DRN-4584471

Financial Ombudsman Service

The complaint

Mr and Mrs G complain that they received unsuitable investment advice from PSP Wealth Management Ltd (PSP) in November 2012. In particular, they felt it exposed them to too much risk and their future needs and circumstances weren't considered.

Mr and Mrs G are being represented with this complaint by a claims management company (CMC), but for ease of reference, I will refer to all actions and comments as those being of Mr and Mrs G.

What happened

Mr and Mrs G met with advisors from PSP in November 2012. Mrs G had received a pay out and a monthly income following an accident some years prior.

The advice Mr and Mrs G received was to invest £750,000 into an investment bond and £150,000 into a range of individual savings accounts (ISAs), open-ended investment companies (OEICs) and unit trusts (UTs) through a discretionary fund management service (DFM). Mr and Mrs G accepted the investment bond advice but decided to only invest £100,000 into the ISAs, OEICs, and UTs.

Between December 2012 and March 2014, Mr and Mrs G made a range of withdrawals from these investments, culminating in the investment bond's surrender. The remainder of the DFM investments were surrendered in March 2013.

Mr and Mrs G say they approached their CMC after reading an article about mis-sold investments and thinking it might apply to them. Following this they complained to PSP saying the advice in 2012 hadn't been suitable. In particular, they said that it carried too much risk and their future needs and circumstances hadn't been considered.

PSP initially responded to say that they didn't think the complaint had been raised in time. However, an ombudsman at our service decided that it had. PSP also said that the advice was suitable and relevant, and that their goals and objectives had only changed after the time of the advice.

Our investigator looked into it. He addressed each concern in turn, but felt PSP had done all that was required of them to ensure suitable advice had been given. Mr and Mrs G remained unhappy. They said, amongst several points in response, that Mrs G's future health wasn't considered, too much risk was taken, too much importance was placed on IHT planning and not enough on paying off outstanding liabilities such as the mortgage.

As no agreement was reached, the case has been passed to me to issue a decision.

I issued a provisional decision on 4 December 2023, an extract is below and forms part of this decision.

> 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

have come to a different conclusion to the investigator and I intend to uphold this complaint. Let me explain why.

At the time of the advice, Mr and Mrs G were married, in their early thirties with two young dependents. Mrs G was recovering from a very significant life changing accident, which she received a pay out from and made up the proceeds for this investment advice. Due to the impact of her injuries, Mrs G wasn't working, and neither was Mr G as he helped look after their young children.

Mr and Mrs G were recorded as living in a property that they intended to rent out, whilst they renovated what would become their new family home. They owned both, with only a small remaining mortgage of £70,000. They were said to be happy to keep the mortgage in place as they were offsetting the costs through the rental income they would receive. They were not recorded as having any other liabilities, savings or investments.

Mr and Mrs G were due to receive a final payment of just over £1,000,000. The advice they received would see them invest £750,000 into a portfolio bond and £100,000 into a range of ISAs, OEICS and UTs within a DFM service. This left them with a total cash reserve of approximately £177,000.

Mr and Mrs G were classified at the time of advice as having a high medium attitude to risk. This classification was generated after Mr and Mrs G responded to a range of questions regarding the risk they were willing to take. PSP have said that the advice given matched this risk profile and that Mr and Mrs G accepted this.

However, whilst I acknowledge the portfolio bond and DFM service investments matched this risk profile, I don't think the advice given to invest here was suitable. Their circumstances don't suit the "high medium" rating and I think PSP should have established that. Neither Mr or Mrs G had a recorded income. Their future income was set to come from the rental property they had. Although this was to be offset by the mortgage repayment they still had. I cannot see that any of this future income or outgoings were discussed in detail to establish if they were sufficient.

Mr and Mrs G were left with a £177,000 cash surplus after investing (more than the advisors recommended amount of £127,000). However, whilst this was a sizeable amount, they were recorded as "planning to start a property business…once established it is intended to provide a rental income. Any additional income is to be generated by use of surplus capital (from slush fund) and investment income".

Therefore, in their early thirties and with neither planning or likely to be able to resume full time employment for a considerable number of years, the advice given meant Mr and Mrs G's income was going to be reliant on two relatively small rental properties, with seemingly no consideration given for how much income might be produced and whether it would be sufficient.

> This situation of insufficient income does appear to have been recognised by the advisor who states in the fact find “income will no longer be sufficient for expenditure. Rental income, investment income and surplus capital will be used to address this situation”. Required monthly expenditure of £1,650 was noted (Mr and Mrs G’s CMC calculate it at being nearer £30,000 per annum). With no calculation of value from the rental properties, I don’t believe the advice given was appropriate for this pressing need. It doesn’t surprise me that Mr and Mrs G surrendered all the invested amount within eighteen months of inception.
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> Further, following purchase of the second rental property, they were to be left with very little if any cash surplus and not in employment, hindering any capacity to recover any losses that this investment advice might bring. If their property rental business is unsuccessful, this invested amount is likely to be all the money they will ever have. The lack of capacity for loss, makes this even more unsuitable. There’s no clear strategy of capital preservation.
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> Mr and Mrs G have also complained through their CMC that IHT planning and writing the bond into trust, was not a priority. I tend to agree. They were in their early thirties, and whilst I appreciate they were recorded as wanting IHT mitigation on the fact find, I think their need for an income and accessible investments superseded this and they should have been advised as such. The focus on growth and IHT planning is at odds with their circumstances.
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> In summary, I don’t believe Mr and Mrs G were given suitable advice. Not paying off their remaining mortgage was going to impact their income, which they were reliant on. Because of their stated IHT mitigation objective, they were tied into a non-income generating investment limited up to 5% withdrawals per annum, before penalty. They were left without any cash surplus or reserve, meaning a need for accessible funds. I don’t believe this advice met that need and it exposed them to too much risk than they were able to take.

Mr and Mrs G responded to say they accepted the findings in the provisional decision and had nothing more to add.

PSP responded to confirm they didn’t accept the findings. They provided several points in response and I have tried to summarise these below:

- Maintained their view that the case had not been brought in time.
- Mr and Mrs G withdrew the funds and invested in riskier business opportunities, which were unsuccessful. This has led to them seeking compensation from PSP.
- A future need for income was mentioned and it was made clear that the investments were long term.
- The investment would have met income provision and inheritance tax planning needs, if it had remained invested.
- The investments weren’t withdrawn for liquidity purposes, but for a foreign property purchase.
- None of the business plans commenced were ever mentioned to the PSP advisor.
- A rental property business was planned, but through mortgages and they have provided a statement from the mortgage advisor at the time to evidence this.
- The remaining capital would be used for deposit purposes, to build a property portfolio.

- An income of £36,000 p.a was arranged four months after this advice, through the investment bond taken out through PSP.
- This investment was income generating, as it provided the option of a 5% drawdown from the bond.
- Mr and Mrs G's ISAs could also have been used to generate an income.
- They maintain that the client risk rating was correct and that the amount on deposit ensured they had sufficient capacity for loss.
- It was correct that inheritance tax liability was considered.
- *"If the clients had maintained the course of action prescribed in PSP Wealth Management Ltd.'s recommendation of 2012, not made significant withdrawals for non-essential expenditure, pursued additional businesses interests as discussed, and maintained their own future plans to build a property portfolio, then adequate income would have been maintained, Inheritance Tax Liability mitigated and assets preserved through investment growth - assets for their future once the children are age attained".*
- The redress calculation is also incorrect, and the benchmark shouldn't be used, but instead a comparison to if the investment had remained. And not surrendered earlier than advised.

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.

PSP maintain that the merits of this case shouldn't be considered, as they haven't been brought in time. However, I would like to remind them that this was already decided upon by an ombudsman, who determined in August 2023 that we could consider this. I also acknowledge and understand the points PSP raise about what Mr and Mrs G did after this investment and with the proceeds from this. However, I am reviewing this advice in 2012 and anything they did subsequently doesn't affect its suitability.

My concerns around this centre on Mr and Mrs G's income provisions needs and capital preservation. PSP have said that a need for income was discussed, and it was to come from the rental property business Mr and Mrs G were to start through a mortgage advisor (who has provided me with a statement). However, there doesn't seem to be any discussion on how much income this would generate and how sufficient it would be. There was also no guarantee that the rental property business would go ahead, and in fact I can see now that it didn't.

PSP have also said that income could have come from the bond and that only four months later Mr and Mr G started the process of £4,000 monthly withdrawals from the bond. However, this was a withdrawal from the original capital invested, from an investment that, as PSP have said, should be considered long term. This raises the obvious concern that I mentioned in my original provisional decision of capital preservation, if Mr and Mrs G were to keep making withdrawals (from very soon after the commencement of the bond).

PSP have also said that income could have been generated from Mr and Mrs G's ISAs/UTs. Whilst I am sure this is the case, I haven't been provided with anything to evidence that the funds were income generating or how much income this would have produced and if it would have been sufficient. As a hypothetical, it also wouldn't make this advice any more suitable.

PSP have stated that Mr and Mrs G exacerbated any losses by making withdrawals earlier than the 5-10 year minimum term that was expected for this investment. However, this contradicts their point that Mr and Mrs G could have taken withdrawals to maintain their income and lifestyle needs. And I maintain that these early withdrawals were needed as Mr and Mrs G were not suitably advised, to leave them with sufficient income provision.

PSP have said that if I do uphold the complaint, redress should be what the investment performance would have been had Mr and Mrs G remained invested. However, we don't compare positions to that of unsuitable investment advice. The explanation behind my redress is below.

In summary, I still don't believe Mr and Mrs G were given suitable advice. There was insufficient provision for income. This would have relied upon rental income which was unpredictable and not even estimated. This will also have left them with an insufficient cash reserve. Or they could have used withdrawals from this non-income generating investment bond (where you could only access 5% per year before you were penalised). This didn't meet their needs and exposed them to more risk than they were able to take.

Putting things right

Fair compensation

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

I think the trustees would have invested differently. It is not possible to say precisely what the trustees would have done, but I am satisfied that what I have set out below is fair and reasonable given the trust's circumstances and objectives when the trustees invested.

What should PSP do?

To compensate the trust fairly, PSP must:

- Compare the performance of the trust'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.

- PSP should also add any interest set out below to the compensation payable.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Whole investment	No longer 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 ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Income tax may be payable on any interest awarded.

Actual value

This means the actual amount paid 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, PSP should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal, income or other distributions paid out of the investments should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if PSP totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have chosen this method of compensation because:

- The trustees wanted Income with some growth with a small risk to the trust's 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 the trust's 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 the trust's risk profile was in between, in the sense that the trustees were prepared to take a small level of risk to attain the trust's investment objectives. So, the 50/50 combination would reasonably put the trust into that position. It does not mean that the trustees would have invested 50% of the trust's 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 the trustees could have obtained from investments suited to the trust's objective and risk attitude.

- The additional interest is for being deprived of the use of any compensation money since the end date.

My final decision

My final decision, is that I uphold this complaint and PSP Wealth Management Ltd should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr G and Mrs G to accept or reject my decision before 6 March 2024.

Yoni Smith
Ombudsman