm providing a personal recommendation should have formed its own view on the risks of investing in an Arch cru fund, based on the information that it had or ought to have gathered about the fund*".

On the balance of probabilities, I don't think Handscombe had formed an accurate view of the high risk nature of the fund. So I don't think Handscombe described it accurately to Mr W. I'm satisfied that Mr W wasn't willing to take a high risk with this particular investment. So I think it's fair for Handscombe to compensate Mr W.

Handscombe has also said that my choice of comparator was incorrect. Comparator 2 represents a return equal to a 50/50 combination of the APCIMS Conservative Index (32.5% equity) and the IMA Mixed Investment 20-60% shares sector. I thought this was the most suitable because Mr W was willing to take some investment risk, but not a high level. There is another comparator with a higher equity component I could have chosen. But I think this is the benchmark, which most closely fits Mr W's objectives at the time.

I am enclosing a copy of the FCA's redress calculation.

my final decision

I uphold this complaint.

Handscombe Financial Planning Ltd should:

- Pay to Mr W the total loss set out in the FCA redress calculation.
- If not paid within 28 days from the date Handscombe Financial Planning Ltd receives Mr W's acceptance of this final decision, interest should be added at 8% simple from the expiry of the 28 day period to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 5 February 2015.

Louise Bardell
ombudsman