DRN-4230812

The complaint

Mr N has complained about what he considers to have been unsuitable advice he received from Chic-Kending Ltd, trading as Bloomfield Wealth Management (BWM), in 2015 to consolidate and reinvest his pension plans.

What happened

In December 2015, BWM advised Mr N to consolidate various pensions and general investments into a Wrap account on the Ascentric (now M&G) platform.

BWM recommended Mr N invest his pension assets as follows:

Asset		**Amount**	Portfolio %
Direct equity	Swiss Re	£12,979	5%
Direct equity	Munich Re	£14,838	6%
Direct equity	Swisscom	£12,622	5%
Absolute Return Fund	FP Argonaut	£70,000	28%
Absolute Return Fund	City Financial Equity	£70,000	28%
Absolute Return Fund	Henderson UK	£70,000	28%

An additional sum of around £50,000 was invested across four direct equities in a general investment account (GIA) outside of the pension wrapper.

Some time in late 2018, Mr N says he received a statement from Ascentric that alerted him to the value of the City Financial Equity investment having fallen by around 25%. He said he spoke with his adviser at BWM to raise his concerns. He thinks this may have been around October 2018.

Mr N said that his instinct was to sell out of the fund but that his adviser told him not to crystallise his losses as, based on previous performance, he shouldn't be concerned and it would recover as it had before.

The investment recovered slightly in the fourth quarter of 2018 but, on 19 March 2019, the City Financial Equity investment was suspended. BWM received a corporate action notification. The fund was sold to VT Garraway and renamed the VT Garraway Absolute Equity Fund (the Fund). It reopened for trading on 5 April 2019 - although Mr N says he wasn't informed of this.

On 8 April 2019, the fund was suspended again due to the volume of redemptions. The fund was finally wound up in February 2022.

Mr N says he received a phone call from BWM to advise him of the situation. He cannot recall exactly when the phone call took place but assumes it was around April 2019 - shortly after the fund had been suspended.

BWM remained Mr N's advising firm until 2022. During this period, Mr N says he had limited telephone contact with his adviser, but was advised to "wait and see" what happened with the investment, and failing all else, that his adviser had sufficient professional liability insurance in place to cover the situation.

Following instruction from his adviser at BWM to raise a complaint, on 28 March 2022, Mr N did so. He complained that the level of risk associated with the recommended portfolio mix wasn't suitable for him as a low/medium risk investor.

In response, BWM didn't uphold the complaint but also said it had been raised too late. BWM said Mr N should have complained earlier when he realised, or should have realised, that there was a problem.

Mr N referred the matter to this service, where it was considered by one of our investigators. He addressed the matter of whether the matter fell within this service's jurisdiction on the basis of timeliness, saying that, in his view, it had been raised in time.

BWM responded to say that it accepted the investigator's conclusions on jurisdiction, and that, as it considered that it hadn't sought to time bar the complaint, it was perplexed as to how that notion had arisen.

The investigator therefore proceeded to consider the merits of the complaint, and set out his findings in his assessment dated 20 January 2023, in which he concluded that the complaint should be upheld. He said the following in summary:

- He wasn't persuaded that the recommended investments within the pension portfolio were suitable. In his view, they represented a level of risk above both that which was suitable for Mr N and that which he was willing to take.

- Mr N's "self-assessed" risk rating was "5" on a scale of "1 to 10", where "1" was the lowest risk and "10" was the highest. This could reasonably be described as a medium or balanced risk rating.

- But the attitude to risk questionnaire produced a lower risk rating of "3 out of 10", which was low risk. And Mr N described the portfolio as his "financial security" which would be used to fund his lifestyle and dependants.

- Mr N had property assets, but didn't want to release any equity from these at the time. It was also recorded that Mr N had funds which might in the future become available from a business venture he was involved in.

- BWM recommended that around 16% of the portfolio be invested in direct overseas equities, which introduced currency risk to the usual risk of direct equity holdings, with the remainder spread evenly over three Absolute Return funds.

- The Argonaut Absolute Return fund set out in its literature that it could:

  '… at times, invest in a relatively small number of equities, the selection of which will not be restricted either by size, industry, or geographical location of the underlying companies, although exposure is expected to be mainly (over 50% of gross exposure) to companies incorporated in Europe'.

- It was therefore subject to various risks, including counterparty, market, currency, liquidity and derivatives risk – all of which meant that it had a risk profile of "6 out of 7", so towards the higher end of the risk spectrum.

- The Henderson Absolute Return fund literature said the following:

  'The Fund is designed to be used only as one component of several in a diversified investment portfolio. Investors should consider carefully the proportion of their portfolio invested into this Fund'

- This bore a risk rating of "4 out of 7", but BWM recommended that Mr N invest 28% of his pension funds in this, as part of a portfolio which lacked diversification in the first place.

- The City Financial Equity Absolute Return fund, which later became the VT Garraway Absolute Equity fund, had a risk profile of "5 out of 7". Its literature said that it was ranked as "5 out of 7" on the risk rating as weekly historical performance data indicated that it had experienced relatively high rises and falls in market prices. This would therefore have been unlikely to offset the higher risk represented by the direct overseas equity holdings.

- Th investigator considered that BWM had been overly focused on the high level of growth required to provide an income of £30,000 pa. The suitability report said that a 10.5% pa return was required to achieve this, but the investigator thought that this was unrealistic, even for those who were willing to take a high level of risk.

- BWM should have advised Mr N of the unrealistic target, but the suitability report focussed on the past performance of the assets rather than whether they were suitable for Mr N.

- Mr N may have had some capacity for loss, given that he held other assets outside his portfolio and could potentially benefit from his business venture. But this didn't outweigh the level of risk to which BWM had exposed his pension portfolio by the lack of diversification in the recommended assets.

- Mr N was placed in the position of being overly reliant upon the fortunes of three individual overseas stocks and three Absolute Return funds, which on their own constituted too high a risk, the investigator concluded.

- The investigator thought that, given Mr N's age and long term investment horizon, he could realistically have taken a balanced level of risk.

As such, the investigator recommended that a comparison be undertaken between the performance of Mr N's pension portfolio and one of our benchmark indices for an investor who wanted capital growth and was willing to accept some investment risk - the FTSE UK Private Investors Income Total Return index.

The investigator said that, if the notional value using the benchmark index was higher than the actual value, then Mr N should be compensated, by either paying an amount into his pension plan, or if this wasn't possible, by paying the amount directly to him with a deduction for the assumed basic rate income tax he would otherwise have paid on his pension benefits in retirement on 75% of the redress amount (allowing for tax free cash).

The investigator also said that BWM should pay Mr N £250 in respect of the uncertainty and disruption caused to his pension planning as a result of the unsuitable advice.

But in response, BWM said that it felt that Mr N had been well aware of the losses incurred by the fund before its first suspension. It said that it felt that Mr N should have raised his complaint then, rather than waiting to complain when he did.

It said that, unfortunately, due to the platform Mr N was using having been migrated in the Autumn of 2018, it wasn't able to confirm whether an independent valuation had been sent to him in 2018.

BWM therefore requested additional time to establish this before responding further.

No further response was received from BWM, however, and so the investigator confirmed to both parties that the matter would be referred to an ombudsman for review. He asked for any final comments from either party.

Mr N referred again to the email in July 2019 which he felt supported the position that the BWM adviser was advocating that he hold on to the investment and that the adviser had also said that he need not worry as there would likely be a class action from investors against the fund managers.

As notified by the investigator, the complaint was then referred to me for review.

I issued a decision on our jurisdiction to consider the matter on 5 July 2023, in which I set out my rationale as to why I considered the complaint to have been made "in time". In summary, I said that, although there had been issues (involving performance and suspensions) with one of the investments in particular – the City Financial Equity fund – the reassurances provided by BWM as to the likely recovery of the fund had meant that, although Mr N may have been concerned about the situation, those concerns had been managed and mitigated to the extent that he wouldn't have considered that he had cause for complaint.

This changed in 2022 when it was expressly recommended to Mr N by the BWM adviser that he complain.

Although BWM has had since the issue of the investigator's assessment on 20 January 2023 to make further representations on the merits of the case, both parties were provided with a further opportunity to do so following my decision on jurisdiction.

No further representations have been submitted.

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.

And having done so, I've reached broadly the same conclusions as the investigator, and for similar reasons.

I think it's fair to say that some of the risks associated with the recommendation were set out within the suitability report, such as currency risks and the "complexities" added to a portfolio by inclusion of the Absolute Return funds – and that they use short term duration strategies which are difficult to monitor and make performance predictions difficult.

But even if Mr N had understood the risk posed by fluctuating exchange rates, I don't think that Mr N, as a relative layman in investment pension matters, would have understood the complexities of the Absolute Return funds based on the description provided.

But the more important point here in my view is that, irrespective of the risk warnings provided, BWM still needed to make a recommendation which was suitable for Mr N, taking into account his risk rating, circumstances, and objectives.

Certainly with regard to the latter, I can see that BWM tried to create a portfolio which could produce the high returns which were needed to produce the income Mr N said he wanted in retirement. But BWM will be aware that financial advice isn't simply about wish fulfilment – and whilst BWM had identified a strategy which might, if historic performance was repeated, provide the necessary growth, I think Mr N was entitled to a candid appraisal about how such a strategy was incompatible with his overall risk rating and capacity to take such risks.

However, other than the mention of the disadvantages relating to overseas equities and absolute return funds, this was absent from the suitability report.

In terms of Mr N's actual risk rating, as set out by the investigator, this was determined as being "low" by BWM's risk questionnaire, which was the professional assessment here. And even by Mr N's own initial self-appraisal, which was described as being different due to a potential lack of understanding of the risk scale, he was at most a "medium-high" risk taker.

But as also commented by the investigator, the types of investment used here, and the lack of diversification, meant that Mr N was exposed to the types of risks which were comfortably above those to which a low or even, arguably, medium-high risk investor should have been exposed.

And this position is lent further credence by the risk rated example portfolio which was set out as being appropriate for a low risk investor. This was markedly different from the portfolio recommended to Mr N, being a well-diversified mixture of bonds, cash and equity funds (rather than individually held equities).

Mr N's capacity to take risk was also assessed within the questionnaire as being "low-medium".

And so, overall, my view is aligned to that set out by the investigator in that the recommended portfolio wasn't compatible with Mr N's risk rating, as assessed by the risk questionnaire, and that it was therefore unsuitable.

Putting things right

As with the investigator, my aim is to place Mr N as closely as possible in the position he'd now be but for the unsuitable advice.

I agree that it's more likely than not that, suitably advised, Mr N would have invested differently. It is not possible to say precisely what he would have done, but I'm satisfied that what the investigator set out is fair and reasonable given Mr N's circumstances and objectives when he invested.

What should BWM do?

To compensate Mr N fairly, BWM should:

- Compare the performance of Mr N's investment, as at the date of this decision, with that of the FTSE UK Private Investors Income Total Return index (before 1 March 2017 the FTSE WMA Stock Market Income Total Return index). If the notional value of the latter is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the notional value, no compensation is payable.

- If there is a loss, BWM should pay into Mr N's pension plan to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. BWM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If BWM is unable to pay the compensation into Mr N's pension plan, it should pay that amount directly to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr N won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age. As with the investigator, I think it's reasonable to assume that Mr N is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr N would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Provide the details of the calculation to Mr N in a clear, simple format.

Any additional sum paid into the investment should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the pension portfolio should be deducted from the notional 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, BWM may total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr N wanted capital 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 made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it's called an income index, the mix and diversification provided within the index is close enough to allow it to be used as a reasonable measure of comparison given Mr N's circumstances and risk attitude.

Any compensation should be paid to Mr N within 28 days of BWM being notified of his acceptance of this decision. If it isn't, interest at 8% simple pa should be added to the compensation amount from the date of this decision to the date of settlement.

As with the investigator, I think the unsuitable advice will have caused Mr N no insignificant amount of concern and anxiety over the security of his pension provision in retirement. As such, I also agree that BWM should pay to Mr N a further £250.

My final decision

My final decision is that I uphold the complaint and direct Chic-Kending Ltd, trading as Bloomfield Wealth Management, to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 August 2023.

Philip Miller
Ombudsman