

The complaint

Mr A has complained about the suitability of the investment advice he was given by CSS Partners LLP ('CSS'), an appointed representative of Charles Street Securities Europe.

Mr A is represented in bringing his complaint but for ease of reading I'll refer to 'Mr A' throughout my decision.

What happened

In January 2008 Mr A was advised by CSS to invest £25,500 in a company I shall refer to as 'Business D' and to provide £50,050 for a bridging loan for the same which I shall refer to as 'Bridging Loan'.

Mr A raised concerns about the investments – and others – with CSS but didn't receive any response so brought his complaint to this service. CSS didn't agree this service could consider the complaint and thought it was brought too late under the rules that apply.

I issued my jurisdiction decision about what parts of the complaint we could consider – the above two investments – and our investigator who looked at the merits of the complaint thought that it should be upheld;

- She outlined the rules that applied at the time of the advice and outlined his personal circumstances, investments and investment experience.
- She couldn't see that CSS had assessed Mr A's attitude to risk but considered his risk profile likely to be moderate as he was only willing to take a high level of risk with 10% of his investment portfolio.
- Mr A already held high risk investments as advised by CSS and she didn't think it was reasonable that it didn't encourage him to diversify his investment portfolio given those high risks.
- CSS had a direct interest in Business D which she thought was likely to impact on the impartiality of the advice given to Mr A. She thought the investments were unsuitable for Mr A because of the high risk.
- The investment advice had been given with little regard to his circumstances and there was no evidence the advice was tailored or potential tax incentives in making the investment were calculated.
- She accepted Mr A was an experienced investor with some exposure to speculative investments and was prepared to take a high risk with a portion of his portfolio, but all of his available capital was invested solely into Business D. And it was difficult to reconcile the advice given when CSS had its own commercial interest in Business D.
- She recommended that Mr A's investment be returned to him in line with the performance of the FTSE UK Private Investors Income benchmark plus £200 for the stress and inconvenience he had been caused.

CSS didn't agree. It said;

- Mr A was prepared to take up to 20% higher risk with his portfolio and not 10% as stated by the investigator. The Business D investments only accounted for 8.7% of the portfolio.
- Mr A was a very experienced investor who signed an Intermediate Risk form confirming he didn't require any investment advice before making new investments. He had significant experience of investing in AIM high risk investments and made his own decision to invest.
- There were no tax incentives to invest into Business D.
- CSS had prepared the Investment Memorandum for Business D which was fully disclosed, and it was viewed as generally positive for the sponsor to have financial exposure to the investment.

The investigator responded to the points raised but concluded they hadn't changed her mind. CSS responded again but the investigator's view remained unchanged. As the complaint remains unresolved it has been passed to me to decide in my role as ombudsman.

What I've decided – and why

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

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

CSS has told us Mr A was a client of CSS Partners LLP ('CSSP') which was an appointed representative of Charles Street Securities Europe ('CSSE') until October 2008. Mr A was sold all his investments on the advice of CSS Inc between 2006 and 2008.

CSS Inc was represented by CSS Partners LLP ('CSSP'), which acted solely as appointed representative of CSS Inc until Oct 2008. Since October 2008, CSSP have operated as sole appointed representative of Charles Street Securities Europe LLP ('CSS Europe'). CSS Europe is the successor Firm of CSS Inc and assumed liability for all claims (historic and future) against CSS Inc following its closure in 2009.

For the purposes of this decision, I have referred to 'CSS' throughout.

Mr A's circumstances

It looks like Mr A's relationship with CSS began when he completed a coupon in November 2005 to receive a free briefing on an Enterprise Investment Scheme. There is an annotation added to the coupon by hand dated 21 December 2005 which CSS has said was made during its first conversation with him. It says Mr A;

'Is sophisticated investor. Has number of VCTs [Venture Capital Trusts] had 6 not so keen on them as profits not good'

CSS' 'initial set up procedure' took place in January 2006.

At the time Mr A's portfolio was comprised of collective investments and VCTs. CSS has provided a copy of Mr A's completed Private Client Agreement which he signed in August 2006 and which records Mr A's circumstances;

- 79 years of age and had retired from his occupation as a management consultant.
- His income was £55,000 per year.
- He had been investing in the FTSE 100 and FTSE 250 for 40 years and three years in AIM investments.
- His portfolio was valued at £900,000 and his PEPs and ISAs were valued at £300,000.
- He had savings of £200,000 and his unencumbered jointly owned home was valued at £1m.
- Mr A was prepared to accept a high level of risk with 20% of his investments in terms of acquisition costs but he did 'not wish to receive advice relating' to derivatives.

Was advice given

My understanding of how CSS works is that companies approach it to raise finance and as a result it conducts due diligence checks and produces an Investment Memorandum with information about the company. CSS would then contact prospective investors and describe the investment opportunity.

CSS has told us that it didn't give advice to Mr A, and it was Mr A who made his own decisions to invest after discussions/meetings with CSS colleagues, senior individuals involved in the underlying potential investment plus family and friends. CSS said it only provided Mr A with information about potential investments Mr A could invest in and was for him to decide for himself whether the investment was right for him. Sometimes he chose not to invest.

Mr A says he was given advice. CSS told us the availability of documentation for Mr A is limited because he hasn't been a client for more than ten years. In circumstances, where the information or evidence I am presented is either missing or contradictory, I must make my decision based on the balance of probabilities and what I consider to more likely have happened.

I've reviewed the documentation from the time that Mr A became a client of CSS. Mr A completed the document on 31 August 2006 and signed the 'Private Client' ('Annex 4') rather than the 'Intermediate Customer' ('Annex 3') of the document. CSS has said Mr A signed an Intermediate Risk Form, but I haven't seen any evidence of that. I asked CSS about Mr A's client categorisation and it confirmed he was treated as a Private and Retail customer rather than as an Intermediate referred to in its response to the investigator.

CSS' 'Private Client Agreement and Intermediate Customer Annex' document records;

'We are an appointed representative of Charles Street Securities Inc. ... which is authorised and regulated in the UK by the Financial Services Authority ("FSA"). In accordance with FSA Rules, we will treat you as a private customer.'

And it goes on to explain the services that would be provided under the agreement were;

'We shall provide advisory and deal arranging services in the following:-

Under the investment objectives section it says;

'In order to be able to provide you with investment advice, it is essential that we understand your investment objectives and your personal financial circumstances. It

is important, therefore, that you provide us with as much information as possible in Annex 5 to this Agreement.'

With regard to conflict of interest;

'We may give you investment advice or enter into transactions for you where we are an Associates Company or some other connected person may have an interest, relationship or relationship that is material to the transaction of investment concerned.' [my emphasis]

Bearing in mind Mr A was asked for information – albeit limited in my opinion – about his employment, investment experience, current assets held, liabilities, investment objectives and the percentage of high risk investment he was prepared to take, I think the Private Client Agreement gave consideration to the fact that an advisory service was to be given.

I'm persuaded the above indicates that Mr A was treated as a private client by CSS and the relationship was an advisory one. And while I accept that Mr A was an experienced investor and was capable of attending business presentations, liaising with senior representative of potential investee companies, as well as declining to invest when investment opportunities were offered to him, I'm persuaded the above shows the relationship was advisory, Mr A assumed that was the basis of the relationship and I consider it unlikely in the circumstances that Mr A thought CSS was anything other than his adviser. And I don't think it was unreasonable of Mr A to have reached that conclusion.

I've looked to see whether the relationship proceeded along the lines of an advisory client relationship. CSS records its engagement with its clients on 'Diary Card Notes' rather than providing phone recordings. Unfortunately, the majority of the Diary Card Notes are illegible, but I have been able to make out some of the comments, as examples;

20 March 2007 - 'Explained that although [potential investment] has had some initial success there is still a good percentage chance they could fail at the next trials.'

19 September 2008 - '... [regarding negative prospects for Business D] I informed [Mr A] that I felt this was not the case although the company had not hit targets for 2008...'

24 October 2008 - '...I explained we are in a difficult market and the original investment strategy has changed...That said I informed the client we remain confident that we will raise the full placing amount...I urged client to proceed with caution...'

3 April 2009 - 'Called [Mr A] to introduce myself. Was going to recommend [stock] however [Mr A] said he would not be interested.'

I'm satisfied the above samples are evidence that CSS was either giving recommendations or was giving a value judgement about the investments and which I think would have influenced Mr A's decision making. So, I'm persuaded CSS provided more than just information.

So, bearing in mind I'm satisfied that Mr A was a Retail/Private client and was receiving advice, I've gone on to consider the suitability of the investment advice he was given taking account of his investment experiences, circumstances and investment objectives etc.

The regulator – the Financial Conduct Authority ('FCA') – provides requirements around principles for Business which are set out in its Handbook;

Principle 2 – Skill, care and diligence

'A firm must conduct its business with due skill, care and diligence.'

Principle 6 – Customer's interests

'A firm must pay due regard to the interests of its customers and treat them fairly.'

Principle 9

'A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.'

And in the Conduct of Business Sourcebook the relevant rule here, is COBS 9.2.1 that says;

'Assessing suitability: the obligations

- (1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.
- (2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:
 - (a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;
 - (b) financial situation; and
 - (c) investment objectives;

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'

COBS 9.2.2 goes on to say;

- '(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:
- (a) meets his investment objectives;
 - (b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and
 - (c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.
- (2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

- (3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'

I'm not satisfied that CSS carried out its obligations as a regulated business as identified above because I am not persuaded that CSS has been able to evidence that it obtained sufficient information about Mr A to know whether the advice it was giving him was suitable or not. And if it had done so, I think it more likely it would have concluded it was not. I say this because there is nothing in the 'fact find' stage of the relationship to indicate how risk was explained to Mr A or how his willingness to expose 20% of his investible assets to high risk investments was ascertained. And I would further question the suitability of recommending such high risk investments to a 79 year old investor in any event.

By exposing 20% of Mr A's investible assets to high risk investments would mean that the remaining 80% would be invested in low/medium risk investments. But I haven't seen any evidence that CSS was able to know whether high risk investment was suitable for him bearing in mind what I consider would have more likely been his overall medium attitude to risk. Up until his involvement with CSS its recorded Mr A didn't have any exposure to private or unquoted companies. Mr A's investments in stocks, shares, gilts and ISAs stood at £1.2m and had invested in AIM stocks.

Mr A told us he invested in six investments upon the advice of CSS including into Business D as well as the Bridging Loan. But this decision is limited to the assessment of the suitability of the investment into Business D and the Bridging Loan. So, I make no findings on those other investments.

While I'm not persuaded that Mr A has been able evidence how it understood Mr A's attitude to risk or whether 20% investment into higher risk investments was right for him, I've gone on to consider whether the two investments made – and an overall investment of £75,550 – were suitable for him.

I can see from the phone notes that Mr A was told that the investment into Business D would be high risk, it was non liquid and wasn't listed. So clearly it was a high risk investment. But as CSS hasn't been able to evidence how it ascertained Mr A's attitude to risk and whether a 20% exposure to high risk investments was right for him then I struggle to see how it concluded that in giving such advice was suitable at all. Although Mr A had experience, I have not seen any evidence he was accustomed to investing in unlisted or illiquid investments or those more suited to sophisticated or professional investors. I appreciate Investment Memorandums and similar were provided to Mr A but as Mr A was a retail customer and the relationship was an advisory one, I think Mr A looked to CSS to provide him with suitable investment opportunities over and above the information contained in those documents.

The type of investments recommended weren't suitable investments for the majority of retail customers and CSS knew, or ought to have known this. And, had CSS carried out the more meaningful checks as it should have done about Mr A's circumstances, investment objectives and attitude to risk etc, I think it would most likely have identified that the investments recommended weren't suitable for him. And as this was Mr A's first time investing into unlisted or illiquid investment – as far as I am aware – then I'm not convinced Mr A had the knowledge or experience to understand the risks involved in the investments.

I haven't been provided with anything that suggests Mr A would have wanted to continue with the investments if CSS had clearly set out the risks involved and told Mr A that it hadn't fully ascertained his circumstances or risk categorisation in order for it to have been sure the

investments being recommended were suitable for him. And by being categorised as a retail client I think its most likely that Mr A trusted in CSS to act in his best interests in line with Principle 6 and provide him with suitable advice.

I have considered all that CSS has told us, but I am not persuaded by it. Mr A says he was advised by CSS, and I consider that plausible. CSS in effect says that is not what it does, but I believe the contemporaneous evidence does support Mr A's claims and so I don't agree with CSS' position that it did not give advice or make recommendations.

And I don't think the two investment recommendations made to Mr A were suitable for him bearing in mind the lack of recorded information about his circumstances and investment objectives. And by investing £75,550 into one business, I think this compounded the risk further because of the lack of diversification and which I don't consider was suitable for a 79 year old investor, who I think would more likely have been categorised as a medium risk investor if this had been meaningfully assessed by CSS. It follows that I uphold Mr A's complaint and it should be put right as outlined below.

Putting things right

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

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

What must CSS do?

To compensate Mr A fairly, CSS must:

- Compare the performance of each of Mr A's investments with that of the benchmark shown below.
- A separate calculation should be carried out for each investment.
- CSS should also add any interest set out below to the compensation payable.
- Pay to Mr A £200 for stress and inconvenience caused.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Business D	No longer exists	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement
Bridging Loan	No longer exists	FTSE UK Private Investors Income Total	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date

		Return Index			to the date of settlement
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For each investment:

Actual value

This means the actual amount paid or 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.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mr A wanted Capital growth and was willing to accept some investment risk.
- 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr A's circumstances and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

For the reasons given, I uphold the complaint. My decision is that CSS Partners LLP should pay the amount calculated as set out above.

CSS Partners LLP should provide details of its calculation to Mr A in a clear, simple format. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 17 April 2025.

Catherine Langley
Ombudsman