DRN-3187695

Financial Ombudsman Service

The complaint

Mr R complains that Sentor Solutions Commercial Ltd (SSC) gave him unsuitable advice to invest in a convertible loan note. He now believes it was a scam and he has lost the capital he invested.

What happened

Mr R said he received advice and accepted a recommendation from SSC to invest in a loan note issued by a property company. In September 2020, Mr R invested £45,000 in a loan note that promised to pay him interest at a rate of 14.5%. The investment was due to mature after three years, where Mr R expected to have his capital investment returned. But Mr R didn’t receive any interest payments and the loan defaulted almost immediately and his capital wasn’t returned.

Mr R complained to SSC about the advice he received. SSC responded and said:

- It offered advice to Mr R based on the information he provided and on the outcomes that he hoped to receive.
- The product recommended to Mr R matched his needs based on the information provided to SSC by the company issuing the loan note. The risk profile and history of the company was based on information provided by them and the descriptions of promised returns was from feedback from them.
- It doesn’t have ownership or executive involvement with the company issuing the loan notes. And while some information provided to Mr R now looks misleading, this was simply information that it was provided with.
- Unfortunately, it doesn’t have assets or insurance in place to consider a refund of Mr R’s money and it will likely become insolvent.

Mr R contacted this service and asked us to investigate his complaint and provide an independent review.

One of our investigators looked into the complaint and upheld it. In summary he said:

- He was satisfied from the evidence provided by Mr R that SSC did provide advice to invest in the loan note.
- The investment recommended to Mr R exposed him to significant to risk. And, based on what he’d seen, the investigator didn’t think that was in line with Mr R’s risk appetite. He thought suitable advice would have instead led to Mr R having made lower risk investments.
- The information SSC provided about the investment to Mr R was misleading.
- Mr R should be compensated by comparing the performance of his investment with that of a benchmark that represents a small risk. He asked SSC to pay any loss that results from the comparison.

Mr R responded and accepted the outcome the investigator reached.

SSC responded to the investigator. It said it accepts Mr R was given misleading information regarding the company he invested in, its financial viability, and was informed that it was a low risk investment, when it appears to be rather high risk. But said it is insolvent and is unable to pay any claim or award to Mr R.

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.

There is limited evidence from the sale of the investment. SSC hasn't been able to provide any information it retained from the sale such as a fact find or recommendation report, but Mr R has provided records that he retained. Having reviewed this information, I consider it to be credible and the documents provided support the complaint Mr R now makes. He has been able to provide the promotion brochure he received, and also various emails sent to him by SSC about the suitability of the investment for his needs. So, there is enough information about the characteristics of the loan notes that mean I'm satisfied that it amounts to an investment for the purposes of the rules I must consider.

Mr R says he was advised by SSC to invest. In the context of the regulatory framework, investment advice is a regulated activity – and something this service can consider complaints about. Broadly speaking, a firm providing advice has a duty to ensure that it is suitable. In terms of establishing that SSC recommended the investment to Mr R, I have considered its acknowledgment of its involvement in the sale and note it hasn't denied making a recommendation to invest. This further supported by the emails Mr R has provided which contain statements such as:

"I previously wrote to you with a recommendation that [borrowing company] bonds would be ideal in your personal circumstances. I will not go over the rationale again, but I do recommend that you complete your subscription."

"If I am correct in my assessment of your needs above, then in my professional opinion, as an FCA approved person, I feel that the [..] bond is ideal for your needs."

"I wholeheartedly recommend […] to you. As stated above, my advice to you is entirely free. Many other IFAs or financial professionals will charge you additionally if they undertake a needs based assessment such as this."

Overall and on balance, I am persuaded by evidence that SSC recommended the investment to Mr R. So, I've gone to consider whether the advice was suitable for him.

The evidence I've seen indicates that that this investment was of a complex nature and high risk. It appears to involve investors funds being used to facilitate the purchase and subsequent operation of commercial property development projects at various locations within the UK. Investments in property carry inherent risks – including the difficulty in valuation of assets, success of projects and also in terms of liquidity. So, there does seem to be a number of layers of risk involved where things could go wrong.

I also note the investment brochure says *"It is anticipated that the Convertible Loan Notes will only be offered to High Net Worth and Sophisticated Investors"*. This raises a further question as to whether this type of investment should have been sold to someone in Mr R's circumstances.

There is limited information about Mr R's circumstances at the time. For example, there is not the usual documents such as a fact find which clearly sets our Mr R's needs and circumstances. But there is some information Mr R has been able to provide from the time which is useful in establishing what type of investment he was looking for and his attitude to risk. The following is contained in an email SSC sent to Mr R in September 2020.

"From the background that you have given me, I have built up a solid picture of what you are trying to achieve. Please correct me if I am wrong, but I have tasked myself with finding a company for you to invest in that has the following key components:
1. Safety and very low risk profile
2. Security of your invested funds
3. Excellent Returns, above those offered by comparable products.
4. Consistent guaranteed returns over 3-5 year time horizon.
5. Additional guarantees in the form of FSCS protection, a regulated security trustee etc.
6. You have between a total of £20,000 and £100,000 of capital to invest over the next 6-12 months.
7. You are looking to safeguard your existing capital but also build it in the form of high interest payments, paid either monthly, quarterly or annually.
8. Your preference is to invest only in companies based in the UK with a 5-10 year track record of success that I have been able to independently verify."

"I have worked with [bond issuer] and am entirely confident that your funds will be secure, and that their company and business model is very low risk."

This email correspondence between Mr R and SSC points towards him looking for a low risk investment. But for the reasons I've described, this is not the type of investment that provided a low level of risk – quite the opposite. So, I think Mr R was mis-led by SSC when it described the nature of the investment to him.

Having considered the evidence provided, it does not support that Mr R was a high-risk investor with investment experience that made it possible for him to understand the risks involved in investing in these loan notes – or that they were different from mainstream investments. He appears to be prepared to take a low level of risk, which was mismatched by the high-risk nature of the loan notes. Overall, on balance and for the reasons given above, I don't think this investment was suitable for Mr R as it presented a higher risk with his capital than he was prepared to take.

Fair compensation

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

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

What must SSC do?

To compensate Mr R fairly, SSC must:

- Compare the performance of Mr R'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.

- SSC 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
Convertible loan note	Still exists but illiquid	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 of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

If at the end date any asset 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 R agrees to SSC taking ownership of the illiquid assets, if it wishes to. If it is not possible for SSC to take ownership, then it may request an undertaking from Mr R that he repays to SSC any amount he may receive from the portfolio 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, SSC 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr R wanted Capital 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 R'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 R into that position. It does not mean that Mr R 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 R could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Sentor Solutions Commercial Ltd should pay the amount calculated as set out above.

Sentor Solutions Commercial Ltd should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 November 2022.

Daniel Little
Ombudsman