complaint

Mrs M complains that Pension & Financial Consultants Limited (PFC) gave her unsuitable financial advice in 2007. Mrs M says she has suffered financial loss as a result. Mrs M's complaint has been brought by her representative, Mr O.

background

In 2007 PFC met with Mrs M and the late Mr M. PFC advised Mr and Mrs M to take out an equity release mortgage for around £200,000. PFC then invested this money in a discounted gift trust investment that pays an income of around £10,000 per year.

In 2013 Mr M passed away. Mrs M recently sold her property and repaid the equity release mortgage. She still holds the £200,000 investment.

In 2014 Mr O complained to PFC on Mrs M's behalf. He questions the suitability of the advice PFC gave Mr and Mrs M in 2007. He says it is 'unusual' advice for Mr and Mrs M to have been sold a mortgage and then an investment for the same amount. He says this seems poor advice when the investment return is considerably lower than the interest charged on the mortgage. He also says Mr and Mrs M didn't need additional income and they had savings of around £250,000 at the time the mortgage was taken out.

PFC didn't uphold Mrs M's complaint. It said Mr and Mrs M had wanted more income in 2007 and to reduce their inheritance tax liability. It said Mr and Mrs M's savings hadn't all been available. PFC said the bond has performed as it was intended to, delivering around £10,000 income a year to Mrs M. PFC thought the advice had been suitable for Mr and Mrs M's needs at the time it was given.

Mr O brought the complaint to us and our adjudicator looked into the matter. She considered that PFC had given Mr and Mrs M advice about the equity release and the investment as a package. She was concerned that the overall risk of the transaction exceeded Mr and Mrs M's risk appetite, described by them in 2007 as being 'low'. She upheld the complaint and recommended that PFC should pay Mrs M the amount she paid to redeem the mortgage less the value of the discounted gift trust and the income Mr and Mrs M had received since the bond was taken out.

PFC disagreed. So this matter has been passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I agree with our adjudicator's view. I think this complaint should be upheld. I'll explain why.

I have given careful thought to what PFC has said about the advice given. I've also looked at all the documentation surrounding the sale of the mortgage and the investment - including the thorough contact notes completed by PFC. However, when looking at the overall advice, I don't consider that PFC's advice matched Mr and Mrs M's risk appetite. And I don't think PFC explored other options open to Mr and Mrs M sufficiently.

Mr and Mrs M's financial needs

When PFC advised Mr and Mrs M in 2007 they were both in their 80s. Neither had previously had jobs that suggest they had a better than average knowledge of financial products. I consider they would have relied heavily upon the advice given to them by a personally known representative of PFC. Mr and Mrs M's home had an estimated value of between £700,000 and £800,000. They had savings of nearly £200,000 and shares worth around £60,000. Mr M received pension income of around £20,000 and Mrs M received pension income of around £10,000.

PFC recorded Mr and Mrs M's financial needs to be:

- to increase income and financial provision to ensure these will be sufficient especially for Mrs M if Mr M were to die; and
- review and consider inheritance tax on second death

Elsewhere in PFC's records from the time it says Mr and Mrs M's "*regular income sufficient together with accessible cash. But would like additional income*." Mr O says that Mr and Mrs M didn't need additional income. They'd been managing on their pensions for twenty years by this time. Having taken into account the wider circumstances of this case, I'm persuaded that Mr and Mrs M's main objective was to look to provide an income to Mrs M in the event of Mr M's death.

I think that reducing inheritance tax liability might've been something the advisor persuaded Mr and Mrs M was a need. I consider it unlikely that this was Mr and Mrs M's primary need for the 'package' of products advised. Inheritance tax liability would be reduced by lowering the value of Mr and Mrs M's home - through rolled up interest accruing on the borrowing of £200,000. But reducing Mr and Mrs M's wealth to help them pay less tax seems counterproductive. I appreciate that the discounted gift trust was intended to reduce inheritance tax liability. Overall, I consider this aim to be secondary to the need to find income for Mrs M in the event of Mr M's death.

suitability of advice

So having established what I think Mr and Mrs M's main objective was, I now need to consider whether the advice given met this need.

The discounted gift trust has performed as hoped and has delivered an income to Mrs M of £10,000 per year. But this doesn't mean the advice was right. The investment wasn't guaranteed to perform as it has. Mr and Mrs M described themselves as being investors with a low risk appetite. PFC knew they were both in their eighties and suffered from pre-existing health conditions. They were sold an investment that involved a medium risk level. PFC said Mr and Mrs M needed to take on more risk to get the level of income they needed. The investment sold is intended to be medium to long term in nature. I question whether this product was suitable for Mr and Mrs M in their particular circumstances and I don't think the risks of the policy not performing were really understood by Mr and Mrs M.

The advice to take out a mortgage on their home, which was unencumbered, to take out such an investment is also questionable. Mr and Mrs M would be incurring interest on the mortgage at a faster rate than they could have earned on their investment. And, when taking into account that their "need" for additional income in 2007 is in doubt, this seems a recommendation that doesn't match Mr and Mrs M's needs.

I also don't think PFC adequately explored the possibility that, in the event of Mr M's death, Mrs M might like to downsize her property, or live from the considerable savings and other assets that they owned. In such a situation, Mrs M had access to £85,000 of savings. So she could have supplemented her pension with around £10,000 of savings for over eight years before she would have needed to sell shares or access any savings that had been in Mr M's name or were "tied up" in more long term saving plans. I accept PFC's comment that Mr and Mrs M needed to have liquid savings available, and that these should be of a higher amount due to their age. But Mrs M was in a fortunate position of having access to a considerable sum to supplement her pension in the event Mr M died before her. I consider this should have been explored further, as an alternative to the two products proposed by PFC.

what has happened since the advice was given?

Mr and Mrs M's main objective was to have income for Mrs M in the event of Mr M dying before her. Sadly Mr M died in 2013 and so the plans they made were needed. Mrs M is still receiving around £10,000 per year from the discounted gift trust. However, Mrs M has suffered a substantial reduction in her wealth due to falling house prices. And whatever income she has received from the discounted gift trust, it is considerably less than the interest that built up on the equity release mortgage before it was redeemed.

Following Mr M's death, Mrs M sold the property to live nearer relatives. She's received around £52,000 after paying around £320,000 to redeem the mortgage and fees.

When settling a dispute like this we typically try to put consumers back in the position they would've been in if the products hadn't been sold. Mr O has explained that Mrs M might like to keep the discounted gift trust as this investment is giving her an additional income that she is finding useful. I can understand Mrs M's comments and I've taken this into account when setting out what I consider should happen next. Going forward, Mrs M might like to seek independent financial advice to help her explore her options.

what does the ombudsman think should happen now?

In settlement of this complaint, I consider that PFC should pay the following to Mrs M:

> Refund A – (B + C),
>
> where:
>
> A = the amount paid to redeem the mortgage
> B = the current value of the investment bond, and
> C = the income already paid from the bond.

my final decision

My final decision is that Mrs M's complaint against Pension & Financial Consultants Limited should be upheld.

In full and final settlement I direct that Pension & Financial Consultants Limited should refund to Mrs M the amount paid to redeem her mortgage, less the value of the investment bond and the income that the bond has already paid out. That is A – (B+C) as set out above.

The value of B and C should be taken from the date of this decision.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs M to accept or reject my decision before 9 July 2015.

Emma Peters
ombudsman