complaint

Mr and Mrs W complain that Financial Planning (Wales) Ltd provided them with an investment advice service which resulted in their money being wrongly invested, causing them an unnecessary financial loss.

I'll call Financial Planning (Wales) Ltd 'FPW'.

background

FPW gave Mr and Mrs W financial advice at various times in 2010. This culminated in a package of recommendations on which Mr and Mrs W acted. The recommendations included Mr and Mrs W investing around £30,000 via Transact. A further sum was invested later.

After around three and a half years, Mr and Mrs W moved their money out of Transact and away from FPW. They were unhappy with how FPW had handled the investment.

They said that FPW had wrongly left most of the money in cash and had made unsuitable investment recommendations with the balance. This had caused them to lose money compared with where they would have stood if FPW had made recommendations in line with its original advice.

FPW didn't accept Mr and Mrs W's criticisms as valid. It said its original advice had represented an aim to be achieved over the medium to long term, not straight away. It also said that in its judgement there were too few investment opportunities in the period in question which suited Mr and Mrs W's attitude to risk, and that it had kept Mr and Mrs W informed of its approach in written updates.

FPW also said that it had duly obtained Mr and Mrs W's consent for all its investment recommendations, that the higher risk investments were only a small proportion of Mr and Mrs W's portfolio, and that its advice should be assessed in the light of Mr and Mrs W's whole portfolio, not just the Transact part.

An adjudicator from this service investigated the complaint and didn't uphold it. Mr and Mrs W asked for an ombudsman to review their complaint.

The result of my review was that I provisionally upheld Mr and Mrs W's complaint. In summary, I wasn't satisfied that FPW had provided Mr and Mrs W with the service they could reasonably expect.

FPW didn't accept my provisional findings. It said in particular:

- It had described its strategy to Mr and Mrs W, who expressed their agreement.
- Mr and Mrs W weren't 'cautious' investors but 'defensive' ones.
- A phone recording indicated that Mr W understood FPW's approach, that a more defensive stance was suitable, and that FPW had suggested alternatives for Transact.
- Any other approach by FPW would have been reckless.
- FPW couldn't see a great deal of discussion, in my provisional decision, of the salient facts.

- It appeared I'd placed too much emphasis on the higher risk investments, which typically represented less than 3% of the overall portfolio.
- Mr and Mrs W should have complained sooner if they were unhappy with FPW's service.
- I'd made no mention of the 5-10 year time frame for the investments. If Mr and Mrs W had remained invested, their portfolio would have performed above the agreed benchmark.
- A decision not to invest was just as considered as a decision to invest.
- My suggested redress wasn't suitable for defensive investors like Mr and Mrs W.
- It was also unfair FPW should have to pay 8% interest on the redress. This was unreasonable and punitive.

At my request, FPW did, however, calculate compensation using my suggested method, for which I'm grateful. This produced a financial loss of £4,893 with additional interest of £742.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I'm sorry to disappoint FPW but I continue to think Mr and Mrs W's complaint is justified.

There's quite a high threshold before I can uphold a complaint of this kind. I must be satisfied that FPW did something that no reasonably competent financial adviser would do. I have to be careful to allow for the valid exercise of FPW's professional judgement. And I have to make my assessment in the light of all FPW's advice and actions, not just those in relation to the Transact element.

Even with these caveats, I struggle to understand what FPW did in this case. The service it in fact provided, in relation to the Transact element, wasn't the one Mr and Mrs W would reasonably think they would get from what FPW told them at the outset.

FPW have drawn a distinction between a cautious investor and a 'defensive' one. But my point is that FPW, having classified Mr and Mrs W as defensive and described the type of portfolio it thought would be suitable for them, then proceeded to do something completely different.

This is illustrated by the Transact summary in the May 2012 review. The graph is meant to show the "recommended asset allocation for your agreed risk profile and investment term". The portfolio bears no resemblance to what it was supposed to look like.

Instead of constructing a portfolio of the kind it had indicated to Mr and Mrs W it would construct, FPW left most of their money uninvested as cash, not for just a short time but for years. With the balance of the money, it advised Mr and Mrs W to make various higher risk investments, but these didn't perform well enough to make up for the modest return on the cash.

If FPW felt it couldn't provide Mr and Mrs W with the service it said it would, it should have explained this to them in the clearest terms and made early, alternative recommendations. Mr and Mrs W would have known where they stood and chosen either to follow the alternative recommendations or to go elsewhere.

I'm aware that other parts of Mr and Mrs W's portfolio performed well. But this shouldn't excuse FPW from not doing what it said it would in regard to the Transact money. Nor should FPW's periodic updates to Mr and Mrs W, or the fact they agreed to FPW's recommendations, provide an excuse. Mr and Mrs W weren't investment experts or financial advisers themselves. They were relying on FPW's expertise.

I don't think it's enough for FPW to say that it avoided losses by remaining invested in cash. It avoided gains too. But the overriding point is that, by remaining predominantly invested in cash, FPW provided Mr and Mrs W with a service they hadn't signed up to.

Regarding the 5-10 year time frame, I don't accept this entitles FPW to provide a completely different service, over any time frame, from the one it led Mr and Mrs W to expect. And I've already noted that FPW recommended allocations for the agreed investment term.

So I uphold the complaint. I describe my redress below; I refer to the money invested via Transact as 'the Transact Portfolio'.

FPW has queried aspects of the redress. I remain of the view that the composite benchmark I've specified provides a reasonable proxy for Mr and Mrs W's objectives and attitude to risk. The benchmark is a proxy. I'm not saying this is exactly how Mr and Mrs W would otherwise have invested.

Regarding 8% interest, this is our standard approach and constitutes compensation for Mr and Mrs W being kept out of their money. I see no reason why Mr and Mrs W should be treated any differently from other complainants.

Apart from the main redress, I also think FPW should also pay Mr and Mrs W £200 for the worry that they've suffered through discovering their money was wrongly invested.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr and Mrs W as close to the position they would probably now be in if they hadn't been given unsuitable advice.

I think Mr and Mrs W would have invested differently. It's not possible to say precisely what they'd have done. But I'm satisfied that what I've set out below is fair and reasonable given Mr and Mrs W's circumstances and objectives when they invested.

what should FPW do?

To compensate Mr and Mrs W fairly, FPW must:

- Compare the performance of Mr and Mrs W's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

  FPW should also pay interest as set out below.

- Pay Mr and Mrs W £200 for the worry FPW's actions caused them.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
the Transact Portfolio	transferred	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 transferred	8% simple per year on any loss from the end date to the date of settlement

actual value

This means the actual value of the investment at the end date.

fair value

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

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, FPW 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 Mr and Mrs W 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'll accept it if FPW totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I've chosen this method of compensation because:

- Mr and Mrs W wanted to invest with a small risk to their 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 their 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 Mr and Mrs W's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr and Mrs W into that position. It doesn't mean that Mr and Mrs W would have invested 50% of their 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 Mr and Mrs W could have obtained from investments suited to their objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

my final decision

I uphold the complaint. My final decision is that Financial Planning (Wales) Ltd should pay Mr and Mrs W the amount calculated as set out above.

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

Roger Yeomans
ombudsman