complaint

Mr and Mrs D's representative complains on their behalf that Intrinsic Independent Limited recommended an investment that exposed their capital to more risk than they were willing to take.

background

Our adjudicator recommended the complaint should be upheld. He concluded that the funds recommended by Intrinsic's adviser were not suitable for Mr and Mrs D. He considered they had a limited investment experience and the underlying funds were too strongly focussed on equities and property. He suggested that in order to compensate Mr and Mrs D, Intrinsic should compare the performance of their investment against a suitable benchmark and pay them any resulting loss.

Intrinsic did not agree with the adjudicator's findings. It said Mr and Mrs D had a history of investing in a range of assets and were aware of the risks of investing in the recommended funds. They were willing and able to accept those risks.

As no agreement could be reached, the complaint has been referred to me to review.

my findings

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

Where evidence is incomplete, inconsistent or contradictory (as some of it is here), I have to assess the evidence on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

The adviser collected details of Mr and Mrs D's circumstances at a meeting in September 2007. Around a week after that meeting, Mr and Mrs D applied for the investment and a few days later the adviser sent them a report explaining the reasons for his recommendation.

In the report, the adviser makes a number of references to Mr and Mrs D's previous and current investments. I am concerned that none of these were detailed in the record of the initial meeting despite the intention being for Intrinsic to gather information about Mr and Mrs D's circumstances on which to base a recommendation.

I don't think it is right to dismiss this lightly as Intrinsic has sought to do by saying Mr and Mrs D did not declare the information. If they had not done so I have to wonder how the adviser would have known to refer to it in his report. Equally, if they had declared it, I would expect to see a record of it on the fact find the adviser completed at the initial meeting. Unfortunately, Intrinsic has been unable to obtain any comments from the adviser to explain this discrepancy. Mr and Mrs D have not commented about this either.

On balance, I am therefore not satisfied there is sufficient evidence for me to safely conclude Mr and Mrs D were experienced investors.

There are also a number of inconsistencies in the evidence presented by Intrinsic about Mr and Mrs D's approach to investment risk:

- the fact find records Mr and Mrs D's approach to risk for investments as 100% "*low*";
- Mr and Mrs D also completed a questionnaire with the adviser to determine their approach to taking a risk with their capital for a potentially better return. Based on the answers they provided the adviser concluded they were "*Low-Medium Risk*" investors. Later in the questionnaire, he describes their approach as "*cautious to moderate*";
- in the report setting out his recommendations the adviser says "*you are prepared to accept an average level of risk*". He appears to have based this change on Mr and Mrs D's apparent reluctance to invest in fixed interest assets – preferring to invest in equities, which are generally regarded as more volatile and presenting more risk of capital loss.

I have not seen other evidence to support such a significant change in Mr and Mrs D's approach to risk over a short period of time (a matter of a few days). So it is difficult to be certain what level of risk Mr and Mrs D were comfortable with. It seems most likely they were not willing to accept very much risk.

Using the approach to risk from the questionnaire, the adviser recommended a portfolio of asset classes that would be appropriate for Mr and Mrs D. But when making his final recommendations, he did not follow the portfolio profile he had agreed best suited them.

Overall, I'm not persuaded the funds recommended by the adviser were consistent with the information he had recorded at the two meetings with Mr and Mrs D about their approach to risk. So, having considered all the available evidence, I find the recommendation to invest in the bond was not suitable for Mr and Mrs D's needs or objectives.

fair compensation

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

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

To compensate Mr and Mrs D fairly, Intrinsic must

compare

- the performance of Mr and Mrs D's investment

with

- the position they would now be in if 50% of their investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the FTSE WMA Stock Market Income Total Return Index ('WMA income index')

If there is a loss, Intrinsic should pay this to Mr and Mrs D.

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

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to their capital. It does not mean Mr and Mrs D would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to the capital.

The WMA income index (formerly the APCIMS income index) is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. I consider it to be a fair measure for a consumer who was prepared to take some risk to get a higher return.

Mr and Mrs D's risk profile was in between, as they were prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mr and Mrs D could have obtained from investments suited to their objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr and Mrs D into the position they would have been in had they received appropriate advice.

how to calculate the compensation?

The compensation payable to Mr and Mrs D is 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 *actual value* is the value Mr and Mrs D will receive if they terminated the investment on the date of my decision.

To arrive at the *fair value,* Intrinsic should work out what 50% of the original investment would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date of investment to the date of my decision and apply those rates to that part of the investment, on an annually compounded basis.

Intrinsic should add to that what 50% of the original investment would be worth if it had performed in line with the WMA income index from the date of investment to the date of my decision.

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

Any withdrawal or income payment that Mr and Mrs D received 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 are a large number of regular payments, to keep calculations simpler, I will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

my final decision

For the reasons given, my final decision is that I uphold the complaint. I direct Intrinsic Independent Limited to pay Mr and Mrs D the amount calculated as set out above.

If my award is not paid within 28 days of Intrinsic Independent Limited receiving notification Mr and Mrs D have accepted my decision, simple interest is to be added at a rate of 8% gross a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

James Harris
ombudsman