Financial Ombudsman Service

complaint

Mr K complains that Helm Godfrey Partners Ltd should have advised him to reduce the income he was taking from an existing offshore investment bond. He complains that it gave inadequate advice, and did not consider changes in his attitude to risk.

background

In 2005, another firm recorded Mr K's attitude to risk as "*balanced*", and Mr K accepted its advice to invest in an offshore bond. Helm Godfrey was not responsible for that advice.

In 2009, Mr K became a client of Helm Godfrey. At the time, he was taking regular monthly withdrawals from his bond, and a discretionary manager was responsible for some of the investments within it. The discretionary manager said it was managing those investments on a "*balanced*" or "*medium*" risk basis. I understand that Mr K and Helm Godfrey agree the discretionary manager continued to use a "*medium*" risk mandate throughout the period Mr K complains about.

In July 2010, Helm Godfrey gave Mr K advice about a different product. Before giving that advice, it recorded his attitude to risk as "*cautious balanced*".

In 2012, the investments within Mr K's discretionary portfolio were sold, and he made significant withdrawals from his bond.

In 2013, Mr K complained to our service. He said that ever since he became a client of Helm Godfrey, it had failed to give him suitable advice about his investment bond. It did not tell the discretionary manager that his attitude to risk had changed, and did not instruct any changes to the underlying investments. In addition, it did not send regular communications to him, and it did not advise him to reduce his withdrawals.

I issued a provisional decision on this complaint in December 2014, and said:

> "*Our adjudicator said that Mr K did not know the risk profile of his bond had not changed – but I have seen nothing to show he was told it* had *changed. Mr K was a relatively experienced investor, and so given the lack of documentation I think he would have known that Helm Godfrey had not instructed any changes to his bond. Mr K's complaint is more about omission than about specific advice; he accepts that Helm Godfrey did not make any changes to his bond, but he believes it should have done.*
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> *In particular, Mr K says that he should have been advised to reduce the risk associated with his bond. He says that even if his attitude to risk really was "*balanced*" in 2005, by 2010 his situation had changed, he was more cautious, and Helm Godfrey's recommendations should have reflected that. He says he understands that reducing risk might have meant his income halved, but he would have simply reduced his outgoings in order to preserve his capital. Helm Godfrey says Mr K's return expectations meant that a lower risk portfolio would not have been suitable for him.*
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> *There is a relationship between risk and reward. Over the longer term, I would normally expect a "*balanced*" portfolio to outperform a "*cautious balanced*" portfolio – but the "balanced" portfolio would probably be more volatile. Over a specified period,*

*I would not be at all surprised to see a "*balanced*" portfolio lose significantly more money than a "*cautious balanced*" portfolio.*

All parties agree that Mr K was investing for income, and that the bond represented a significant proportion of his overall assets. I have very little information about his income needs over the period, and invite both parties to submit anything they might have on that point (or indeed on any other). I do have an April 2012 email from Mr K's adviser, which says:

- *They had discussed income in the past, and Mr K had "always led [the adviser] to believe that [his] current income is the minimum requirement, however as [Mr K] pointed out [the current level of] 8.6% is unsustainable".*
- *At the time, Mr K was spending all the income he received, including income from the bond and from property.*
- *He expected to start receiving additional income (from another country) around April 2013, and his family commitments would stop in around 2022. He would receive income from pension arrangements when he reached 65.*

I would like to have seen documentary evidence from 2009 or 2010 to show that income from the bond was discussed. However, I think the April 2012 email does demonstrate that Mr K and the adviser had talked about his income withdrawals in the past. In view of the circumstances the adviser describes in the email, I find it very difficult to accept that Mr K would have been content to halve the income from the bond in 2009 or 2010. I can see that he did reduce his monthly withdrawals from June 2012 – but since he also withdrew a very substantial lump sum shortly afterwards, I don't think that in itself suggests that he was able to accept lower income from the bond.

*The evidence I have seen suggests Mr K was in a difficult position between 2009 and 2012. He has explained that some of his other investments were unsuccessful, which meant he relied more on the bond than he might otherwise have done. The bond was managed on a "*medium*" risk basis, but was not generating the level of income he needed. If he increased the risk of the investments within the bond, then he* might *increase the income the bond generated – but he would also increase the risk that his capital would fall. If he decreased the risk, then it would be virtually certain that the bond could not generate the level of income he needed. Helm Godfrey's adviser believed Mr K was already spending all the income he received, and so he is likely to have wanted more income rather than less. So, even if Helm Godfrey had recommended that Mr K reduce his income withdrawals, it is not clear to me that he would have accepted that advice.*

*Helm Godfrey did reassess Mr K's attitude to risk between 2009 and 2012. It concluded that – with respect to another investment – he was "*cautious balanced*" rather than "*balanced*". I do not think it follows automatically that Mr K's attitude to risk with respect to his bond must also have changed. Given Mr K's income requirements, I think a "*balanced*" or "*medium*" discretionary mandate was reasonable in the circumstances.*

Mr K also complains that Helm Godfrey did not provide regular updates on the bond. I've seen no evidence that it did – but on the other hand I haven't seen anything to *say it promised it would. Mr K did receive information from the product provider, but Helm Godfrey was not responsible for the accuracy of that information.*

In the overall circumstances, it is not obvious to me that Helm Godfrey should have recommended any changes to the bond. I am therefore not currently persuaded that Helm Godfrey has done anything wrong."

Helm Godfrey accepted my provisional findings, but Mr K did not. Briefly, he said:

- Helm Godfrey did record his attitude to risk as "*cautious balanced*", but that was not in relation to a different product – it was part of Helm Godfrey's standard procedure for new clients. That attitude to risk did apply to his bond. Helm Godfrey's adviser should have passed on his change of risk attitude to the discretionary manager in July 2010.

- He considers I was wrong to say he was a "*relatively experienced investor*". His professional experience was in a family business, and his focus was on the business itself. With hindsight, he now believes he made "*a series of foolish investment decisions*" after closing that business. He said he looked for investments with a high reward without fully understanding the risks involved, and consequently lost significant amounts of money. By 2009 he was a relatively experienced investor only in terms of understanding the foolhardiness of the types of investments he had recently taken out. He was still very naïve in terms of continuing to hold his adviser in very high esteem and assuming he was making sure his investments were being managed in a cautious balanced manner.

- By 2007 he had completely altered his lifestyle, spending a considerable portion of each year abroad in an area with much lower living costs than the UK. He took with him a substantial amount of cash, which he put into a no risk account and lived off the interest. If Helm Godfrey had advised him at any time to reduce his withdrawals or to change to a fund with a lower expected return he would have done so. From March 2012 his partner received a salary that more than covered their outgoings.

- The April 2012 email that I referred to in my provisional decision should be completely disregarded. His comment that it was difficult for him to take a reduction right now should be considered in the context that he had already lost faith in the adviser, and was concerned the adviser's previous recommendations had been based on the commission the adviser would receive rather than his (Mr K's) best interests. He "*deliberately made these statements about income requirements to see what might come out of the woodwork in terms of suggested schemes*".

- Even after he instructed a reduction in the monthly income paid from his bond, he still managed his affairs successfully and lived within his means.

- He drew my attention to comments he had made in other April 2012 emails, and particularly his concern that the adviser should have drawn the unsustainable withdrawals to his attention at an earlier point.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as I did in my provisional decision, for the same reasons.

The document that recorded Mr K's attitude to risk as "*cautious balanced*" was completed just before Helm Godfrey gave Mr K advice about his pension arrangements. Helm Godfrey says that at the time, it was only giving Mr K pension advice. I note that it put its pension advice in writing, but did not write to Mr K to give him any advice about his bond.

I remain satisfied that Mr K was a relatively experienced investor, in the sense that he had invested for some years. I accept that he was not in any way a professional investor, and that he was entirely reliant on Helm Godfrey's advice. However, I still think he had enough experience to know that the lack of documentation was likely to mean that Helm Godfrey had not made any changes to his bond.

I do not feel able to disregard the comments Mr K made in April 2012. I accept that he had lost trust in the adviser by that time, but I remain satisfied that he told the adviser he could not afford to take a lower income from the bond. The adviser might have given different advice if Mr K had given different information, but I cannot criticise the adviser for that. In the overall circumstances, I think it unlikely that Mr K would have accepted any advice that meant his income reduced in the short term.

I acknowledge that Mr K has very strong feelings about the events that led to this complaint, but overall I am still not persuaded that Helm Godfrey has done anything wrong.

my final decision

My final decision is that I do not uphold this complaint about Helm Godfrey Partners Ltd.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr K to accept or reject my decision before 20 February 2015.

Laura Colman
ombudsman