DRN-3589108

Financial Ombudsman Service

The complaint

Mrs P has complained about the advice she has received from Alan Steel (Asset Management) Limited (ASAM). In particular, she says that the advice to invest into the Woodford Equity Income Fund (WEIF) was not suitable for her.

Mrs P is being represented with this complaint. But for ease, I have referred to all actions and comments as those of Mrs P.

What happened

Mrs P has been a client of ASAM, since she invested £150,000 into a collective investment account following their advice in 2013. They continued to act for her on an advisory basis from that point.

ASAM advised Mrs P to switch an amount into the WEIF in October 2014 and again in August 2018. She was then advised to invest £20,000 into the WEIF within a new individual savings account (ISA) in September 2018. This was done through switching the amount from another fund in her collective investment account.

Trading into the WEIF was suspended in June 2019, following poor performance. In October 2019, it was announced that the fund would not re-open and would be wound up. Mrs P had approximately £30,943.75 invested in the fund at the time and received £26,262.70 after it was wound up. Representing a loss due to this of £4,681.05.

Unhappy with this, she complained to ASAM. They responded to say that they believe the advice they gave was suitable for Mrs P, considering her risk profile and the diversification of her portfolio. They also provided some background as to why the WEIF was chosen and continued to be monitored despite initial poor performance.

Mrs P brought her complaint to our service for an independent review. Our investigator looked into it and whilst she felt the initial advice to switch into the fund in 2014 was suitable, she didn't think this was the case for either of the 2018 switches. She said she was of this opinion due to the impact it had on the diversification and risk profile of Mrs P's portfolio.

Whilst Mrs P agreed with the opinion of our investigator, ASAM didn't. They said they felt the August 2018 switch was reasonable and the breakdown of Mrs P's portfolio matched her risk profile. They did say maybe a different fund could've been selected for the switch into an ISA in September 2018, but that further diversification after the initial switch was intended.

As no agreement was reached, the case has been passed to me for a decision.

What I've decided – and why

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 think the outcome reached by the investigator was fair. I'll explain why.

Our investigator looked into the initial switch from one fund into the WEIF in 2014 and didn't think ASAM had done anything wrong with this advice. Mrs P responded and accepted that, so I've focused my decision on the following advice that the parties aren't in agreement with.

<u>August 2018 advice</u>

Mrs P was advised to switch approximately £26,000 of units from the Investec Cautious Managed Fund into the WEIF. This was about 1/6th of her total portfolio value at the time of approximately £155,000.

Whilst it was a switch and not a new subscription, Mrs P was still asked for her current attitude to risk and it was recorded as still being cautious to balanced. Mrs P was also asked for her updated current circumstances. This money had originally been invested from inheritance in 2013. She had been recorded as wanting to retire in 2022 and not having any outstanding liabilities other than a mortgage with her husband, which was offset and due for repayment by 2023. It was now recorded that her income was now £12,000 p.a and she had no recording savings.

According to ASAM, the switch meant Mrs P's portfolio was now invested approximately 60% into equities, 30% bonds and 12% commodities and alternatives. I think this presented too much exposure to risk and potential for loss for Mrs P, who I would not regard as an experienced investor. Considering her goal to retire shortly after this and that her income had reduced (presumably in light of this), I don't think the advice was suitable for Mrs P as she didn't have the capacity for loss that the risk of this switch brought. I say this especially as the money had come from inheritance and with only a modest income and no savings, she was unlikely to be able to make the amount up again.

Further, in March 2018 the WEIF was reclassified from an Equity Income fund to a UK All Companies fund. This took account of the changes in investments (a higher level of illiquid shares) and that it wasn't generating the income expected of an equity income fund. As well as this, the inclusion of several unlisted securities (which generated less income) increased the funds risk profile. ASAM have said they were aware of this but that this reclassification was common and isn't necessarily a warning. Whilst I understand those comments, I still think this switch and the resulting make-up of Mrs P's portfolio presented more exposure to risk than she was willing to take.

<u>September 2018 advice</u>

Mrs P was then advised to invest a further £20,000 into the WEIF within an ISA, through a switch from her collective investment account. This meant nearly 1/3rd of her total portfolio was invested in the WEIF.

I believe this saw a lack of diversification of Mrs P's portfolio and too great an exposure to one fund. I note ASAM have acknowledged this in their response to our investigator and stated their intention was to diversify further in the new year. However, this doesn't make the advice suitable and if diversification was the aim, I see no reason why this wasn't done immediately. Ultimately the portfolio lacked diversification until the WEIF was suspended.

In summary, I don't think either pieces of advice given in 2018 to Mrs P were suitable. The initial switch saw her portfolio carry more risk than she was willing to take. I also think the second switch meant her portfolio was too exposed to the WEIF and lacked diversification.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mrs P as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs P would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

What must ASAM do?

To compensate Mrs P fairly, ASAM must:

- Compare the performance of each of Mrs P's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- ASAM should also add any interest set out below to the compensation payable.
- Pay Mrs P £300 for the stress she was caused when she realised the considerable losses she had incurred. She had just retired and advised it was a stressful time for her. Since then she has changed IFA and spent considerable time and effort in making the complaints to both ASAM and our service.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
WEIF	Still exists but illiquid	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 (exact date unknown but approx.. 28 August 2018)	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
WEIF	Still exists but illiquid	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 (exact date unknown but approx.. 25 September 2018)	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

For each investment:

Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mrs P agrees to ASAM taking ownership of the investment, if it wishes to. If it is not possible for ASAM to take ownership, then it may request an undertaking from Mrs P that she repays to ASAM any amount she may receive from the investment in 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, ASAM should use the monthly average rate for one-year fixed-rate bonds 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.

The wrapper only exists because of illiquid investments. In order for the wrapper to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by ASAM taking over the investment, or this is something that Mrs P can discuss with the wrapper provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If ASAM is unable to purchase the investment, to provide certainty to all parties I think it's fair that it pays Mrs P an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the wrapper to be closed.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs P wanted capital growth with a small risk to her 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 her 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 Mrs P's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs P into that position. It does not mean that Mrs P would have invested 50% of her 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 Mrs P could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Alan Steel (Asset Management) Limited should pay the amount calculated as set out above.

Alan Steel (Asset Management) Limited should provide details of its calculation to Mrs P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 30 May 2023.

Yoni Smith
Ombudsman