

complaint

The trustees complain that they were given unsuitable advice by Campbell Harrison Ltd to invest in a life settlements fund. They have said the fund was not suitable for their attitude to risk.

background

I issued my provisional decision on 4 February 2016. By way of my provisional decision I set out why I was minded not to uphold this complaint.

I asked both parties to let me have any further comments they wanted to make before I determined their complaint.

In 2009 one of Mrs F's sons had several meetings with Campbell Harrison to discuss inheritance tax planning for Mrs F. The adviser recommended that Mrs F should put £600,000 of her money into a trust designed to reduce the inheritance tax (IHT) that would be payable. Mrs F wanted to take an income of around £30,000 per year from the money held in the trust.

The adviser recommended that 50% of the money in the trust should be put in a life settlements fund and 50% into an equity growth fund. He set out in *'The Inheritance Tax Planning report'* sent to Mrs F in June 2009 that in order to provide a regular income:

"I believe we should have different investment content for the policies (set up within the trust) depending upon the maturity dates.

- My recommendation for policies maturing in years 2 to 5 would be the [life settlements fund]*
- Those maturing in years 6 and 7 I would suggest a 60/40 split between the [life settlements] fund and the [provider name] Growth Fund.*
- Those maturing in years 8 and 9 I would suggest a 50/50 split between the [life settlements fund] and the [name of provider] Growth Fund..."*

The stock market linked fund was described as;

"...designed specifically to deliver long-term capital growth. The fund invests only in equities and the fund is normally fully invested. Around 40% of the assets of the [name of provider] Growth fund are invested in the UK. However, to take advantage of opportunities that exist outside the UK and to provide some diversification benefits, the remainder of the portfolio is invested in other equity markets."

The life settlements fund was described as investing in:

"...life policies bought from US policyholders, who would otherwise surrender their policy back to the life company. The fund has an investment benchmark to provide an 8% annual net return to investors, with the prospect of total target net returns of 8% to 10% per annum. The fund was launched in November 2005 and has demonstrated the ability to provide steady, consistent returns of around 0.7% to 0.9% per month. It has achieved a positive return for each of the last 30 months. However, these returns are not guaranteed."

Mrs F took an income from the trust. This was taken from the life settlements fund until it was suspended in late 2011.

The trustees complained to Campbell Harrison in late 2014. They said that they did not feel that the life settlements fund was suitable for Mrs F's attitude to investment risk.

In an email dated 7 January 2015 one of the trustees said:

"...specifically, my mother has what appears to be a high risk investment fund (the, Life Fund), which we understood as being a deposit type fund with no risk, and which the regulator has said is not suitable for private Individual investors. How can this fund be a suitable investment for an elderly widow with no real previous investment experience?"

There is no discussion documented around my mother's feeling towards risk, no summary or quantifying of her agreed attitude towards investment risk with these funds being invested, or the level of investment risk that the recommended investments are exposed to."

Campbell Harrison did not uphold the complaint. In summary it said that it felt the advice it had given Mrs F was suitable. It also noted that;

"...[even after] taking into account the down valuing of the fund ...the current value of your [IHT planning trust] is £572,000, but you have had income of approximately £86,500 since inception meaning the overall value has shown an increase on the amount invested and therefore you have not suffered any loss.

The only detriment to yourself is the lack of choice as to where the annual income can be taken. This will be rectified in the future as more and more [life settlements] policies mature, giving sufficient cash flow to provide the choice of either [life settlements] or [stock market linked growth fund] to fund any maturities."

The trustees were not satisfied with the firm's response and brought the complaint to this service.

An adjudicator recommended that the complaint should be upheld. Initially she said that both, the life settlements fund and the growth fund were unsuitable. She said Mrs F was an inexperienced investor with a cautious attitude to investment risk. She therefore recommended that any redress due should be based on both investments.

However, having considered additional information provided by Campbell Harrison showing that Mrs F had held a range of higher risk investment products over a number of years she accepted that Mrs F was an experienced investor who was prepared to take investment risk. In view of this she said she felt the growth fund was suitable for Mrs F, but she remained of the view that the life settlements fund was not suitable.

She said she had not seen any evidence that the fund prospectus had been provided at the time of the advice, or that sufficient risk warnings had been included in the suitability report.

She noted that the life settlements fund was unregulated and didn't offer the regulatory protections normally offered to retail clients. She said that based on what was known about the fund at the time of the advice; she felt the firm ought to have known of the risks associated with the life settlements fund which included investment, valuation, policy pricing and liquidity risks.

The business did not accept the adjudicator's view. It provided a detailed response. In particular it said:

“Whilst we would dispute that having an amount in UCIS of less than 10% of the portfolio is excessive (estimated based on the client's overall wealth including her husband's monies and holdings with other advisers) we don't believe the FSA made any such comment prior to the investment being made in November 2009 ...”

It also said that despite the life fund's suspension, Mrs F has been able to continue to take the maximum available income from the trust each year and would be able to continue to do so. It reiterated that due to the trust status Mrs F is not permitted to access the money in the trust except on an annual basis when policies within the trust mature.

It said;

“... based on the most recent [growth fund] quarterly value of circa £252,000 and ignoring the [life settlements] fund value, there are still significant monies in the accessible [growth] fund to potentially cover income payments for the next ten years.

By this time we expect that the maturities from the [life settlements] fund will have realised very close to 100% and this is further borne out by the fact that a distribution is due shortly from the [life settlements] fund of approximately £63,000. This will be available by 8 January 2016 and will provide enough liquidity to provide income for at least the next two years, should the trustees wish to retain the potential for growth within the [growth fund] in favour of using the soon to be available cash balance.

It also said;

“Whilst we appreciate that we have mentioned this before, we would like to further reiterate that, as a result of Campbell Harrison's advice, should Mrs F die before 2029 then her estate has saved, to date, at least £250,000 in Inheritance Tax and therefore far from the estate suffering a loss it has shown a gain of this amount.”

The third party representing Mrs F and the trustees also responded. He queried the basis on which the adjudicator had proposed the redress should be calculated. He said:

“The trustees are not saying that an appropriate attitude to risk with these funds invested would have been cautious, merely that such an assessment to establish this here has not been completed, and they do not feel that what is deemed to now be "high risk" investment, the [life settlements] fund, was suitable.”

my provisional findings

I considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I was minded to depart from the view reached by our adjudicator. I said:

I am satisfied that the advice given to Mrs F to set up the trust to potentially reduce IHT was suitable. However, I must also consider whether the advice given to the trustees was suitable for their objectives and the level of risk they were prepared to take.

The Inheritance Tax Planning report sent to Mrs F in June 2009 did not refer to her attitude to investment risk, or that of the trustees. Likewise, it does not appear that a fact find was completed in 2009. However, the firm has provided meeting notes made by the adviser after his meetings with one of Mrs F's children in April 2009. The notes do not cover either Mrs F's or the trustees an attitude to risk. But they do set out that the key objectives were;

“...to ensure that his Mother has sufficient income during her lifetime, it is also her wish that upon her demise as much money as possible passes to the 3 children as opposed to the tax man.”

The adviser recorded that he would:

“...arrange a further meeting when I could discuss my actual recommendation with [one of Mrs F's sons]. I did briefly discuss the EEA Life Settlements fund which [Mrs F's son] particularly liked, and the [provider name] fund of funds. [Mrs F's son] himself said he quite liked the Invesco Perpetual High Income fund and would probably like this included in the arrangement.”

The adviser noted that Mrs F received around £40,000 per year from a business run by her children and had approximately £3million in liquid assets.

From information provided by Campbell Harrison it appears that both Mrs F (the settlor) and her adult children (the trustees) have substantial other investments. It would appear that these investments are managed on a medium to high risk basis.

Campbell Harrison has also provided earlier financial planning reports that had been sent to Mrs F by other firms of financial advisers. These reports gave advice on IHT mitigation and recommended the use of trusts.

These reports don't refer to the trustees' attitude to investment risk. But they describe Mrs F's attitude to risk as variously:

“...high risk, i.e. investment in such areas as Shares, Special Situation or Recovery Funds.”

“You have indicated that your attitude to risk is spread between (20%) balanced, i.e. investment in such areas as Managed Funds, Managed Personal Equity Plans, some Unit Trusts or Unitised With Profits and (80%) high risk, i.e. investment in such areas as Shares, Special Situation or Recovery Funds”

“You confirmed your attitude to investment as follows;

- You prefer to invest in a broad range of blue-chip stock-market linked investments, in return for the potential for real capital growth. In doing so you understand that you accept the risk of some capital loss. -100%”*

And most recently, in a report dated 2007:

- “• You prefer to invest in a broad range of blue-chip stock-market linked investments, in return for the potential for real capital growth. In doing so you understand that you accept the risk of some capital loss. - 72% .*

- You prefer to invest in specialised stock-market linked investments, in return for the potential for increased capital growth. In doing so you understand that you risk significant capital loss. -18%”*

It is not in dispute that both the trustees' and Mrs F's attitude to risk should have been properly documented in 2009 when Mrs F received IHT planning advice. However, I am satisfied that there is enough information available for me to safely conclude that Mrs F was an experienced investor who was prepared to take investment risk. I do not find the comment made by one of the trustee's that Mrs F had “no real previous investment experience” is an accurate reflection of her situation.

With regard to the investments recommended by the adviser, it is not in dispute that the equity fund recommended was suitable. What remains in dispute is whether the life settlements fund was suitable.

I have very carefully taken account of all that both parties have said and provided.

Campbell Harrison did not explain the particular risks involved in investing in an unregulated collective investment scheme in the report it issued in 2009. However, this in itself does not mean that the advice to invest in the life settlements fund was unsuitable.

At the time of the advice Campbell Harrison viewed the EEA fund as being low risk. It has since changed its view and now considers that it would have been accurate to describe the fund as medium risk. I do not agree with this. In my view the fund should have been considered as high risk. This is consistent with the view expressed by the FCA. A key factor in this conclusion is the high return expected to be generated by the fund (around 9%). In my view such a level of return could only be realistically expected to be returned by a relatively high risk fund.

I have therefore considered whether Mrs F and the trustees would have gone ahead with the investment if all the risks had been fully explained. Having very carefully considered the matter I am of the view that they would still have gone ahead with the investment.

I have reached this view having taken account of all the information about previous investments that had been set up to mitigate IHT, and the information recorded by previous advisers about Mrs F's and the other trustees attitude to risk. It is clear that in relation to a number of investments both Mrs F and the other trustees had been prepared to make high risk investments.

The intention was that the income Mrs F required would at least initially be generated by the EEA fund. Therefore Mrs F's income would depend on this fund generating its expected return of around 9%. The trustees were told that this level of return could be achieved by investing in a low risk fund. I do not consider that such a high return could reasonably have been expected from a low risk fund. In my view such a return could only be reasonably expected from a much higher risk fund.

If they had been properly informed the trustees would therefore have two options:

- they could accept the lower level of return consistent with a low level of risk or,
- they would instead have agreed to take a higher level of risk in order to try and achieve a higher return.

Having considered this point my current view is that the trustees would have accepted a higher level of risk. I say this for the following reasons:

Mrs F and the other trustees had a history of making high risk investments. It is therefore reasonable to assume that they would have understood the concept of risk and reward and the trade offs involved.

The trust and the income from it formed overall a small part of Mrs F and her family's wealth. Because of this if, for any reason, the expected income was not generated it would have

been unlikely to have any adverse impact on Mrs F – she was not entirely reliant on the income from the trust.

Because of this my provisional conclusion is that if the firm had given the trustees an accurate picture of the risks of the EEA fund they would have still gone ahead with the investment.

my provisional decision

For the reasons I explained, but subject to any further information or evidence I might receive from either the trustees or Campbell Harrison Ltd by 4 March 2016, my provisional decision was that I am not minded to uphold this complaint.

my findings

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

In the absence of any further comments from either party, my view remains the same as set out in my provisional decision.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask the Trustees to accept or reject my decision before 11 April 2016.

My decision is that I do not uphold this complaint.

Suzannah Stuart
ombudsman