

The complaint

The estate of Mrs M, represented by a claims management company (CMC), complains that Mrs M was provided with unsuitable investment advice by Carnwyllon Wealth Management Limited and, further, it failed to provide an ongoing advice service as agreed and for which Mrs M was charged.

What happened

Mrs M was advised by Carnwyllon to start two investment bonds, first in 2013, then in 2017. At the time she was already invested in a bond that she'd held since 2006, from which she was taking annual 5% withdrawals.

In 2013, she was aged 83 with her main assets in addition to the existing £100,000 bond being £200,000 on deposit and £20,000 in an ISA. Her main objective was to invest £70,000 over the medium to long term, seeking growth above inflation, whilst taking a regular income that would be passed to her family members. She agreed an attitude to risk of level four (on a scale of 1 – 10 highest), or 'lowest medium'.

Mrs M was recommended an offshore investment bond to be invested 10% into a fund focused on capital preservation and 90% into a primarily equity fund-based portfolio. Quarterly withdrawals amounting to 5% would be paid to Mrs M.

Later, in 2017, she had another meeting with the adviser. At this point, she was aged 87 and it was noted that she felt health wise that she was 'slowing down'. She had £144,000 on deposit, £20,000 still in her ISA, and the other bonds. Her objectives were noted as broadly the same as in 2013, but there was some discussion around retaining cash in respect of potential care costs.

She was recommended a further investment bond, with £60,000 committed to it at a slightly lower level of risk than that of the previous bond. On this occasion Mrs M's daughter, who attended the meeting, was added as a life assured.

Mrs M sadly passed away in 2022 and in 2024 a complaint about the advice was made by the CMC, as set out above. Carnwyllon didn't consider it had done anything wrong and the matter was referred to this service.

In respect of the ongoing advice service the investigator explained his view that any complaint regarding ongoing reviews that had been missed prior to 2018 had been made too late, outside the time limits set out in our rules. And the evidence demonstrated that reviews after this, from 2018 through to 2021 had been carried out. So that part of the complaint was not upheld.

In respect of the advice element, the investigator felt the complaint should be upheld regarding both the 2013 and 2017 advice, as he felt it had been unsuitable on both occasions. He said, in brief –

The 2013 advice

- Mrs M already had exposure to an offshore bond. These commonly had higher charges than alternative products such as a general investment account and ISA.
- Given Mrs M's age at the time, the bond was subject to an early withdrawal charge for the first five years and no additional life assured was added to the bond to enable it to continue and be surrendered in an efficient manner.
- Had Mrs M needed to withdraw more than the 5% initially arranged, there would've been a chargeable event and an income tax liability may have been generated, along with the additional complications of completing the tax returns. In effect, recommending another offshore bond restricted what could be withdrawn tax efficiently should the need arise.
- The investment involved too much risk, with around an 80% reliance upon equities, which seemed inconsistent with both Mrs M's circumstances and her 'lowest medium' attitude to risk.
- The fact find and application form had been completed on the same day, with the suitability letter issued afterwards, suggesting Mrs M had little time to consider the recommendation.
- Mrs M had wanted to top up her existing bond, which hadn't been possible. But the recommendation of another bond shouldn't have been a default recommendation because of this. The adviser was required to act in Mrs M's best interests.

The 2017 advice

- On this occasion, an additional life assured was added, to help manage a surrender, and the lower level of risk taken was more appropriate.
- However, the issue of potential more suitable courses of action wasn't addressed and adding to Mrs M's existing ISA (which hadn't been added to since the previous advice) wasn't recommended.
- Using a bond again was likely to be more expensive. The illustration showed that charges would reduce a mid-rate growth assumption down from 2.75% a year to 1.3% a year.
- Importantly, the fact find confirmed that Mrs M was concerned about access to monies to cover care costs if required. By recommending the bond, the adviser was limiting the amount she could access without the need for a chargeable gain calculation.
- Again, there appeared to have been little time allowed for Mrs M and her daughter to consider the advice, particularly given her age at the time and that her health was 'slowing down'.

The investigator recommended that Carnwyllon compensate the estate by way of comparing the performance of the two bonds with this service's 'some risk' and 'cautious' benchmarks respectively.

The estate's CMC accepted the investigator's view. But Carnwyllon disagreed, saying in brief –

- The investment bonds would potentially have been discounted from an assessment of Mrs M's assets in respect of care costs.
- The use of a general investment account as an alternative may have led to Mrs M needing to make more complex tax reporting arrangements.
- She had sufficient cash available to have been able to contribute to her pre-existing ISA alongside adopting the recommendations.
- Her income was higher than the investigator had indicated as she was in receipt of an employer's pension in addition to her state pension.
- The 2017 advice adopted a more cautious approach to reflect Mrs M's

circumstances.

- The risk level of the 2013 recommendation was rated as a '4', which was consistent with Mrs M's risk profile.

The investigator wasn't persuaded to change his opinion by Carnwyllon's further comments, so as no agreement could be reached, the complaint was referred to me to 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 done so, I've come to the same conclusions as the investigator and for broadly the same reasons.

In respect of the ongoing advice charges, I'm satisfied the evidence shows that, for the period our rules allow us to consider, the evidence supports reviews having been carried out in line with agreement made at the outset. So, I'm not upholding this element of the complaint.

Turning to the two recommendations made in 2013 and 2017, Mrs M was well into her 80s at the time of both. While this in no way means it was by default unsuitable for her to invest, it does mean that careful thought should've been given to her circumstances and the flexibility she may well have needed in respect of access to her money. This applies both to the investment vehicle selected and the level of risk involved, given the likelihood of the investment not being held for the medium to long term.

Mrs M already held an investment bond that she'd started in 2006, and she seemed happy with how it was operating, its performance and that she was able to take tax efficient withdrawals from it. It appears that it was this that led her to seek a top-up to it. But, as noted, that wasn't possible.

At that point I think it would have been prudent for the adviser to have given greater thought as to what would be the best way to achieve her objective, as set out in the suitability letter of achieving "*a return, hopefully, above inflation*".

Placing her into another investment bond, albeit on the same terms as her existing bond, left her exposed to an early withdrawal charge in the event of it being surrendered within the short term. An additional life assured wasn't added to help mitigate this issue. While I appreciate Mrs M had other monies available for emergencies, any withdrawals above 5% annually would potentially create a chargeable gain and income tax liability.

Although the suitability letter referred to a discussion of various ways in which Mrs M's needs could be met and her objectives achieved, no detail was given of these alternatives, and the advice appears to have focussed very much on the investment bond route.

But my primary concern with the 2013 advice is with the level of risk to which it exposed a significant proportion of Mrs M's money. While there was a nod to capital preservation for 10% of the recommendation, 89% was invested onto an investment platform across funds that were heavily reliant upon equity performance and, as such, subject to significant volatility.

I don't think this was consistent with her circumstances nor with her likely attitude to risk. This was categorised as 'lowest medium', but her answers provided in the attitude to risk questionnaire (in which it was actively noted that some of her answers indicated

inconsistencies) didn't really support this, and didn't in my view indicate that she was comfortable accepting the level of risk associated with the high equity reliance of the investment platform.

As such, on balance, I'm not persuaded that the advice to invest provided to Mrs M in 2013 was suitable.

Turning to the 2017 advice, the issue of risk is of less concern. Although Mrs M was again initially categorised as 'lowest medium', this was reduced slightly from a '4' to a '3' at her request and resulted in a portfolio more focussed on bonds, less so on equities. There was also an additional life assured added to the new bond (albeit at Mrs M's daughter's request, not as a recommendation) that would help with management of its surrender.

But it was recorded in the fact find completed on this occasion that Mrs M had surplus income, wanted to keep money accessible and that the potential cost of funding care was important. It was noted that the adviser suggested she should get her money held on deposit working harder, but "*she did not want to risk monies at her age*". There was reference also made to the possibility an Asset Protection Trust in respect of estate planning although no inheritance tax liability was identified.

I note Carnwyllon's comments regarding the potential for the investment bonds to have been discounted from Mrs M's assets for the purposes of care fees, particularly as they had been held for a considerable length of time. While that may have been the case for the original 2006 bond, it was less likely for the later bonds, particularly the third 2017 bond, given Mrs M's age. But in any event, I don't think that possibility should have been a primary consideration regarding the suitability of the recommendations.

As such, while I accept that the suitability of the 2017 bond is a more finely balanced issue than that of the 2013 bond, I think in all the circumstances, the recommendation of a third investment bond for Mrs M wasn't suitable.

Putting things right

Fair compensation

In assessing what would be fair compensation, I consider my aim should be to put the estate of Mrs M as close to the position it would probably now be in if Mrs M 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.

I've separated out the redress for 2013 and 2017 as Mrs M had a different attitude to risk at each point.

What must Carnwyllon do regarding the 2013 advice?

To compensate the estate of Mrs M fairly, Canrwyllon 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.

- Canrwyllon should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Offshore Investment Bond	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	Pay 8% simple interest per year on any loss from the end date to the date of settlement.

Actual value

This means the actual amount paid from the investment at the end date, less any chargeable gains tax paid as a result of the Bond ceasing upon Mrs M's death.

If any chargeable gains have not yet been settled, Canrwyllon should provide an undertaking to complete the calculation once the gains have been settled.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

Any withdrawal from the Canrwyllon 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 Canrwyllon totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Canrwyllon must pay the compensation within 28 calendar days of the date on which we tell it the estate accepts my final decision.

If Canrwyllon fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

Why is this remedy suitable?

I have decided on this method of compensation because:

- In 2013 Mrs M wanted income with some 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 Mrs M's circumstances and risk attitude.

What must Carnwyllon do regarding the 2017 advice?

Fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put the estate of Mrs M as close to the position it would probably now be in if Mrs M 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 Carnwyllon do?

To compensate the estate of Mrs M fairly, Carnwyllon 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.
- Carnwyllon should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
2017 Onshore Bond	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date ceased to be held	Pay 8% simple interest per year on any loss from the end date to the 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, Carnwyllon 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 bond 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 Carnwyllon totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Carnwyllon must pay the compensation within 28 calendar days of the date on which we tell it the estate accepts my final decision.

If Carnwyllon fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs M wanted income with some 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 in 2017 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

For the reasons given, my final decision is that I uphold the complaint and direct Carnwyllon Wealth Management Limited to pay compensation to the estate of Mrs M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs M to accept or reject my decision before 14 January 2026.

James Harris
Ombudsman