DRN-4616769

Financial Ombudsman Service

The complaint

Mrs H's representative, her son Mr H, complains on her behalf that she was given unsuitable investment advice by Advanced Asset Consultants Ltd ("AAC").

What happened

Mrs H, and her husband, had been in an ongoing advisory relationship with a financial adviser for some years. By 2012 that adviser was employed by AAC. In September 2012 Mrs H invested in AAC, purchasing a shareholding in the company.

In 2021 Mr H complained on Mrs H's behalf about the suitability of the investment. AAC didn't uphold the complaint and further, felt it wasn't one this service was able to consider. However, it was decided in September 2023 that the complaint did fall within our jurisdiction and an investigation of its merits was duly carried out.

Having done so, our investigator concluded that the complaint should be upheld. She said, in brief:

- Mrs H was aged 80 when she invested in AAC and had generally invested previously in deposits and more cautious investments jointly with her husband.
- She received the invested money as an inheritance and wanted to invest it for the benefit of her grandchildren.
- Given the nature of the ongoing relationship with the adviser and AAC she'd have assumed she was receiving advice in respect of the share purchase.
- Mrs H was had never invested in this type of high-risk asset, and never invested at all without advice.
- AAC had considered Mrs H to be a sophisticated investor, keen to invest in local businesses. But this didn't appear to have been the case and, in any event, the required process for categorising a sophisticated investor wasn't followed.
- There was no evidence of what Mrs H was told about the investment.
- It was apparent that AAC had failed to distance itself such that Mrs H would've concluded that advice wasn't being provided.
- As such, she'd assumed she was being advised and would've also assumed therefore that the investment was suitable.
- There was a potential conflict of interest so AAC shouldn't have involved its client database in the matter, or at least made it abundantly clear that no advice was being provided. AAC hadn't acted in Mrs H's best interests.
- Given Mrs H's objective – investing for her grandchildren – it was highly unlikely she would've wanted or accepted the high level of risk associated with a direct illiquid share investment.
- Ultimately the investment was unsuitable for Mrs H as it was inconsistent with her attitude to risk and circumstances.

The investigator recommended that Mrs H be put back in the position she'd have been in had she not bought the shares, by way of a comparison with an investment benchmark.

Mr H accepted the investigator's view on Mrs H's behalf.

AAC sought some clarification on aspects of calculating the proposed redress but didn't confirm definitively whether it accepted the investigator's view. As such, the matter's been referred to me to review.

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've come to the same conclusions as the investigator and for broadly the same reasons. I'm satisfied the complaint should be upheld and Mrs H be compensated.

In brief, I find it was reasonable for her to conclude that she was being advised to invest in a way that her adviser considered suitable for her. However, that wasn't the case and Mrs H found herself invested in a manner inconsistent with her objectives, attitude to risk and general circumstances.

AAC's responses to the investigator's view suggest it is prepared to compensate Mrs H as proposed. However, as noted, there's been no firm confirmation of that. So, given Mrs H's personal circumstances – she's now aged 91 and sadly has recently lost her husband – I think it's appropriate that I now issue a final decision on the matter to provide her with closure as soon as possible.

Putting things right

In assessing what represents fair compensation, I consider my aim should be to put Mrs H as close to the position she'd probably now be in if she hadn't invested in the AAC shares.

I take the view that Mrs H would've invested differently if she hadn't bought the shares – she's confirmed an objective of wishing to invest inherited monies for the future benefit of her grandchildren. However, it's not possible to say *precisely* what she would've done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mrs H's circumstances and objectives when she invested.

What must AAC do?

To compensate Mrs H fairly, AAC must:

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

- AAC should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
AAC Company Shares	Still exists but illiquid	FTSE UK Private Investors Income Total Return	Date of investment	Date of my final decision	8% simple per year from final decision to

		Index			settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

If at the end date the investment is illiquid (meaning it can't 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 H agrees to AAC taking ownership of the illiquid investment if it wishes to. If it's not possible for AAC to take ownership, then it may request an undertaking from Mrs H that she repays to AAC 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.

Any income received by Mrs H from the investment should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AAC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs H wanted capital growth and was willing to accept some investment risk.

- 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.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs H's circumstances and risk attitude.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Advanced Asset Consultants Ltd to pay compensation to Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 21 March 2024.

James Harris
Ombudsman