DRN-4862992

Financial Ombudsman Service

**The complaint**

Mr and Mrs C have complained about the investment advice they were given by AFWM Limited ('AFWM'). They questioned whether the advice to invest for the longer term was right for them particularly taking account of their age. Mr and Mrs C have suffered an investment loss of around £10,500 which they would like returned to them along with a refund of the charges.

**What happened**

Mr and Mrs C had savings and ISA investments and in May 2022 agreed to transfer their ISAs to the management of AFWM. The portfolio was valued around £145,000 and in June 2022 AFWM provided its recommendations for Mr and Mrs C to invest an additional £10,000 each. The funds were invested into the AFWM's Cautious Growth Fund. Further funds were invested later in the year.

In November 2022 Mr and Mrs C were concerned about falls in the stock markets and instructed that all of their investments be sold. The holdings were bought back but Mr and Mrs C still remained concerned and transferred their investments away from AFWM.

Mr and Mrs C complained to AFWM in January 2023 and questioned whether they should have been advised to invest at their age. And if the advice given in June 2022 was good why did it become increasingly questionable when further funds became available in August/September. And when the investments were sold, why weren't they advised to put their funds into a cash ISA.

AFWM responded to the complaint on 2 February 2023. It didn't uphold the complaint;

- The risk and capacity for loss had been discussed at the meetings of May and June 2022. The advice given was to move money out of a portfolio that would be considered higher risk than the investment being recommended.
- It had been discussed at length whether the investment was right considering their ages (Mr C was 91 and Mrs C 83 years of age) and AFWM had a Vulnerable Persons Policy in place which outlined the practices and procedures to prevent detriment to its clients.
- When further money was available for investment later in 2022 AFWM reiterated its advice which it maintained was still suitable. However, 2022 was an exceptionally volatile year which cautious investors weren't insulated from.
- Mr and Mrs C held a significant amount of cash, and this had been discussed. Mr and Mrs C had apologised for their instruction to sell the funds in November 2022. The Cautious Growth portfolio had performed broadly in line with the risk benchmarks.

Mr and Mrs C weren't happy with the outcome of their complaint so brought it to this service. Pending some information from AFWM the first of our investigators initially thought the complaint should be upheld. But when that information was received the second of our investigators who considered the complaint didn't think it should be upheld. She said;

- She outlined the relevant rules and regulations and explained she could only uphold the complaint if AFWM hadn't complied with the rules which she thought it had.
- AFWM had gathered details of Mr and Mrs C's circumstances and investment objectives and had sent a letter outlining its recommendation.
- Their then current investments didn't suit Mr and Mrs C's risk profile and AFWM classified them as cautious risk investors, the description of which included longer term investment. There had been substantial discussion about risk at the meetings Mr and Mrs C had with AFWM, and they were made aware of potential losses.
- The investigator couldn't agree that even if the advice had been suitable at the outset, that suitability didn't remain so four months later as Mr and Mrs C were investing for the longer term.

Mr and Mrs C didn't agree. As the complaint remains unresolved, it has been passed to me in my role as ombudsman for a 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.

After doing so, I've reached the same conclusion as the investigator and broadly for the same reasons. I'll explain why.

<u>Mr and Mrs C's circumstances</u>

Mr and Mrs C contacted AFWM after receiving its magazine in the mail. They had meetings with AFWM in May and June 2022 and I've considered Mr and Mrs C's circumstances at the time the advice was given and as recorded in AFWM's 'fact find' document completed when they met with their adviser.

The purpose of the meetings was to give advice about savings and investments. Mr C was aged 91 and Mrs C 83. They were both retired. No medical issues were recorded. They owned their home valued at around £300,000 and didn't have any liabilities. They had a joint annual income of just under £45,000 and they had a disposable monthly income of £1,000.

They had total funds available – including emergency funds – of £130,000 with £20,000 available for immediate investment. The source of the funds was excess cash. They wanted to review their existing ISAs 'as to their suitability for maximising capital growth potential over the medium to long term' as well as matching their attitude to risk. They wanted their 'money to work harder for them, striving for performance potential greater than cash on deposit over the medium to long term in line with their attitude to risk'. Mr C had been managing those investments but wanted active management as he didn't have the time.

Mr and Mrs C each had cash on a term deposit of £40,000 which was due to mature in September 2022 and ISA investments of over £61,000 and £82,000 respectively. They each had premium bonds valued at £50,000 and a joint current account of £30,000.

Mr C had some investment knowledge as he informed the adviser that 'any experience and understanding of investment risk has come from the previous 18 months when he open[ed] both his and [Mrs C's]' accounts with the previous platform provider. He also read the Financial Times.

<u>Mr and Mrs C's attitude to risk.</u>

As per the fact find document Mr and Mrs C categorised themselves as ‘very cautious’ when it came to their investment needs and ‘cautious’ within the categories as defined by AFWM. AFWM’s definition of a cautious investor was;

> ‘You are wary of capital losses but do recognise the need to take some risk over the longer term in order to achieve longer term returns higher than that available on Deposit. You are generally comfortable taking on risk provided the overall portfolio is defensively positioned to avoid large scale losses in the event of a financial crisis.’

It’s noted that Mr and Mrs C agreed with risk profile, and I’m further satisfied that risk was discussed as its recorded in the suitability letter issued after the meetings;

> ‘We discussed at some length your attitude to risk and in particular, the relationship between risk and reward. You understand a degree of risk does have to be taken in order to provide for investment return.’

About their cautious attitude to risk the letter went on to say;

> ‘CAUTIOUS
>
> You are wary of capital losses but do recognise the need to take some risk over the longer term in order to achieve longer term returns higher than that available on deposit You are generally comfortable taking on risk provided the overall portfolio is defensively positioned to avoid large scale losses in the event of a financial crisis.
>
> Capacity for Loss
>
> Whenever you invest you have to accept there is a risk to your capital. Any capacity for loss is based on what you are prepared to lose, or can afford to lose, which is based on your personal circumstances. Having agreed your attitude to investment risk, we discussed how this could impact on potential losses to your investment and you confirmed this is within an acceptable tolerance based on your capacity to suffer any losses.
>
> Examples of losses for your risk profile were discussed in our risk questionnaire and are provided in the table below. This indicates the approximate falls that you would have experienced, issuing the relevant benchmark sectors for each risk category, specifically during the economic shock of the COVID-19 Pandemic crisis. In the last 20 years, there have been two other market falls of similar magnitude, one being the end of the 2000 Technology bubble, followed by the September 11th 2001, terrorist attacks, followed by the 2003 Gulf War (08/2000 to 03/2003); secondly the world banking collapse of 10/2007 to 03/2009.’

It then outlined the sector benchmark falls during the COVID pandemic. The letter confirmed that ‘You are happy and I am satisfied that you are able to withstand the above potential losses should they occur.’

So, taking all of this into account, I think the levels of risk implicit in investing were explained to and discussed with Mr and Mrs C and they were content to expose their investment money to a cautious level of risk in order to achieve the potential of better returns than cash held on deposit over the longer term.

<u>The advice</u>

While I'm satisfied it was most likely the case that Mr and Mrs C's attitude to risk was assessed by the adviser, I've considered whether what was recommended to them was right for their circumstances and financial objectives.

Mr and Mrs C wanted to achieve potentially better returns than cash deposits for some of their money. But they have questioned why they weren't advised to keep their funds in cash and I've considered this point.

While Mr C did have some investment experience this was limited to 18 months of choosing his own investments and reading the financial press so I think Mr and Mrs C would have been reliant upon the advice given to them. And I've borne in mind what they'd done previously with their money by splitting it between investments and the risk-free environment of a savings account and premium bonds.

But as mentioned above its recorded that Mr and Mrs C's investment objective was for the potential for capital growth over the medium to longer term, so it seems likely that Mr and Mrs C did want to continue to explore the opportunity to make a portion of their money grow more than it had done while in a savings account or premium bonds. Taking everything into consideration, and Mr C's recent investment experience, I'm persuaded it was more likely that Mr and Mrs C were willing to take some risk with their money, albeit limited to cautious risk with some growth.

Mr and Mrs C's personal and financial circumstances were stable – they owned their own property, had income in excess of capital, had a significant sum in cash and for emergencies as well as some investments.

After the initial meeting AFWM issued its recommendation letter on 14 June 2022. It confirmed that Mr and Mrs C wanted to keep £110,000 as emergency funds and which included the £100,000 invested in premium bonds. They wanted to review their existing ISA investments and have an 'actively managed portfolio, investing with your children and grandchildren in mind.'

It was recommended that Mr and Mrs C transfer their ISAs held with another platform provider. AFWM concluded that both ISA accounts' asset allocation of over 80% equity exposure amounted to an above average risk. The funds were to be reinvested into the AFWM Ltd Cautious Growth portfolio which was then invested 28% into bonds, 28% into property and 44% into equity.

It was also recommended that Mr and Mrs C each invest £10,000 into the same portfolio Cautious Growth within an ISA wrapper.

In July 2022 Mr and Mrs C each invested £10,000, the funds for which originated from encashed premium bonds. They then transferred approximately £105,000 from their previous platform provider in August 2022 and just over £40,000 in September and October 2022, again from their previous provider – around £165,000 in total.

I don't think – in itself – the recommendation to transfer from Mr and Mrs C's existing platform was unreasonable. That platform didn't allow for third party management of the investments and while Mr C had been managing their joint investments for around 18 months its recorded that he didn't have the time to dedicate himself to doing so, hence the need for someone else to actively manage the investments for them. AFWM has also told us that the previous platform only offered 79 own brand underlying funds at the time which was restrictive compared to what AFWM could offer.

The investments held with the other platform had a higher exposure to equity and foreign assets and currency risk than AFWM's recommended investments and AFWM concluded they exposed Mr and Mrs C to a higher level of risk than they were prepared to take. The portfolio recommended was the AFWM Cautious Growth portfolio and I've reviewed the underlying funds within that portfolio and am satisfied they collectively matched Mr and Mrs C's risk profile.

Mr and Mrs C have referred to the continuing level of risk after Mr and Mrs C initially invested. They couldn't understand why 'in mid 2022 when the financial market was in freefall that…it was correct for AFWM to advise that my savings be invested in their fund.' And they questioned whether the investment advice given in June still remained suitable later in the year bearing in mind the volatility in the stock markets in 2022.

I note the fact find included the question 'Based on the recent Covid-10 Pandemic financial crisis, are you comfortable with the falls for your chosen risk profile?' Mr and Mrs C answered 'Yes' to that question. This indicates that Mr and Mrs C were aware of stock market falls in value and whether they were comfortable with that. And they answered 'No' to the question 'NOT TAKING INCOME: Should capital fall for 30 months would this have an unacceptable impact?' which further suggests the investments were affordable for them in that any losses wouldn't impact on their day to day living.

And in between Mr and Mrs C making the initial investment and the later investments their investment objective and risk profile hadn't changed as confirmed by the 7 November 2022 email. So, while there was shorter term volatility, I haven't been given anything to show that the investment advice given in June 2022 became unsuitable a few months later purely as a result of that volatility.

While losses to their capital must have been upsetting for Mr and Mrs C, they were investing for the medium to longer term during which time it would be hoped that the losses sustained in the short term could be recouped. And equally, it's not unusual to invest when a market is falling in order to take advantage of the potential upside.

Mr and Mrs C's age and the suitability of the investment

Mr and Mrs C have questioned whether the investment recommendation was right for them particularly bearing in mind Mr C's age of 91.

AFWM has provided us with its Vulnerable Person Policy and that policy flags up age as a potential vulnerability. For any clients aged 75 or over AFWM told us it offers the opportunity to have a friend or relative to accompany them at meetings. But it said that Mr and Mrs C were adamant they were happy to look after their own affairs and which was sense checked with the adviser.

And I think this sounds right as its clear that up until their decision to seek a managed portfolio service, that Mr C was happy making his own investment choices which he had been proactive in doing for 18 months or so but no longer had the time to. I also note that with regard to the medium to longer term nature of the investment that Mr and Mrs C were 'investing with your children and grandchildren in mind.' So, it seems likely Mr and Mrs C were looking to invest with the aim of growth of their capital which they could pass on to their children.

The November 2022 sale and reinvestment

Mr C was very concerned about the stock markets and on 6 November 2022 instructed that all of the investments were sold, which AFWM carried out. Mr C didn't realise the implications of this and after discussion with their adviser Mr C asked for the funds to be reinvested back into the AFWM Cautious Growth portfolio. The confirmatory email from AFWM said ‘Having discussed your risk profile with you, you have confirmed again that you remain of Cautious Risk.’ However, Mr and Mrs C remained concerned about their investments and eventually requested their assets be transferred elsewhere.

Clearly Mr and Mrs C invested during very volatile market conditions. It must have been distressing for them to incur losses so soon after investing but I don’t think the investment recommendation was unsuitable for them. The switch in investments exposed them to a lower level of risk than their previously held investments.

And I think it’s more likely Mr C had sufficient investment experience and were jointly given enough information for them to be aware of the varying levels of risk and potential rewards implicit in stock market investments. So, I’m satisfied they were made aware of the alternatives that were available to them. And Mr and Mrs C had two meetings with AFWM’s representative so had an additional opportunity prior to investing to discuss any concerns they may have had. I also note the recommendation letter stated;

> ‘The advice provided to you is based upon the information you have disclosed and therefore, if this letter does not coincide with your view of the situation or you require further clarification, please contact me immediately.’

So, Mr and Mrs C were given further opportunity to query anything they weren’t sure about or any of the conclusions AFWM had reached about their investment objectives and circumstances.

However, I do appreciate that there were probably lower than cautious growth risk options available to Mr and Mrs C at the time that could have potentially offered them better returns than savings held on deposit. But my role isn’t to re-visit the advice that they were given and what other options were potentially available to them. Rather it’s to consider whether the advice that was given to Mr and Mrs C was suitable for them at the time and as identified prior to the investment and whether it was sufficiently explained to them.

Taking all of the above into consideration, and in the individual circumstances of this complaint, I don’t find that the advice given to Mr and Mrs C was unsuitable for them bearing in mind their personal and financial circumstances, their attitude to risk and their investment requirements. It follows that I don’t uphold Mr and Mrs C’s complaint.

No doubt Mr and Mrs C will be disappointed with my conclusion – it’s clear they feel strongly about it – but I hope I have been able to explain how and why I have reached it.

**My final decision**

For the reasons given, I don’t uphold Mr and Mrs C’s complaint about AFWM Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr and Mrs C to accept or reject my decision before 6 September 2024.

Catherine Langley
**Ombudsman**