

## complaint

Mr M has complained about the advice he was given by Reid Scott & Ross Limited ("the firm") in March 2009 to invest a large part of his pension provision in the Quadris Environmental Forestry Fund (referred to from now on as the Quadris fund.).

This fund is an unregulated collective investment scheme ("UCIS") investing in forestry plantations in Brazil. As it is now illiquid so that Mr M cannot sell any of his investment.

## Background

In March 2009 Mr M held a meeting with the business during which he was recorded as having a cautious attitude to risk. Mr M invested subsequently invested £180,000 (or 47% of his pension fund) in the Quadris fund

In June 2010 Mr M received an email from the business advising him to "pull-out" of the Quadris fund. However as the fund had been suspended by that time this was not possible.

Mr M" complained about the advice to invest in Quadris. This was not upheld by the business. He then complained to this service where the complaint was investigated by one of our adjudicators who upheld it because:

- The fund's literature said:
  - *"Investment in the Fund is only appropriate for those (who) can afford the loss of the whole of their investment and have no need for their investment to be liquid";*
  - *"Because there is not a recognisable market for investments which the Fund may make it may be difficult for the Fund to deal in any such investments or to obtain reliable information about their value or the extent of the risks to which such investments are exposed";*
  - *"The Fund will invest in markets which may be subject to regulation which is different from internationally recognised standards and investments in such markets may involve additional risk"; and*  
  
*"An investment in Shares should be considered high risk".*
- Mr M should not have been advised to invest more than a very small proportion of his pension money in a fund that was high risk, illiquid and specialised. In the event, the firm advised him to put 47% of his pension money in it.
- The adjudicator said what the firm should do to put matters right.

Neither the firm nor Mr M made any further submissions. Mr M's complaint has therefore been passed to me for a decision.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The firm had a duty to ensure that any advice it gave Mr M was suitable for him. It was not entitled to advise him to do anything that he may have said he *wanted* to do; had an interest in doing or agreed to do, unless it had first satisfied itself that it was suitable for him.

The suitability of this fund does not depend on what Mr M knew or was told about its risks and the way it operated. Suitability largely depends on whether, or to what extent, Mr M could afford to lose money in the investment and whether it met his attitude to risk and his overall circumstances.

I agree with the adjudicator that Mr M could not afford to lose 47% of his pension money. The fund's literature makes clear that it was high risk. Investors could lose all of their capital.

Mr M was initially advised to invest 12% into this fund and I have not been presented with any information that would suggest a valid reason for increasing this to 47%.

The adjudicator pointed out that the regulator, the Financial Conduct Authority, has concerns about this type of fund. It has stated that they should only have been marketed to specific types of investor. Whilst I appreciate that Mr M would be classified as a high net worth individual; in my opinion he did not have investment experience and was not in a position to bear significant losses. But even if he was able to meet these requirements those investors should have had only a relatively small part of their money invested in UCIS's. Indeed as pointed out by the adjudicator the regulator has stated that UCIS funds

*“are generally regarded as being characterised by a high degree of volatility, illiquidity or both – and therefore are usually regarded as speculative investments. This means that in practice they are rarely suitable for more than a small share of an investor's portfolio.”*

Mr M was recorded with a “cautious to moderate” attitude to risk and I agree with the adjudicator that the advice to put a large part of his pension money into the Quadris Environmental Forestry Fund was unsuitable.

I also agree that the adjudicator's proposals on how to compensate Mr M are appropriate in the circumstances of this case.

### **fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put

Mr M as close to the position he would probably now be in if he had not been given unsuitable advice.

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

### **what should Reid Scott & Ross Limited do?**

To compensate Mr M fairly, Reid Scott & Ross Limited must:

- Compare the performance of Mr M'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.

If there is a loss, Reid Scott & Ross Limited should pay such amount as may be required into Mr M'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 Reid Scott & Ross Limited is unable to pay the total amount into Mr M's pension plan, it 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 M's current marginal rate of tax.

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

investment name	status	benchmark	from ("start date")	to ("end date")
Quadris Environmental Forestry Fund	still exists	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 of my decision

### ***actual value***

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

My aim is to return Mr M to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation.

### ***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, Reid Scott & Ross 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.

### **why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr M 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 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 M'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 M into that position. It does not mean that Mr M 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 M could have obtained from investments suited to his objective and risk attitude.
- Mr M has not yet used his pension plan to purchase an annuity.

### **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 Reid Scott & Ross Limited should pay Mr M the amount produced by that calculation – up to a maximum of £150,000 plus any interest set out above.

If Reid Scott & Ross Limited does not pay the recommended amount, then any investment in the Quadris Environmental Forestry Fund (which is currently illiquid) should be retained by Mr M. This is until any future benefit that he may receive from the investment together with the compensation paid by Reid Scott & Ross Limited (excluding any interest) equates to the full fair compensation as set out above.

Mr M should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

Reid Scott & Ross Limited should provide details of its calculation to Mr M in a clear, simple format.

**recommendation:**

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

Mr M should give an undertaking to the business so that if in future the investment in the Quadris Environmental Forestry Fund is sold it will be necessary to determine that part of the loss that has not been redressed. I will refer to this as the unredressed loss. If there is no unredressed loss then the amount realised on the sale of the investment in the Quadris Environmental Forestry Fund should be returned to the business after making appropriate allowance for any tax that Mr M will be required to pay.

If there is an amount of unredressed loss then this should be met first from the proceeds of the sale of the Quadris Environmental Forestry Fund.

If after meeting the shortfall of any unredressed loss there are funds remaining after the sale of the investment in the Quadris Environmental Forestry Fund then Mr M should return this to the business after making appropriate allowance for any tax that he will be required to pay.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr M to accept or reject my decision before 29 February 2016.

Adrian Hudson  
**ombudsman**