DRN-4969410

The complaint

Mr H complains that Lewis & Co (Investments & Pensions) Limited trading as Lewis Investment (Lewis) gave him unsuitable advice to retain his holding in his Self-Invested Personal Pension (SIPP) property syndicate. He said it told him that the value of his investment would increase, but instead it's gone down.

Mr H said he'd been without income for two years. He wanted redress on the basis that he would've sold his holding two years ago but for the unsuitable advice. He said he'd repeatedly asked to sell his holding but that Lewis advised him that the property would increase in value once a new tenant was found.

Mr H has previously brought another complaint about Lewis to this service in respect of its initial recommendation of the property syndicate to him and the service it'd provided him with. I won't refer to that complaint in my decision.

What happened

In 2005, Lewis recommended that Mr H transferred into a new SIPP so he could then invest in a commercial property syndicate. A Memorandum of Understanding and Rules was established for the syndicate. Within this, it stated that any resolution had to be passed by a vote by syndicate members.

In January 2021, the initial tenancy came to an end and the property owned by the syndicate became vacant. Lewis said it would pursue dilapidations given the state the property had been left in. Mr H said he repeatedly asked Lewis to sell his holding in the syndicate.

On 3 February 2021, members were asked to vote on whether to accept the vacating tenant's offer of £116,500 towards the cost of dilapidations. Members voted to accept this offer.

In August 2022, members were asked to vote on approval of a new tenant for the property. The proposed annual rent was £145,000 on a 15-year lease, with an initial six-month rent-free period. Members voted in favour.

In September 2022, the property was independently valued. The valuation noted the following:

- At the date of inspection the property was awaiting refurbishment.
- The property was at that time incapable of beneficial occupation.
- The property was vacant, although it was understood that there was an offer from a potential occupier.
- The report stated: "*Once the lease has been completed and the tenant in occupation the value may increase*."

- The property was valued at £1,585,000.

Throughout 2022, Mr H spoke to his Lewis adviser about his need for income. The syndicate wasn't generating any income, so Mr H was considering selling his holding so that he could use the proceeds to provide an income. Lewis explained some of Mr H's options, but said that selling the property once a new tenant was in place would likely achieve a higher value.

In March 2023, the syndicate held its annual general meeting. The minutes from that meeting stated that a potential tenant had recently made an offer. But Lewis noted that the potential tenant had been difficult to deal with. The offer was for rent of £145,000 each year. But the potential tenant wanted a rent-free period of four years and three months. However, they expected to spend over £600,000 on improvements to the property.

Lewis said that the improvements would add value to the property. And noted that if the potential new tenant stayed for 15 years, the total rent, allowing for the rent-free period, would be £1,558,000. It felt the syndicate should accept this rental offer. But it outlined an alternative option, where the syndicate instead refurbished the property at its own expense. It felt it might then take around two years for a high-quality tenant to occupy the building. It said that the total costs to the syndicate of this option would be £471,072. But noted that this cost would increase if it couldn't get a tenant in that quickly.

During the meeting, Lewis also talked about the recent valuation. It said the valuers were having a difficult time putting numbers on buildings and that it was seeing some unusual figures. But it felt that the valuation put on the syndicate's property was fair.

Lewis said that the valuers had suggested a market rental figure of £145,000. It said the initial tenants had paid £133,000, so felt £145,000 was acceptable.

Lewis also noted that the total rent and dilapidations received from the initial tenants was about the same as the syndicate had initially paid for the property. Lewis said it'd had very few enquiries on the property. It explained that if it didn't get a new tenant for it, the loss for the syndicate would be £85,536 each year, although the dilapidations had helped to fund this for a period of time.

Lewis said it felt that if the potential new tenant decided to take up the tenancy the valuation was likely to increase. It said this was because the September 2022 valuation had been based on an empty building. And the valuer had stated at that time that if the syndicate secured a tenant the value would likely increase.

Lewis recommended that the syndicate accepted the offer from the prospective tenant. But said that if it had any other interest it would consider the alternative option it'd outlined.

Lewis noted that if the syndicate members accepted the recommendation, they wouldn't get any income on the property over the next 4 years and 3 months. It suggested that if anyone needed income from the property they could put part of their share on the market once the lease went through when it could base that share on an updated valuation. It said it wouldn't recommend doing this before the lease went through because the member might not get any interest on their holding.

Lewis felt the value would go up once tenanted, and estimated a value of around £1,700,000 to £1,850,000.

Around the time that the new tenants agreed to the lease Lewis had outlined at the annual general meeting, independent valuers valued the property in December 2023. The valuation noted the following:

- It assumed for the purposes of the valuation that the refurbishment was complete and that the property was in good lettable condition.

- It said that the new tenant had agreed to a 15-year lease with effect from 5 December 2023. And that an annual rent of £145,000 would be payable from 1 March 2028.

- The report stated: "*the RICS Commercial Property Monitor Q3 2023 points to market activity remaining subdued given current lending conditions and fragile economic outlook*."

- The property was valued at £970,000.

- The report stated: "*The investment would not in our view be attractive in the open market today with zero income to a buyer for in excess of four years without a significant reversion to compensate for the zero initial return. This is unlikely to be fundable in the open market through traditional channels at this time and will have a limited market which could affect certainty of the valuation*."

As property had fallen in value, Mr H complained to Lewis about its advice to retain his investment until a tenant was in place.

Lewis issued its final response to the complaint in February 2024. It didn't think its advice to retain his property share had been unsuitable for Mr H. It acknowledged that Mr H had wanted to sell his share of the syndicate on various occasions. But felt its adviser had offered the correct advice when he'd explained that it would be very unlikely that the share would sell, and had therefore advised Mr H to retain his share for the time being.

Lewis didn't believe Mr H would've found a buyer willing to purchase his share of the syndicate without a lease in place and with the liability of business rates, insurances and other property-related costs to pay. It said there was also a requirement for members to provide additional funding for the works.

Lewis acknowledged that during the annual general meeting, there'd been a discussion which had re-iterated that with a lease in place, the syndicate would be in a stronger position and the valuation would likely increase. It noted this hadn't in fact happened, as the value of the property had fallen from £1,585,000 to £970,000. But it said this had been unexpected given a new tenant had been secured. It said that the valuers' justification for the reduced valuation was that the new tenant could fail before it'd completed the refurbishment of the property at its own cost. Lewis felt the valuers had taken the worst possible scenario for the valuation. It also noted that recently increased Bank of England base rates had had a negative impact on property values.

Lewis said it still felt that the £970,000 valuation was too low. It believed that once the works had been completed the property would increase in value. As such, it said its advice for Mr H to retain his share of the syndicate remained the same.

However, Lewis said that as there was now a tenant in place, Mr H's share of the property would be likely to sell if he wanted to put it to market. It recommended that if he did want to sell, it would market it based on a value of £1,250,000, as it felt this would be appealing to other members of the syndicate.

Lewis also said it didn't believe Mr H's share would've sold at the time that the lease had ended on 12 January 2021, given the impending uncertainty and all of the costs involved in the property.

Unhappy with Lewis's response, Mr H brought his complaint to this service. He said it'd never tried to find a buyer for his share. And that it'd reduced in value by £33,000. He felt that if he'd sold his share over the past three years when he'd told Lewis he wanted to sell it, he wouldn't have lost out as much. He wanted Lewis to make good his loss.

Mr H also said that Lewis had told him that it wouldn't have been possible to sell his share of the property at the time. But he provided this service with correspondence from Lewis that he felt showed that it had actively looked for and promoted a buy out for an investment in another similar vacant commercial property. He didn't think that Lewis had taken a similar action to find a buyer for his investment.

Lewis confirmed that it'd taken no steps to sell Mr H's share as its advice was to wait.

Our investigator didn't think the complaint should be upheld. He felt that it was only clear to see how the property valuation had changed over time with the benefit of hindsight. He felt it was appropriate for Lewis to advise Mr H to maintain his holding. And that in doing so, it was acting in his best interests by trying to help him achieve a more favourable sale price. He also felt that if Lewis had instead advised Mr H to sell his holding, there was no way of knowing whether it would've been possible to find a buyer, or what price any buyer would've been prepared to pay. He therefore didn't think it was possible to say whether Mr H would now be in a different financial position if Lewis's advice had been different.

Mr H didn't agree with our investigator. He made the following points:

- He said his adviser had told him that it would be very unlikely he could sell his share, and as such he advised him to retain it. Mr H said that his adviser had suggested that, if he wanted to go ahead with his intention to sell his share, he'd need a valuation so that any prospective buyer would be buying at market price.

- Mr H said that Lewis had sent him an offer to invest in another untenanted property on 14 March 2024. He felt that the circumstances were similar to his property. He said it seemed that this offer had been sent to the "wider market" as per the Syndicate rules. But he didn't think this had been done for his share in his syndicate.

- Mr H felt that Lewis had suggested that either syndicate members put money into the syndicate or they looked for more investors. He noted Lewis had then stated: "*That isn't straightforward with a vacant building but we do have some investors that might be interested*." Mr H felt that this contradicted the advice Lewis had given him about the likelihood that his share would sell.

- Mr H felt that Lewis should've known that the valuers would take a pessimistic view of the value of his property.

- He also felt that Lewis should've known that higher and rising Bank of England base rates would have a negative impact on property values. But he said at no point did it advise him about this possible negative impact.

Our investigator considered Mr H's points, but they didn't change his view. He said he ultimately still felt that Lewis's opinion that the property should reach a higher value once tenanted - and be easier to sell - wasn't unreasonable.

Mr H still felt that the prevailing circumstances at the time he'd wanted to sell his holding suggested that Lewis should've given him alternative advice.

As agreement couldn't be reached, the complaint has come to me for a review.

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.

Having considered all the circumstances of this complaint, I'm not going to uphold it. I know this will be disappointing to Mr H. I'll explain the reasons for my decision.

I first considered if there's any evidence Lewis provided Mr H with unsuitable advice.

Was Lewis's advice to retain the holding unsuitable for Mr H?

Mr H said that Lewis told him it'd be very unlikely he'd be able to sell his share. Therefore it advised him to retain it. So I've gone on to consider whether I think this was a reasonable position to take.

Having done so, I'm persuaded that it was. I say this because the evidence shows that Mr H was unhappy with his investment in August 2022.

Lewis's call note from its 22 August 2022 call with Mr H recorded that he didn't feel it had a good deal to put before the syndicate's members. It further noted that it told him that putting a new tenant in place would benefit all syndicate members: "*from an income as well as a valuation perspective*".

A further call note from 26 August 2022 shows that Mr H was still: "*upset with the investment performance and the new tenant*". The noted stated that Lewis didn't know the value of the property, as it hadn't been recently valued. So it couldn't accurately assess the investment performance.

Lewis then told Mr H that it would be sensible to wait until they had a valuation for the property before exploring his options further. But it noted that these were:

1. "*keep the property and work out how to address any potential borrowing.*
2. *sell his share and reinvest these monies into something more cautious or even look at annuities.*
3. *sell some of the property, if he preferred to retain it and use the funds to repay the loan so that he can draw income immediately*."

The note recorded that Lewis had outlined these options to Mr H "*on numerous occasions over the last couple of years*". But Lewis felt that receiving the offer from the new tenant had moved it closer to being able to resolve his situation. The call note acknowledged that Mr H needed income, but felt that selling the property whilst it was empty and needed work would mean that its value was considerably lower than waiting a few months for the deal to complete.

I do understand that Mr H was in a very difficult position at the time of the September 2022 valuation for £1,585,000. But I'm satisfied that it was reasonable for Lewis to consider that this valuation was lower than it would be in a few months' time. I say this because I think it's reasonable to assume that a tenanted, refurbished property would be valued more highly than an untenanted one in need of refurbishment. I also note that the valuer also stated in its report that the property might increase in value once a tenant was in.

I therefore can't reasonably say that Lewis's August 2022 advice to retain the property was unreasonable.

I next considered whether Lewis should've taken steps to help Mr H sell his share of the property.

Should Lewis have tried to sell Mr H's share of the property?

Mr H said that Lewis had suggested that syndicate members could put money into the syndicate, or that new investors might be interested, even when the property was vacant.

Lewis told this service that Mr H had taken the statement recorded in the annual general meeting minutes: "*we do have some investors that might be interested*" out of context. It said it had discussed a potential rights issue with syndicate members during the annual general meeting. But that the members had voted not to explore this option. It still maintained the position it'd outlined in its final response letter, that is, it felt it was unlikely that other investors would be willing to purchase the share without a lease in place, given the ongoing liabilities and the requirement for refurbishment.

Mr H said that although Lewis was clearly marketing another similar untenanted property in March 2024, it didn't take any steps to market his share in his property. Lewis said this was because it would've been against its advice to have marketed his share of his property in this way.

While I understand why Mr H has made these points, I can't fairly say Lewis acted incorrectly here. I say this because I wouldn't have expected Lewis to have marketed his share, having advised him not to sell it, unless the evidence showed that he'd specifically asked it to. There's no evidence that this is the case here. I also noted earlier in my decision why I agree with Lewis that an untenanted property in need of refurbishment was unlikely to attract much investor interest, given the ongoing costs also involved.

I next considered if Lewis should've known that the value of the property was likely to fall, despite the new tenant.

Should Lewis have anticipated the fall in the property's valuation between September 2022 and December 2023?

Mr H felt that Lewis had experience of its valuers taking a pessimistic view of the value of properties. He therefore felt that it should've known the new valuation could be lower than the old one. He also felt that Lewis should've known that higher and rising base rates would lead to falling property values. He therefore felt that Lewis should've advised him of the possible negative impact this could have on the property's value.

I've carefully considered this point. However, I'm not persuaded that Lewis should've known how much of the impact of the potentially high and rising interest rates had already been factored into either the September 2022 or the December 2023 valuations. And I can't reasonably say that it should've been able to work out how this impact might've interacted with the change in value from an untenanted property in need of refurbishment to one with a long-term tenant in a good state of repair. Therefore, on balance, I'm not persuaded that Lewis should've known that the property value was likely to fall, despite the new tenant.

I'm sympathetic to the position Mr H has found himself in. I can see that his other syndicate members have voted for options that he himself wouldn't have voted for. But I've not found that Lewis did anything wrong. Therefore I don't uphold the complaint.

My final decision

For the reasons I've set out, I don't uphold Mr H's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 November 2024.

Jo Occleshaw
Ombudsman