complaint

Mr and Mrs B complain about advice they were given in 2007 by Lighthouse Advisory Services Limited ("the business"). Their representative says the recommended investments were unsuitable as they contained more risk than Mr and Mrs B were prepared to take.

background

I issued my provisional decision in April 2015 (copy attached). I said I was minded to uphold the complaint.

The business did not agree with my conclusions. It said I had not answered a question by the adviser who recommended the investments about the standard portfolio for cautious to balanced risk investors. This would be expected to have the following split of investments:

5% - Cash
32% - UK Corporation
5% - International Corporate Bonds
5% - UK Gilts
19% - UK Equities
7% - European Equities
14% - Northern American Equities
5% - Japan Equities
8% - Property

The business considers the make-up of Mr and Mrs B's investments closely resembled this. It maintains the funds were suitable, given Mr and Mrs B's recorded objectives and tolerance of investment risk.

The business also said it is untrue that Mr and Mrs B were inexperienced investors and financially naïve. It feels this is typical propaganda used by claims management companies to portray clients as vulnerable when evidence shows this to be not the case.

It also wished to comment on the method of redress I had proposed. I had agreed Mr and Mrs B were prepared to take some risk with their capital. The business believes 50% of their investments already represented the level of risk contained in the WMA index. So it follows the redress should be for the other 50%.

The business had nothing to add about my view that the investment loss should be calculated up to 1 June 2010.

Mr and Mrs B confirmed they had nothing further to add.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

It does not seem to be in dispute that Mr and Mrs B were prepared to take a cautious to balanced risk with some of their capital. So the crux of this case is whether the investments recommended were compatible with this risk profile. This was the issue I considered in my provisional decision.

I apologise if the business feels I failed to answer a question raised by its adviser during the investigation of the complaint. I would like to emphasise I did take account of all the evidence that had been submitted.

However, for the sake of completeness, I will address this specific point.

It has been suggested the funds recommended to Mr and Mrs B in 2007 were in line with the industry standard risk profiling system. However, I am not persuaded there is a definitive approach to how a consumer's attitude to risk should be met. Different advisers and investment experts will have different views.

It is also important to note that the advice was being given to Mr and Mrs B. So it was not for some average customer that any risk profiling system would be aimed at.

Having reviewed the funds used, I thought these contained more risk than Mr and Mrs B wanted to take. In doing so I took account of the make-up of the funds and their underlying assets. Because it has not been possible to obtain fund fact sheets from the time of the advice, I had to rely on those from December 2013. I accept this is not ideal. But I have not seen evidence the make-up of the funds was greatly different in 2007. I have certainly not seen evidence the funds have changed to the extent they would have contained a significantly lower level of risk in 2007.

So while I have considered this matter again, it remains my opinion the investments contained more risk than Mr and Mrs B wished to take. I do not think it is likely they would have gone ahead with the investments, had they understood the risk involved.

I have noted the comments made by the business about the method of redress I proposed. But I think it may have misunderstood the basis for this.

I have found that Mr and Mrs B's capital was placed in unsuitable investments. If they had received suitable advice, I think they would have invested differently. But I cannot know for sure what other investments they would have taken.

Therefore, the proposed redress is intended to put them, as closely as possible, in the same position as if they had not been given unsuitable advice. We do this by comparing the actual investment performance with what could have been achieved from the type of investments that would have been more appropriate. The benchmarks used are intended to reflect the sort of return that could have been achieved. These are applied for the full sum invested. It would not be appropriate to simply apply one of the benchmarks for part of the capital.

fair compensation

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

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

what should Lighthouse Advisory Services Limited do?

To compensate Mr and Mrs B fairly, Lighthouse Advisory Services Limited must compare the performance of Mr and Mrs B's investment with that of the benchmark shown below.

The compensation payable to Mr and Mrs B is the difference between the *fair value* and the *actual value* of Mr and Mrs B's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

Lighthouse Advisory Services Limited should also pay Mr and Mrs B any interest, as set out below. Income tax may be payable on the interest awarded.

In addition, Lighthouse Advisory Services Limited should pay Mr and Mrs B £200 for the trouble and upset caused by this matter.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
four investment bonds	surrendered	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 surrendered	8% simple p.a. 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, Lighthouse Advisory Services Limited 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.

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 Lighthouse Advisory Services Limited totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have decided on this method of compensation because Mr and Mrs B wanted income with some growth with a small risk to their 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 their capital.

The WMA 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 and Mrs B's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs B into that position. It does not mean that Mr and Mrs B would have invested 50% of their 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 and Mrs B could have obtained from investments suited to their objective and risk attitude.

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

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 Lighthouse Advisory Services Limited should pay Mr and Mrs B the amount produced by that calculation – up to a maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

recommendation:

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Lighthouse Advisory Services Limited pays Mr and Mrs B 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 Lighthouse Advisory Services Limited. It is unlikely that Mr and Mrs B can accept my decision and go to court to ask for the balance. Mr and Mrs B may want to consider getting independent legal advice before deciding whether to accept this decision.

Doug Mansell
ombudsman

COPY PROVISIONAL DECISION

complaint

Mr and Mrs B complain about advice they were given in 2007 by Lighthouse Advisory Services Limited ("the business"). Their representative says the recommended investments were unsuitable as they contained more risk than Mr and Mrs B were prepared to take.

background

The adjudicator who reviewed the complaint did not agree with all the points raised by Mr and Mrs B's representative. But he did find the investments did not match Mr and Mrs B's circumstances or requirements. The investments did not accord with their cautious to balanced attitude to risk.

The business disagreed. It said the investments were in line with Mr and Mrs B's recorded tolerance of risk. The business also argued it had made Mr and Mrs B aware of the equity content within the investments. It also did not agree with the adjudicator's opinion of the risk posed by the investments.

In addition, Mr and Mrs B transferred the investments to a new adviser in December 2009. So the business should not be responsible for any losses beyond this date.

The complaint has now been passed to me for consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr and Mrs B met with the adviser in September 2007 and November 2007. They wished to discuss generating an income from their existing pension and capital. Mr and Mrs B's were in their sixties. They had retired and were receiving their pensions. They had total assets of £560,000, mainly in cash deposits.

Mr and Mrs B's attitude to risk was assessed as cautious to balanced. The adviser recommended they invest £100,000 each into four investment bonds, using a variety of funds.

I have noted the comments by Mr and Mrs B's representative. It says they were entering into this type of investment for the first time. They were inexperienced investors and financially naïve.

However, while I understand this point, I am satisfied they were in a positon to take some degree of risk to achieve their aims. On balance, I think a cautious to balanced attitude to risk is not unreasonable for their circumstances in 2007.

Neither the business or Mr and Mrs B were able to provide a copy of the fund factsheets from 2007, which would show the make-up the investment content of the bonds. As such, it was necessary to look at factsheets from December 2013. I accept there may be some

changes in the make-up of the funds over time. But I am satisfied the overall composition and objectives are likely to be largely similar.

The funds contained high levels of assets that represented significant risk. This included equities and property. There were relatively low levels of more secure investments, such as cash or gilts.

Therefore, when taken overall, I consider these investments exposed Mr and Mrs B’s capital to more risk than they were prepared to take.

I have also considered the information Mr and Mrs B were given at the time, including the adviser’s report and product literature. However, I do not consider Mr and Mrs B were provided with a clear understanding of how much risk they would be taking with their capital.

Although Mr and Mrs B had a substantial sum on deposit, almost all of this was placed in the bonds. In all, about 70% of their capital was invested. This therefore represented a significant portion of their available capital. I do not think they wanted to expose this to the risk posed by the investments they were recommended.

I also have noted the business’ point about Mr and Mrs B arranging for a new financial business to act on their behalf. It considers any liability for loss caused by the advice it gave should be assessed at this point. This is because it was no longer able to provide ongoing advice.

I should explain that simply because a customer engages a new adviser, it does not follow this limits losses caused by earlier advice. However, in this case the adjudicator has looked at whether any changes were made to the investments.

Although the business suggests Mr and Mrs B appointed a new financial business to act on their behalf in December 2009, for one of the bonds the date the provider has given us is January 2010.

But it is also clear the new adviser did make changes to the investments, by arranging switches to the original funds. I am therefore satisfied this is evidence Mr and Mrs B were no longer relying on the advice they were given in 2007.

It seems switches started to be made in June 2010. I therefore think it would be fair and reasonable to use 1 June 2010 as the point at which the investment loss should be calculated. I have therefore taken this into account when setting out below the way compensation should be calculated.

fair compensation

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

I think Mr and Mrs B would have invested differently. It is not possible to say *precisely* what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs B's circumstances and objectives when they invested.

what should the business do?

To compensate Mr and Mrs B fairly, the business must:

- Compare the performance of Mr and Mrs B's investments 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.

  the business should also pay interest as set out below.

- Pay Mr and Mrs B £200 for the trouble and upset they have suffered through the investment loss caused by the business' unsuitable advice.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
four investment bonds	encashed	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 switched (1 June 2010)	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 investments at the end date.

fair value

This is what the investments 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, the business 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 investments on an annually compounded basis.

Any additional sum that Mr and Mrs B paid into the investments should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other payment out of 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 are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr and Mrs B wanted income with some growth with a small risk to their 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 their capital.
- The WMA 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 and Mrs B's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs B into that position. It does not mean that Mr and Mrs B would have invested 50% of their 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 and Mrs B could have obtained from investments suited to their objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

my provisional 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 that Lighthouse Advisory Services Limited pays the balance.

determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My provisional decision is that Lighthouse Advisory Services Limited should pay the amount produced by that calculation up to the maximum of £150,000 (including distress and/or inconvenience but excluding costs) plus any interest set out above.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Lighthouse Advisory Services Limited pays Mr and Mrs B the balance plus any interest on the balance as set out above.

I now invite the parties to let me have in writing any further submissions they may wish to make within one month. After this time I will issue my final decision.

Doug Mansell
ombudsman