

complaint

Mr P complains that Craig Mitchell – as the registered financial advisor – approved and, in effect, recommended investing £10,000 in an unsuitable investment bond in 2017. The product literature made various promises about guaranteeing a return of the capital after 12 months with a set level of return, neither of which materialised.

background

Mr P's representative said he had limited understanding of the risks posed by the UKPDS bond and should not have been advised to invest in it as it posed too great a risk to his capital. The representative said Craig Mitchell had breached various FCA rules concerning his responsibilities as a regulated advisor, notably:

Conduct of Business Rules

- 4.1 COBS 9.21.1 (1): You did not take reasonable steps to ensure that the recommendation was suitable for our client because you failed to consider the investment;
- 4.2 COBS 9.2.2: You could not have reasonably believed that the specific transaction met our client's investment objective;
- 4.3 COBS 9.4.7: You did not fully explain why the transaction was suitable, based on our client's needs and demands, and you did not explain the possible disadvantages of the transaction;
- 4.4 COBS 9.4.8: You did not give sufficient details for the complexity of the transaction;

FSA Principles of Business

- 4.5 Principle 2: You did not conduct your business with due skill, care and diligence;
- 4.6 Principle 3: You did not take reasonable care to organise and control your affairs responsibly and effectively, with adequate risk management systems;
- 4.7 Principle 6: You did not pay due regard to the interests of our client and/or treat them fairly;
- 4.8 Principle 7: You did not pay due regard to the information needs of our client and did not communicate information to him in a way which was clear, fair and not misleading;
- 4.9 Principle 9: You did not take reasonable care to ensure the suitability of your advice;

He further argued that it was impossible for Craig Mitchell to state that the recommendation for Mr P to invest was suitable when the investment itself had simply not been fully considered, investigated or advised upon. The FSA's Thematic Review of September 2009 confirms that a Firm cannot give advice on a vehicle for investment without providing advice that considers the overall transaction: both the investment vehicle and the underlying investments intended. Craig Mitchell failed to carry out any due diligence on the investment.

When Mr P first tried to register a complaint, in 2019, he had by then received back two sums of £1,640 and £258, and concluded, from the product provider's correspondence, that the rest of his capital was lost and no interest would be paid.

After initially pursuing UKPDS, Mr P's representative brought a complaint against Craig Mitchell, a registered independent financial advisor, who had signed the application stating that the investment was suitable for him.

Craig Mitchell said he had never met or spoken to Mr P, had not assessed his suitability as an investor or recommended the product. He therefore had no files or documentation and was not responsible for Mr P's decision to invest.

Mr P confirmed that he'd had no contact with Craig Mitchell and that it was a third party, who was not a regulated IFA or business, which had encouraged him to take out the investment. He said this individual came to his house to help him write a Will and talked about the UKPDS product, saying he'd invested in it for years and it offered a guaranteed 10% return a year.

In a second meeting the individual gave Mr P some paperwork, explained how the investment worked and got him to fill out the application. He said this would be signed off by an IFA meaning it had full FCA protection. He then took the signed application away with him.

The first he knew about Craig Mitchell was when he received a copy of his application form months later. He eventually 'tracked down' Craig Mitchell who admitted he had a connection with the individual who'd 'recommended' the investments and said he'd signed the application form 'as a favour to a friend'. Mr P said he had made a recording of this conversation.

An investigator at this service noted that neither the individual in question nor UKPDS itself was regulated by the FCA and couldn't have offered personal financial advice on the investment bond. Also, the promotional literature made clear that the acceptance of the Bond application was subject to the applicant seeking financial advice from an authorised person i.e. an FCA-regulated advisor.

She also noted that the Bond application stated:

I/we can confirm that I/we have complied with the suitability rules in COBS 9 of the Financial Conduct authority's Handbook of rules and Guidance and have assessed this investment as suitable for the above-named person.

Crucially, she noted that Craig Mitchell had signed and dated this statement providing his FCA registration number and other key details.

In her 'View', dated 12 June 2020, she concluded that Mr P could not have gone ahead with this investment without Craig Mitchell, as a registered financial advisor, confirming he had recommended it as suitable for him. As such, she said he was responsible for the advice, which she deemed unsuitable, and was responsible for paying appropriate compensation.

She recommended he repay the amount Mr P had invested, less any payments received, plus 8% interest simple a year from the date of the investment to settlement date on the amount invested. He should also pay £150 compensation for the trouble and upset caused to Mr P as a result of this situation.

Craig Mitchell disagreed, reiterating that he had never met or spoken to Mr P, or given him financial advice. He said his firm name, FCA number and signature are on the application form as he was asked to verify the identity and address of Mr. P, which he did in his capacity as a financial adviser. He added that he had absolutely no idea about the state of Mr. P's finances or his attitude to risk regarding investments. A suitability test by an adviser would have been required before Mr. P proceeded with this investment.

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 this case I agree with the investigator and for the same reasons.

I also agree with Mr P's representative about the regulatory responsibilities of an FCA-registered advisor and that Craig Mitchell did not meet these requirements when signing to say he had assessed the suitability of the investment for Mr P. This is why I quoted the relevant COBS rules in the background section of this decision.

I am satisfied that Craig Mitchell did not consider Mr P's circumstances and/or the suitability of this investment for him. Mr P was not in a fully informed position to decide whether to go ahead with this product and would not have done so but for the reassurance that a regulated advisor would 'guarantee' it.

Crucially, Mr P could not have invested in this risk-based product without Craig Mitchell wrongly claiming he had considered his circumstances and judged this was a suitable recommendation. Without Craig Mitchell's signature Mr P would not have put his money at risk and subsequently lost a substantial portion of it. Therefore, Craig Mitchell is directly responsible for that loss.

I therefore instruct Craig Mitchell to pay Mr P £8,102 plus 8% simple interest on the initial £10,000 investment from the date of investment to the date of settlement of this complaint. 8% interest will only apply to the £1,898 Mr P has received back up to the date he received this money back. (£1,640 on Dec 2017 and £258 on August 2018).

I also instruct him to pay Mr P £150 for the considerable trouble and upset this has caused him.

Finally, I should explain that while I found Mr P's testimony about what Craig Mitchell said in a phone call persuasive, I have not relied on this in reaching my decision as I have not been provided with or listened to the alleged phone call. While Mr P was entitled to make a recording of the call without obtaining Craig Mitchell's permission it would not be permissible for me to listen to the recording without such permission.

my final decision

I uphold this complaint and instruct Craig Mitchell to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 8 October 2020.

Tony Moss
ombudsman