complaint

Mr B has raised a number of concerns about SG Kleinwort Hambros Bank Limited's investment advice and its attitude and behaviour towards him.

background

In 2017 SG initially recommended Mr B invest £900,000 in one of its in-house funds; he eventually agreed to a total of just over £700,000.

Mr B said that during the meetings prior to investing, he made clear that he was as concerned about maintaining the capital value of his funds against inflation as deriving an income from them. He said that SG told him that, subject to the normal risks of investment, it expected to deliver an income of around 4.5% along with capital growth of 3%; and that a total return of around 7% a year was quoted on numerous occasions.

He also outlined other concerns, saying SG:

- failed to provide him with a private banker of suitable ability and integrity
- failed to act in a transparent manner
- failed to properly manage a significant data breach
- failed to handle and investigate his formal complaint in accordance with its own protocols
- staff repeatedly mislead him (in writing and verbally) about the position of the fund manager
- charged over £25,000 for these deeply flawed services

An adjudicator at this service felt his complaint should be upheld.

He noted that Mr B was 55, had three dependent children, was self-employed and had an uncertain income. He had limited personal investment experience, most of his investments having arisen from inheritances. He said that while Mr B was hoping for a substantial income from any investments, capital protection was clearly of great importance. As a result, he felt he should not have taken more than a small risk with his money; instead, the recommended investments posed a medium to high level of risk.

He concluded that Mr B should have been recommended low risk investments and so SG should pay compensation on this basis, using the low risk formula recommended by this service. It should also pay £150 for the various administrative failings outlined.

SG did not agree, reiterating its view that Mr B had 20 years' discretionary management experience, was aware of the risks posed by the recommendations and fully agreed to these. It did not agree that a low risk portfolio, as reflected in the adjudicator's redress formula, was consistent with Mr B's situation or objectives. Instead, it was satisfied that the recommended product - with a 60/40 split of equities and bonds - was appropriate for Mr B's circumstances and objectives.

Mr B subsequently elaborated on his overall concerns, adding:

- When he first discussed things with SG's advisor he told him he had long-term depression and anxiety, had no pension and that capital preservation was his key priority

- The advisor knew he had little investment understanding, acknowledged that Mr B was vulnerable and promised to look after his money
- In further meetings he reiterated that while income was important, the preservation of his capital was critical
- He agreed to invest in the fund not because he fully understood it but because he trusted the advisor to act in his best interests
- The documentation gave a misleading picture about likely returns
- The three years since have been extremely stressful, both due to the £60,000 fall in his capital but also because of SG's contemptuous attitude to him and his complaint

On reading this file I sought further information and comments from both parties.

SG confirmed that Mr B had invested just over £700,000 during April, May and June 2017 in one of its in-house funds rated 'balanced'. It added:

- Since making this complaint, Mr B has had further meetings with its investment advisors who have explained its strategy and the risks of the fund, after which he confirmed he did not wish to lower/change his risk profile
- Its Suitability Letter of 2018 confirms this, and spelt out that it was continuing to follow its original mandate
- Mr B is no longer withdrawing income on a regular basis or reinvesting it, causing a cash drag
- It still believes this complaint is essentially about performance rather than suitability

Mr B said:

- He accepted that while 4% income and 3% growth were mentioned, these were not guaranteed
- His complaint concerns the misleading documentation and verbal assurances about the alleged past performance of this fund, which he's now discovered were not accurate as demonstrated by evidence from the FT, City Wire and Morning Star
- He was also assured that this fund balanced capital growth and income; in fact, the 4% income is delivered irrespective of the impact on growth; he specifically did not want this to be the priority
- He was shown paperwork allegedly showing this fund performed above the relevant benchmark, which led him to assume it was low risk
- He was not offered the opportunity to choose lower risk funds
- SG's advisors only explained risk in the context of a danger of a market crash; they never explained that there was a separate risk of a fund simply underperforming relative to other funds
- Instead they only ever talked up this fund as 'outperforming' the market, which led him to assume it was relatively safe
- SG eventually admitted that the fund had underperformed since 2015, in direct contradiction of what they'd said when they recommended it
- His understanding of the fund was that it was middle-of-the road, not too high, not too low i.e. he was playing relatively safe with this product
- SG is wrong to claim he didn't want to lower his risk level when he spoke with its advisors in 2018; he's now been given lower risk options
- Also, one of its advisors said that the term medium risk was 'fairly meaningless' and that it wouldn't be worth investing if he lowered the risk of his funds further

- He had no idea these funds were 'high risk' until this service's adjudicator described them as such earlier this year
- He had been anxious about this investment but didn't know what to do, particularly after he'd made a complaint. He felt that if he'd withdrawn the money from SG, any complaint would be dismissed
- He was also fearful about selling his stake at a low point of its value in 2018, and thereby potentially missing out on a possible recovery
- He is still bewildered as to the risk of these funds and whether he ought now to move his money elsewhere; and, if so, what level of risk he should take with his money

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 do not accept SG's characterisation of Mr B's complaint as solely, or predominantly about performance. In my view, he questions whether SG fully took account of his circumstances, needs and priorities, its assessment of his propensity for risk as well as claiming he was misled about the product's track record and its prospects. He clearly also makes further detailed allegations about SG's subsequent behaviour.

Overall, I think he raises the broad question of whether, for various reasons, this was a suitable recommendation and whether he was in a fully informed position to decide whether to invest in this product.

Firstly, I do not believe the evidence indicates Mr B was a particularly knowledgeable investor. From what I've read, his investments either arose from inheritances and/or were actively managed in a way that he had no need to make decisions about them. Indeed, in my view, Mr B's recent correspondence suggests he is still unclear about the broad meaning of different risk categories and the factors which contribute to them.

This strongly suggests he did not fully understand the potential implications of being classified as someone prepared to take a balanced risk back in 2017 or a medium/high investment. Further, I am not persuaded that SG and its advisors fully explained this such that Mr B could decide whether this actually represented his attitude towards this large of portion of his money.

I recognise that Mr B was presented with a brief description of the various risk categories and elected the 'balanced' risk option. However, given his lack of personal investment decision-making, and the very large portion of his capital concerned, I think the advisor should have done much more to explore his attitude to risk (i.e. his willingness to lose up to a third of his money) via this medium/high-ish risk product. A typical risk questionnaire, for example, with a series of customer-friendly questions/statements would have given Mr B a much better opportunity to think through how much risk he wanted to take with his money - and make a more informed decision.

I do not dispute that the documentation indicates Mr B was looking for a regular income, but I don't think there is sufficient information for the advisor to have concluded that this was his only or overwhelming priority (as opposed to capital protection/growth). Nor do I think the advisor made it sufficiently clear that this investment was designed to deliver a regular income irrespective of the impact on Mr B's capital, such that it could erode very significantly in a falling market i.e. the income exacerbating the risk to his capital.

I also note that, at the end of the report, he recorded Mr B's capacity for loss at 15% of his capital (having indicated a different figure in other documents). This loss capacity is clearly not compatible with the recommended investment.

Further, SG's internal memo of 2016, after a first meeting with Mr B, clearly states that he was looking for 'income, income growth and capital growth' and to 'protect his income and capital against inflation'. Again, I do not believe the 2017 advice fully reflected this mix of priorities, putting Mr B's capital at far too great a risk, particularly when the regular income was factored in.

I also think the 2018 Suitability Review offers an added insight into Mr B's likely objectives at the time of the initial advice in 2017; his overall situation having not changed. This report explicitly states that capital preservation is a priority, alongside regular income. I do not believe this medium/high-ish risk investment – with a likely 60% exposure to equities - is suitable for someone for whom capital preservation is a significant priority.

I also note that while Mr B again ticked the 'medium risk' box with no evidence of the advisor having undertaken sufficient specific steps – such as using a risk questionnaire – to establish whether this accurately reflected Mr B's attitude. Further, this medium risk box refers to a 50% exposure to equities, not 60%, while the product literature refers to a potential exposure of 70%.

Unlike the earlier report, this included a section on Mr B's 'primary purpose' in which he ticked both 'capital preservation' and 'regular income'. This, in my view, should have alerted the advisor (albeit in 2018) that Mr B was not looking to take a large risk with his capital. He also ticked 'no' in a box asking if he required his investments to produce a specific level of regular income'. This should also, in my view, have raised a red flag to the advisor as to whether this investment was suitable for him.

Overall, I've seen no persuasive evidence to indicate that the advisor – either in 2016, 2017 or 2018 – fully explained the way in which risk-based investments worked and the inevitable trade-off between capital preservation, with or without inflation protection, regular income and the potential for significant growth/returns via riskier funds. Most investors would ideally like all three; it is the responsibility of an advisor to fully explain why this isn't possible and to clarify a client's relative priorities.

Mr B's situation was relatively unusual in that he had a large capital sum, and some other assets, so clearly needed some investment advice as to how best to use this money. But he was relatively young, with three dependent children, no apparent pension provision and was doubtful about future employment prospects. All of this, in my view, meant caution was crucial when it came to putting this capital at risk.

I am satisfied that Mr B was looking for investment advice and that his existing investments needed a reconsideration in the light of his situation and likely future priorities. So, I don't believe it would have been appropriate to leave things as they were. Instead, I agree with the adjudicator that he should have been recommended a suitably low/cautious risk investment (with a diverse spread of funds/assets), and one from which he could take flexible income.

I am therefore satisfied that the adjudicator's proposed redress formula is broadly fair.

I therefore instruct SG to compare the current value of Mr B's portfolio with what his investment would now be worth if he had invested the same initial sum/s in a more suitably low risk investment, and by using the formula set out below. As the formula does not include fees or charges this means, in effect, Mr B is getting back any initial and ongoing charges as part of this compensation formula.

I also note that Mr B paid an additional £4,000 standalone fee. As I consider the advice to have been unsuitable, this must therefore be repaid with appropriate interest.

I've also considered Mr B's concerns about SG's various alleged service failures, including:

- Wrongly charging him a £2,250 management fee in 2017; something it acknowledged and paid back
- Sending him contract notes relating to another client; something it apologised for
- It cancelled a planned breakfast seminar at short notice and without explanation, which caused him considerable inconvenience; it acknowledged this
- Failing to spell out the specific fees and charges; it denied this
- Failing to tell him which specific fund his money was invested in and the performance of that fund
- Providing misleading information about the fund's current performance

Overall, I am satisfied that SG's service was far from satisfactory, noting that it accepted making several significant errors, such as the data breach. But it's important to point out that my role, when investigating a complaint, is to consider all the evidence but not necessarily to address every complaint point or seek to make a judgement on every issue, especially where the evidence is far from clear.

In particular, while I recognise the strength of Mr B's argument about the allegedly misleading information, I don't think there is sufficient evidence to fairly reach a conclusion about this issue. It is impossible to be certain about what a particular advisor said, or implied, about the likelihood of any returns (although I think it's unlikely any specific return was guaranteed). Nor have I seen persuasive evidence to conclude that the documentation contained incorrect figures.

I do think SG ought to have responded to Mr B's queries and subsequent complaint more promptly and with far more detailed answers. Overall, I think £250 is a fair sum to pay in lieu of the various issues above.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr B as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr B would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

what it should do

To compensate Mr B fairly it should:

- Compare the performance of Mr B'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.

- It should also pay interest as set out below.

- Pay Mr B £250 for SG's various administration and customer service failures.

- Refund the £4,000 standalone advice fee plus 8% simple interest per annum for the date it was paid to the date of settlement of this complaint.

- Provide the details of the calculation to Mr B in a clear, simple format.

Income tax may be payable on any interest awarded.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
Discretionary Investment Portfolio	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of settlement	not applicable

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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, it 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. Apply those rates to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investments should be deducted from the *fair value* 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 will accept if it totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I have chosen this method of compensation because:

- Mr B wanted income with some growth with a small risk to his 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 his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market 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 someone who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean Mr B would have invested 50% of his 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 B could have obtained from investments suited to his objective and risk attitude.

further information

Information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database, clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

Finally, I should make clear that I have not sought to calculate whether this formula will result in Mr B being entitled to compensation. If this SG fund has delivered a higher return than a more suitably low risk one, then no compensation will be payable; aside from the £4,000 plus interest on it and the £250.

Either way, it is now up to Mr B to decide whether to retain this investment going forward and/or seek and pay for new advice if he feels this is appropriate.

my final decision

I uphold this complaint and instruct SG Kleinwort Hambros Bank Limited to pay compensation as outlined above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 16 February 2020.

Tony Moss
ombudsman