DRN-4622339

The complaint

Mr S brings this complaint as a representative for all of the executors of the estate of the late Mr C. He says that an appointed representative adviser of Storrar Crane Ltd misadvised Mr C and his wife into taking out an investment bond in 2021 which presented too much risk for them. Mr S also says that the adviser failed to advise Mr C and his wife in respect of a lasting power of attorney ('*LPA*') and after both Mrs C and Mr C had passed away, that the adviser made administrative errors when assisting with the settlement of Mr C's estate.

What happened

Mr and Mrs C had appointed a financial adviser from Pritchett Financial Planning since 1992. Storrar Crane takes responsibility for that advice as the adviser was acting as its appointed representative for the relevant dates of advice set out below.

On 29 September 2021, the adviser recommended that Mr C and his wife invest £100,000 into a Canada Life Select Account investment bond, split equally between two Canlife Portfolio funds (Fund 5 and Fund 7). The advice took place after Mr and Mrs C had downsized and purchased a smaller property.

Mr C sadly passed away in October 2022. Alongside Mr S (who is a son-in-law of Mr and Mrs C), Mr and Mrs C's son, who I shall call Mr V for ease of reading, and their daughter, Mrs W, are also executors for the estate.

Mr C's wife also sadly passed away a short time before Mr C in April 2022.

The executors notified the adviser that Mr C had passed away in October 2022. Thereafter, the adviser assisted them in gaining access to the late Mr C's investments after the estate had applied for probate.

The bond was surrendered following Mr C's death for £92,846.24 and later paid to Mr C's estate on 12 April 2023.

A series of correspondence took place thereafter between the adviser, Canada Life and Mr S. On 12 June 2023, the executors via Mrs S (Mr S's wife) complained to Storrar Crane. They said, in summary:

- In January 2021, the adviser told Mr and Mrs C not to register for LPA's.
- After Mr C passed away, the executors met with the adviser in respect of the Canada Life investment and a separate Invesco Investment Company with Variable Capital ('*ICVC*') that had previously been set up for Mr and Mrs C's grandchildren.
- It was at that meeting they discovered the Canada Life investment had fallen to approximately £93,000.
- Probate was also discussed though it wasn't made clear that it would be required to access both investments.
- In March 2023, the adviser concerned them when it appeared the Canada Life account was showing a zero figure – but probate wasn't complete. The executors asked the adviser to call them, but she never did.

- At that point, the executors asked for the relevant paperwork and were shocked to discover they could have surrendered the bond without probate.
- The investment was frozen by Canada Life shortly after Mr C passed away – meaning it had no chance to make further recover in the intervening six months before it was paid.
- They cannot understand why their parents – aged in their 80's – were advised to put £100,000 in a relatively risky bond where, on review of the paperwork, it would likely not make money initially; it was meant to be a medium to long term investment.
- The adviser knew Mr C had health issues at the time, and it was recorded that he did not want to take unnecessary risk with his money.
- Most recently, the adviser has emailed the executors and substituted Mrs C's first name with one of the grandchildren – this was extremely distressing for the family.

On 14 September 2023, Storrar Crane upheld two matters in respect of customer service issues, but otherwise rejected the complaint. Specifically, it accepted the adviser should have called back as promised in March 2023 and that she made a clear mistake in misaddressing the late Mrs C by using an incorrect forename of one of her grandchildren with the same initial. It offered the executors £400 compensation for those two errors.

Storrar Crane went on to address all of the remaining points made by Mrs S on behalf of the executors of Mr C's estate in turn. It said, in summary:

- After Mr and Mrs C had downsized, they were left with £200,000 on deposit.
- The adviser therefore recommended they invest half of that sum into an investment which comprised two portfolio funds of varying risk profiles, with the aim of generating greater returns than deposit based cash accounts.
- Mr and Mrs C's investment would be able to provide regular income at any time if this was required.
- The investment product itself, an onshore investment bond, was an appropriate vehicle for the money in Mr and Mrs C's situation.
- The product gave the facility if needed, to make either regular withdrawals or lump sums. This met Mr and Mrs C's objective of being able to supplement Mrs C's income should Mr C pass away first.
- Mr C was an experienced investor over many years, had detailed financial expertise and had invested through many periods of market volatility.
- The Bank of England base rate at that time was 0.1%.
- Even if Mr and Mrs C's investment had been placed into lower risk Canada Life portfolios (such as Canlife Portfolio funds 3 and 4) they would have made even greater losses over the same period.
- Though the investment was for the medium to long term, there was no indication of when Mr and Mrs C would pass away.
- Mrs S was present at the meeting in September 2021, and at no time did she question whether the investment would be suitable.
- The adviser did discuss LPA's with both Mr and Mrs C and also suggested that they should make an appointment with a solicitor to discuss whether LPA's would be appropriate.
- Even if Canada Life could have made payment any earlier, the executors would not have been able to distribute the funds without the grant of probate - and so the proceeds would not have been able to be invested.
- There has not been a lost opportunity to make returns on the Canada Life investment because the investment was frozen.
- The adviser gave notification to Canada Life of Mr C's death because Mrs W asked her to do so on behalf of the estate in October 2022.
- The adviser didn't state probate was required for the ICVC account(s).

- Most of the administrative issues and misunderstanding about the Canada Life investment seems to have arisen because the adviser was initially dealing with another executor to begin with, who gave her specific instructions, and said that they would be dealing with probate. She later was instructed by a different executor.

The executors on behalf of Mr C's estate remained unhappy with the response. They felt Storrar Crane had taken too long to reply to the complaint. They also said that the final response contained factually incorrect statements about the nature of the complaint. They also believed the compensation offered for the accepted issues was insufficient.

The executors referred the complaint to this service where it was considered by one of our investigators. He said he felt the complaint ought to succeed, in part.

In respect of the administration issue around notification to Canada Life, he didn't believe the adviser had acted without the permission of the executors. Nor did he believe that the adviser failed to inform Mr C and his wife about LPA's. He also believed she had liaised fairly with Canada Life in relation to the surrender of the bond.

Our investigator reviewed the £400 paid by Storrar Crane for the upset caused in relation to the adviser not returning a call and for using an incorrect name for Mrs C. He felt the amount paid was reasonable and didn't believe any other compensation was due.

However, the investigator did agree that the proposed investment bond hadn't been entirely suitable for Mr and Mrs C at the time of the advice. While he did accept that a bond wasn't an unreasonable suggestion to meet Mr and Mrs C's investment aims, he felt the level of risk with the funds chosen within the bond were too high given their recorded circumstances. The investigator therefore proposed a balanced redress calculation on the basis that Mr and Mrs C were prepared to take some risk, but less than had been proposed by the adviser.

Mr S said he and the executors accepted the complaint. He clarified that they hadn't accepted the £400 put forward by Storrar Crane in June 2023, as they considered it would prevent them from referring the complaint to this service.

Storrar Crane queried why the 50/50 benchmark of FTSE UK Private Investors Income Total Return Index for half of the redress and the average rate from fixed rate bonds for the other half was used for the calculation. Our investigator explained that this benchmark was used to broadly represent what Mr and Mrs C would've done in taking a small risk with their capital.

Storrar Crane still didn't accept the investigator's view. It said that if it was accepted that it was appropriate to invest £100,000 out of total available capital of £200,000 for growth, then using a formula that carves out 50% of this growth investment to be cash deposits seemed odd. It implied that the Financial Ombudsman Service believes that less than 25% of the late Mr and Mrs C's holdings should be in equity markets despite their attitude to risk.

Storrar Crane asked for the complaint to be passed to an ombudsman.

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'd like to thank the parties for their patience whilst this matter progressed through the Financial Ombudsman Service and whilst it awaited an ombudsman's decision. Having looked at everything before me, I also believe this complaint should be upheld in part, on the

same grounds put forward by our investigator.

I've included a detailed chronology of the complaint in the 'what happened' section of this decision. I have done so to assist Mr S, Mrs S, Mr V and Mrs W and to recognise the depth of their ongoing concerns. However, I won't be addressing every individual submission Mr S or the representatives for the estate have made in turn.

This service's role is to investigate disputes and resolve complaints informally, whilst taking into account relevant laws, regulations and best practice. In reaching my decision, I'll focus on the issues I believe to be central to the complaint to decide what I think is fair and reasonable in all of the circumstances. We are not a court; and though there are rules I may rely on in respect of complaint handling procedures, I am not required to comment on each point or make specific determinations on every submission put forward by the parties.

The issue relating to LPA's

In the correspondence sent by Storrar Crane, it is clear that discussions were had between the adviser and Mr and Mrs C about LPA's – though these were not followed up. It follows that I do not believe Storrar Crane was unfair in rejecting this aspect of the complaint.

The adviser's actions with the Canada Life Investment Bond

I can see that the executors felt the adviser proceeded without due authority, and in so doing, this led to the investment being 'frozen' as at the date of notification. This was of particular concern to the executors because the investment produced a negative return and they feel they missed out on a further six months of possible recovery of the fund.

However, I agree with the view reached by our investigator in respect of the adviser's actions. She was sent a letter by Mrs W on 12 October 2022 which specifically set out, "*We will be applying for probate ourselves, but could you please notify Canada Life and Invesco of my Dad's death*". I don't think the adviser acted unfairly in relation to then notifying Canada Life that Mr C had passed away.

I accept that there was later confusion about probate as the adviser believed it was required to access the funds but it later transpired that Canada Life would have allowed release of funds to the executors had a form been completed. However, had Canada Life released the funds, the executors could not have distributed the proceeds or until probate was granted. In any event, the value of the investment was crystallised at the date of notification of Mr C's death, so I don't believe any action of the adviser has caused the estate a loss here. Furthermore, the adviser had previously been informed by Mrs W that the executors were applying for probate already.

The administrative errors by the adviser

I agree with both parties that both mistakes made by the adviser in respect of using an incorrect forename for Mrs C and the failure to call the executors when asked in March 2023 would have caused them worry, upset and concern. It is for that reason that Storrar Crane agreed to pay the executors £400 for the distress they'd suffered as a consequence.

I believe that is a fair and reasonable proposal. And, if I were to consider an award on that basis, it is of the range of award I would make for one-off upsetting mistakes of this nature.

However, I must be clear that I cannot propose any payment of the upset caused to the executors directly. I do not have a free hand to make awards to any of them. I can see that this may be confusing, but our rules do not allow it. I'll explain why that is.

We are bound by the Dispute Resolution ('*DISP*') rules which apply to this service, as set out in the FCA Handbook. An ombudsman cannot avoid the rules or apply discretion to certain rules. Complaints that are made to this service must be pursued by an 'eligible complainant' (for example, a consumer or a micro-enterprise) and those complaints must be about acts or omissions by businesses when carrying out certain 'regulated activities' – in this case, the advice about and the administration of the investments held by the late Mr and Mrs C.

A specific rule (DISP rule 2.7.2 R) allows a third party to bring a complaint on behalf of an eligible complainant to this service, for example from an appointed representative or an executor of an estate for an eligible complainant that has since passed away. That applies here as Mr S, Mr V and Mrs W act as executors for Mr C's estate. But that doesn't mean that Mr S, Mr V or Mrs W, as representatives, are eligible complainants in their own right.

Though this service can make further awards for the distress a business has caused in relation to a complaint (DISP 3.7.2 R), and whilst a complaint can be made to this service by a representative on behalf of the eligible complainant (or the estate of a complainant that has passed away), that does not confer the right to receive a money award to the representative.

Consequently, I cannot make an award for distress or trouble caused to the executors by the adviser in relation to her administration of the late Mr C's investments; our rules do not permit me to award compensation to a representative in these circumstances.

That notwithstanding, Storrar Crane may still be willing to make the payment it previously offered – and the executors will need to contact it directly about that if they wish to accept the offer now. However, I cannot award it in this decision.

The recommendation for the Canada Life Select Account investment bond

The fact find and recommendation for the investment took place in 'summer 2021' and there is documentary evidence in the form of a fact find completed by the parties.

The late Mr and Mrs C met with the adviser after they sold their house to move into a sheltered accommodation where they had purchased a smaller property for £165,000. At the time of the advice, Mrs C was aged 83, and Mr C aged 85. Mr C had £220,000 held in cash, due to the surplus proceeds from their house sale. Mr C was in receipt of a Canada Life annuity, full state pension and a full employment pension, which left his income just under the higher tax rate. Mrs C received a married woman's state pension.

Mr and Mrs C held no investments in their own right, and had no debts or liabilities. The recent change to their circumstances had necessitated a review of their finances.

I don't believe the recommendation for the policy was unsuitable itself insofar as the type of investment considered for Mr and Mrs C. It seems to me, on balance, that they wanted to place their capital into investments where there was a greater possibility of achieving higher returns than the limited amount open to them leaving a large cash sum in cash deposit accounts. They had sufficient means, without liabilities or dependants and with notable disposable capital on deposit following the sale of their house, to take some level of risk of the nature set out by the recommendation.

I believe on balance that Mr and Mrs C likely wanted to go ahead with the investment and that on the information I've seen, they were in agreement with recommendation in the circumstances of their specific financial situation and recorded investment objectives. They are noted as having "*had various shares and investment bonds in the past*".

However, I also take the view that I don't think Mr and Mrs C likely understood the particular risks that the choice of funds for the bond entailed. I'm not satisfied that they appreciated or understood that the underlying investment funds (Canlife Portfolio Fund 5 and Canlife Portfolio Fund 7 were made up primarily of both UK and global equities – totalling 67.9% and 91.4% respectively.

I say that noting how, on the fact find, Mr and Mrs C were asked "*Are you willing to hold a range of investments with different levels of risk to achieve a balance?*". Their answer was "*Sort of*". I am also mindful that – and both parties accept this – the investment was designed to be held for the medium to long term. Mr and Mrs C could make income withdrawal from this, but given their incomes and the fact they left a further £100,000 on deposit, this seemed relatively unlikely without a notable change to their circumstances.

Mr and Mrs C were in their 80's at the time of the advice. They did not have the means of recouping any losses they may suffer from market volatility given their respective ages and circumstances. And, the adviser recorded in response to a question about serious health problems that Mr C's health was "*deteriorating and had heart incident while abroad on holiday last year*". Canada Life's documentation does explain how returns were merely examples and not guaranteed. That the policy went on to make a loss was far more likely in the early years and doesn't mean it was suitable for the adviser to propose overall.

However, I haven't seen any clear evidence to fairly say that the bond, which was described as offering a balanced investment portfolio, reasonably reflected a risk level that matched Mr and Mrs C's attitude to risk, which was ticked as '*realistic*' – and halfway on a scale from risk one to nine. Nor have I seen any objective evidence of any discussion around lower risk funds or alternative investments which could have offered Mr and Mrs K potential for growth to their capital with less volatility, given their specific answer to the question about risk.

The chosen portfolios within the bond were the highest and third highest risk options – out of a total of five risk-targeted portfolio funds. Notably, the Canlife Portfolio Fund 7 sought to achieve capital growth over the long term (so, more than five years) after all costs and charges had been taken. It was in risk band 7 (on a scale of 1-10, where 10 was the highest) on a rolling three-year basis. I don't believe the term or exposure of the portfolios – notably the highest one open to the adviser – was appropriate for Mr and Mrs C.

Taking all of the information in the round, I also believe this aspect of the complaint should be upheld. That the key features information supplied to Mr and Mrs C pointed out the nature of the investment doesn't automatically mean it was reasonable for them where various fund choices could be made depending on the investors' appetite for risk. And noting Mr and Mrs C's particular circumstances, I don't believe the recommendation made was consistent with their recorded risk profile. For example, the adviser had the option of considering Portfolio Funds 3 and 4 which had far less exposure to equities and an asset allocation that offered a greater balance of lower risk assets and fixed interest securities. That those portfolios didn't perform well over the same period was set out by Storrar Crane with the benefit of hindsight.

Like the investigator before me, I don't believe Mr and Mrs C were given sufficient information in order that they could properly understand and appreciate the risks and benefits, such that they could make a balanced and informed choice about the fund choices for their particular investment or whether they ought to consider a lower risk investment elsewhere. I therefore uphold this aspect of the complaint.

I note Storrar Crane has queried how this service approaches investment compensation in these circumstances. It is explained in the redress calculation below. Put simply, it isn't possible to say precisely what the late Mr and Mrs C done in 2021 had they been advised about the asset allocation of the different funds, and been able to apply these against their

undetermined (‘sort of’) approach to risk.

I am persuaded that it’s most likely they would still have gone ahead with the investment recommendation given their overriding objective to achieve greater returns beyond the 0.5% base rate for deposit accounts at the time; but I find it more plausible that they’d have done so in lower risk portfolios that provided a more cautious approached to risk given their ages and lack of means to absorb volatility in the shorter or medium term. I have set out the means of establishing this by assessing what would be ‘fair compensation’ below.

Putting things right

Fair compensation

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

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

What must Storrar Crane do?

To compensate the estate of Mr C fairly, Storrar Crane must:

- Compare the performance of Mr and Mrs C'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.

- Storrar Crane should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Canada Life Select Account investment bond	No longer in force	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 ceased to be held	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, Storrar Crane 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 C and Mrs C likely wanted capital growth with a small risk to their 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 their 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 investors who were prepared to take some risk to get a higher return.
- I consider that Mr and Mrs C's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put the estate of Mr C into that position.
- It does not mean that Mr and Mrs C would have invested 50% of their 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 and Mrs C could have obtained from investments suited to their objectives and risk attitude.

My final decision

I uphold this complaint, in part. My decision is that Storrar Crane Ltd should pay the amount calculated as set out above.

Storrar Crane Ltd should provide details of its calculation to the executors for the estate of Mr C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr C to accept or reject my decision before 26 June 2024.

Jo Storey
Ombudsman