Financial Ombudsman Service

The complaint

Mr and Mrs S' complaint is about the advice they received from Key Retirement Solutions Limited to take out a home reversion plan (HRP) and invest some of the released equity in an investment bond. They believe that both products were mis-sold.

What happened

Mr and Mrs S met with an adviser from Key in the summer of 2003. It appears from Key's records that the first discussion was had on 16 June 2003 and that was followed up on 26 June 2003 when a fact find was completed. Both products were sold to Mr and Mrs S by the same adviser.

Key has provided two fact find documents. One is dated 26 June 2003 and is computer generated. It detailed that Mr and Mrs S were both in their early 70s and retired. They were living on pension income and had a disposable income of £200 per month. This assessment was based on both their committed and discretionary outgoings being deducted from their income. Their objectives were detailed as:

1. '*raise money from property to pay for home improvements, holidays and to improve lifestyle in retirement.*'
2. '*have capital to invest following ER. £20,000 to invest for growth now and income in the near future.*'

Mr and Mrs S were recorded as owning £1,600 worth of shares, which the later fact find confirmed were held in a business that was their former mortgage lender. They also had £1,500 held in deposit accounts. They wanted to increase their deposit-based savings to £5,000. They wanted £20,000 for home improvements. Mr and Mrs S were asked what their attitude toward risk was and they selected low risk – two on a scale of one to five, with one being no risk. It was confirmed that they didn't want to take more than a low risk as they would be unable to replace any capital loss, but they would like to achieve growth above what could be achieved in deposit accounts.

The second fact find was completed by hand on a pre-printed form. It is dated 7 July 2003. Not all of this document is legible as it appears the physical form completed was a poor-quality photocopy. This detailed that Mr and Mrs S wanted help to raise funds for:

1. Improvements to their house.
2. To replace their savings.
3. Have capital savings for larger purchases/holidays.

Mr and Mrs S wanted £30-40,000 in total and confirmed they had been considering releasing equity from their home for several years. When asked if they had any concerns the answers were 'Roll-effect. Process time/Survey/Sols' It was later stated they would '*prefer*' there was some value left in their home. The details of Mr and Mrs S' income were slightly different to that recorded on the first fact find, as while the total was the same, it was recorded that £2,000 came from a part-time job Mr S had. Some further detail of Mr S' pension was also given, which confirms that the amount increased each year due to indexation. It was again confirmed that Mr and Mrs S had a monthly disposable income of £200.

The same details were given about Mr S' shares and the amount they wanted their savings to be increased to was again £5,000. It was confirmed that Mr and Mrs S' home was worth £180,000 and their only liability was a car loan that had three years remaining on the term and cost them £150 each month. It does not appear that they wanted to borrow money against their home to repay the loan.

It was documented that in the short-term they wanted £23,000 for home improvements and to put into savings. In the medium term, they wanted growth/income for £20,000; growth having been underlined. In the long term '*(Reversion)*' was documented. Mr and Mrs S were asked what their attitude toward risk was – the full explanation is not legible on the fact find, but they again selected two on a scale of one to five. A handwritten note then confirmed that Mr and Mrs S chose the profile they did as they were '*Not willing to take risks with capital. Want better than deposit A/C's.*'

Following the factfinding exercises the adviser created two letters documenting his recommendations. One related to the recommendation for equity release and the other for the recommendation for an investment in which to place some of the released funds.

The letter recommending the HRP was dated 8 July 2003 (signed by Mr and Mrs S on 28 July 2003) and set out details of Mr and Mrs S' situation. It confirmed that in the short term they wanted to make some improvements and alterations to their home and garden and replace their savings. In the medium term it was documented they wanted to set aside £20,000 for growth with the options of withdrawals in the future for larger capital purchases as and when necessary. They also wanted to have funds available for holidays. In relation to the long term, the letter said that Mr and Mrs S wished to ensure there would be a sum remaining in their estate for their beneficiaries.

The adviser recommended a HRP as they wanted to:

- Guarantee an inheritance, if possible; and
- Define the cost as a percentage of their property.

The HRP involved Mr and Mrs S selling 61% of the value of their home to the bank providing the HRP (hereafter referred to as 'the bank'). In exchange, they received £45,547 from which fees and charges would be deducted – a net sum of £43,611.77. Following the sale, the property title was transferred to the bank and Mr and Mrs S were granted a lifetime lease on their home for a peppercorn rent.

The reasons why letter the adviser created for the investment bond was dated 28 July 2003. This detailed that Mr and Mrs S were willing to accept a low level of capital loss in return for the opportunity to earn more than from deposit type accounts. It went on to say that their attitude toward risk would limit the potential for real capital growth. The recommendation was detailed as:

'*Having discussed your provision for emergencies, your major concern was to have a capital sum of £20,000 invested for growth that you could draw an income from in the near future to improve your standard of living in retirement.*

With Profits Bond

I recommend that you invest £20,000 in a With Profits Bond for at least 5 years. I can confirm that an investment in a With Profits Bond is in line with your attitude to risk as mentioned earlier.

I have recommended a with profits bond because You [sic] *are looking for steady growth with low risk to your original capital investment and you have indicated that you would like to supplement your income in the future.*

…

We looked at various possibilities such as deposit accounts and National Savings, but you were seeking to generate additional income in the future which might be greater than offered by cash based investments. You also wished to provide some growth with the option of income in the future. As such I have looked at a contract that provides access to investment funds that invest in GILT, Index Linked Gilts and fixed interest assets. These assets are designed to provide a steady growth without exposing the capital to the volatility and risks of the major stock markets.'

Key also confirmed that at that time the provider of the bond being recommended was applying a Market Value Adjustment (MVA) if the bond was closed down within the first five years. The charge was on a sliding scale starting at 7% in the first year down to 2% in the fifth year.

Mr and Mrs S accepted the recommendations made, although they only signed the recommendation letter relating to the HRP.

The HRP offer from the bank was received in December 2003. As part of the bank's process, they were required to speak to an independent solicitor to ensure they understood the product that was being arranged. This meeting would not have reviewed the suitability of the HRP for Mr and Mrs S, only how it worked and the potential impacts the product would have on them and their estate. The solicitor signed the relevant certificate on 26 January 2004.

The funds from the HRP were advanced and Key then submitted the application for the investment bond. It was immediately set up.

Mr and Mrs S have not taken an income from the bond. However, they have taken two lump sum withdrawals from it. One of £6,500 in the 2010/11 policy year and a second of £4,000 in the 2012/13 policy year.

Mr and Mrs S complained to Key that the HRP and bond had been mis-sold in March 2021.

Key responded to the complaint in a letter dated 13 May 2021. It provided details of the process and information its adviser had in 2003. It confirmed that it considered the advice that had been given was suitable for Mr and Mrs S' needs and circumstances, and so the complaint was not upheld.

Mr and Mrs S were not satisfied with the outcome of the complaint and referred it to this Service. The Investigator looked into our jurisdiction to consider the complaint and was satisfied that the whole complaint fell within our remit. She then considered the merits of the complaint and recommended that it be upheld.

Key didn't agree with the Investigators findings and, when she was not persuaded to alter her conclusions, asked that the complaint be referred to an Ombudsman.

What I've decided – and why

I have issued two decisions relating to our jurisdiction to consider this complaint. In one I confirmed that Mr and Mrs S were eligible complainants and that the complaint about both the investment advice and that to take the HRP fell within our jurisdiction as the latter was ancillary to the former. In the other decision I confirmed that the complaint was not time-barred by the time limits contained in our rules. As such, I am satisfied that the complaint, in its entirety, falls within our jurisdiction and this decision sets out my conclusions on its merits.

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

The two fact find documents in this case – dated 26 June 2003 and 7 July 2003. While I would usually expect the handwritten document to be the earlier one, that doesn't appear to be the case here – it is dated more than a week after the computer generated one. The two fact finds detail different requirements from the £20,000 that it was proposed Mr and Mrs S would take over and above the amount to be used for their immediate needs. The first one says that Mr and Mrs S wanted to increase their income in the near future; the second that they wanted access to lump sums for larger purchases. Given the dates on these documents, it would appear that Mr and Mrs S spoke to Key after the initial discussions to update their needs and preferences.

Having read the letters recommending the two products, it would appear that the updated requirements were taken into consideration when the equity release product was recommended, but not when the investment bond was recommended. I say this as the reasons why letter for the investment documents Mr and Mrs S' requirement as providing an additional income in the near future.

I note that other than holding some shares in their former mortgage lender, Mr and Mrs S had no investments at the time of the sale and there is no indication that they had held any previously. As such, I am satisfied that Mr and Mrs S would reasonably be described as inexperienced investors and I would not usually expect them to be particularly adventurous with any initial investment. That said, a with-profits bond would, in 2003, have generally been considered a low risk product.

In the fact find dated 7 July 2003 Mr and Mrs S selected the second option out of the five that were given to describe the amount of risk they were willing to accept. As I have mentioned above, the form was a poor copy and the definitions of the risk categories were not legible so it is not clear what was read out to Mr and Mrs S before that option was selected. That option, in the position it was on the scale, would usually be expected to represent a consumer being willing to accept a low level of risk in relation to any financial arrangements they were considering. That would correlate with the risk rating selected on the 26 June 2003 fact find. However, the person completing the form wrote immediately below the scale that Mr and Mrs S were '*Not willing to take risk with capital*', which contradicts the selection of low risk directly above it and would make the recommendation of a product that has risk associated with it unsuitable. In addition, I note that the adviser's explanation of where a with-profits fund invests would be considered slightly misleading. Such a fund will include fixed interest assets and Gilts of different types, but it would also include other investments that would have been listed on major stock markets.

Furthermore, while the July fact find does detail the investment was to be used for both growth and income, growth was underlined. The fact find also confirms that Mr and Mrs S wanted to borrow more than they initially needed in order to provide the ability to pay for larger capital expenditure. There is no mention of Mr and Mrs S wanting or needing an additional income. I also note that the recommendation letter of the HRP only mentions the requirement to have access to money for large expenditures and there is no mention Mr and Mrs S wanted an additional income, as I would have expected had that been one of their priorities. Furthermore, I note that Mr and Mrs S had a reasonable level of disposable income at the time from their pensions, and their pension income would increase each year.

Given that Mr and Mrs S didn't take an income from the bond, but they did make two lump sum withdrawals, I am satisfied that the July fact find was accurate and so, the investment bond was recommended for a purpose that didn't exist by the time the recommendation was made. When that is added to the fact that the investment bond had risks associated with it, albeit of a low level, I am not persuaded the investment bond was suitable and so it should not have been sold to Mr and Mrs S.

When we conclude a financial business has made a mistake, we then have to consider what position the consumer would have been in, but for that mistake. While Mr and Mrs S wanted better growth on the £20,000 than they could get in deposit accounts, that does not negate the fact that they told the adviser they didn't want their capital at risk and couldn't afford to replace it if it was lost. In light of that attitude toward risk, I don't consider that an investment product should have been recommended to Mr and Mrs S.

The money that was inappropriately invested into the investment bond was released as equity from Mr and Mrs S' home. As it was inappropriate for it to have been released for the purpose it was used for, I need to consider what Mr and Mrs S would most likely have done had they not been advised to make the investment.

Mr and Mrs S wanted to be able to access equity from their home in order to provide for some immediate needs. As such, an equity release product was not generally unsuitable for them. However, they didn't have any need in the immediate future for the £20,000 that was invested. Indeed, there was nothing documented that indicated that Mr and Mrs S had any definitive plans that would need them to access lump sums in the future and they didn't need any further money for around seven years.

It has been good practice for many years for consumers to be warned that borrowing more than they need and placing it on deposit, or even into an investment, is not a good idea, as generally the returns on the money are likely to be lower than the cost of the borrowing. In 2003 deposit interest rates were low when compared to lifetime mortgage rates, and house prices were climbing rapidly. So no matter what type of equity release product Key had recommended to Mr and Mrs S in 2003, they would make a loss on the £20,000 they didn't have an actual need for if it was released at that time. Key would have known that fact. Given that Key was able to persuade Mr and Mrs S to take out an unsuitable investment product, I am satisfied that had it explained that they would suffer a loss if they released £20,000 more from their home than they needed, I don't think they would have borrowed more than they needed in 2003.

HRPs are relatively inflexible products and don't tend to be recommended for consumers who are likely to want to make changes to their borrowing in the future. Key has said that the HRP was the most suitable option for Mr and Mrs S because they wanted a guarantee that there would be equity in their home for their beneficiaries. Mr and Mrs S didn't request a guarantee in the discussions that were had before the recommendation was made, they simply said they would *prefer* some equity to be left for their estate. As I have said, Key would have been aware of the rapidly increasing house prices in 2003. This alongside Mr and Mrs S' ages, and the relatively small amount of borrowing, would have meant that Key would have known that it was unlikely that the equity in their home would be exhausted in their lifetimes if they took out a lifetime mortgage. So Mr and Mrs S' preference for leaving some of the equity in the property for the beneficiaries of their estate would not preclude a lifetime mortgage, as Key has suggested.

Overall, I am not persuaded that either the investment bond or the HRP were suitable products for Mr and Mrs S, given their needs and circumstances in 2003. I am also satisfied that had Mr and Mrs S not been mis-sold these products they would not have, in 2003, borrowed the £20,000 that was used for the investment. Rather they would have borrowed the initial £23,000 they needed plus costs, and then borrowed any further funds needed as and when required. As such, I am satisfied that they would most likely have taken a more flexible product in the form of a lifetime mortgage, where it is not unusual for further borrowing in smaller increments to be advanced.

My final decision

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as A minus D, as follows.

A The amount the bank will require of Mr and Mrs S to buy back their home.
B The likely balance of a lifetime mortgage at the calculation date, assuming an initial advance of £24,547, and further advances of £6,500 and £4,000. Mr and Mrs S will need to provide evidence of the exact dates they received these funds, either in the form of bank statements or evidence from the investment bond provider. Key should calculate this figure as soon as Mr and Mrs S provide confirmation of the dates of the withdrawals from the bond and provide them with details.
C The surrender value of the investment bond as at the calculation date.
D = B+C

It is unknown what interest rate Mr and Mrs S would have paid on the lifetime mortgage when the mortgage offer was made, but my understanding is that lifetime interest rates were around 7.5% at that time. The further advances should be added as at the dates they were advanced at an average rate for the times.

The calculation date should be six months from the date Mr and Mrs S accept this decision, if they do, to allow them to raise the money they need to contribute to buying back their home if they wish to do so.

My decision is that Key Retirement Solutions Limited should pay Mr and Mrs S the amount produced by the above calculation – up to a maximum of £160,000.

The bank will require a valuation to be completed to calculate A. Mr and Mrs S will need to pay this cost initially, but it should be reimbursed by Key upon provision of suitable evidence, over and above the monetary limit.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Key Retirement Solutions Limited pays Mr and Mrs S the balance.

This recommendation is not part of my determination or award. Key Retirement Solutions Limited doesn't have to do what I recommend and it has confirmed that it will not. It's unlikely that Mr and Mrs S can accept my decision and go to court to ask for the balance.

Mr and Mrs S may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr and Mrs S to accept or reject my decision before 28 October 2024.

Derry Baxter
Ombudsman