Financial Ombudsman Service

complaint

Mr L complains an adviser from Bob Little & Co Ltd (who I'll call "Mr R") gave Mr L poor advice from 2003 onwards, and particularly in October 2010.

background

Mr L told us:

- In 2003, he wanted to remortgage his UK property and borrow £15,000 for home improvements. Mr R persuaded him to borrow as much as he could, and invest the extra money (some £31,500) in various different products. Mr R told him he would earn 12% per year on his investments, but only pay 5% or 6% per year in mortgage interest.

- Over the next few years, he invested more money. The subsequent investments were all on Mr R's advice, and Mr L believed he would earn 12% per year on all of them.

- In October 2010, he met Mr R to discuss his retirement planning. He wanted to know if he could afford to retire a few months later in March 2011. Mr R told him that if he invested more money into his portfolio (taking the total investment up to £180,000) he would be able to withdraw £1,500 to £2,000 per month. Mr L believed that withdrawals at that level would allow him to maintain the "status quo". In other words, Mr L says that after taking Mr R's advice he believed his investments would consistently return 10% to 13% per year.

- Mr L's investments didn't perform as well as he expected. In June 2012, the poor performance of the investments forced him to take an equity release mortgage on his UK property.

I issued a provisional decision on this complaint in July 2015. Briefly, I said:

- I can't consider Mr L's complaint about anything that happened before January 2006 – because Bob Little & Co Ltd isn't responsible for Mr R's actions before that date.

- So far as the advice given after January 2006 was concerned, I didn't think Mr R or Bob Little & Co Ltd had done anything wrong. I was satisfied that Mr L wanted to take a high risk with his money, and that Mr R had given him suitable advice.

- I didn't think Mr R had misled Mr L about the returns he could expect from his investments. Mr L was a very experienced investor, and over the years he would have seen significant fluctuations in the value of his portfolio. In 2010, I thought he would have known it was impossible to achieve returns of 13% without taking significant risk.

- Overall, I thought Mr R had made clear that he was giving advice about high risk investments, and that Mr L had understood that returns were not guaranteed.

Bob Little & Co Ltd accepted my provisional findings, but Mr L did not. He said:

- Although he signed the "*attitude to risk*" paperwork, it was filled in by Mr R, under Mr R's advice and direction.

- Mr R initially said Mr L was a "*moderately experienced*" investor, but later wrongly recorded that Mr L was now an "*experienced investor*". If he really had been an experienced investor, he wouldn't have needed help from a financial adviser. He noted that the Financial Ombudsman Service's own guidance says that firms sometimes wrongly classify investors as "*experienced*" in an attempt to justify poor advice.

- Risk profiling methods have limitations, which advisers should be aware of. Mr R did not make any reference to Mr L's capacity for loss, only his attitude to risk. His capacity for loss was ignored.

- Our guidance also notes that people may have different needs at different stages of their life. Mr L's needs own needs changed over the time Mr R advised him, and Mr L is surprised I did not mention that in my provisional 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. I have also taken into account all relevant law and guidance. Having done so, I have come to the same conclusions as I did in my provisional decision, for the same reasons.

Even very experienced investment professionals will sometimes seek advice from others. Mr L was not an investment professional, but I don't think his decision to seek advice from Mr R automatically implies that he was an inexperienced investor. By 2010, Mr L had invested in high risk products for many years – and Mr R knew that.

Mr L is right to say that firms sometimes wrongly classify consumers as experienced investors. But in Mr L's own case, by 2010 I'm satisfied that he *was* an experienced investor. He was not an experienced investor when he first met Mr R, but over time Mr L's experience increased.

I remain satisfied that Mr L was prepared to take a high risk with his money. Financial advisers often complete forms for their clients, but regardless of who completed the paperwork it is very difficult for me to ignore Mr L's signature.

I still think it highly unlikely that Mr R would have told Mr L in 2010 or 2011 that Mr L's investments would consistently return 10% to 13% per year. Even if Mr R had said that, given Mr L's investment experience I don't think Mr L would have believed him.

Mr L's situation in 2010 and 2011 wasn't the same as his situation in 2003. But the documentary evidence records that he still wanted to take a high level of risk. The paperwork doesn't use the term "*capacity for loss*", but it does talk about "*affordability*" – a very similar concept, but expressed in ordinary language rather than financial jargon. I'm satisfied that Mr R considered whether his recommendations were affordable for Mr L, and that Mr L confirmed they were.

In Mr L's particular circumstances, bearing in mind his previous investment experience, I remain satisfied that Mr R's recommendations were suitable for Mr L.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 October 2015.

Laura Colman
ombudsman