

## **The complaint**

The executors of the estate of Mrs R complain that Graham Carter Financial Services Limited trading as Graham Carter & Co gave unsuitable investment advice. They also complain that Graham Carter & Co failed to review Mrs R's investment portfolio which has resulted in a loss.

## **What happened**

Mrs R had an ongoing relationship with Graham Carter & Co. It appears it advised her for many years. In 2015, it advised Mrs R to sell her investment within one particular fund and use the proceeds to invest into the Woodford Equity Income Fund (WEIF). In 2018 Mrs R's children registered an Enduring Power of Attorney and in January 2019 Mrs R sadly passed away.

The executors complain that Graham Carter & Co's advice in 2015 was unsuitable for Mrs R. They say it presented too high a risk for her age and circumstances. They also complain that Graham Carter & Co failed to carry out contractual annual reviews, and had it done so, it would've switched Mrs R's investment out of the WEIF when it started to decline. As it didn't, the estate has lost out.

Our Investigator partially upheld this complaint. She said the following:

- Whilst there was a lack of a recent fact find, Mrs R's investment experience and circumstances suggests she remained a balanced investor.
- The advice in 2015 switched from a fund with a similar risk profile to the WEIF and this wasn't unsuitable.
- Graham Carter & Co failed to send Mrs R review invitations from 2017 onwards and should refund the fees taken for those years plus interest as it didn't provide the service Mrs R was paying for.
- Had the reviews taken place any movement out of the WEIF would've required Mrs R's attorney's authorisation and there's no evidence they were looking to change her investments so Mrs R wouldn't be in any different position.

Graham Carter & Co agreed with our Investigator's view. The executors of Mrs R's estate disagreed. They felt that had Graham Carter & Co carried out its reviews each year then it would've switched Mrs R's investments out of the WEIF. They also maintain that it wasn't suitable at the outset. They asked for an Ombudsman to reach a decision.

## **What I've decided – and why**

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

Having done so I agree with our Investigator for similar reasons. I'm partially upholding this complaint. I'll explain why.

### *Suitability of the 2015 advice*

Mrs R's executors complain that the advice in 2015 to switch into the WEIF was unsuitable. Unfortunately, I can't see Graham Carter & Co carried out a fact find after 2005, but I've considered the large volume of correspondence between Mrs R and her adviser over the years to conclude whether the advice was suitable.

From the information we have on file I can see Mrs R was retired, in her 80s and had sufficient income to cover her outgoings. Mrs R had an investment portfolio in 2015 which had a balanced risk profile. Previous correspondence shows she was keen to address her potential inheritance tax liability and there wasn't any suggestion that Mrs R needed to take a cautious approach to investments or needed to ensure her capital was preserved.

I do appreciate that Mrs R was retired, which would mean she'd find it hard to replace any lost capital. But her circumstances, and regular correspondence with Graham Carter & Co don't suggest that she couldn't take some risk with her investments. In 2015, the advice was to sell Mrs R's holding in a different fund that hadn't been performing well, and reinvest the proceeds into the WEIF. There wasn't any new monies invested, and the risk profile of the WEIF largely matched that of the previous fund. Essentially the advice didn't make her existing portfolio more risky to the extent that it was unsuitable for her based on what I've seen. It appears her portfolio remained balanced after this advice.

It's worth noting that correspondence shows Mrs R took a keen interest in her investments, and was actively involved in selecting types of investments within her portfolio. So, I do think it's likely that she remained a balanced risk investor with some capacity for loss and so the advice she received in 2015 wasn't unsuitable for her.

### *Ongoing reviews*

Mrs R signed up to a specific service level in 2013 with Graham Carter & Co which meant she could expect annual reviews of her portfolio. Graham Carter & Co said it invited Mrs R to a review in 2016 but she didn't respond. However, I can see on the file it submitted that a review did take place in September 2016. I can't understand why no further review invites were sent and I agree that this meant Graham Carter & Co fell short of its obligations – particularly as Mrs R was paying a fee for this service. It follows that I think Graham Carter & Co should pay the executors any fees it took from 2017 onwards together with interest.

I note that the fees were taken from the investment, and so potential returns on this amount had it remained invested may be different to the 8% simple rate our Investigator suggested. But, as Graham Carter & Co agreed to this redress, I think it's fair and reasonable, as well as pragmatic, to award 8% simple interest on to the fee refund.

### *Effect of missed annual reviews*

The crux of this complaint is around the effect of the missed annual reviews. The executors say that had the reviews taken place, Graham Carter & Co would've moved Mrs R's investment out of the WEIF prior to it being suspended in 2019. I think it's too speculative to have reached this conclusion, I'll explain why.

Graham Carter & Co sent Mrs R annual portfolio updates. In these updates – which were sent each year until she passed away – it said to contact it if she wanted to discuss her investments. The portfolio updates contained the valuations of the funds. I can't see that Mrs R, or her attorneys contacted Graham Carter & Co to discuss the portfolio. In 2017 and 2018 the investment in the WEIF hadn't declined to the extent that it later did. By the time Mrs R passed away, her investment into the WEIF had lost some value but not a significant

amount. I can't see any indication that had Graham Carter & Co invited her for a review in 2017 and 2018 that any changes would've been made to her portfolio.

It's also important to note that any changes to the portfolio would've had to be authorised by Mrs R's attorneys, who have said they didn't feel it right to delve into her investments at that time. So I think it's likely that any invitation to an annual review may have gone unanswered. So, I don't think that Mrs R's portfolio would've been in any different position had Graham Carter & Co sent out annual review invitations.

I understand the executors' disappointment that the WEIF was suspended whilst they were waiting for probate to be granted. But I hope I've explained why I don't think the advice to invest was unsuitable at the time. From the information I have, I don't think Graham Carter & Co's errors in not inviting Mrs R to annual reviews has caused the losses. I don't think it's likely the portfolio would've been in any different position had it done so. So whilst I'm not upholding the substantive part of this complaint, I do think Graham Carter & Co should refund the fees it took from 2017 onwards as it didn't provide the service it was charging for.

### **My final decision**

For the reasons I've explained I partially uphold this complaint. Graham Carter Financial Services Limited trading as Graham Carter & Co must refund the fees it took from the late Mrs R's portfolio from 2017 onwards. To this amount it should add interest\* at 8% simple per year from when the fee was taken to the date of settlement.

\*If Graham Carter Financial Services Limited considers that it's required by HMRC to deduct income tax from that interest, it should tell the executors of Mrs R how much its taken off. It should also give them a tax deduction certificate if they ask for one so they can reclaim the tax from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mrs R to accept or reject my decision before 1 March 2023.

Charlotte Wilson  
**Ombudsman**