DRN-3841759

The complaint

Mr G and Mrs H have complained about the advice they received from (the predecessor business of) ReAssure Limited ('ReAssure') to invest £250,000 into an Investment Bond.

Mr G and Mrs H are being represented by a third party in bringing their complaint but for ease of reading, I shall refer to 'Mr G and Mrs H' in my decision.

What happened

In 2005 Mr G and Mrs H were advised by ReAssure to invest into an Investment Bond for income and inheritance tax planning.

The Investment Bond was surrendered on 6 June 2008. Mr G and Mrs H were concerned whether the Investment Bond was suitable for them and raised a complaint with the predecessor business of ReAssure. The predecessor business of ReAssure responded to the complaint on 5 August 2008 not upholding it.

In 2011 the predecessor business of ReAssure reviewed the sale of the Investment Bond and made an offer of compensation. Mr G and Mrs H were unaware of the offer, so it wasn't accepted. The complaint was closed.

ReAssure doesn't have any detailed records of the 2011 offer and won't carry out a further review of the sale for which Mr G and Mrs H would like compensation. It closed its file on the complaint as Mr G and Mrs H weren't able to provide any further information about the offer. Mr G and Mrs H brought their complaint to this service. Our investigator who considered the complaint didn't uphold it. They said;

- ReAssure couldn't locate the correspondence and offer made in 2011. It had contacted the predecessor business who couldn't trace any review or offer.
- The Investment Bond wasn't in force when ReAssure took over the predecessor business in September 2020 so there weren't any documents in relation to the 2011 offer.
- The investigator didn't find it unreasonable for ReAssure not to be able access to the documents from the complaint in 2008. And because of that they were unable to form an opinion as to whether the Investment Bond was mis-sold.
- The investigator couldn't find ReAssure responsible for Mr G and Mrs H not receiving the offer made.
- If more information came to light, they said we may be able to re-look at the case.

Mr G and Mrs H responded to say that while all of the paperwork might not be available, it's clear the Investment Bond was mis-sold to them and should be investigated. They didn't have any record of the 2011 offer as they were unaware of it. And as there was no evidence to show that decision was ever made or sent to them, the sale of the Investment Bond should now be investigated. As ReAssure has accepted it should have sent a compensation offer its clear the Investment Bond was mis-sold. The product wasn't suitable for them.

In a submission to this service ReAssure said ‘As an offer of compensation was made in 2011, there is an argument to say that [the complainant] might have brought his complaint too late, however we recognise that the fact that the complaint was re-opened in 2011 and compensation offered would indicate the previous decision might have been overturned. In view of this, we are open to reviewing this case again and assessing the whole suitability of the plan.

Because ReAssure had given its consent to an assessment of the suitability and there was no evidence of referral rights to this service being given to Mr G and Mrs H in 2011 when the offer was made, the investigator then went on to consider the merits of the complaint. They said;

- They weren’t entirely convinced the sale was ‘proactively rereviewed’ in 2011 but took that information at face value.
- If an offer was made in 2011, they were persuaded this wasn’t received by Mr G and Mrs H as they were no longer living at the address recorded by the business.
- They couldn’t see that a final response had been issued in 2016 or after when ReAssure had been put on notice that a complaint was in progress. So, they couldn’t conclude that any time restrictions applied. And they couldn’t say for certain that any complaint about the suitability of the Investment Bond had been carried out. And which was a point also made by ReAsssure.
- There was difficulty in assessing the merits of the complaint because of the time since the sale in 2005.

From the information that was available, the investigator didn’t think ReAssure needed to take any action about the mis-sale. They said;

- Mr G and Mrs H were looking to invest £250,000 over the medium to long term. They had cash of around £507,000 because of the sale of a business.
- Mr G had some investment experience.
- Mr G and Mrs H were classified as having a cautious risk profile which didn’t seem unreasonable considering their assets, objective, time horizon, knowledge and experience.
- The investment was equally split between a cautious Distribution fund and a moderate risk Property fund. Their overall risk was aligned with a cautious risk profile. The investigator couldn’t review more information about this as it wasn’t available, but they didn’t think that because of Mr G and Mrs H’s circumstances they could conclude they were inappropriate for the type of investment.
- Mr G and Mrs H received a profit of £1,990.04 over the three years it was invested.
- Because of the lack of information and Mr G and Mrs H not doing more at an earlier stage to ensure they weren’t hindered by that; the investigator couldn’t find in the balance of probabilities in Mr G and Mr H’s favour.
- They appreciated the frustration about the 2011 offer but didn’t have any information to help confirm what it was and for what reason it was offered.
- They weren’t persuaded ReAssure had done anything wrong.

Mr G and Mrs H didn’t agree and made the following points;

- They had evidence that the property fund was a 'moderate' risk fund which confirmed a significant amount of risk.
- Mr G had only had one ISA investment of £7,000.
- The cautious rated Distribution fund included several risks such as exchange rates, fixed interest, sub-investment grade corporate bonds, smaller companies, and property. A 2006 illustration showed the assumed investment growth rate of the Property fund was 5.5% and the Distribution fund was 6.0% which reinforced the point that the Distribution fund had a significant level of risk in order to achieve that growth rate.
- They couldn't agree that the investment was suitable. For Mr G he was making an investment 35 times larger than the one single tax efficient ISA and the funds invested into posed a significant risk.

As Mr G and Mrs H's comments didn't change the investigator's view, they asked that the complaint be considered by an ombudsman, so it has been passed to me.

What I've decided – and why

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

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

I should first that I don't find it surprising there is limited paperwork from the time of the sale or the 2011 offer. The Investment Bond had been surrendered by the time that ReAssure took over the predecessor's business in 2020 and businesses aren't obliged to keep paperwork indefinitely in any event.

However, Mr G and Mrs H have been able to provide the paperwork from the point of sale in 2005. These include the application form for the Inheritance Loan Trust (within which the investments were held), the 'welcome letter', the key features of the Investment Bond and the Personal Financial Review all of which I have reviewed in reaching my decision.

Mr G and Mrs H's circumstances.

The Personal Financial Review documents state the following;

- Mr G was aged 52 years and Mrs H was 47.
- It's recorded that the literature given to Mr G and Mrs H included the key features document, the risk brochure, risk meters, funds directory, structured product literature and a with profits comparison chart.
- Mr G and Mrs H's needs and priorities were identified as being inheritance tax planning and a capital investment for income and capital growth.
- Mrs G was only included in the personal financial review for identity purposes, and she didn't take part in the review. Mr G and Mrs H kept their finances separate but Mrs H was acting as trustee for the Investment Bond. So, most of the information recorded in the Personal Financial Review relates to Mr G.
- Mr G was self-employed and just starting up a new business after selling the previous one. His annual income was £40,000 and he had excess monthly income

over expenses of around £1,600.

- It's noted that a lump sum of just under £630,000 would be required in the event of Mr G's death.
- It's recorded that Mr G understood the risk to capital, was comfortable with the level of equity exposure within the funds chosen, the difference between index and active funds, with profit bonuses, the need to spread assets, any special conditions that applied, comfortable with medium to long term investment for a minimum of five years.
- Under the 'soft facts' section it says that Mr G had 'stated that [he] had previously invested in many types of investment through [a high street bank] and you understood the benefits of diversification with regards to products and product providers. When you had a mortgage it was on a capital repayment basis so as to have it cleared at the end of the term, you have never taken any risks with your property. You have invested in both deposits and asset back investments to maximise growth potential. You have your own personal pension plan with [a high street bank]. You do not recall the fund chosen or the risk associated with the fund. You have invested into the stock market via your Isa allocation to maximise tax breaks within the Isa's to provide a variety of funds, although these investment funds have not been disclosed. You understand the potential gain and loss associated within stocks and shares, but by retaining a large amount on deposit this has reduced the risk overall portfolio. It is important to you to minimise income tax as you are a higher rate tax payer. For this reason you have fully funded your Isa allowances each year.'
- There was £507,100 held in cash, and £12,000 in an ISA which was invested for growth with a moderate risk and had been held for around four years.
- Four risk ratings are explained – from minimal, moderate, cautious, and high. With the exception of the ISA being recorded as a high risk investment, all other cash was classified as minimal risk. Including his house, Mr G had assets of £881,000 which would give rise to inheritance tax of £247,000.
- Mr G's current portfolio was recorded as being of a minimal risk and the revised portfolio would be cautious. He was 'prepared to go higher than this to achieve your objectives'.
- Mr G wanted to retain £269,000 in cash and invest £250,000 with a cautious attitude to risk. He was to invest into an Investment Bond.
- There is a section of 'notes' which includes the following – 'You stated that you feel that you have a very good understanding of investments in general and the markets. You feel that interest rates are flat and will probably remain so with little room for improvement. You have been to numerous providers of investments including banks and you feel that a deposit account would not do what you want and being a higher rate tax payer would not be beneficial. You wished to invest in a product that could be used in inheritance tax planning and could be put in trust for your 2 children. You feel that investing directly into equities could be risky as the markets are stable now but could turn volatile at any moment. You know that fixed interest securities are suitable for providing a stable return but rates are not as attractive as they were. You thought that commercial property sector was a good market to be in to give the potential for good returns are stable and diverse. You stated that inheritance tax reduction is your main priority and want to invest £250,000 as long as the risk within the investment did not go too high.'

I don't think it unreasonable for me to rely on the information recorded in the Personal Financial Review as it was taken at the time of the sale. And I am mindful that it is nearly 20 years since the sale and memories can and do fade. I note that Mr G signed and dated the documents. If what was recorded wasn't right, Mr G had the opportunity to correct it. And I think it's reasonable for ReAssure to have relied on what it was told by Mr G at the time. So, while Mr G has now said that he didn't have much investment experience or knowledge of investments, the soft facts and other notes recorded at the time of the sale suggest to me that he did have an active interest in stock markets, property and interest rates.

Attitude to risk.

For this investment, Mr G's attitude to risk was recorded as being cautious. I have considered how this came about and how ReAssure made Mr G aware of the varying levels of risk implicit in different investments, particularly bearing in mind that he was seeking advice because he didn't have the knowledge or experience to make such an investment unaided. So, ReAssure needs to demonstrate that it gave suitable advice taking into account Mr G's circumstances, understanding and knowledge after ascertaining his attitude to risk.

Because of the lack of information from the time of the sale, I'm not convinced that ReAssure has been able to show how it came to the conclusion that Mr G was a cautious investor but overall I think this was most likely discussed and agreed. And I note that its recorded he was provided with the key features document, the risk brochure, risk meters, funds directory, structured product literature and a with profits comparison chart. So, taking into account his ability to understand investment risk and clarification of his experience or knowledge to under the risk involved, I think Mr G reasonably understood the risk of the investments.

I say this because of the 'soft facts' that were recorded and repeated above – about Mr G's interest and knowledge in the stock market, interest rates and property plus his lack of desire for direct equity investing. And I also note that ReAssure's four levels of risk categories were quoted in full in the Personal Financial Review. For the cautious risk profile, it says;

> 'You are looking for the potential of a return in excess of cash deposits but capital security is an important concern. You are willing to invest in non-cash assets and are comfortable that there may be some exposure to the stock market. You accept that your money is not guaranteed, the value of your investments will vary and your investment potential may be restricted.'

So, taking all of this into account, I think the levels of risk implicit in investments were explained to and discussed with Mr G and he was content to expose his investment money to a cautious level of risk in order to achieve the potential for capital growth and income over the medium to long term.

The advice

While I'm satisfied it was most likely the case that Mr G's attitude to risk was assessed by the adviser, I've considered whether what was recommended to him was right for his circumstances and financial objectives. And I've borne in mind that this was a new lump sum available to him after selling a business and there's no record of him dealing with such a large sum before.

But as mentioned above, its recorded that Mr G wanted to invest for inheritance tax mitigation purposes and his investment objective was for the potential for capital growth in excess of cash deposit returns and with an income stream. So, it seems likely that Mr G did want to explore the opportunity to make his money grow more than it would have done in a savings account. Taking everything into consideration I'm persuaded it was most likely Mr G was willing to take some risk with his money.

Mr G has said the investments recommended exposed him to too much risk. The property fund was risk rated by ReAssure as being of a moderate risk. And that the investment growth return of the cautious rated distribution fund of 6% suggested it posed a significant risk.

While Mr G has provided us with some details of the funds from a year or so after he invested, I'm not able to review in any great detail the investments held within both funds to form a more accurate opinion and so I have to take ReAssure's risk ratings at face value. But I think it's clear from the information recorded in the Personal Financial Review that Mr G was happy with property investment – in particular – and wanted a better return than he would receive from cash deposits. And I've also borne in mind that Mr G retained a significant amount of his cash on deposits – just under £270,000.

The retention of this large sum is recognised by the adviser as being important for the portfolio overall as 'by retaining a large amount on deposit this has reduced the risk overall [of the] portfolio.' So, I don't agree with Mr G that the advice he received exposed him to a higher level of risk than he was prepared to take. And there's nothing to suggest to me that the risk he was exposed to was too high risk for him taking into account his overall circumstances.

I don't think by making the investments was unreasonable advice. Mr G was aware of stock market investment and the risks implicit in that. And those stock market investments would allow him to see the benefits of that type of asset while limiting the impact on his overall financial standing were those risks to materialise. But in order for him to do so, I would expect to see that all of the options and risks were clearly explained to him.

While the information I have to consider is limited, I think it was more likely Mr G was given sufficient information for him to be aware of the varying levels of risks and potential rewards implicit in different types of stock market investments. And I'm satisfied he was made aware of the alternatives that were available to him. Over and above anything he was told by the adviser, Mr G himself refers to the fact he had 'been to numerous providers of investments including banks and you feel that a deposit account would not do what you want and being a higher rate tax payer would not beneficial.'

However, I do appreciate that there were probably lower than cautious risk options available to Mr G and Mrs H at the time that could have potentially offered them, and the trust, better returns than savings. But my role isn't to re-visit the advice that they were given and what other options were potentially available to them. Rather it's to consider whether the advice that was given to Mr G and Mrs H was suitable for them at the time and as identified prior to the investment and whether it was sufficiently explained to Mr G.

Taking all of the above into consideration, and in the individual circumstances of this complaint, I don't find that the advice given to Mr G and Mrs H was unsuitable bearing in mind Mr G's personal and financial circumstances, his requirements for the trust, his attitude to risk and his investment requirements. Based on the limited information that is available to me and in the particular circumstances of this complaint, it follows that I don't uphold Mr G and Mrs H's complaint as I haven't seen sufficient evidence to show that the investments recommended were unsuitable or exposed Mr G and the trust to a too high level of risk.

Overall, I don't find the risk Mr G and Mrs H – within the trust – was too high risk for the trust's objectives. No doubt Mr G and Mrs H will be disappointed with my conclusion, but I hope I have been able to explain how and why I have reached it.

My final decision

For the reasons given above, I don't uphold Mr G and Mrs H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G and Mrs H to accept or reject my decision before 3 November 2023.

Catherine Langley
Ombudsman