complaint

Mr L's representative has complained, on his behalf, about the advice he received in September 2008 from Nationwide Building Society to invest into a Norwich Union Portfolio Bond. It was invested into the With-Profits Inflation Protected Guaranteed Fund.

Specifically, Mr L's representative has said the advice had been unsuitable as too much of his capital had been invested into one single investment fund. It resulted in an increased risk of potential poor management of the fund, and a Market Value Reduction (MVR). It's been said that there was an increased risk of a gain producing an additional tax liability.

background

The adjudicator who initially looked at the complaint concluded that it should be upheld. He said the With-Profits fund wasn't unsuitable for the type of risk Mr L was willing to take. But it had been inappropriate to invest the recommended proportion of Mr L's overall capital into one fund as it didn't provide the necessary diversification, the adjudicator said.

The business disagreed, saying that the fund offered diversification by the nature of the different asset classes held. If the recommendation to invest £30,000 into a fixed rate bond was also taken into account, the actual asset split wasn't dissimilar to the comparison benchmark for calculating redress proposed by the adjudicator. Nationwide maintained that, given Mr L's circumstances and objectives, the advice wasn't unsuitable.

The complaint was then considered by a different adjudicator, who wasn't of the view that it should be upheld. In summary, he considered that Mr L's circumstances at the time, together with his previous history of risk-based investments, supported the position he would be willing to accept a degree of risk. In the adjudicator's opinion, the advice to invest into an inflation protected With-Profits fund was consistent with his requirement to reinvest the proceeds from an offshore investment bond into a more cautious investment.

The With-Profits fund offered diversification by way of the assets contained within the fund, the adjudicator said. As to the potential application of an MVR, it was noted that Mr L had wished to invest for the medium to long term and hadn't indicated that he'd need access at any particular date. Mr L also had other investments which he could encash without penalty if he needed access to his money.

To address Mr L's tax status, the adjudicator noted that basic rate tax would be paid in the fund and therefore shouldn't be any adverse effect on his tax affairs. The possibility of investment gains from the bond pushing Mr L into a higher rate tax bracket was unlikely, the adjudicator said.

Mr L's representative didn't agree with the assessment and raised the following points:

- Mr L was age 69 and therefore in receipt of the age allowance.
- His gross income was close to the HMRC upper earnings limit.
- He was in what is known as the "age allowance trap" where £1 for every £2 over the limit is charged at 50%.
- It was the accepted industry view that these types of investment weren't suited to retired people who were either non-tax payers, basic rate tax payers or close to the upper earnings limit.

- Accepted practice would be to use ISA or other tax free allowances before investing in this type of bond
- Too much of Mr L's money was placed into one investment, which would be influenced by a single fund manager.
- At the time of the investment, the markets had collapsed but there was no mention of whether an MVR was in place at the point of sale. It was simply said that it could be applied at any time.
- Mr L wished to invest for 5 years. This was a short term investment – not a medium term one.
- The rest of Mr L's money was held in cash and exposing £70,000 of his capital into a risk based environment which might be subject to an MVR if markets collapsed wasn't suitable.

As agreement's not been reached on the matter, it's been referred 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.

To firstly address the risk to which Mr L's investment was exposed, I note he'd been categorised as a low to medium to risk investor. Given Mr L's circumstances, available capital and prior experience of investing in an offshore bond, it wouldn't appear to be improbable that he wished to invest in a lower risk environment with the opportunity for enhanced growth.

I've also noted that the investment itself represented less than half of his available capital and that he was prepared to invest for a period of five years. My view is that this timeframe could entirely reasonably be described as a "medium" timeframe, but the actual description doesn't in any case seem to be relevant here. The fact is that he was prepared to invest for at least five years and the With-Profits fund offered not just a return of capital after that time, but also an inflation guarantee. The inflation guarantee would be unaffected by an MVR which might be applicable to the wider fund at the time.

Therefore, as a five year investment, it doesn't seem to me to have either represented too high a proportion of Mr L's overall capital or too high a risk. A With-Profits fund is also well diversified and offered Mr L exposure to a varied range of assets whilst protecting his capital. Markets hadn't "collapsed" at the point of Mr L's investment – the FTSE 100 was at approximately 5,500, although it's fair to say that markets had experienced considerable volatility and in later months would drop significantly.

But the diversification of the fund is likely to have offered the type of lower risk environment Mr L was seeking, having been disappointed with his offshore fund. The comment relating to the With-Profits fund being overseen by a single fund manager seems to be speculative, but even if this were to be the case, I don't see how this would in itself render investment in such a fund unsuitable.

I've also noted the comments relating to Mr L's proximity to the upper earnings limit and how breaching this might affect his age related allowance. But the relevance of this seems to be distinctly limited here. Mr L was not seeking an income from his investment and after a period of five years, any gain would also take account of the number of years he'd held the investment.

As Mr L was 69 at the time of the advice, and he was self-employed, it's also entirely possible that his income might have dropped by the age of 74. It is in fact in precisely these types of situations where someone's income may reduce by the time of encashment that lends itself well to there being no additional tax to pay on gains (as basic rate tax is paid within the fund). Although, as it's likely that Mr L would in any case have remained a basic rate tax payer and would benefit from "top slicing", there would in any case be no tax disadvantage to investing in the bond.

If he was however in a sufficiently fortunate position that, after top slicing, the gain in the investment pushed him over the allowable limit for the increased age allowance, the actual degree of gain required to do this would in my view in any case have justified the reduction in his personal allowance.

my decision

For the reasons given, my final decision is that I don't uphold the complaint.

Philip Miller
ombudsman