**AMF Ombudsman's Blog of 1 September 2019**

**The challenge of recommending a suitable financial product for the client's specific situation**

Proposing a suitable financial instrument for the specific situation of their client is a major challenge for distributors advising their customers. If the instrument is not suitable, there can be harmful consequences, as illustrated by the case I am describing this month.

**The facts:**

In 2016, after inheriting some money, Mrs R. requested an appointment with an adviser from her financial institution in order to invest her money wisely.

Mrs R. had no investment experience and during the appointment, she asked that all the money from her inheritance should be invested in a completely secure, liquid investment, as this inheritance was the only asset she had.

She was then advised to put the whole of her inheritance into a “dividend” real estate investment company (“SCPI”) on the grounds that it would be more profitable than any other investment.

When she made this investment, Mrs R. was receiving an allowance as she is recognised as having a disability greater than or equal to 80% by the Commission on the Rights and Independence of Disabled Persons ('CDAPH'). However, due to the quarterly income from the SCPI, the amount of this allowance decreased automatically and significantly, by an amount exceeding the income generated by the investment.

One year after making her investment, Mrs R. therefore requested the redemption of her units, incurring a loss estimated at €5,000 when she did so.

She therefore contacted her financial institution to obtain compensation for the loss incurred. The institution agreed to pay her the sum of €500, as a discount.

Mrs R. considering this gesture insufficient in light of the damage sustained and therefore referred the matter to me.

**Investigation:**

Following a careful examination of this investor's request and having discovered, based on the evidence, that the only income she had was that from the disability allowance she was receiving, I questioned the institution in order to obtain information on the following points:

* whether the investment service provider had acted honestly, fairly and professionally, with due skill, care and diligence, in the best interests of its client;[[1]](#footnote-1)
* whether the investment services provider had checked that the proposed and recommended SCPI was suitable in view of this client's financial situation and her experience in and knowledge of financial matters, and did actually correspond to her needs and objectives;[[2]](#footnote-2)
* whether Mrs R. had been provided with appropriate information concerning the risks entailed in this investment.

The financial institution was unable to provide me with the requested information, but it did confirm that it had made an initial commercial gesture amounting to €500, which corresponded to the difference between the reduction in the disabled adult allowance paid to Mrs R. and the income generated by the SCPI during the single year of ownership.

**Recommendation:**

It seemed to me that this gesture was insufficient to compensate fully for the prejudice sustained by Mrs R.

I therefore went back to the financial institution to which I presented my analysis: given that the prospective return could not be guaranteed in the future, and therefore be sufficient to offset the loss of the regular income from her disabled adult allowance, Mrs R's desire to terminate this investment, and the resulting loss of €5,000, was an integral part of the prejudice she had suffered, in my opinion.

On account of the clear unsuitability of the product recommended to Mrs R. in light of her specific situation, and the lack of diversification in the allocation of Mrs R.'s capital in this case, given that the amount coming from this inheritance was her only asset, I recommended to this institution, which agreed, that it should propose a commercial gesture equivalent to the reimbursement of the loss incurred as a result of the redemption of the SCPI fund units, i.e. the sum of €5,000.

**Lesson to be learned:**

When marketing financial products and before providing suitable advice to their client, distributors must enquire about their client's:

* knowledge of and experience in financial matters;
* investment objectives;
* without forgetting to examine the consequences of such an investment for their specific financial situation. In this case, the circumstance that a regular additional income could cause the client to lose the benefit of her disabled adult allowance.

At the time of the facts, the applicable legislation was that resulting from the MiFID I Directive on Markets in Financial Instruments which established the obligation for investment services providers (ISPs) to submit a questionnaire on their clients' knowledge so as to be capable of recommending suitable products to them.

Since 3 January 2018, the effective date of the MiFID 2 Directive, the suitability test criteria have become more stringent and the Know Your Customer questionnaire must now also assess the client's risk tolerance and their ability to bear losses. Furthermore, ISPs who provide investment advisory services must now submit *"to clients, prior to the transaction, a statement of suitability on a durable medium in which is specified the advice provided and the extent to which it corresponds to the preferences, objectives and other characteristics of retail clients.”****[[3]](#footnote-3)[1]****.*

1. Article 313-3 of the AMF General Regulation, in its version applicable at the time of the facts (in this case 2016) [↑](#footnote-ref-1)
2. Article L 533-13 of the Monetary and Financial Code, in its version applicable at the time of the facts (in this case 2016) [↑](#footnote-ref-2)
3. [1] Article L. 533-15 of the Monetary and Financial Code [↑](#footnote-ref-3)