complaint

Mr W complains he was given unsuitable investment advice by Coutts & Company, to invest £160,000 of his Self-Invested Personal Pension (SIPP) in to an RBS Navigator investment bond.

Mr W says he didn't fully understand the product and wasn't happy to only get his money back with no return.

background

In January 2012, Mr W was advised to invest £160,000 of his SIPP in to the Navigator investment. In January 2017 the investment closed with £160,000.

One of our adjudicators having considered the complaint thought it should be upheld. He found Mr W hadn't fully understood the workings of the product and that if it had been properly explained he wouldn't have taken it out. He set out how the business should calculate redress in line with one of our benchmarks.

The business disagreed with the adjudicator's view. It said the Navigator was appropriate and made the following points:

- Mr W had wanted to de-risk and was keen on capital protection.
- The Navigator provided the potential for better returns than a deposit account and Mr W was happy to invest for at least five years.
- The general principle of the product is straightforward.
- Only part of the available money was put into the Navigator suggesting that Mr W understood the relative merits of both it and the DIMA from where the money came.

Mr W made the following observations:

- These explanations weren't available to him at the outset. At the time he was provided with only a factsheet.
- Even now, after much consideration, he finds it difficult to understand the information upon which he was expected to make a decision to invest.
- At no time was a formal risk assessment carried out before the recommendation.
- The business has provided misleading and inaccurate information in the various responses to his complaints.

As no agreement has been reached the matter has been passed to me for review.

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, on balance, I agree with the adjudicator's conclusions for much the same reasons. I'm going to uphold this complaint.

When advising Mr W, the business's adviser had two key responsibilities. To make sure he was given an adequate explanation of what he was investing in, and to make sure any investment recommended was suitable for his needs and circumstances.

Structured investments designed to at least return the capital invested aren't without risk. The possibility of receiving a nil (or very low) return can be a real risk, particularly because of the effect of inflation on the purchasing power of the investor's money.

Beyond that, I think it was a complex product that contained a number of additional risks that I'm not persuaded were adequately explained to Mr W.

I appreciate only part of the available money was put into the Navigator, but I disagree that this suggests Mr W understood the relative merits of both it and the DIMA from where the money came. I think it's more likely than not, he just wasn't comfortable investing the whole SIPP in the Navigator.

Whilst the general principles of the Navigator may be straightforward for the business to understand, I don't think it was for Mr W. He maintains that he has difficulty understanding the various graphs, charts and terminology even now.

I don't entirely agree that the Navigator simply provided a chance for growth, with no risk to capital. I think this is an over simplification. The Navigator is a structured investment and one that Mr W hadn't historically invested in, despite the business's incorrect record that he frequently invested in structured products.

I appreciate Mr W had some investment experience, but on balance I'm unable to say that he was a sophisticated investor and his experience would enable him to understand the risks involved in this product.

I appreciate in theory the Navigator provided the potential for better returns than a deposit account, and on the face of it Mr W was happy to invest for at least five years. But I don't think he would have been had he understood how this policy worked.

The business says the DIMA provided potential for combined growth with an element of capital security, while the Navigator gave the opportunity for additional growth options, while offering full capital protection. In combination, the two investments met the overall client requirements.

But the product wasn't directly reflective of the stock market and relied on RBS's moving trends analysis and decisions, which I'm not persuaded Mr W understood. This may explain why he didn't query the suitability letter, because he wouldn't have been aware of these issues.

The product was capital protected, but I'm not persuaded that this product was suitable for Mr W in this instance. On balance I'm not persuaded the inflation risk was a risk that he wanted to take, had he known how this policy worked.

I appreciate any past performance is not necessarily indicative of future performance and that there were no guarantees given. And despite what the business says about his risk profile, I'm not persuaded that he wasn't willing to take some risk with his capital. I appreciate he wanted to de-risk his portfolio but in my opinion he still wanted to take a small risk with his capital. I'm mindful it was recorded that he had no liabilities and therefore he was in a reasonable position to do so.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr W as close to the position he would probably now be in if he had not been given unsuitable advice. Mr W has said he could have stayed in the original investments in his SIPP but there is evidence to suggest he wanted to de-risk these somewhat. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr W's circumstances and objectives when he invested.

what should you do?

To compensate Mr W fairly you should:

- Compare the performance of Mr W'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.

  You should also pay any interest, as set out below.

  If there is a loss, you should pay such amount as may be required into Mr W's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

  If you are unable to pay the total amount into Mr W's pension plan, you should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mr W's marginal rate of tax at retirement.

  For example, if Mr W is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr W would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Provide the details of the calculation to Mr W in a clear, simple format.

Income tax may be payable on any interest awarded.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
RBS Navigator	matured	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of maturity	8% simple per year on any loss from the end date to the date of settlement

actual value

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

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, you 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. Apply those rates to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases 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 you total all those payments and deduct that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr W wanted capital growth 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 FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr W into that position. It does not mean that Mr W would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr W could have obtained from investments suited to his objective and risk attitude.

- Mr W has not yet used his pension plan to purchase an annuity.

- The additional interest is for being deprived of the use of any compensation money since the end date.

further information

The information about the average rate can be found in the ‘Statistics’ section of the Bank of England website under ‘Interest and Exchange Rates Data’ / ‘Quoted household interest rates’ / ‘Deposit rates’ / ‘Fixed rate bonds’ / ‘1 Year’.

Some examples of how the calculation should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'.

my final decision

For the reasons set out above, I uphold this complaint and direct Coutts & Company to pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 1 December 2017.

Dara Islam
ombudsman