DRN-3137792

The complaint

Mrs B complains through her representative, Mr D, about how Canaccord Genuity Wealth Limited have managed her investment portfolio. She has concerns with how the portfolio has performed when compared to a selection of indices and believes they have misunderstood her attitude to risk. For ease of reading, I will only refer to Mrs B.

What happened

Mrs B was a client of a firm (B1) that was taken over by Canaccord. She moved to their discretionary service in 2015 having previously been an execution-only client. Her circumstances had changed, and she was looking to move back to the UK from abroad and wanted to generate income from her capital. It was agreed that her portfolio worth around £390,000 would be managed on a medium risk basis and benchmarked against the WMA Income index.

Mrs B complained to Canaccord in 2020. They didn't uphold the complaint as they thought the portfolio was set up to provide the income that Mrs B wanted. This meant that it had exposure to equities which could be volatile but had a better chance of producing the returns she wanted compared to more predictable investments such as fixed-interest securities.

They appreciated that the portfolio had underperformed the benchmark Mrs B had used – the FTSE Private Investors Income Index – but explained that it had performed in line with their model portfolio for someone with her risk level. They accepted that they'd incorrectly recorded her investment experience as high but said that it wouldn't have affected how her portfolio had been managed. They noted that recent performance had been affected by the ongoing pandemic but thought that once the income she'd taken from the portfolio was taken into account, she'd seen a return of over 10% on her portfolio.

Mrs B didn't accept their findings and brought her complaint to this service where it was considered by one of our investigators. The investigator noted that Mrs B had invested £400,000 with Canaccord, had £80,000 in cash savings and a pension which paid her £6,000 per annum. She was retired, had recently been through a divorce and owned her home abroad with no mortgage but was planning to move back to the UK. The money she'd invested was to be used to generate income to support her through retirement as she had an income shortfall.

He appreciated that Mrs B needed to take some risk with her capital in order to generate the income she required. But given her circumstances, she had very little capacity to recover from any significant losses. Therefore, he thought that she'd been exposed to too much risk and recommended that the complaint be upheld.

Canaccord didn't agree and said, in summary:

- They strongly disagreed with the assessment that the medium risk discretionary portfolio wasn't suitable for Mrs B and didn't think that she'd been financially disadvantaged in any way. Ultimately, her portfolio had achieved its objective of providing the income needed to cover her expenses.

- Market fluctuations are part of the nature of investments and the loss in value of Mrs B's portfolio was most likely triggered by the extraordinary market fluctuations during the Covid 19 pandemic. Mrs B transferred her portfolio in July 2020 before it had the chance to fully recover from the market downturn. If they were asked to compensate Mrs B, she would benefit from a rebound in her portfolio value and also the compensation, which didn't make sense.

- The benchmark chosen by Mrs B wasn't appropriate. The portfolio should be compared to the benchmark specified as stated in (COBS 6.1ZA.8 / Articles 47(2) and (3) of the MiFID Org Regulation 2017/565): '*a specification of any benchmark against which the performance of the client portfolio will be compared'*. In Mrs B's case the benchmark stated in the application form from 2015 was the WMA Income Index, but a change of benchmark must be possible in case it ceases to exist or if the firm changed hands.

- The investigator had said that the risk level chosen for Mrs B was too high and her risk profile should have been "*in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives*". When she signed up to the discretionary service in 2015 there were 3 risk levels available: low, medium and high. At the time she signed up to a medium risk account and was provided with the client agreement and the attached 'circumstances letter' which outlined her individual circumstances and justified why the portfolio was considered to be appropriate.

- There was no regulatory stipulation regarding how much of their savings clients needed to hold in cash or a maximum they could invest. The industry standard was to hold 3 months' worth of expenditure in emergency cash. They also believed Mrs B's total wealth - including the value of her property - should be considered, not just the amount in her bank account, investment income and pension.

- The investment portfolio was diversified, investing in a number of different asset classes. For example, the portfolio summary dated 29 June 2015 showed that it included 41.31% in fixed income, which would surely be considered a safer option.

- In May 2016, the predecessor firm introduced a different, more differentiated risk scale of 1-9 and Mrs B's medium risk was reclassified as risk 5 which was the risk level she still had when she decided to transfer out in 2020. The 2017 risk assessment where Mrs B scored 34 confirmed that level.

- The investigator had misunderstood what they'd said about capital reliance. They didn't say that Mrs B wasn't reliant on her capital, they'd said "*that she was not reliant on maintaining the value of the capital invested*." That meant her portfolio didn't need to consistently have the same value, but instead was about maintaining a certain level after withdrawals, fees and charges which in their view, they'd achieved. The lowest value was in March 2020 when the pandemic first hit, but even then, Mrs B's portfolio was still worth over £330,000.

- The investigator had expressed the view that Mrs B would've invested differently and it wasn't possible to say precisely what she would have done differently. But based on the information they'd gathered from Mrs B, they didn't believe she had the knowledge or experience to make decisions about investing in fixed rate bonds or tracker funds, hence why she was on their discretionary service.

- It was incorrect that "*all gains and losses were crystallised on 30 July 2020*", the transfer out was In Specie, so there was no need to sell and re-purchase the assets and no loss or gain was crystalised.

Mrs B also disagreed with some aspects of the investigator's opinion and said, in summary:

- She didn't believe that any significance should be given to the amount of cash she held at the time she moved to the discretionary service, as that was during the early part of her divorce when assets were being transferred.

- She disagreed with the redress that had been proposed. A significant element of the FTSE UK PII index consists of fixed interest securities, and she didn't see the logic of not applying purely that index in respect of the whole portfolio let alone of dividing the portfolio and introducing the Bank of England fixed interest database to one half.

- The benchmark suggested assumed re-investment of income, which did not happen in her case. She thought this hid or distorted the actual fall in the portfolio value by deducting actual income values from a theoretical capital calculation. She also thought that the introduction of the fixed interest index further confused the resulting calculation, and the result would not be a fair comparison of like for like and was therefore not realistic.

The investigator wasn't persuaded to change his opinion. He noted the points that had been raised but still thought that the risk level chosen for Mrs B was too high. He also explained that the benchmark that he'd chosen to calculate redress was in line with this service's usual approach and shouldn't be taken to mean that it was the specific investment that should have been made.

There was no agreement, so the complaint has been passed to me to make a decision.

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.

Having done so, I'm of the opinion that this complaint should be upheld, I will now explain why. I'd like to acknowledge that both parties have raised numerous points in their arguments, but I've focused my decision on what I consider to be the key issues. Our rules allow me to do this, and it simply reflects the informal nature of our service. I'm satisfied I don't need to comment on every single point to arrive at what I consider to be a fair and reasonable outcome.

At the heart of this complaint is the question of whether or not Mrs B should have exposed her capital to a medium level of risk. With that in mind I've thought about her circumstances at the time she entered into the discretionary service.

From what I've seen she'd had a very significant change in her circumstances – she'd been through a divorce and was moving back to the UK from abroad. She was retired and was receiving pension income of £6,000 and was taking an income of around £16,500 from her existing investments. She had cash deposits of £80,000 and investments valued at £390,000 - half of which she'd received from her ex-husband as part of a divorce settlement.

It was noted that she had little direct knowledge of the stockmarket and wanted B1 to manage her portfolio on her discretionary basis going forward. She needed to use £200,000 of her existing funds to purchase a property in the UK and planned to replace the funds when her property abroad had been sold. Her aim was to use the portfolio to produce an income to supplement her pension – in line with the income she was receiving at the time.

Her expenditure wasn't recorded but it was noted that her current level of income was sufficient to meet her requirements. And she didn't want a significant fall in income, but any fluctuations wouldn't cause her any hardship as it wasn't required to meet any financial liabilities.

The suitability letter from 2015 said that Mrs B had requested that her investments were placed at a medium level of risk, at the time there were three levels available - low, medium and high. But I can't see how this was assessed and I must be mindful of the previous statement that she had little direct knowledge of the stockmarket.

Canaccord had a responsibility to ensure that the portfolio was suitable for Mrs B - in terms of her attitude to risk and an assessment of whether she had the necessary experience and knowledge in order to understand the risks involved. Mrs B had some experience - the makeup of her holdings prior to receiving her ex-husband's portfolio shows an asset split of around 45% equities, 41% fixed income, 12% alternatives and 2% cash.

I can also see that she was sent a letter with warnings that B1 were concerned that she didn't have experience of exchange traded funds, bonds, gilts, collective investments and structured products. The letter went on to say that B1 would deal in those products but she should note that they may not be appropriate for her, and she may not have the ability to properly assess the risks associated with these products.

Mrs B clearly had a need for income and in order to produce this income, there needed to be an element of risk. But given what she said about her limited knowledge and what we know about her change in circumstances, I don't think the limited warnings she was given were sufficient to make her aware of the potential significant risks of exposing the majority of her capital - nearly 83% - to a medium level of risk, compared to a holding a lower risk portfolio with lower potential returns.

The lack of any specific expenditure figure makes it difficult to assess what level of income Mrs B required from her portfolio. What I have seen is that she was looking to keep her income at or around the same level she'd been used to, but she could afford to live off a reduced level of income. I think this is an important point - if she could afford to live off a reduced income then the question could be asked if it was necessary to take a medium level of risk to provide income which arguably she didn't need. If she could survive on a lower level of income then she could take less risk with her money and potentially ensure her capital lasted longer.

It's important to note that Mrs B wasn't able to make up any losses on her portfolio. While it was noted that she didn't have any specific plans for her capital, I don't think it's unreasonable to suggest that she needed her capital to continue providing income for the rest of her life. Therefore, any large falls in the level of her capital would have a fairly serious impact on her lifestyle.

By 2017 I've seen that the makeup of Mrs B's portfolio was 61% equities, 25% fixed income, 8% alternatives and 6% cash. On balance, I consider this to be too risky for Mrs B's circumstances. I think that putting Mrs B in a position where nearly 70% of her holdings were dependent on risk-based assets was inappropriate. I appreciate that she needed to take some risk in order to achieve the income she required, but I don't think she was advised of the potential for a less risky portfolio to meet her needs and therefore wasn't in an informed position. And I think that on balance, if she had been, then she would have taken the lower risk option. Therefore, I agree with the investigator's proposed method of redress and think that fair redress would be to compare the performance of her portfolio to a benchmark which reflects a lower risk approach.

I’ve considered the concerns both parties have raised with the proposed method of redress. However, I’m not persuaded that it isn’t fair. I think Mrs B was in a position where she could take a small risk to her capital. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without any risk to their capital. 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. As I think Mrs B’s could have taken a small amount of risk, I think a combination of both these benchmarks would broadly reflect the kind of return she could have obtained from investments suited to her objectives and risk attitude.

Putting things right

Fair compensation

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

I take the view that Mrs B would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs B's circumstances and objectives when she invested.

What must Canaccord do?

To compensate Mrs B fairly, Canaccord must:

- Compare the performance of Mrs B's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Canaccord should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Discretionary Portfolio	Transferred	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date transferred	8% simple per year on any loss from the end date to the date of settlement

Actual value

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

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, Canaccord 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 additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the portfolio 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Canaccord totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs B wanted Income with some growth with a small risk to her 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 her 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 Mrs B's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs B into that position. It does not mean that Mrs B would have invested 50% of her 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 Mrs B could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Canaccord Genuity Wealth Limited should pay the amount calculated as set out above. Canaccord Genuity Wealth Limited should provide details of its calculation to Mrs B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 30 December 2022.

Marc Purnell
Ombudsman