

The complaint

Mrs M complained about the service she's received from an appointed representative of Sense Network Limited (SNL). She's unhappy with advice she received to not surrender an offshore bond she held because of tax that would become due.

What happened

Mrs M had been receiving ongoing advice from the advisor since 2011 and in May 2020 she had discussions with the advisor about encashing an offshore investment bond she held with Canada Life. The reason for this was that she wanted to gift funds to her son and daughter for potential property purchases.

The advisor made proposals regarding the best way to go about releasing the required funds and it was agreed that two of the ten underlying funds in the bond would be sold to provide the c.£18,000 Mrs M's daughter required. Mrs M still required £40,000 for her son, the advisor initially advised Mrs M to fully encash the bond but then advised against doing this and instead agreed to disinvest the bond and move the bulk of the capital to a Canada Life III portfolio whilst retaining £40,000 in cash.

There was further correspondence over the next few weeks and the advisor copied Mrs M into an email they sent to a colleague where they stated their intention to disengage with Mrs M due to the amount of time and resources she was taking up. However, this didn't happen and in November 2020 the advisor and Mrs M had a meeting. Mrs M has said that during this meeting it was agreed that the cash balance would be reinvested into ten very cautious funds in line with her attitude to risk (ATR), fees and dealing charges would be reduced and a new suitability report would be sent out.

Mrs M had various personal challenges over the next few months, and she also moved house during this time. When she was finally settled in March 2022, she began to review the reports she'd been sent and noticed discrepancies between what had been agreed with the advisor and what had actually taken place. She complained to SNL in June 2022 and said, in summary, that actions that had been agreed during a meeting in November 2020 hadn't been followed. These included:

- Her cash holdings should have been reinvested into ten very cautious funds, but they'd been reinvested into a model portfolio made up of 12 funds, some of which had a risk rating higher than five out of seven.
- 27% of her portfolio was invested in the Baillie Gifford Managed B Fund when it should only have been 3%. This also impacted the remainder of her portfolio as the remaining funds didn't align with the composition she'd agreed with the advisor.
- Advisor fees hadn't been reduced to .75% from 1% and dealing fees also hadn't been reduced as agreed.
- Nine of the funds that had been recommended might not be suitable for investors who planned to withdraw their funds within the next three to five years. But she'd

been advised to rebalance her portfolio after just 12 months.

- She had concerns about the level of service fees and charges that were taken from her portfolio during the period when the bond had been disinvested and when it was reinvested.
- The value of the bond had fallen, and she was now in a position where without partially surrendering it, she was unable to gift £40,000 to her son. If she were to partially surrender the bond, she would be crystallising the loss. Had the advisor not changed their advice in July 2020, she would have already surrendered the bond and the projected tax bill would by now have been partially mitigated by the savings made in ongoing service fees and charges. Additionally, if the advisor hadn't advised her to re-invest the £40,000 she'd promised to her son back into the bond, she could have withdrawn that as part of her 5% tax free allowance.
- She felt the advisor had exposed her to an excessive level of risk and hadn't alerted her when the value of her investments started to fall.

SNL looked into the concerns that had been raised and partially upheld the complaint. They said, in summary:

- They weren't responsible for the initial advice to take out the bond as the advisor wasn't their AR at the time.
- There was no documentary evidence that there had been an agreement to reduce ongoing fees to .75% but they accepted what Mrs M said and agreed to refund .25% of the fees that had been charged from January 2021.
- There was documentary evidence that reduced trading fees had been agreed, so they were also going to refund any amounts that had been overcharged.
- Mrs M had originally moved her funds into cash as she was considering surrendering the investment bond. Funds were withdrawn to give her daughter a lump sum and a further amount of £40,000 was retained on the understanding that this was to be given her son. However, their understanding was that both the decision to surrender the plan and gift the £40,000 to her son were discounted as Mrs M preferred to retain the investment with the hope that the returns would be greater than cash.
- Had she surrendered the bond, she would be liable to a chargeable event which would always have happened upon surrender. They noted that Mrs M's intention was to move the investment into a fund that did not require active ongoing management by the advisor. The decision was made to invest into the Portfolio III fund and a recommendation report was issued. However, no final authority was received to authorise this transaction and without this, they couldn't complete their recommendations.
- They highlighted an email Mrs M had sent them in September 2020 where she expressed concerns at losing the advisor's services and explicitly requested that they continue to provide her with advice. This meant that the funds remained in cash until an agreement was made regarding the provision of advice.
- They didn't dispute that some of the funds held within her portfolio were higher than her ATR but thought that overall makeup of the portfolio was suitable. But they thought that £40,000 ought to have been invested in line with portfolio's existing fund allocations and not solely in the Baillie Gifford Managed Fund.

- They offered compensation based on the refund of advisor fees and return if the £40,000 had been invested correctly.

Mrs M didn't accept their findings and asked for our help. The complaint was considered by one of our investigators who thought it should be upheld. In their opinion, SNL should put Mrs M in the position she would have been in if the bond had been surrendered in June 2020 and the proceeds invested on a no risk basis. The investigator thought this was appropriate because:

- Correspondence from May 2020 showed that Mrs M's plan was to disinvest £54,000, £40,000 for her son and the balance for her daughter. This changed to £18,500 for daughter and to then review the suitability of the bond. The advisor had agreed that Mrs M was unwilling to incur financial loss and arranged to encash the bond fully while they discussed the next steps and subsequent emails showed the plan was to place the funds in low-risk investment and feed into an ISA.
- Mrs M's answers to a risk questionnaire showed she valued certainty over capital growth and emails she sent to SNL in 2020 showed she was worried about losses to her investment and the impact of fees. She also said she wasn't willing to lose up to 50% of her portfolio.
- Mrs M only agreed to reinvest all her funds as she was told she would incur high tax costs, but she didn't know this tax was always due on surrender. Based on the balance of probabilities, the investigator agreed that Mrs M would have gone ahead with the full surrender if she had known the tax was inevitable.

Mrs M accepted the investigator's findings, but SNL didn't agree. They made the following points:

- Mrs M had said that the advisor was not initially aware of the tax implications of surrendering the bond and pressured her into reversing the decision once the advisor became aware of the potential tax charge. But the advisor had a different recollection of events - she highlighted the tax charge to Mrs M, who was then in a fully informed position, and decided not to encash the bond.
- Mrs M had repeatedly suggested in her submissions that the advisor hadn't actioned the 'agreed' re-investment of the funds from cash into the 'agreed' investments. This showed that Mrs M was prepared to reinvest and agreed to this with the advisor, and was not pressurised.
- Mrs M had said that she decided to retain a bond she held with another business following a telephone call with them. That was clear evidence that she was prepared to invest, but only in investments that made a profit.
- Mrs M had also suggested that she was not aware of the tax implication prior to the meeting in June 2020. However, the records suggested otherwise as the fact find stated "But there is likely to be a tax liability, which has been discussed with ***. I have explained that we are not tax advisers, and that we can only offer guidance on this. *** knows that she will be liable and accepts this.". Also, the appendices of the January 2020 report contained additional information highlighting the tax position of the investment.
- The advisor was highly respected and had won awards for her care of vulnerable clients. To suggest that she'd pressurised Mrs M went against all professional

standards that she adhered to.

- Mrs M had withdrawn funds for her daughter, and they had no doubt that the advisor would have assisted with the withdrawal for the other £40,000 if this was required. The fact that Mrs M subsequently complained about the lack of re-investment of the £40,000 suggested, beyond doubt and on the balance of probabilities that it was agreed, with the consent of Mrs M, to reinvest these funds.
- They couldn't provide any evidence of verbal discussions between the adviser and client however the information supplied by Mrs M clearly suggested that she was in a fully informed position.

The investigator wasn't persuaded to change their opinion and pointed to the communications between Mrs M and the advisor in early 2020 which, in their opinion, highlighted Mrs M's concerns about the investment's value declining and demonstrated that she had a low risk tolerance.

SNL didn't provide any further responses, and as there was no agreement, the complaint was passed to me to decide. I recently issued a provisional decision where I set out how the complaint should be upheld. An extract is below and forms part of this decision:

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

I'd firstly like to point out that I'm not considering the initial recommendation to invest in the Canada Life bond. This is because the advisor wasn't working for SNL at the time, so they aren't responsible for the advice she gave at that particular time. However, I am able to consider the 2020 advice.

Mrs M initially met with the advisor in January 2020 for an annual review. Her objective was to analyse her Canada Life International Portfolio Bond to ensure it was in line with her ATR and offered good potential to preserve her capital. Mrs M's investment knowledge and experience was discussed, and the following statement was recorded:

"We discussed market fluctuations, and how these might impact on the level of growth or income within your investments, and also how exposure to risk means that you can lose all or part of your investment. You are aware of market fluctuations, through the various types of financial products you have held, and have been comfortable with the concept that these might generate growth and/or income within your investments, but also that you may lose all or part of an investment made."

Mrs M's ATR was assessed as having a capacity for loss of 50% and having an ATR of four out of ten (one being the least risky) which equated to a Cautious to Moderate risk level. This was defined as:

"This means that you are prepared to take a limited investment risk in order to increase the chances of achieving a positive return but you only want to risk a small part of your capital to achieve this. The risk scale is made up of 10 profiles overall and means that you are slightly below average in how much risk you want to take in your investments.

A typical Cautious to Moderate investor will have up to half invested in fixed interest products which are low risk but have low returns. The larger part of the portfolio will be invested in equities and property which can boost longer term returns but are associated with more risk. The range of asset types helps reduce the overall risks as well as increasing the chance of better returns."

Following the review there were no recommended changes. But around May 2020 Mrs M's priorities had changed and she got back in touch with the advisor as she wanted to disinvest £54,000 from the bond in order to give funds to her children. Emails from the time show that she was keen to disinvest this specific sum quickly as she had concerns about any potential falls in the value of the bond and paying excessive charges for the disinvestment.

The plan changed slightly in early June as Mrs M only wanted to initially disinvest £18,500 and the balance of £35,500 at a later date. The advisor made a recommendation on which of the funds to sell and also made a plan with Mrs M to review her circumstances with a view to potentially changing her investment approach. Mrs M accepted the proposal, and the withdrawal was processed.

Mrs M then got back in touch with the advisor in July 2020 and said "When we last spoke some 4 weeks ago I agreed to your suggestion to encash my entire Canada Life International Bond and reinvest the proceeds in a lower risk product. I am conscious that the weeks are passing without this being moved forward. I really don't want to lose the opportunity of encashing the bond while it is still at a reasonable value that I can "live with".

I think this shows that Mrs M had concerns about the level of risk that she was being exposed to, and wanted to preserve as much of the capital she had invested in the bond as possible. Mrs M has told us that the funds that were invested in the bond were made up of inherited funds and a settlement she received from her ex-husband, and were solely for the benefit of her children. The available evidence shows that around this time Mrs M's children required funds to assist with property purchases, so it is understandable why Mrs M would have wanted to preserve as much of her capital as possible and reduce the level of risk she was taking.

The advisor subsequently arranged a suitability review, the outcome of which was encashment of the entire bond. The advisor then got back in touch with Mrs M on 22 July and highlighted the potential tax liability that would be incurred. There are no records of this discussion apart from an email confirming the bond would be left in place and as the underlying funds had been sold, the cash held would be reinvested in equal tranches over a period of three months.

I note the points SNL have raised about the issue of tax – essentially that the advisor was simply putting Mrs M in an informed position about the implications of surrendering the bond and that she'd previously been made aware there would be a tax liability. I appreciate what they've said but I think the advisor's actions went further than just providing information and I can't see that Mrs M was advised to seek professional tax advice before changing her decision.

I think the advisor's actions had the impact of objectively influencing Mrs M's decision to surrender the bond and therefore should be considered as part of the advice process. I agree with the investigator's opinion that had Mrs M been made aware that the tax was inevitable, she would have fully surrendered the bond.

Following the decision not to surrender the bond, the advisor made a new recommendation to Mrs M. In summary, she advised Mrs M to invest - over three tranches - in the Canada Life III portfolio, a multi manager fund which would reduce her ongoing fees as there would be no buying and selling of funds within the bond. It was also noted that Mrs M might decide not to invest all of the final tranche, and reserve it as cash to give to her son at some point.

There was further correspondence over the next few months and during this time there was a breakdown in the relationship between Mrs M and the advisor which was subsequently resolved. While this was happening, the funds remained as cash within the bond. Mrs M and

the advisor had another meeting in November 2020 and the advisor changed the plan to invest in the Canada Life III portfolio and recommended that Mrs M invest the cash into the Clear Cut Model Portfolio 2C.

I've considered the makeup of the 2C model portfolio to see if it was suitable for Mrs M's circumstances at the time. Broadly speaking, the advisor had an obligation to provide Mrs M with a suitable recommendation, taking into account several factors including Mrs M's objectives, circumstances, investment experience and ATR. I'm mindful of Mrs M's intentions prior to the recommendation because as I've previously noted, the correspondence I've seen points to her wanting to encash the bond and reinvest in a lower risk product.

The makeup of the bond in January 2020 was around 27% UK Gilts, 24% North American equities, 12% UK equities, 11% Japanese equities, 10% European equities, 6% Global Fixed Interest, 5% property, 4% UK Corporate Fixed Interest, 1% money market/other.

The makeup of the model portfolio was 40% UK Gilts, 14% UK equities, 12% North American equities, 10% Global Fixed Interest, 8% Other international equities, 7% Japanese equities, 5% Money Market, 4% European equities. The lower equity content meant the model portfolio was less risky than the bond, but I'm not satisfied that it was suitable for Mrs M's circumstances at the time.

I say this because Mrs M has told us she didn't want to take much risk with the funds and in July 2020 she was prepared to fully surrender the bond and transfer the funds to her bank account. She said she would then have put as much as she could into a cash ISA, the balance into a very low risk investment which she would encash and drip feed into the ISA over a period of time.

I find her comments broadly persuasive, and I think the correspondence she had with the advisor over the course of 2020 reflects her intention to de-risk the investment. She clearly had concerns about the impact of charges on the bond and any reduction in its value. Taking this into account, I don't think she had a capacity for loss of 50% of the value of the bond so I'm of the opinion that she was advised to take too much risk. But I don't think she didn't want to take any risk at all, her emails show that she wanted more growth than provided by cash deposits in order to mitigate the impact of charges. This means I disagree with the redress methodology suggested by the investigator.

Having considered everything, I think a suitable recommendation, given her circumstances at the time, would have been to invest in a product which offered the potential for growth but carried a lower level of risk than the 2C Model Portfolio. I've therefore suggested redress that reflects this.

I'm also satisfied that Mrs M has been caused unnecessary distress and inconvenience by SNL. I've taken into account the email that she was mistakenly copied into where the advisor said that Mrs M's email of 30 July 2020 was ridiculous and she was taking up too much time and should be disengaged. I've also taken into account the inconvenience caused by Mrs M having to chase SNL repeatedly regarding uninvested funds and the funds not being invested as per the advisor's recommendation. I agree with the investigator's opinion that £250 is suitable compensation for the distress and inconvenience suffered."

Responses to my provisional decision

SNL didn't provide a response. Mrs M accepted my provisional decision but asked for me to consider the tax treatment of any potential compensation and also that she'd been charged a significant amount of fees since 2020 which she wouldn't have incurred if she'd received suitable advice at the time.

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 done so, I see no reason to deviate from my provisional findings and I will now explain why.

I note the concerns Mrs M has raised about the fees she's been charged since 2020. However, I'm satisfied that the redress methodology I've suggested is fair. This is because it compares the value of her current portfolio (which would have been reduced by the deductions for fees) to what it would have been worth if it had been invested suitably. Therefore, it puts her broadly back in the position she ought to have been in if she hadn't received unsuitable advice.

Regarding the tax treatment of any compensation payments, it is my understanding that compensation for loss of investment growth as is the case in the circumstances of this complaint, isn't usually liable for income tax. Therefore I see no reason to depart from the redress methodology in my provisional decision.

Putting things right

Fair compensation

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

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

What must SNL do?

To compensate Mrs M fairly, SNL must:

- Compare the performance of Mrs M'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.
- SNL should also add any interest set out below to the compensation payable.
- Pay to Mrs M £250 for the distress and inconvenience suffered.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Canada Life	Still exists	For half the	Date of	Date of my	8% simple per

Portfolio	and liquid	investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	encashment in July 2020	final decision	year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
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Actual value

This means the actual amount payable 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, SNL 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.

Any withdrawal from the Canada Life Portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if SNL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs M wanted capital growth with a small risk to her 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 her 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 Mrs M's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs M into that position. It does not mean that Mrs M would have invested 50% of her 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 Mrs M could have obtained from investments suited to her objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Sense Network Limited should pay the amount calculated as set out above.

Sense Network Limited should provide details of its calculation to Mrs M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 9 October 2024.

Marc Purnell
Ombudsman