

complaint

Mr J is complaining as the executor of his late wife's estate. His complaint about The Crescent Partnership LLP concerns the advice Mrs J received to put money into an investment bond. He is concerned that the value of the capital she invested fell, but he has also questioned whether the original advice was suitable for her needs.

background

Following discussions with an adviser in 2006, Mrs J placed £250,000 into a Legal & General investment bond. The bond was set up to provide regular withdrawals and invested in a selection of different funds. The intended spread of assets in the bond was initially agreed as 50% equities, 40% property and 10% bonds. The investment was cashed in following Mrs J's death, prior to which she switched between different funds within the bond on a number of occasions.

Mr J also invested £250,000 in a similar bond at the same time. We have considered a complaint about that investment separately.

I previously issued my provisional decision (an extract of which is attached and forms part of this final decision) explaining why I considered Mr J's complaint should be upheld.

I invited both parties to let me have any further comments they wished to make. Mr J said he had no further information to provide. The Crescent Partnership disagreed with my provisional decision, making the following key points:

- The Crescent Partnership's contract with Mr and Mrs J covered the initial advice only. It never undertook to provide on-going advice and all subsequent contact was initiated by Mr and Mrs J.
- Mr and Mrs J's capital was invested according to a low-risk strategy as assessed by the UK's foremost authority on the risk grading of investment portfolios.
- In assessing Mr and Mrs J's '*true*' risk profile, there are three factors to take into account: their attitude to investment risk, their capacity to absorb investment loss, and their need to accept any investment risk.
- Mr and Mrs J had significant assets in addition to the money they invested, meaning they could absorb some investment loss. This included an overseas property (The Crescent Partnership disputes Mr J's comments that they needed to live there for some of the year due to Mrs J's health issues) and a controlling share in an overseas business. They also had additional funds in deposit accounts.
- The bonds were also recommended for inheritance tax (IHT) planning purposes.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having reconsidered the case, including all responses to my provisional decision, my conclusions remain as set out previously for essentially the same reasons. I have not attempted to address every individual issue raised

in this decision, but rather to concentrate on the issues that I believe are central to the outcome of the complaint.

It remains my view Mr and Mrs J were not looking to expose their capital to a significant degree of risk and that their capacity to replace any capital loss within their bonds was limited. They were in receipt of a very modest pension income and it seems they would depend on their capital to generate an income to live on for the remainder of their lives.

I have noted The Crescent Partnership's comments about the risk rating of the funds and overall portfolio in which Mr and Mrs J invested at the outset. But it is not my role to rate the risk of funds and portfolios, but rather to decide whether I believe the recommended investments were consistent with the degree of risk Mr and Mrs J were willing to accept and consistent with their circumstances and requirements.

The range of funds in which Mr and Mrs J initially invested created a portfolio that invested approximately 50% in equities and 40% in commercial property. For the reasons explained in my provisional decision, I can see why a higher weighting in the commercial property sector was selected in this case. But it still remains my view that the overall risks of their investment in the bonds was greater than the degree of risk Mr and Mrs J were willing to accept, particularly given the amount of money that was being invested.

The Crescent Partnership has referred to Mr and Mrs J's capacity to absorb investment loss. But its calculation of their total worth includes their UK home and overseas assets. Aside from not being a particularly liquid asset, I do not think it was particularly wise to devise an investment strategy on the basis they could sell their home if things did not work out.

As far as their overseas assets are concerned, Mr J has previously explained the business, from which he says they did not take an income, was bought for their son and they retained a controlling interest only due to his age. As for the overseas property, Mr J says he and Mrs J lived there for much of the year due to her health issues and was used by their family for the rest of the time. I have noted The Crescent Partnership's comments about Mrs J's health, but there may have been other issues the adviser was not aware of. Even if she did only suffer from the condition it has referred to at the time the investment was made, she may still have viewed it as beneficial to live in a different environment for part of the year.

In my view, Mr J has provided plausible explanations of why their overseas assets were not ones they could readily fall back on if their investments failed. And in the absence of any evidence to the contrary, I have no reason to disbelieve what Mr J has said. In the circumstances, I believe The Crescent Partnership has overstated Mr and Mrs J's capacity to absorb investment losses. If their home and overseas assets are discounted, the amount they invested in the bonds actually accounted for nearly two-thirds of their capital.

The Crescent Partnership's view that Mr and Mrs J were able to accept risk has also been based on the fact that they were advised to put the bonds in trust for IHT planning. The argument being that they would be giving up control of the capital via the trust. I do understand this argument, but it does seem flawed given it has been established they did not follow the advice to put the bonds in trust. Mr J says this was because they were not willing to lose control of their capital.

As far as the later fund switches are concerned, the correspondence does not necessarily make it clear who contacted who initially. But either way, I believe it would have been

reasonable for Mr and Mrs J to contact the adviser from time to time to discuss whether their money was invested in the most appropriate funds.

Once contact was made with the adviser, it seems clear he was willing to give further advice. The correspondence provided refers to further assessments of Mr and Mrs J's risk profile and clearly details recommendations to switch into different funds. As I said in my provisional decision, I cannot see Mr and Mrs J's choice of funds to buy and sell deviated from those recommended by the adviser.

There is nothing in the evidence provided to indicate Mr and Mrs J's circumstances changed significantly following the original advice in a way that would have increased their willingness or capacity to accept investment risk to any significant degree. But it does appear the risk profile of their investment changed nonetheless.

In conclusion, I believe the original investment advice was unsuitable for Mr and Mrs J because the recommended bonds involved a greater degree of risk than they were willing and able to accept. This situation was compounded by subsequent fund switches recommended by the adviser that actually increased the risk profile of the investment at different times. It is for this reason that I am upholding the complaint. To address any financial loss resulting from the advice, I am proposing compensation based on a comparison between the value their investments achieved and the return they could have achieved with suitable advice.

my final decision

My final decision is that I uphold this complaint.

Subject to his acceptance, I direct The Crescent Partnership LLP to pay Mr J (as executor of Mrs J's estate) compensation as set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr J to accept or reject my decision before 25 March 2015.

Jim Biles
ombudsman

extract from provisional decision:

my provisional findings

To decide what is fair and reasonable in this complaint, I have carefully considered everything Mr J and The Crescent Partnership have provided. I have not attempted to address every individual issue raised in this decision, but rather to concentrate the issues that I believe are central to the outcome of the complaint.

Mr and Mrs J received advice and the adviser had a responsibility to make sure any recommendation made was suitable for their circumstances and requirements. I have seen nothing to indicate that they were particularly knowledgeable or sophisticated investors and I believe it is reasonable to think they would have placed far greater emphasis on what they were told by the adviser over and above any explanatory literature provided.

The evidence, including the adviser's assessment of their attitude to risk, does indicate Mr and Mrs J were willing to accept some degree of risk to achieve the income they required. But at the same time, I do not believe their circumstances are particularly consistent with the medium/high assessment recorded by the adviser at the outset and subsequently.

While I accept Mr and Mrs J probably needed to take some degree of risk to obtain the income they wanted, I do not believe they would necessarily have wanted to expose their capital to a significant degree of risk. I say this because it appears they would be dependent on their capital to provide an income for the remainder of their lives. And in view of the fact they had retired with only a very modest pension income, their capacity to replace any substantial capital loss was very limited.

At the outset, the adviser recommended the bonds were approximately 50% invested in equities, including overseas equities involving additional currency risk, and 40% in commercial property. In my view, this spread of investments involved a greater degree of risk than Mr and Mrs J would have been willing to accept and was therefore unsuitable - particularly for such a large part of their available assets.

Over time, Mr and Mrs J made a number of fund switches within the bonds. In August 2009, the adviser recommended a selection of funds with a total of 90% invested in UK and overseas equities. So even if I was persuaded the bonds were suitable at outset, I think subsequent changes soon meant that was not the case.

I have noted The Crescent Partnership's comments about Mr and Mrs J's other assets on which it believes they could also have drawn to provide an income or replace any lost capital. But in view of Mr and Mrs J's most recent comments, it appears the assets on which they could draw were substantially less than has been suggested. I also note they did not put the bonds into trust because they did not want to lose control of their capital. This appears to undermine The Crescent Partnership's view that they were willing to take a higher degree of risk because they planned to give that up.

Mr J is particularly concerned about the amount that was placed in commercial property and 40% is perhaps higher than I would normally expect to see in this situation. But in this case, I note Mr and Mrs J's previous business did operate in the property sector and I believe it is reasonable to think their knowledge and experience may well have inclined them to invest a higher amount in this area as the adviser's notes suggest. My view that the recommended bonds were unsuitable instead stems from the fact that I believe the associated risk to their capital was greater than they were willing to accept.

The Crescent Partnership has pointed out that the amount Mr and Mrs J received from the bonds (calculated as the surrender values plus total withdrawals) was greater than the amount invested. And while this may be true, it does not necessarily show they were not disadvantaged. To calculate whether the advice to invest in the bonds led to Mr and Mrs J incurring a loss, we would also need to

take account of any growth that could have been achieved from alternative investments that would have been suitable.

In defence of the complaint, The Crescent Partnership has also commented on the number of fund switches made while Mr and Mrs J held the bonds. In particular, it says they often made switches against the advice they were given.

To consider this point, we have obtained from Legal & General a full record of all switches made while the bonds were held and The Crescent Partnership has provided us with copies of some of the adviser's correspondence with Mr and Mrs J after the initial investments were made. From the information I have seen, particularly relating to those in March 2008, August 2009, June 2010, February 2011, March 2011 and December 2011, it appears the adviser prompted the switches and recommended which funds Mr and Mrs J should switch out of and into. And that Mr and Mrs J followed that advice.

fair compensation

To compensate the estate of Mrs J fairly, The Crescent Partnership should put it as close as possible to the position it would probably now be in if she had not been given unsuitable advice.

I think Mrs J would have invested differently. It is not possible to say *precisely* what she would have done, but I am satisfied that what I have set out below is fair and reasonable given her circumstances and objectives when she invested.

what should The Crescent Partnership do?

- Compare the actual performance of Mrs J's investment to the return the investment could have obtained using the benchmark set out in the table below.
- The compensation payable to the estate of Mrs J is the difference between the *fair value* and the *actual value* of Mrs J's investment. If the *actual value* is greater than the *fair value*, no compensation is payable.
- The Crescent Partnership should also pay the estate of Mrs J any interest, as set out below. Income tax may be payable on the interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
investment bond	surrendered	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date surrendered	8% simple p.a. 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, The Crescent Partnership should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 additional sum that Mrs J paid into the investment should be added to the *fair value* calculation at the point it was actually paid in.

Any withdrawal, income or other payment out of the investment 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 are a large number of regular payments, to keep calculations simpler, I will accept if The Crescent Partnership totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs J wanted income without significant 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 WMA 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 J'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 the estate of Mrs J into that position. It does not mean that Mrs J 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 J could have obtained from investments suited to her objective and risk attitude.
- The additional interest is for being deprived of the use of any compensation money since the end date.

further information

The information about the average rate can be found in the 'Statistics' section of the Bank of England website. It is available under the section headed Interest and Exchange rates data / quoted household interest rates / fixed rate bonds / one year.

The information about the WMA index can be found from the website of the Wealth Management Association or the FTSE Group.

my provisional decision

My provisional decision is that I currently intend to uphold this complaint. I currently propose to direct The Crescent Partnership LLP to pay Mr J (as executor of Mrs J's estate) compensation calculated using the method set out above.