

The complaint

Ms G complains about investment advice she received from Executive Benefit Consultancy Limited (EBCL). She feels the investments she made as a result haven't performed as well as they could have with more reasonable advice.

What happened

Ms G set out the key points of her complaint in a 22-page letter to EBCL, in November 2019. That letter covered her history with EBCL since April 2013.

A lot of the details of that relationship will be familiar to both sides. So while I've read and considered those details, I'm not going to repeat them at length here. In keeping with the informal nature of our service, I'll focus on what's steered my decision the most.

Ms G's relationship with EBCL began in 2013, after she'd inherited a significant amount of money. She met EBCL for advice about investing her money to get an income from it.

To advise Ms G, EBCL considered what she was trying to achieve with the money, and how she would manage if her investments lost money. They identified her attitude to risk as "*balanced*", between taking some risk to get a better return, and being careful not to lose too much of the money she'd inherited.

Having completed that assessment, EBCL recommended some investments for Ms G. Two ISAs were set up – one in Ms G's name and one in her husband's – to make use of the tax benefits they provided. Once the annual ISA allowance was used up, the rest of the money went into a collective investment account. All of the accounts invested in the same funds.

Ms G accepted all of EBCL's recommendations. The investments ran for a few years. But in 2019 there were some problems. One of the funds Ms G was invested in was suspended, and then later wound up. And later that same year, another of Ms G's funds was suspended.

Ms G felt EBCL were responsible for the financial loss she suffered as a result, for broadly the following reasons.

- The investments EBCL recommended had put her money at too much risk.
- EBCL hadn't done enough to monitor the investments and act before losses were incurred.
- A recommendation EBCL made to put the investments temporarily in cash had meant the investments hadn't grown as much as they could have.
- Ms G felt EBCL had misled her about the success of her investments.

EBCL responded to the complaint, setting out why they felt their service had been reasonable. They also noted Ms G's feelings that they'd deliberately misled her, and decided to stop working for her. Ms G says it then took her a couple of months to move the management of the investment to a new adviser.

I provisionally made a decision about this complaint in June 2022. I found EBCL's recommendations in 2013 had been too risky for Ms G, given what they'd found out about her at the time. I felt that a reasonable level of risk would have seen her money invested in line with a lower risk index. So I explained how EBCL should remedy that – with a view to putting Ms G in the position she would have been in, if the service had been reasonable.

I gave Ms G and EBCL the opportunity to consider that decision and comment on it, before I made my final decision.

Ms G accepted the decision, but felt she doubted EBCL would properly carry out the remedy I'd put forward. She also explained how it had taken until 11 March 2020 for her investment to be transferred to a new adviser, after EBCL had decided to stop working for her in January 2020. Ms G also said she still had £1,198 in one of the funds frozen in 2019, and wasn't keen for EBCL to take ownership of this.

EBCL didn't accept the decision. They suggested an alternative to the remedy I'd put forward. And they felt the period in cash in 2016 should be replicated in the remedy, saying this was something Ms G had requested at the time.

I've considered the comments from both sides, and looked again at the details our investigator gathered. And I'm able now to make a final 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.

I've decided that my provisional decision is the right one for this complaint. So I'm going to repeat it here for my final decision. But I'll add to it in places to show how the comments I've received have been considered.

Looking at the initial advice in 2013, I find EBCL took reasonable steps to assess Ms G's objectives, and her attitude to risk. They spoke to her and thought about what she said, in line with what I'd expect from a regulated adviser. They then recorded that in written documentation, and confirmed it with Ms G.

So I provisionally find the level of risk EBCL decided for Ms G – balanced between making enough money to provide her with an income while shielding her from significant losses – was reasonable.

But then I note an issue with the funds EBCL recommended to Ms G in 2013. EBCL recommended five equity income funds. That meant almost all of Ms G's money was used to buy shares in companies. That exposed Ms G's investments to a couple of risk issues.

Firstly, the value of company shares can change quickly, and by large amounts. And secondly, having five funds exposed to that same type of risk amplified its potential impact on Ms G's money.

Now, I can appreciate these funds were in line with Ms G's wish to generate an income from her investment. But the chance of quickly losing a lot of what she'd put in doesn't seem to be given suitable weight. A mix of different asset classes would have been better, balancing out the need for the risks necessary to generate income with the need for lower risks to preserve capital.

But looking at what EBCL recommended, I find that the overall risk caused by focussing so heavily on equities was unreasonably high in Ms G's case.

Putting things right – Fair compensation

In assessing what would be fair compensation for that, my aim is to put Ms G as close to the position she would probably now be in if she had not been given unsuitable advice.

Here, I find that Ms G would have invested differently. It's not possible to say *precisely* what she would have done. But I'm satisfied that what I've set out below is fair and reasonable given Ms G's circumstances and objectives when she invested.

What should EBCL do?

To compensate Ms G fairly, EBCL must:

- Compare the performance of Ms G'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.
- EBCL should also pay interest as set out below.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From	To	Additional interest
ISAs and collective investment account	Some liquid/ some illiquid	FTSE UK Private Investors Income Total Return Index	The date of investment: 19 August 2013	The date transferred to new adviser: 11 March 2020	8% simple per year until settled (if not settled within 28 days of the business receiving the complainant's acceptance)

I've changed the "To" date from my provisional decision to reflect that Ms G says the transfer of the investment to a new adviser took place on 11 March 2020, not in January 2020. For clarity – and if there's any debate about what date should be used – my remedy is aiming for the date the money or holdings left EBCL and was sent to either Ms G or her new adviser.

Actual value

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

Ms G's said part of the portfolio is illiquid (meaning it can't be readily sold on the open market). So working out the *actual value* is difficult. In such a case the *actual value* should be assumed to be zero. This is provided Ms G agrees to EBCL taking ownership of the relevant part of the portfolio, if they wish to. If it's not possible for EBCL to take ownership, then they may request an undertaking from Ms G that she repays to EBCL any amount she may receive from the illiquid part of the portfolio in future.

In response to Ms G's comments, I can understand she doesn't want to have EBCL involved with her ongoing investment. But that's not what I'm intending by having the ownership of the illiquid part of the portfolio pass to them. It's more like selling something that can't be sold more widely. EBCL are to compensate Ms G for the value of the illiquid investment, and in return they receive it.

The alternative would be more of an ongoing connection. EBCL – having compensated Ms G for the value of the illiquid fund – would be entitled to contact Ms G whenever the fund is able to release money and call on her to pay it to them.

I'm not sure which option will work best for EBCL and Ms G. So I'm going to leave this part of the remedy to them to work out.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Using a benchmark reflects that I can't say for sure what alternative investment EBCL should have recommended, or what Ms G would have agreed to. It represents broadly the sort of performance Ms G could have achieved, if she'd invested in a range of asset classes – and so at a lower level of risk overall.

Any withdrawal from the ISAs and collective investment account 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 EBCL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

In response to my provisional decision, EBCL talked about taking an average value for the investment withdrawals and applying that to the remedy. I'm not in favour of that for a couple of reasons. Firstly, it makes it harder for Ms G to check the remedy has been calculated reasonably. She wouldn't be able to simply compare the withdrawals being factored in to the remedy against the withdrawals she actually made.

And secondly, this approach would unduly impact Ms G or EBCL if larger withdrawals were made at the end or start of the investment period. It may take some time to work out, but I find the fairest outcome here will be for EBCL to simply apply the withdrawals as they were actually made at the time.

I've noted Ms G's concern that EBCL will handle the specifics of the calculation in a way that favours them and not her. That will be something for Ms G and EBCL to take forward, possibly through the courts. My power extends to saying what should be done. Where my decision is accepted by a complainant, the financial service provider must then do what I've directed. But to enforce my decision – and insist it's carried out as I've said – would require a complainant taking the matter to court.

With that said, it should be possible for EBCL to show Ms G how they've worked out their calculation of this remedy. Ms G can then review that – possibly with the help of a financial adviser – and raise any issue with EBCL directly.

Getting back to the remedy for Ms G's complaint, the broad approach here makes it unsuitable to try to reflect some of the decisions Ms G and EBCL made with her actual investment. Specifically, the transfer to cash in 2016, and the reinvestment into new funds in

late 2016 and early 2017. The decisions made at the time were for something that was invested at a higher level of risk initially. Those wouldn't necessarily match the decisions made if the investment had held a lower level of risk.

So the index should simply be applied from the first day of the investment to the day Ms G transferred control over it to a new adviser.

EBCL have commented about Ms G wanting to transfer the investment to cash in 2016. But the records from the time tell a different story. In their file note from 3 May 2016 – just before the transfer to cash – EBCL's adviser wrote:

"I advised [Ms G and her husband] that we had concerns over the forthcoming months regarding the effect that a Brexit would have on markets. We believed there would be a period of heightened volatility and if the UK withdrew from Europe then this could lead to a major fall in equity markets... I advised that it would be prudent to take a temporary measure and place this into cash... [Ms G and her husband] thought that it was a good idea to move to cash."

This tells me it was EBCL – rather than Ms G – that drove the move to cash in 2016. And it tells me that move reflected concerns about the equity market. At the time, Ms G's investment had been focussed on equities by the recommendations in 2013.

But as I've said, a more reasonable recommendation in 2013 would have seen the investment made in a range of asset classes. In that case, the concerns about the equity market in 2016 would have been different. So I find it likely the advice in 2016 would have been different too. So I've decided not to try to replicate that advice in the remedy now.

The index should be applied without replicating the move to cash in 2016, or the decisions made when reinvesting in late 2016 and early 2017.

As I'm not identifying a specific investment to have made with Ms G's money, I can't say exactly what the fees would have been in this simulated alternative. In line with our general approach, I find it'll be reasonable to simply treat the fees Ms G actually paid as being generally what would have been incurred if a more reasonable level of risk had been taken.

I've thought about simulating an "emergency fund" for some of Ms G's money. The idea of this would be to ensure some of it was at no investment risk, and would always be available if needed. But I can see in the fact-find documents from 2013 that Ms G "strongly agreed" that she had enough money from other sources to cover her expenses for a 12-month period. And I can see that before approaching EBCL she seems to have taken steps to pay off her major debts using some of the money she'd inherited.

That leads me to conclude the absence of an emergency fund in this case wasn't a particular issue. So I'm not going to complicate the remedy by trying to simulate Ms G having one.

With this finding and remedy, the other points made by Ms G in her complaint somewhat fall away. Any finding I made about the reporting of the success of the investment, the monitoring of it, and the decision to temporarily transfer everything to cash wouldn't change the remedy I've set out here. So – again in keeping with the informal nature of our service – I'm not going to go over the details of those specific parts of this complaint.

Why is this remedy suitable?

I've provisionally chosen this method of compensation because:

- Ms G wanted income with some growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Ms G's circumstances and risk attitude.

My final decision

I've decided to uphold this complaint. Executive Benefit Consultancy Limited should pay the amount calculated as set out in the table above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 22 August 2022.

Paul Mellor
Ombudsman