

The complaint

Mr C complains he was given unsuitable advice to invest in an investment bond by Abbey Financial Services (N.I) Ltd (“AFS”).

What happened

In May 2016 Mr C and his wife Mrs C were provided with an investment memorandum and brochure about the Helix Investment Bond (“the bond”) by someone who had been introduced to the bond by Mr M of AFS.

Mrs C emailed Mr M to discuss the bond and a meeting took place at AFS’s offices on 24 June 2016 between her, Mr C and Mr M. Mr C then invested £120,000 into the bond in September 2016.

According to the information memorandum I have seen, the way the investment worked was that Helix issued tranches of Euro Medium Term Notes (EMTNs) - debt securities - with each tranche having a specified duration and being redeemable on maturity. Each tranche provided fixed coupons and in Mr C’s case the interest rate payable annually in arrears was 9.85%.

Helix used investor money to purchase promissory notes issued by Privilege Wealth under the terms and conditions of a loan and ongoing finance agreement. Privilege Wealth conducted lending activities in the USA and the investor money paid by Helix to it were to be used by Privilege Wealth to provide short term loans and revolving lines of credit in the USA.

The documentation refers to investment managers insurance with capital protections for 95% of the capital invested.

Mr C received the interest payment due in 2017 but not the interest due in the following year. Administrators were appointed in respect of Privilege Wealth in the first part of 2018. The administration ended in February 2020 with no significant money having been recovered for investors, and the court ordered the company be wound up on 12 February 2020.

Mr C complained to AFS when he didn’t get the interest payable in 2018 and Mr M responded saying he hadn’t provided advice. On referral to our service a jurisdiction issue arose as it was argued that Mr M wasn’t acting on behalf of AFS at the time and hadn’t provided advice.

The matter was referred to me to decide if we did have jurisdiction and as I was satisfied that Mr M had provided advice and that Mr C was a customer of AFS’s at the time I decided that we did have jurisdiction to consider the merits of the complaint.

One of our investigators provided her opinion on the merits of the complaint and thought it should be upheld. In summary she made the following findings:

- There is no fact find to confirm Mr C’s circumstances at the time of advice, but it isn’t unreasonable to accept what he has said about his priority being securing his children’s financial future.
- Mr C may have been a high net worth individual but there is no evidence he was knowledgeable about investments like the bond.
- Based on what he has said his circumstances were at the time he wouldn’t have wanted to risk investing so much of his capital in such a high-risk investment as the

- bond unless he had been assured of its security.
- It's not difficult to conclude he wouldn't have wanted to risk his money given his priority was his children's future.
 - The brochure guaranteed an annual return of 9.85% and stated 95% was insured against loss but Mr C was likely persuaded to invest because Mr M said he had invested in the bond after carrying out his own research.
 - It has been established that Mr C wasn't aware the bond was unregulated at the time of investment so probably was unaware it didn't have the protection a regulated product would have, such as the ability to claim from the Financial Services Compensation Scheme (FSCS) if the investment failed.
 - It's not likely Mr C would knowingly have invested in a scheme which didn't provide such protection given his priority was his children's future.
 - It's fair to conclude that Mr C relied on the advice of Mr M in making the investment.
 - There is no evidence AFS explained to Mr C he could lose all his money because of the nature of the investment.
 - AFS didn't ensure the bond was suitable for Mr C.

In response to the investigator's opinion AFS, in short, made the following key points:

- It is disappointed that our service continues to get basic facts surrounding the case wrong.
- Mr C didn't have various insurance products with it as stated, he had a whole of life (WOL) plan taken out in 1968 from a firm it took over.
- The investigator has stated that because of the pre-existing relationship it is understandable Mr C would have been comfortable approaching it, which is tenuous at best.
- Mrs C didn't at any point speak to AFS about pension advice as the investigator has suggested.
- Any previous relationship appears to have been exaggerated.
- It is concerned about such errors given the original investigator found our service didn't have jurisdiction and this was then reversed with no new evidence being provided.
- It wants the ombudsman to review the complaint taking into account this was a client led process with no evidence of advice/suitability reports etc.
- It is unfair to lay 100% of the blame on AFS, but in an attempt to resolve matters amicably, it has made an offer to Mr C on the basis that if he hadn't spoken to Mr M it is likely he would have taken some risk and invested one third of his money into the bond.
- It considers the offer is fair given there is no documentary evidence that advice was given, and the situation was commenced and driven by the client.

As Mr C didn't accept the offer put forward by AFS the matter was referred to me for review and I issued a provisional decision, the findings from which are set out below.

"I have previously decided that we have jurisdiction to consider this complaint on the basis that Mr C was provided with advice about the bond and was a customer of AFS for that purpose. The crux of this complaint is whether the Mr C should have been advised to invest in the bond.

I note that AFS has made reference to my decision on jurisdiction reversing the previous opinions of investigators, which stated the opposite, without further evidence. It is the role of an ombudsman to review matters when a party doesn't agree with the opinion of an investigator. There is nothing unusual or untoward in an ombudsman coming to a different outcome to an investigator as AFS infers, whether on jurisdiction or merits. I have made my decision on jurisdiction and I am considering the merits of this complaint.

AFS has also referred to factual errors in the merit opinion of the investigator. Although I am not persuaded that any factual errors made by the investigator have a bearing on the outcome of this complaint, I will briefly comment on what AFS has said about this.

AFS has referred to the relationship between it and Mr C having been exaggerated because the investigator has referred to him and Mrs C already being customers of AFS and having various insurance products through it.

I accept what it has said about Mr C only having a long-standing WOL plan with it - which it took on responsibility for from a previous firm - and that its only other interaction with him was in relation to the bond.

I don't think Mr C has sought to mislead us about his relationship with AFS. He has referred to having obtained car insurance over many years from a business that operates at the same address as AFS. He seems to have assumed that there was some link with AFS when, having checked the financial services database provided by the regulator, I am satisfied these are separate businesses.

However, I think his misunderstanding wasn't deliberate and was understandable given the names of the two businesses and the fact they operated out of the same premises. I note the investigator placed some significance on the supposed pre-existing relationship – she suggested this meant Mr C was comfortable approaching AFS. However, Mrs C asked for a meeting with Mr M so she and Mr C could discuss the bond with him and having done so there is no reason to think they wouldn't then have relied on what was said, regardless of any previous relationship.

AFS has said that at no time has it offered Mrs C pension advice. It may be that there is some confusion about what was meant by 'pension advice'. I have seen an email from a colleague of Mr M's at AFS to Mrs C dated 6 September 2016 which is headed "Review of ISA and Pension portfolio". The email advises her about not switching some funds and giving two other funds a further quarter and consider fund switches after that if there isn't improvement. In the circumstances I am satisfied that AFS provided advice in relation to the funds within the pension portfolio.

In any event, whether AFS advised Mrs C about her pension has no bearing on what I need to decide in this complaint, namely whether Mr C should have been advised to invest in the bond. If advice is given, as it was in this case, then the advice must be suitable for the client. Having considered the limited evidence available I am not satisfied that it was.

The rules under which AFS operated at the time, as seen in the FCA's 'Handbook', set out what needs to be considered when providing advice. In short AFS needed to obtain the necessary information regarding Mr C's; knowledge and experience in the investment field relevant to the specific type of designated investment; his financial situation; his investment objectives.

AFS had to obtain the information necessary to have a reasonable basis for believing that the transaction recommended met Mr C's investment objectives, that he could bear the financial risk and had the necessary experience and knowledge to understand the risks involved.

In this case, AFS didn't have the necessary information about Mr C because he wasn't asked to provide this. So, there is no fact find or suitability report available that provides information about Mr C's circumstances. I understand that this is because Mr M didn't consider he was providing advice, but the rules don't cease to apply because Mr M mistakenly believed he wasn't providing advice.

The rules go on to state that if a firm doesn't obtain the necessary information to assess suitability it must not advise on an investment. So, it was in breach of the rules in advising Mr C about investing in the bond and shouldn't have given such advice.

I have considered whether the bond was suitable for Mr C in any event based on what he has said about his circumstances, which evidence I accept. He has said that the £120,000 he invested in the bond was a lump sum he accepted as part of a retirement voluntary exit scheme offered by his employer in 2015 which also included a reduced pension. He was 67 years of age at the time and 68 at the time of advice.

Mr C said he and Mrs C decided to invest the lump sum to help provide money for their children's educational needs. He said that his and Mrs C's attitude to investing is governed by 'fear of losing their money' and that traditionally they leave money on deposit. He explained that it was because interest rates were so low that they decided they should invest instead. Mrs C was still working, and Mr C has said that between his pension and her income their day to day spending needs were met.

Given Mr C's age, the fact he had children that were due to enter further education and the fact that the money he was investing was the lump sum from his pension I think it is reasonable to accept what he has said about his objective and that he wouldn't have wanted to take any significant risk with his money.

I have seen nothing that suggests that Mr C had any previous experience of investing in an unregulated product like the bond such that he would have understood the risks of such an investment. Given his circumstances I am not satisfied that this was a suitable investment for him.

I have also considered what AFS has said about the investment being client led. I acknowledge that Mr C was aware of the investment and had seen the brochure and investment memorandum before AFS was contacted by Mrs C asking for a meeting to discuss the bond. I also acknowledge that the advice that Mr M did give was very limited and Mr C chose to proceed without sight of a suitability report or anything in writing from the adviser about the investment.

However, whilst it is possible Mr C would have gone ahead in any event regardless of any advice given by Mr M I am not persuaded that it is more likely than not he would have done so. In other words, I am satisfied that Mr C invested in reliance on the advice he was given by Mr M and that if Mr M hadn't provided advice he wouldn't have invested in the bond. I note AFS offered to resolve the complaint on the basis that Mr C would have invested a third of his money in the bond irrespective of any advice from Mr M. I can see no basis for making a finding on that basis. I think it is more likely than not he only invested in the bond as a result of the advice he was given and as this advice was unsuitable, I am not satisfied he would have proceeded to invest anything in the bond if Mr M hadn't provided unsuitable advice."

I said redress should be calculated by a comparison between the investment in the bond and our usual benchmark for those willing to take a small risk with their money. I also said that AFS should pay Mr C £500 for the distress and inconvenience resulting from Mr C losing his capital as a result of the unsuitable advice.

I gave both parties the opportunity of responding to my provisional decision and providing any further information they wanted me to consider before reaching my final decision. Both responded and said they had nothing further to add.

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.

As neither party provided any further information or comment on my provisional decision there is no basis for me to change the findings and redress that I set out. So, these remain the same for the purposes of this final decision. In short, I am satisfied that AFS wrongly advised Mr C to invest in the bond and is responsible for the loss he suffered as a result of that advice.

Putting things right

Fair compensation

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

I think Mr C would have invested differently. It is not possible to say *precisely* what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

What should AFS do?

To compensate Mr C fairly, AFS must:

- Compare the performance of Mr C'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.

AFS should also pay interest as set out below.

- Pay Mr C £500 for the distress and inconvenience resulting from the unsuitable advice. Mr C has made clear that the money he invested was to contribute to the further education costs of his children. I think he will have suffered distress and inconvenience resulting from the loss of his pension lump sum when the expected interest after 2018 wasn't received and he wasn't able to use this for the benefit of his children as intended. I also think he will have been caused distress and inconvenience resulting from the total loss of his pension lump sum.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
The Helix Bond	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

		bonds			
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Actual value

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

If at the end date the investment is illiquid (meaning it could not be readily sold on the open market), it may be difficult to work out what the *actual value* is. In such a case the *actual value* should be assumed to be zero. This is provided Mr C agrees to AFS taking ownership of the investment, if it wishes to. If it is not possible for AFS to take ownership, then it may request an undertaking from Mr C that he repays to AFS any amount he may receive from the investment in future.

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, AFS should use the monthly average rate for one-year fixed-rate bonds 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.

Any withdrawal, income or other payment out of 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 AFS totals all those payments and deducts that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- Mr C wanted income with some 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 FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return 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 C'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 C into that position. It does not mean that Mr C would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint for the reasons I have explained. Abbey Financial Services (N.I.) Ltd must pay the amount it calculates is due in accordance with the redress I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 9 December 2021.

Philip Gibbons
Ombudsman