

complaint

Mrs and Mr D ('the complainants') are represented. Their representative says Blevins Franks Financial Management Limited ('BF') gave them unsuitable investment advice in 2010 and neglected associated tax implications.

background

The complainants settled trusts in 1995, with BF as a trustee. Within the trusts they held Lombard Personal Portfolio Bonds ('PPBs') – Mrs D's was a 'Balanced' Growth Portfolio and Mr D's was a 'High' Growth Portfolio.

They were both assessed as medium risk profile investors in 2010 when BF reviewed their investments and recommended, to them, a switch from the PPBs to Lombard Private Client Portfolios ('PCPs'). Their investment objective of capital growth remained unchanged between 1995 and 2010.

BF's recommendation – as expressed in its review reports – was mainly based on its view that the PCPs offered more flexibility, greater investment potential, access to a wider range of funds to improve growth and a lower charging structure, than the PPBs.

The complainants' representative says the PCPs mismatched their medium risk profile (as of 2010, with the mismatch compounded in 2014 when they were assessed as low to medium risk profile investors); that the PCPs were not cheaper than the PPBs; and that they did not necessarily give access to a wider range of funds. The following main points have been made:

- The PCPs were invested almost only in Equities, which did not make them medium risk portfolios to match the complainants' medium risk profiles.
- The PPBs each had a total annual fee of 1.6% (for their lifetimes and inclusive of BF's fees). At best, the PCPs each had portfolio charges of 0.7% per year, BF's fees of 1% per year and an annual fixed charge of 0.1% per year – totalling 1.71%, a total higher than that for the PPBs. In addition, an initial commission charge of 2.2% applied to the PCPs.
- The PCPs' performances do not support the notion of improved growth based on access to a wider range of funds.

The representative also says that the initial 1995 investments were part of the complainants' Inheritance Tax ('IHT') planning at the time; that IHT planning remained relevant at the point of the switches in 2010; that, prior to 2010, UK IHT rules changed in 2006 and BF ought to have advised the complainants about mitigation of their trusts in this respect, but did not; and that this matter is not a part of the complaint but it highlights BF's negligence.

BF's position, in the main, is as follows:

- There is no potential loss to the complainants' estate arising from the IHT related point made by the representative, so there is no basis for compensation in this respect.
- There was no initial charge (usually 1%) to invest in the PCPs; the annual charge was no more than 1.25% and it reduced to 0.7% after five years, and this included all fees payable to BF; the PCPs were indeed cheaper than the PPBs; and the 2.2%

initial commission was not taken in addition to the fees at policy level, but was a part of the establishment charges.

- It initially recommended funds for the PCPs spread over five asset classes (Bonds, Commodities, Equities, Real Assets, and Capital Guaranteed Funds) in order to match the complainants medium risk profiles. In response, they said they preferred to omit bonds from the PCPs, so it amended its recommendation accordingly.
- The PPBs had limited fund choices. They lacked diversification in terms of asset classes (they were wholly invested in Equities) and the complainants expressly agreed with its recommendation of the PCPs in this context.
- The performance of the PCPs should be viewed in the context of the wider market at the relevant time.

One of our investigators considered the complaint and concluded that it should be upheld. He was not persuaded by the representative's IHT related point. The same applied to the representative's point about the performance of the PCPs – he said performance, alone, is not indicative of suitability. He also agreed with BF's response to the matter of charges.

However, he took the view that the PCPs were unsuitable for because they mismatched the complainants' medium risk profiles. He considered that BF possibly revised its recommendation upon the complainants' input about omitting bonds, but it ought to have conducted an assessment of whether (or not) the revised recommendation matched their risk profiles. He concluded that BF did not do that and that the revised recommendation did not match the complainants' risk profiles.

In response:

- The complainants' representative maintained the point about the PCPs' charges being higher than the PPBs' and affirmed that the complainants did not instruct the omission of bonds.
- BF disagreed with the benchmark proposed by the investigator for the calculation of redress. It considered that an alternative and internal portfolio model would have been suitable for the complainants and would be a more appropriate benchmark than what the investigator proposed. In addition, it argued that its internal asset allocation table made 70% exposure, within a portfolio, to Equities suitable for a medium risk profile and the PCPs had less of such exposure. It said this and the risk score allocated to its recommendation (which also fell within the medium risk range) means the PCPs were suitable.

The investigator explained that the benchmark he proposed is not supposed to mirror a precisely suitable portfolio but is supposed to indicate the sort of return that could have been achieved with a suitable portfolio. He also noted that, overall, the PCPs had high risk components beyond Equities which were not particularly balanced by the minority lower risk element of the portfolio. The matter was referred to an ombudsman. c

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 done so, I have reached the same conclusion as the investigator for broadly the same reasons he gave.

The complainants' representative has confirmed that the IHT issue is not a complaint issue, so I do not address it. The argument about charges and the costs comparison between the

PPBs and the PCPs has been presented to support the complaint about unsuitability of the PCPs. I am satisfied that the PCPs were unsuitable because they were too risky for the complainants. I do not suggest that the argument about charges is irrelevant – it is not – however, the complaint is being upheld (due to the risk mismatch matter) and does not require an additional reason to be upheld.

This service would not normally consider matters of performance in isolation and I have not seen grounds in this complaint to depart from this approach. Furthermore, I agree with the investigator that performance of an investment, alone, is not automatically indicative of its suitability for an investor at the outset.

There is no dispute that the complainants were medium risk profile investors in 2010. It could be argued that the PPBs had become unsuitable for them – or at least for Mr D – at this time because they were wholly based on Equities and Mr D's PPB appears to have been exposed to higher risks than Mrs D's. In this context, I do not consider that the 2010 review, in itself, was unreasonable.

However, having conducted risk profile assessments for the complainants and having concluded that they shared a medium risk profile as investors, it was incumbent upon BF to ensure that its recommendation for reinvestment of the proceeds (from the surrendered PPBs) matched this profile. BF was the expert in its relationship with the complainants. I understand the need for a firm to comply with its client's instructions. I also note that the complainants dispute instructing BF to omit bonds from the PCPs.

In any case and even if the alleged instruction was given, BF remained responsible to warn – in the context of 'advice' – against any unsuitability that arose from that before complying it. If, as it asserts, BF considered its initial recommendation to be a match for the medium risk profile, it ought reasonably to have known that the revision that followed changed this.

There appears to be no evidence of such a warning and I agree with the investigator's observation that the revised composition of the recommended PCPs, overall, tilted them more towards a high risk portfolio without sufficient lower risk components to achieve a balanced/'medium' risk profile outcome. Cash was limited to 3% of the portfolio; 17% was allocated to a short term cash fund but BF's report confirmed that this was a temporary measure before the allocation would thereafter be used for investments; within and beyond the Equities based components (which included exposure to small cap funds), the portfolio was exposed to emerging markets; and the portfolio was also exposed to property funds.

Overall and on balance, I conclude that the PCPs were unsuitable for the complainants because they were too risky for their medium risk investor profiles.

fair compensation

I consider that fair compensation will be to put the complainants as close as I can to the position they would probably now be in if they had not been given unsuitable advice by BF. I take the view that, but for BF's recommendation, they would have behaved differently. It is not possible to say *precisely* what they would have done differently but I am satisfied that what I have set out below is fair given their investor risk profiles.

I have considered BF's point in this respect and with regards to the benchmark to be used for redress. There is not sufficient evidence to conclude that the alternative and internal portfolio model it proposes is *definitely* or *probably* what the complainants would have

invested in – as opposed to the PCP model they invested in. After all, it is BF's argument that the complainants rejected its initial recommendation – leading to its revised recommendation – so BF cannot reasonably be sure that the alternative portfolio would have been the suitably invested portfolio.

The benchmark used below follows this service's approach towards redress for investors with a medium or balanced risk profile and I do not consider I have seen anything in this case to warrant departure from that approach.

what must BF do?

To compensate the complainants fairly, BF must:

- Compare the performance of the investment stated below with that of the benchmark shown below and pay the complainants 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 for financial loss is payable.
- Pay interest if set out below. Income tax may be payable on any interest awarded.
- Provide the complainants with the calculation of compensation in a clear and simple format.

investment	status	benchmark	from ("start date")	to ("end date")	additional interest
Mrs and Mr D's Lombard Private Client Portfolios	Still exists	The FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	Date of investment	Date of settlement	Not applicable (because the calculation end date is the date of settlement)

actual value

This means the actual amount 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 the FTSE UK Private Investors 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 an investor(s) who was prepared to take some risk to get a higher return. I consider that the complainants' medium risk investor profile is broadly matched by this benchmark and that it broadly reflects the sort of return they could have obtained from investments suited to their profile.

my final decision

For the reasons given above, I uphold Mrs and Mr D's complaint. I order Blevins Franks Financial Management Limited to perform redress to them as detailed above and to provide them with the calculation of redress in a clear and simple format. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs and Mr D to accept or reject my decision before 14 May 2020.

Roy Kuku
Ombudsman