

The complaint

Mr B and Mrs G complain about the investment advice provided to them by Medical & Professional Investment LLP (M&PI).

What happened

In 2019 Mr B and Mrs G sought advice from M&PI on investing some of their capital and based on the recommendations made invested a total of around £195,000. Mrs G invested a total of just over £115,000 in the Quilter Wealth Select Active Managed Portfolio 4 – investing just over £55,000 by way of an ISA (including around £35,000 transferred from three cash ISAs) and £60,000 in an Open Ended Investment Company (OEIC). Mr B invested a total of £80,000 in a slightly higher risk portfolio, the Quilter Wealth Select Active Managed Portfolio 5, with £20,000 invested by way of an ISA and the remaining £60,000 being invested in an OEIC.

The investments were made in early 2020 and shortly after they invested the coronavirus pandemic started which led Mr B and Mrs G to contact their adviser on 5 March 2020 due to concerns about the impact this was having on financial markets. They were advised to maintain their investments at that time. However there was a further discussion with the adviser on 20 March 2020 following which the adviser recommended they both move their portfolios to cash, which they did.

Following this there was no further advice or communication from the adviser. Mr B and Mrs G complained in September 2021 about the advice on 5 March 2020 to remain invested as well as the failure to provide any further advice or an annual review as agreed whilst M&PI continued to receive fees.

M&PI provided a final response to the complaint. It upheld the complaint on the basis that the adviser hadn't contacted them and offered an annual review and offered to refund the fees of £2,768.17 paid for the ongoing service that wasn't provided. It didn't uphold any other aspect of the complaint.

Mr B and Mrs G didn't accept the offer made by M&PI and referred the complaint to our service. It was considered by one of our investigators who thought it should be upheld on the basis that the original advice to invest in the two portfolios was unsuitable. The investigator set out how redress should be calculated by reference to our usual benchmark for someone willing to take a small risk with their investment.

M&PI pointed out that the investigator had upheld the complaint in relation to the suitability of the original advice when Mr B and Mrs G hadn't complained about that. It subsequently set out why it didn't agree with her opinion. This led to the investigator asking for further information from Mr B and Mrs G and following receipt of this she issued a second opinion, in effect upholding the complaint on the same basis as set out in her original opinion but making some additional findings about Mr B's and Mrs G's outgoings based on bank statements they had provided.

M&PI continued to disagree with the investigator and the matter was referred to me for review and decision. I issued a provisional decision the findings from which are set out below.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

In doing so, I've taken into account relevant law and regulations; relevant regulators' rules guidance and standards; codes of practice; and, where appropriate, what I consider was good industry practice at the relevant time. But I think it's important to note that while I take all those factors into account, in line with our rules, I'm primarily deciding what I consider to be fair and reasonable in all the circumstances of the case.

It is for me to decide what weight to give evidence a party relies on and where there is a dispute about the facts my findings are made on a balance of probabilities – what I think is more likely than not.

Having considered everything, I have come to a different conclusion to the investigator as to the suitability of the original advice as I am not satisfied this was unsuitable, as I explain below. However before I do so, I note M&PI pointed out when it received the investigator's initial opinion that the investigator has upheld the complaint on the basis the original advice was unsuitable when this isn't something Mr B and Mrs G had complained about.

It hasn't gone as far as arguing that we are unable to consider suitability of the original advice such that the investigator shouldn't have considered that issue but I have considered whether it is appropriate for us to do so.

We have an inquisitorial remit which means that we aren't necessarily limited to the specific complaint issues raised by a complainant. In this case the complaint revolves around advice given to Mr B and Mrs G in March 2020 which included that they surrender the investments they had only recently been advised to invest in. I am in the circumstances satisfied that it is within our inquisitorial remit to consider the overall advice given to them at the time including the original advice.

The suitability of the original advice

The documents provided in this complaint don't provide a full picture of Mr B's and Mrs G's circumstances. As set out in the background above, there isn't a detailed income/expenditure analysis. M&PI say this is because Mr B and Mrs G didn't want to complete this. There is no obvious reason why the adviser wouldn't choose to obtain relevant information from Mr B and Mrs G and I accept what the adviser has said about not finding anything unusual in clients not wanting to provide such information. I acknowledge that some clients prefer not to provide details of the income and outgoings and this could explain the lack of information. I also note that within the fact find the question 'do you wish to carry out a detailed expenditure analysis?' the answer recorded is 'no'.

On the other hand Mrs G has said that she and Mr B provided the information they were asked to provide and disputes they chose not to disclose anything to the adviser. I also note the fact find allows the adviser to select 'client does not wish to disclose' when seeking information about assets and expenditure but this option isn't selected. I am also mindful that there is no mention in the suitability letter about them not wanting to provide the information and I would have expected the adviser to have mentioned this.

In any event, I don't think I need to come to a conclusion about why there isn't more information in the fact find as whatever the reason for the limited information within the fact

find it is of limited assistance in determining what information the adviser obtained before advising Mr B and Mrs G. I say this because it is obvious it doesn't contain all the information provided to him given the suitability letter sent on 20 January 2020 contains information about their circumstances not recorded in the fact find.

The suitability letter provides information on; Mrs G's previous employment before retiring; Mr B's current employer and him being a member of his employer's pension scheme; their only debt being a modest car loan; an expected joint income of £75,000 going forwards that was adequate for their day to day needs; them not needing an income from investment in the short to medium term.

I acknowledge this still provided a limited picture of their financial situation and the rules under which M&PI operate specify that where the necessary information isn't obtained a firm shall not make a recommendation to the client. I have therefore considered whether the overall information the adviser was provided with that I have referred to above provided enough information for him to be able to recommend that Mr B and Mrs G invest.

The lack of information about outgoings could be argued to have made it difficult for the adviser to satisfy himself about Mr B's and Mrs G's capacity for loss. However, I am mindful they are shown as having a significant joint income which they said was adequate for their needs and that they were without a mortgage on their property and their only debt was a modest car loan. They also had at least £35,000 in savings and possibly as much as £70,000 – it being in dispute whether the saving figure referred to in the suitability report included the three cash ISAs of £35,000.

In the circumstances it seems to me that it wasn't unreasonable for the adviser to have thought he had enough information to conclude Mr B and Mrs G had the capacity to cope with losses that could arise from investing £160,000 in medium risk investments.

In making that finding I note that in the course of the complaint Mrs G was asked for information about their monthly outgoings and informed the investigator that their joint average monthly outgoings each month were £5,696. This equates to £68,532 each year which based on the gross earnings of £75,000 – which Mrs G confirmed was right – this would have meant Mr B and Mrs G overspending significantly each month.

I note that the investigator pointed this out to them and Mrs G said the outgoings figure she had provided was based on averaging the figure for the three months prior to the advice and these months must have been an exception. She said they usually kept their outgoings within their net income and are left with a small disposable income. However, there is nothing to support this.

I acknowledge Mrs G subsequently provided account balances for an account in her name and a separate account in Mr B's name for the four to five months prior to advice when the investigator asked for evidence of outgoings. However, providing account balances of itself is of little assistance in determining what their regular monthly outgoings were at the time. In the circumstances I am not persuaded by the evidence that she has provided that they didn't have the risk capacity to invest £160,000 at the time. Moreover, this isn't information that was provided to the adviser in any event so isn't something that was available to him at the time of advice.

Turning to Mr B's and Mrs G's risk appetite, the risk profiling tool used by the adviser indicated that out of a possible 10 risk profiles they both came out as a 7 - identified as 'highest medium risk'. The tool includes a section headed 'does your profile match you?' with explanations for each risk profile. The explanation for highest medium risk included that preferred investments were likely to contain mainly higher risk investments such as shares

with a few lower and medium risk investments such as bonds and property.

However, Mr B and Mrs G didn't proceed on the basis they wanted to invest as highest medium risk investors. Instead Mr B is shown as wanting to invest with a risk profile of 5 – shown as 'medium risk' - and Mrs G with a risk profile of 4 – shown as 'lowest medium risk'. I note that M&PI say it was the adviser that instigated this reduction in each client's risk capacity whereas Mr B and Mrs G argue it was them that was unhappy with the initial risk profile and wanted their respective risk profiles to be lower than the profile identified through the questions in the risk profiling tool.

I don't think it really matters whether the reduction in the level of risk they were willing to take was instigated by them or the adviser. Either way I think it shows they had an understanding of risk and were each happy to take the respective risk of the investments recommended to them – in short I am satisfied that the investments were in accordance with their respective risk appetites.

In summary, there is no persuasive evidence that the advice to invest in their respective portfolios wasn't in accordance with their objective of capital growth and within their respective risk appetites and capacity for loss.

The advice in March 2020

Mrs G telephoned the adviser on 5 March 2020 and the note of that conversation – the call itself isn't available – records that she was concerned about the impact of the Covid pandemic on their investments because she had seen negative reports in the media about the stock exchange index moving downwards. Amongst other things the adviser said they were in well diversified portfolios with assets that weren't correlated so that if one asset class went down another might increase in value. His advice was clearly not to disinvest and this wasn't unreasonable advice at the time.

However on 20 March 2020 the adviser emailed Mrs G because of the announcement by the government that day about closing restaurants that day. The adviser followed up the email with a telephone call to Mr B and Mrs G on 22 March 2020. The telephone note refers to him wanting their views following the news on 20 March 2020, stating to them that nothing like this had happened in his lifetime. The note refers to Mr B's and Mrs G's priority was now preservation of capital and the adviser stating this meant moving into a cash fund. The note states that:

"They said they wanted to pursue this strategy and I said I would carry out the transaction straight away and would be back in touch with them as and when things had calmed down so they could consider whether or not to return their portfolio into the markets."

The adviser followed this discussion up with an email the same day stating that:

"Just to restate my opinion that due to the volatility that Investment markets have experienced as a result of the economic uncertainty the world is currently experiencing I am recommending that we reduce the risk/reward profile that applies to Sian's Investment Portfolio from a 4 to a 1 and in respect of Mike from a 5 to a 1. This will have the effect of reducing further volatility."

And:

"On balance I believe that currently preserving capital is more important than achieving gains in the short term."

It therefore seems to me that the advice to reduce the risk/reward profile and to preserve

capital was what the adviser thought they should do rather than something Mr B and Mrs G necessarily decided themselves, as the call note suggests.

Having said that I am not satisfied that the advice to move their portfolios to cash was unreasonable at the time. I acknowledge that this was only a couple of weeks after they had been advised to remain invested which advice I have also said was reasonable. However, there had been a significant change between the telephone call on 5 March 2020 and the email on 20 March 2020, in particular the announcement by the government that day that restaurants etc were to close.

The failure to provide advice after 22 March 2020

M&PI upheld the complaint that the adviser failed to contact Mr B and Mrs G to offer an annual review and offered to refund the fees charged for the ongoing service they didn't receive. However, the failure of the adviser wasn't just in not offering an annual review. He had advised Mr B and Mrs G to come out of the market on the basis that he would contact them when things had calmed down. The adviser has stated that he thought about contacting them in August/September 2020 when there were signs that the economy was being opened but that matters soon took a turn for the worse.

The adviser didn't act reasonably in failing to contact Mr B and Mrs G at all from March 2020 until they complained in September 2021 firstly because he should have contacted them within that period to discuss what they wanted to do with their portfolios as he said he would and secondly because in any event he should have provided an annual review in accordance the agreement they had with him.

As to when he should have made such contact, I have considered what he has said about thinking about doing so in August/September 2020 but that things then took a downturn. Given the uncertainties I agree with the investigator that it is fair and reasonable to use the anniversary of the original advice as the point at which he should have provided advice to them.

Having made that finding, I then have to consider what the outcome of that advice more likely than not would have been. Their circumstances at the beginning of 2021 were very different from when they invested in January 2020 given they had suffered a significant loss in the interim which had led them to move their portfolios to cash.

It therefore seems unlikely they would have been willing to take the same sort of risk again if they were advised in early 2021. However, I also don't think they would have been completely risk averse such that they would have wanted to remain in cash -given the bank base rate at the time was only 0.1%. On balance I think they would have been willing to take a small risk with their money so they had chance of some capital growth being their objective when they invested in 2020.

I have also considered what period redress should be calculated over. I am mindful that Mr B and Mrs G have recently said they are now nervous about reinvesting because of their experiences with the adviser. However, I am mindful that one of the issues they had with the adviser was that he didn't contact them to provide advice. Their experience wouldn't have been the same if the adviser had contacted them about reinvesting a reasonable time after they switched their portfolios to cash. I think if he had done so it is more likely than not they would have wanted to reinvest, albeit not necessarily with the same level of risk.

I also think that Mr B and Mrs G were both caused some distress and inconvenience as a result of being advised to switch to a cash fund with a promise the adviser would contact them in due course only to hear nothing further."

I gave both parties the opportunity of responding and providing any further information they wanted me to consider before making my final decision.

Mr B and Mrs G accepted my provisional decision but M&PI, in summary, made the following key points:

- As the adviser had spoken to the clients in March 2020 and reassessed their circumstances on their new aims and objectives and their revised attitude to risk and confirmed this in emails to the clients this would be considered an annual review such that next annual review would be March 2021.
- It is speculation that the clients would have returned to the markets in 2021 but the adviser had no reason to think they would have been prepared to change their stance of being totally risk averse given all asset classes were still volatile.
- The adviser considered it would be unhelpful contacting the clients in March 2021, as the outlook continued to be negative.
- The adviser's opinion didn't change from March 2021, first with the pandemic and then the invasion of Ukraine with no let-up in the unprecedented market volatility and making asset classes subject to this volatility to be unsuitable for investors who have clearly stated that capital preservation was their priority.
- It does not understand why redress is due to investors who sought professional advice which was provided to them but then ignored this with their financial losses being caused through ignoring advice and panicking.

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 have considered everything that M&PI has said in response to my provisional decision, the findings from which form part of the findings in this final decision unless I state to the contrary. Having considered what it has said I am not persuaded that I should change the conclusions set out in my provisional decision.

M&PI have suggested that any losses Mr B and Mrs G have suffered are as a result of them not accepting advice provided to them and in effect panicking. Given there is no issue about the advice that was provided by the adviser on 6 March 2020 and their acceptance of that advice – namely to stay invested - this can only be a reference to the advice on 22 March 2020.

M&PI are therefore suggesting that the decision by Mr B and Mrs G to come out of their investments on 22 March 2020 was a panic reaction by them and against the advice of the adviser. This arguments is without merit in my view and there is no persuasive evidence that supports what it has said.

Mr B and Mrs G say that they accepted the advice given to them by the adviser at all times and I accept what they have said, given I think what they have said is supported by the documentary evidence. In short, I think it is more likely than not that they went ahead with selling their investments because that is what they were advised to do by the adviser.

The evidence I have seen makes it clear that it was the adviser that instigated the discussion that took place on 22 March 2022, which of itself doesn't support the idea that Mr B and Mrs G were panicking in my view – if that was the case I think it is more likely than not it would have been them contacting the adviser, not the other way around.

The adviser's telephone note of 22 March 2020 states *"I telephoned clients to obtain an*

update on their views following the news of Friday 20th March that cafes/restaurants/pubs etc were to close with immediate effect for an unlimited time.” Moreover, the statement of the adviser’s recollections provided by M&PI confirms he instigated the discussion because “*A very material change had taken place on Friday 20th of March which had led me to make a telephone call to the clients on 23rd.*” I note the adviser mistakenly referred to the 23 March 2020 rather than 22 March 2020 but that aside his recollection seems consistent with the note of the discussion and doesn’t suggest that Mr B and Mrs G were in any way panicking at the time.

The note of the call of 22 March 2020 refers to him informing Mr B and Mrs G “*that we are in uncharted territory*” and pointing out that all asset classes that are used in constructing an investment portfolio carry risks of fluctuation. The note records that preservation of capital was now their number one priority. However, I am not satisfied that the change to the risk Mr B and Mrs G were prepared to take was the result of them panicking. Rather, I think it was based on the advice they were given – contrary to the argument put by M&PI that they went against the advice from the adviser.

I think the email correspondence following the telephone discussion in particular supports the conclusion that it was the adviser that was concerned about what was happening in the markets and the impact on their portfolios. In the email following the discussion the adviser said:

“Just to restate my opinion that due to the volatility that investments markets have experienced as a result of the economic uncertainty the world is currently experiencing I am recommending that we reduce the risk/reward profile that applies to Mrs G’s portfolio from 4 to 1 and in respect of (Mr B) from a 5 to a 1.”

And:

“I am recommending that the investment holdings are transferred into the BlackRock Cash Fund. I am attaching to this email a Factsheet on the fund which provides you with some information on the fund.

I would like this measure to be as short term as possible, however the current situation is what is referred to as an ; “act of god” and is unprecedented and therefore much more difficult to deal with.

On balance I believe that currently preserving capital is more important than achieving gains in the short term (my emphasis). *Please could you confirm your thoughts to me.”*

I think this clearly shows that the adviser recommended that Mr B and Mrs G should put their investments into cash and it was him that considered capital preservation was more important than achieving gains in the short term. In other words, rather than Mr B and Mrs G concluding that capital preservation was the priority, as the telephone note suggests, it was the adviser who advised they should disinvest and put their money into cash.

The fact that the change to the risk profile and move to cash was based on the advice from the adviser is also supported by the email response from Mr B and Mrs G of 22 March 2020 in which they said:

“Thank you for calling us earlier and advising us to reduce our risk profile to 1. We think under the circumstances it’s the right thing to do, so please go ahead on our behalf.”

I have seen no evidence that the adviser went back to them and said he hadn’t advised they reduce their respective risk profiles to 1 and there is no evidence that supports the argument

put by M&PI that the adviser advised Mr B and Mrs G that they should stay invested and they went against that advice. It is not credible that the adviser wouldn't have referred to this in his email of 22 March 2020 and made clear that the change to capital preservation was their decision if that had been the case. Instead the content of his email to Mr B and Mrs G makes it very clear he was advising they move to cash and they accepted his advice.

Insofar as it isn't already clear from what I have said, I am not persuaded on the evidence provided in this complaint that Mr B and Mrs G were risk averse, such that they wouldn't have been willing to reinvest in due course. In his email of 22 March 2020 the adviser said he would like 'this measure' – switching to cash – to be as short as possible but that the current situation 'is unprecedented' and as such more difficult to deal with. There was nothing to suggest from this that Mr B and Mrs G intended to remain in cash.

Given the findings I have made above it follows that I don't accept the explanation that has been provided as to why the adviser didn't contact Mr B and Mrs G to discuss reinvesting. There was no reasonable basis for him thinking they were risk averse such that they would have been unwilling to reinvest in due course. The move to cash was the result of his advice and was made based on the circumstances at that particular point in time.

I note the argument that M&PI has made as to the discussions in March 2020 being in effect an annual review and that therefore another annual review would have been due in March 2021 rather than January 2021, as I have referred to in my provisional decision. I am not persuaded by this. The advice given in March 2020 was because of the specific 'unprecedented' circumstances that had arisen at that time. As the adviser said in his email of 22 March 2020, the measure should be as short term as possible.

In the circumstances it isn't reasonable in my view to argue that the adviser should have waited until March 2021 to carry out a review. I chose 12 months from date of original advice for convenience and simplicity. It is arguable that the date should have been much sooner - for example September 2020 when the adviser said he was thinking of contacting Mr B and Mrs G but decided not to. I think it is fair and reasonable to use January 2021 as the date when the adviser should have advised Mr B and Mrs G about reinvesting. I note that M&PI has suggested that it is speculation to say Mr B and Mrs G would have reinvested but I am satisfied that it is more likely than not they would have done so if the adviser had contacted them within a reasonable time to discuss this.

Putting things right

fair compensation

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

I think Mr B and Mrs G would have invested differently. It is not possible to say *precisely* what they would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr B and Mrs G's circumstances and objectives when they invested.

What should M&PI do?

To compensate Mr B and Mrs G fairly, M&PI must:

- Compare the performance of Mr B and Mrs 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.

- Pay Mr B and Mrs G £500 – in effect £250 each - as they were both caused distress and inconvenience due to the failure by the adviser to make any contact with them and provide advice.
- Repay the ongoing adviser's fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the *actual value* and the *fair value* can be offset against the fees with interest.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Cash fund	Still in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	January 2021 (First anniversary of the original advice to invest in January 2020)	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, M&PI 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 chosen this method of compensation because:

- Mr B and Mrs G 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 someone who was prepared to take some risk to get a higher return.

- I consider that Mr B and Mrs G'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 Mr B and Mrs G into that position. It does not mean that Mr B and Mrs G 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 B and Mrs G could have obtained from investments suited to their objective and risk attitude.

My final decision

I uphold the complaint for the reasons I have explained. Medical & Professional Investment LLP must pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B and Mrs G to accept or reject my decision before 3 September 2024.

Philip Gibbons
Ombudsman