

## **complaint**

This complaint is about the investment advice given to Mrs C by C.P.H. Ltd ("CPH"). In summary, the executors of Mrs C's estate have said:

- The level of commission paid to CPH was disproportionate to the service provided. Also, the commission was not fully disclosed.
- Mrs C's investments were not rebalanced in line with her attitude to risk.
- Mrs C's diverse investment portfolio was changed by CPH to a number of investment bonds.
- Mrs C's tax status was not considered.
- An investment bond was recommended with early redemption penalties in the first five years despite Mrs C being in her late eighties.
- Mrs C's inheritance tax (IHT) position was not considered. So there was insufficient capital in her estate to pay the IHT liability on her estate.

## **background**

I set out the background to this complaint, and my provisional findings, in the provisional decision I issued in September 2015 (copy attached).

The executors didn't agree with my provisional decision. In response, they said they didn't think sufficient weight had been given to Mrs C's age and infirmity. She didn't have the capacity to understand the concepts involved, the degree of risk being undertaken or the levels of commission paid to CPH. Also, Mrs C's age and life expectancy meant that the investments should not have been recommended to her.

CPH said it had no further comments.

The matter has now been passed back to me for further consideration.

## **my findings**

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

I've noted the points made by the executors. I appreciate Mrs C was elderly, as I acknowledged in my provisional decision. But I also explained that I didn't think this meant she should not have been recommended these investments.

Further, while taking account of Mrs C's age, I've not seen evidence she didn't have the capacity to understand the advice she was given. I'm mindful that in July 2011 Mrs C's solicitor wrote to her in relation to the completion of a Lasting Power of Attorney (LPA). The letter noted that the LPA had been forwarded to the Office of the Public Guardian for registration. But it was also stated that Mrs C had signed the LPA as an "insurance policy". It was not to be used by her attorneys without Mrs C's written authority or evidence she had lost the capacity to deal with her own affairs. It was to be retained by the solicitors for safekeeping in the meanwhile.

What I draw from this is that, even in July 2011, Mrs C was considered able to make her own decisions. I am not aware that the LPA was ever activated, up to the point Mrs C died.

I considered the executors' concerns about the commission CPH was paid in my provisional decision. I also considered the suitability of the investments in light of Mrs C's age. I've not been presented with any further evidence which causes me to change the opinion I expressed previously.

**my final decision**

I do not uphold the complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask the executors of Mrs C's estate to accept or reject my decision before 8 January 2016.

Doug Mansell  
**ombudsman**

## COPY OF PROVISIONAL DECISION

### complaint

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- Mrs C's tax status was not considered.
- An investment bond was recommended with early redemption penalties in the first five years despite Mrs C being in her late eighties.
- Mrs C's inheritance tax (IHT) position was not considered. So there was insufficient capital in her estate to pay the IHT liability on her estate.

### background

One of our adjudicators reviewed the complaint, and recommended it should be upheld in part. In brief, he said:

- Commission levels were disclosed to Mrs C.
- He believed Mrs C was willing and able to take a small degree of risk.
- But the investments recommended by CPH were not suitable for Mrs C's circumstances.
- The fact Mrs C wanted to meet with the adviser every two weeks indicates she did not understand the long term nature of the investments.
- It was probable that some form of discussion around IHT planning took place. However, Mrs C chose not to pursue the matter further.
- Overall, the estate should be compensated for the investment loss caused by the unsuitable advice. The executors should also be paid £250 for the trouble and upset the matter has caused.

CPH did not agree with the adjudicator and asked that the complaint be considered by an ombudsman. In summary, CPH said:

- Mrs C had at least 10 years investment experience prior to its involvement.
- The first two investments that were made for Mrs C were top-ups to existing investment bonds she already held.
- Mrs C's attitude to risk was assessed, recorded and confirmed with each new investment when it was undertaken.
- Mrs C said the service she received from CPH was "*excellent*".
- The tax deferred option of an investment bond suited her requirements.
- Mrs C's intention was for the bulk of estate to go to her two nieces.

The executors of Mrs C's estate also provided further comments:

- The adjudicator said the commission was paid from the investments and not by Mrs C. This is not correct, as the commission was deducted from the sums Mrs C invested.
- If this service is not able to protect consumers from overcharging, this practice will continue.
- CPH has referred to a long list of investments held by Mrs C before its involvement. As these did not exist when she died, they question what happened to them.
- They suggest the mere act of sending a letter to Mrs C referring to her ATR does not show she had an understanding of this matter.
- The notion Mrs C wanted to be visited every two weeks by the adviser contradicts CPH's assertion she was an experienced investor.

- They question why Mrs C, at her age, was investing for growth as the advice indicates. The adviser's letters also say using the investment bonds was to produce an income.
- But if Mrs C wanted to invest for growth, they ask why she would not be concerned about IHT.

As the matter remains unresolved, it has been passed to me for consideration.

### **my provisional findings**

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

The adjudicator considered the different aspects of this complaint under separate headings. For consistency, I have used the same headings below.

#### *commission*

There are two elements to the executors' concerns about commission. They believe the level of commission was excessive. Also, it was not disclosed to Mrs C.

The level of commission payments is agreed between the adviser and the product provider. This is commercial decision and would not be something I would look to influence.

While I appreciate the total sum paid in commission seems high, this was based on the sums being invested. In addition, as well as providing the initial advice, the adviser also met with Mrs C on a regular basis. As far as I am aware, there was no further charge made for these meetings. As I trust the executors accept, a business is entitled to be paid for the services it provides. In all, I do not think the commission paid was excessive.

I also think Mrs C was made aware of the commission CPH would receive. This was included in the illustrations she was given and the suitability letters the adviser sent her.  
Mrs C does not seem to have objected to the commission that would be paid

#### *suitability*

Between March 2010 and December 2011, CPH recommended the following investments:

£100,000 Friends Provident investment bond  
£70,000 Legal and General investment bond  
£600,000 AXA offshore investment bond  
£200,000 Prudential investment bond  
£240,000 Prudential Investment bond  
£10,680 Fidelity ISA  
£200,000 Liverpool Victoria flexible guaranteed bond  
£200,000 Prudential investment bond

The original suitability letter said Mrs C had "*a reasonable knowledgeable of investments*" and had been "*comfortable with fluctuations in the value of your [her] investments in the past*".

The other available suitability reports state that CPH assessed Mrs C's ATR as either moderate or balanced. Mrs C also completed a questionnaire to assess her ATR.

Mrs C held a number of investments which were taken out between 1998 and 2004.  
The investments were held until at least the time she started receiving advice from CPH in 2010. They included some investments that contained a significant degree of risk. So I think Mrs C would have gained some knowledge of investments and experienced some degree of volatility on her holdings.

However, the fact Mrs C had previously invested does not necessarily mean that she was a suitable candidate for future investments. But I also have to consider there is evidence the question of the risk she was prepared to take was discussed with Mrs C on several occasions.

I appreciate Mrs C was elderly and living part of the time in a nursing home. Her husband died shortly after the first advice was given.

But on balance, I'm not inclined to find the assessment of Mrs C as being prepared to take a balanced or moderate degree of risk was unreasonable. I do not think her circumstances indicate she was not able to take this level of risk, if she wanted to. I've also not seen evidence Mrs C didn't understand how much risk she would be taking with the investments being discussed.

Having reviewed the investments CPH recommended, and the underlying funds used, I do not think these were outside Mrs C's risk profile. In general, they were compatible with a balanced approach to investment risk.

I have also noted the comments about the frequency of the visits made by the adviser to see Mrs C. I understand this could be evidence of uncertainty on her part. But on the other hand, it could be evidence Mrs C took a close interest in her investments. Overall, I don't think the fact that Mrs C met with the adviser roughly every two weeks shows she was unaware of the risk she was taking with the investments. Nor is it evidence the investments posed more risk than she was willing to take.

Mrs C's objective was to achieve a capital return above that offered by deposit accounts, but with the option of taking an income in the future if it was needed. Despite her high cost of care, Mrs C was in the fortunate position of being able to fund her outgoings from the income and interest she received from her existing savings and investments.

On balance, the investments CPH recommended met Mrs C's main objective. I have considered the executors' comments. But I do not find anything unusual in Mrs C wanting to achieve growth on her money. Using investments bonds also gave her the option, at some point in the future, of taking a fixed income by way of regular withdrawals.

I appreciate such bonds are intended to be medium to long term investments. But despite Mrs C's age, it seems she was willing to look at investing for five years or more. Clearly, it could not be known how much longer Mrs C would live. But I don't think it was out of the question she could survive for at least five years.

Further, one of the main reasons for keeping such investment products over this term is to avoid charges on early surrender. But it does not seem Mrs C was unhappy with the performance or any other aspects of the investments. They were all still in force when she died.

So while there are charges applied if an investor chooses to cash in a bond, the same does not apply on death. The Prudential, Legal and General and Liverpool Victoria bonds would all pay out 101% of the fund value. The Friends Provident bond would pay out 100.1%. So there was no penalty in this event. In addition, the Liverpool Victoria bond also had the option of paying out if Mrs C suffered a terminal illness.

I therefore don't think the normal minimum investment period for these products meant they were unsuitable for Mrs C.

The AXA offshore bond was set up on a capital redemption basis. This meant it did not have to finish on Mrs C's death. It could continue in force and be taken over by her beneficiaries. This was discussed as part of the advice process.

*inheritance tax*

The executors say CPH did not consider Mrs C's IHT position. The executors were required to arrange a bridging loan because there was insufficient capital in her estate to pay the inheritance tax liability.

The documentation makes a number of references to IHT planning. This indicates Mrs C was aware there was going to be sizeable liability on her death. But it does not seem this was a priority for her. She had gifted money to members of her family in the past, and thought she might do so again. But she wanted to retain access to the capital being invested.

In the circumstances, I don't think there was any failure on the part of CPH by not recommending investments with a view to mitigating IHT.

I note the adjudicator thought the executors and beneficiaries of Mrs C's estate should receive a payment for the trouble and upset they have been caused. But as I am not upholding the complaint, no such award is merited. In any event, we do not normally recommend such payments to third parties, such as executors. So even if the complaint was being upheld, I would not make an award on this basis.

**my provisional decision**

I do not uphold the complaint and I make no award.

Doug Mansell  
**ombudsman**