

The complaint

Miss H complains that Dewhurst Torevell & Co Limited gave her unsuitable investment advice.

The complaint is brought on her behalf by her court-appointed deputy who I'll refer to as Mr L. Mr L says Dewhurst Torevell should refund its initial advice and on-going management fees and compensate Miss H for the failure to utilise her annual ISA allowance.

What happened

In 2012 Miss H received a monetary court award and, due to her mental capacity, a deputy was appointed by the Court of Protection to deal with her property and affairs on her behalf. The deputy sought financial advice for Miss H from Dewhurst Torevell.

In brief summary, the deputy initially said there was £1.5million available for long-term investment. After the initial advice was given, and the deputy had sought further information from Miss H's family, he decided a reduced sum - £1.2million - should be invested. He said Miss H needed an annual income from her investments of £30,000, whilst preserving and growing the capital investment. Miss H had no other sources of income.

Dewhurst Torevell recommended £800,000 was invested equally between two investment bonds, which would provide the annual income of £30,000; £300,000 in a portfolio of unit trusts held on a third-party platform; and £100,000 to be placed in a bank deposit account for emergency capital expenditure and future investment opportunities.

Dewhurst Torevell charged an initial advice fee of £11,000 and then an annual management fee of 0.5% on the non-cash investments. It agreed to review the investments on at least an annual basis to ensure they still met Miss H's needs and objectives.

Dewhurst Torevell managed the investments, on an advisory basis, until September 2016 when the advisor moved to a new business and the deputy transferred Miss H's investments to that new business.

In September 2020 Mr L was appointed as Miss H's new deputy. Having reviewed her finances, he complained about the advice and service Dewhurst Torevell had given. In summary he complained that:

- No rationale was given for the amount to be retained as cash.
- The tax treatment of the investment bonds made them unsuitable for Miss H. And hers was the sole life insured which wasn't appropriate.
- Initially an offshore bond was recommended, but this did not feature in the revised advice, with no rationale given.
- The attitude to risk wasn't properly assessed – the deputy's attitude was assessed, rather than Miss H's, and the investment did not reflect the agreed "low to medium risk" approach.

- Miss H was eligible to invest in a cash ISA when she was 17 and a stocks and shares ISA when she was 18. The failure to utilise the annual ISA allowances meant Miss H lost out on several years of ISA tax benefits.
- Dewhurst Torevell charged an annual management fee, but it didn't provide advice after 2012.
- No cash flow modelling was carried out to ensure the investments would meet Miss H's income requirements over the long-term.

And he said he wanted Dewhurst Torevell to refund all of its fees to compensate Miss H.

Dewhurst Torevell didn't agree that the advice had been unsuitable. It said that from 2012 to 2016, the portfolio had generated non-taxable income of £111,250 and had grown from £1.1million to £1.4million. Whilst the ISA allowance hadn't been utilised, a financial loss hadn't been incurred and substantial capital growth was achieved. It said it would appear that one regular valuation, due in April 2016, hadn't been sent, but that otherwise half yearly valuations and commentary were provided.

Our investigator didn't recommend that the complaint should be upheld. He thought the advice provided met Miss H's agreed objectives and that the tax situation of the investment bonds was covered in detail when the advice was given.

Mr L didn't agree. He said, in summary, that:

- Miss H was a non-taxpayer. The selection of two investment bonds meant she was committed to a 20% income tax charge deducted at source and deferred a further liability to income tax which she would otherwise not have to pay. This annual loss could have been avoided and a substantial cost was incurred in liquidating the bonds to mitigate the increasing future liability to income tax.
- Multiple lives should have been assured to give the policyholder's executors flexibility in the event of Miss H's death.
- Miss H couldn't open a stocks and shares ISA when the advice was initially given because of her age. But this should've been incorporated in the on-going strategy. She's lost the benefit of several years ISA allowances.

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.

Firstly, I'm aware that I've summarised this complaint in less detail than the parties and in my own words. There is a considerable amount of information here but I'm not going to respond to every single point made. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

For ease, I've used sub-headings to cover each of the main complaint points:

Cash reserve

The amount available for investment did not reflect the entirety of Miss H's wealth. She'd received considerably more than the £1.2 million that was invested. I find it was reasonable

for Dewhurst Torevell to rely on Miss H's deputy, who was responsible for all of her finances, when he told it how much money she had available for a medium to longer term investment.

I don't think it was unreasonable for Dewhurst Torevell to recommend placing £100,000 (out of the £1.2 million) in a 95-day notice deposit account. It had previously explained the advantages of keeping some of the investment in a deposit account, including to take advantage of any future investment opportunities.

Investment bonds

Dewhurst Torevell was obliged to provide advice on suitable investments to meet Miss H's agreed objectives. Whilst it was important to maintain, and hopefully grow, the capital value of the investment, Miss H needed the investment to provide her with an annual income of £30,000. I'm satisfied that the investment bonds met this objective.

Dewhurst Torevell wasn't obliged to provide tax advice. I'm satisfied that it drew the deputy's attention to the tax implications of the investment bonds and that it was for him to seek independent tax advice if he needed it.

Mr L says it wasn't suitable for Miss H to be the only life assured. Miss H was the sole policy holder and had no dependents. In these circumstances it would be unusual for a second life to be assured. But this was an option. I'm satisfied that Dewhurst Torevell gave the deputy the opportunity to discuss the appropriateness of a second life assured. It said:

"The life or lives assured have no ownership rights, but by including more than one life assured it may give the trustees greater flexibility in the future. In this instance I believe the simplest and most practical approach would be to have [Miss H] as the sole life assured. This would mean that on [Miss H's] death the investment bonds would automatically be surrendered, and their value paid out as cash. If you would prefer to have the option to retain the investments on [Miss H's] death then please let me know and we can discuss options."

I don't find the advice and information provided by Dewhurst Torevell to be inappropriate in the circumstances. Having been given the opportunity to think about this, and to discuss it in detail, and the deputy agreed to go ahead with Miss H as the sole life assured.

Offshore bond removed from recommendations

The recommendations initially provided by Dewhurst Torevell were based on an investment of a larger sum - £1.5 million. And included a recommendation to invest £400,000 in an offshore bond. I'm satisfied that Dewhurst Torevell gave an adequate explanation for removing this from its final recommendations when the amount available for investment had decreased. It said:

"The terms attached to the [offshore bond] are not as attractive and therefore although this investment offers greater flexibility in the early years, if we were to proceed with a reduced investment amount, I believe it would take many years, if ever, for the potential returns from this product (even allowing for the tax benefits of offshore investment) to exceed those from the equivalent investments in the [onshore bonds]"

I don't find the exclusion of an offshore bond, in the circumstances, was unsuitable.

Assessment of attitude to risk

I've not seen exactly how the attitude to risk was assessed here but it's clear a reasonably detailed discussion about risk took place as this is reflected in the advice letters. Miss H

lacked the mental capacity to understand investment risk and the deputy was required to make decisions in her best interests. There is reference in the advice letters to the deputy's attitude to risk. But I don't find this means Dewhurst Torevell wrongly used the deputy's personal attitude to risk to decide its investment advice. I think it's more likely than not that, following a discussion, it was agreed that it was appropriate for Miss H's investment to be exposed to a "low to medium" risk. This would not seem unsuitable, based on what we know about Miss H's circumstances at the time.

I'm satisfied that the investment was suitable for a "low to medium" risk investor. Dewhurst Torevell recommended £800,000 was invested in two UK investment bonds; £300,000 was invested in a portfolio of unit trusts; and £100,000 was deposited in a 95-day deposit account. The underlying investment in the bonds and unit trusts provided exposure to fixed interest as well as equity investment. And, whilst some of the equities might be categorised as higher risk, I'm satisfied that the investment was sufficiently diversified to ensure the overall mix met a "low to medium" risk profile.

Failure to utilise ISA allowance

When Dewhurst Torevell gave its initial advice, Miss H wasn't 18 so wasn't eligible for a stocks and shares ISA. Dewhurst Torevell's suitability letter said:

"In [Miss H's] circumstances, it should be possible to manage these investments tax efficiently and over the longer term by utilising Miss H's capital gains tax allowance. I think it would be sensible planning to realise capital gains to fund ISA contributions in future years."

Mr L complains that Dewhurst Torevell failed to invest in an ISA for Miss H and that she missed out on the tax benefits.

I find that the suitability letter was reasonably clear – the advice was that, over time, any capital gains from the unit trust investment would be realised and used to fund an ISA. I don't find this to be an inappropriate approach and I don't find it unreasonable that capital gains weren't realised in the first few years of the initial investment. It's also important to note that, until the introduction of the dividend allowance in April 2016, the tax treatment of dividends within an ISA was the same as for investments held outside of an ISA. So the tax benefits of ISA's were limited to capital gains, and the annual allowance was less than it is now. Taking into account Miss H had an annual capital gains tax allowance, the ISA benefits for Miss H in the early years of her investment would have been limited.

Failure to provide a cash flow model over the medium to long term

I don't find there was any specific requirement for Dewhurst Torevell to provide a cash flow model as part of its advice. Miss H required an annual income of £30,000 from her investment. Dewhurst Torevell's recommendations met this objective, whilst aiming to grow the capital value. As noted earlier, the cash reserve could have been accessed for any emergency or unforeseen income requirement. And, if the annual income requirement changed over time, there was clearly scope for the income level to increase, as set out in the suitability letter. The income requirement was reviewed on at least an annual basis and the deputy confirmed it remained suitable for Miss H's circumstances.

Failure to provide on-going advice, but fees charged

Dewhurst Torevell's agreement required it to carry out a review on at least an annual basis to ensure the portfolio remained suitable for Miss H's needs. And it was the deputy's responsibility to tell Dewhurst Torevell about any change in circumstances that might require

a change in her investments. I'm satisfied that Dewhurst Torevell carried out the agreed annual reviews, and recommended changes in the underlying investments from time to time.

For the reasons I've explained, I don't find Dewhurst Torevell provided unsuitable investment advice. And that it acted in line with the agreed terms and conditions by reviewing the investments on at least an annual basis to ensure they continued to meet Miss H's objectives and risk profile.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 22 August 2023.

Elizabeth Dawes
Ombudsman