

## complaint

Mr H complains that In2 Consulting Limited mis-sold him investments in a number of funds held within an offshore bond. He says they exposed him to more risk than he wanted and have caused him a significant loss. He isn't satisfied with the compensation In2 offered.

## background

Mr H met with In2 several times in 2003 and 2004 to discuss investing some cash on a low risk basis to provide income over the longer term. He was also looking to sell his property and invest some of the proceeds.

In December 2004, Mr H invested £357,500 on the advice of In2 through an offshore bond. The initial bond purchases were:

- Abacus Protected Asset TEP Fund £182,500
- Shepherds Viatical High Security Fund £100,000
- Close Bros Capital Appreciation Trust £75,000

Mr H took quarterly income of £4,468.75 from April 2005.

Mr H didn't pay any more money in, but various sales and purchases of funds were recommended by In2 over time. Until 2011, all the funds recommended invested in ground rents and student accommodation, warden-assisted accommodation or traded life policies.

In May 2011, In2 advised Mr H to invest £77,000 in the Newton Real Return Fund, a more conventional fund investing primarily in equities and bonds. In June 2012, he invested around in a Permanent TSB Deposit, later reducing this amount.

Mr H complained to In2 in July 2014. He said *"the performance of the funds in which you've invested my savings has been disastrous, rather than safe and conservative as instructed. These funds include Brandeaux, Abacus, Centurion Defined Return, Capital Protected Fund etc"*. He also complained that many of the funds were suspended, so he couldn't withdraw his money.

In2 partly upheld the complaint. They said they believed the funds suited Mr H's low risk profile when suggested and some had offered safe returns. But they accepted that four of the funds didn't invest in traditional asset classes, so could be deemed not conservative.

The four funds were the Abacus Protected Asset TEP fund, the SEB University Resident Development fund, the Brandeaux Dual Asset fund, and the Centurion Defined Return Fund.

In2 compared the performance of the four funds to the performance of the Bank of England average rate for fixed rate bonds. They said the Brandeaux and SEB funds had performed well compared to this benchmark, although both were suspended and couldn't be sold. They offered compensation for the losses on the Abacus and Centurion funds.

Mr H didn't accept the offer and referred his complaint to our service.

One of our adjudicators investigated and recommended upholding Mr H's complaint. She thought that the funds in the bond didn't match the agreed risk level and the whole offshore bond had been mis-sold.

In2 disagreed. They said:

- They disagreed with our interpretation of Mr H's complaint. They consider it covers only the four funds named in Mr H's letter.
- Investigating the bond as a whole and not the four funds in question had a significant impact on compensation.
- The Brandeaux and SEB funds are suspended. But both have made profits and still have a value. The underlying investments are student accommodation in the UK.
- Payments were in the course of being made to investors in Brandeaux funds, which would result in investors getting their money back.

In2 and Mr H both also provided some updates on the Brandeaux fund.

### **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 agree with the adjudicator's findings. So I'm going to uphold this complaint. I explain why below.

First, I'm satisfied that the complaint Mr H initially made wasn't limited to the four named funds as In2 suggests. It was that "*the funds*" hadn't been "*safe and conservative*" as instructed. I say this because he said the funds "*include*" the four named "*etc*". I don't think he would have used these words if he wished to limit his complaint just to those four.

I consider it was fair to look at the advice overall. In saying this, I note that Mr H hasn't objected to the approach we've taken. And even if the complaint had been limited, we have an inquisitorial remit and are not bound to investigate a complaint only in the terms in which it's originally made.

Mr H's complaint is also that he felt he was "trapped" inside the offshore bond 'wrapper', without being able to sell any of the funds to reduce his losses.

There doesn't seem to be any dispute that Mr H wanted low risk investments. In2's 2003 letter was headed up "Low risk Investment Opportunities" and I've seen no mention of anything other than low risk throughout its recommendation letters. Although In2 hasn't been able to find much of the paperwork showing its assessment of Mr H's attitude to risk, I have seen an (undated) questionnaire, which seems consistent with this "low risk" category. I say this because the answers given suggested Mr H was prepared to take a little risk, but not a significant amount.

Before May 2011, all the funds In2 recommended were offshore funds. They were non-mainstream investments and some were unregulated collective investment schemes (UCIS). UCIS are funds which are only considered suitable for certain types of investors. Because of this, the Financial Services and Markets Act 2000 (FSMA) restricts their promotion. There's no evidence In2 considered these financial promotion rules when giving recommendations to Mr H.

Several of the funds invested in traded life policies, which the Financial Conduct Authority regards as high risk products, unlikely to be suitable for the majority of retail investors. The others were property funds, investing in specialised types of property (including student accommodation and warden-assisted). I agree with our adjudicator that this meant the risks to Mr H's capital weren't well spread.

Because of the specialised types of assets held, the funds carried a number of risks, including a significant risk that access to capital could be restricted or suspended. They were also all targeting returns of around 8% per annum. Given the relationship between risk and return, I consider this indicates that they carried a higher degree of risk than Mr H wanted.

For these reasons, I'm satisfied that these funds weren't low risk. I think they carried greater risks than were suitable for a low risk investor like Mr H. I therefore conclude that they were unsuitable for him.

In2 has argued that these non-mainstream funds were considered to be low risk at the time of the advice. But I think the risks I've mentioned were all ones a financial adviser ought reasonably to have identified at the outset.

The Newton fund bought in 2011 is a more conventional fund. But it targets a return between bonds and equities and therefore includes a higher proportion of equities than I would expect to see in a low risk fund. So I don't think this fund was suitable for Mr H either.

I'm satisfied that Mr H wouldn't have invested in any of these funds without the advice of In2. And I also find that had it not been for In2's advice, he wouldn't have taken the offshore portfolio bond wrapper.

As far as I'm aware, these were Mr H's only significant investments. He had invested the surplus funds from his house sale in the bond to provide income in retirement. I think that the discovery that the funds had largely fallen in value or weren't accessible or both would have been distressing for Mr H. I consider £250 fair compensation for this.

### **fair compensation**

In deciding what's fair, my aim is to put Mr H as close as I can to the position he would probably now be in if he hadn't been given unsuitable advice.

I take the view that Mr H would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair given Mr H's circumstances and objectives when he invested.

### **what should In2 do?**

To compensate Mr H fairly, In2 must:

- Compare the performance of Mr H's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

In2 should also pay interest as set out below.

- Pay to Mr H £250 for the worry caused by losses and inaccessible funds.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
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the offshore portfolio bond	Some suspended, some not	for half the investment: FTSE WMA Stock Market 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 (if compensation is not paid within 28 days of the business being notified of acceptance)
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### ***actual value***

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

For the funds that remain liquid, their value should be taken into account. Mr H is able to redeem these if he no longer wishes to continue with the bond.

I understand at the time of writing that the Brandeaux fund and SEB funds, which are in liquidation, have now returned around 99% of funds to investors, with the remaining 1% due before the end of the year. If the outstanding balance hasn't been paid into Mr H's bond by the time compensation is paid, then their actual values should be assumed to be zero. In2 may request an undertaking from Mr H, that he repays to In2 any amount he may receive from those investments in future.

I understand that the Defined Return Fund remains suspended. In2 has confirmed that they could take ownership of this fund. When making the calculation above, the fund's actual value should therefore be assumed to be zero. This is provided Mr H agrees to In2 taking ownership of it.

At the end date, if any other funds are still held and can't be sold on the open market, their *actual value* should be assumed to be zero. This is provided Mr H agrees to In2 taking ownership of the illiquid funds, if they wish to. If it's not possible for In2 to take ownership, then they may request an undertaking from Mr H to repay to In2 any amount he may receive from those funds in the 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, In2 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.

In2 should add any additional sum paid into the investment to the *fair value* calculation from the point in time when it was actually paid in.

In2 should deduct from the *fair value* any withdrawal, income or other payment out of the investment at the point actually paid. They will then cease to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if In2 totals all those payments and deducts that figure at the end instead of deducting periodically.

### **why is this remedy suitable?**

I've decided on this method of compensation because:

- Mr H wanted income with some growth, but with a small risk to his 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 his capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr H's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his objectives. So, the 50/50 combination would reasonably put Mr H into that position. It doesn't mean that Mr H would have invested 50% of his 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 Mr H could have obtained from investments suited to his 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 In2 Consulting Limited should pay Mr H the amount produced by that calculation – up to a maximum of £150,000 (including distress and inconvenience) plus any interest set out above.

If In2 Consulting Limited doesn't pay the full fair compensation, then any investment currently illiquid should be retained by Mr H. This is until any future benefit that he may receive from the investment together with the compensation paid by In2 Consulting Limited (excluding any interest) equates to the full fair compensation as set out above.

In2 Consulting Limited may request an undertaking from Mr H that either he repays to In2 Consulting Limited any amount Mr H may receive from the investment thereafter or if possible, transfers the investment at that point.

In2 Consulting Limited should provide details of its calculation to Mr H in a clear, simple format.

**recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that In2 Consulting Limited pays Mr H 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 In2 Consulting Limited. It's unlikely that Mr H can accept my decision and go to court to ask for the balance. Mr H may want to consider getting independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H either to accept or reject my decision before 4 January 2016.

Louise Bardell  
**ombudsman**