## complaint

The complaint is about the advice Greystone Financial Services Limited ("Greystone") gave to Mr P to invest in the Rock Capital Group City Park fund ("Rock City fund").

Mr P has been advised at different times by Greystone Financial Services Limited to invest in other highly geared funds. These investments are being treated as separate complaints by the Financial Ombudsman Service.

## background

In November 2006 Greystone advised Mr P to invest £50,000 in the Rock City fund. The investment was made within Mr P's self-invested personal pension (SIPP).

There is no record of any fact find completed at the time. The only fact find available prior to 2006 was dated in 2001. The only information it recorded was that Mr P was aged 51, was married and had no dependants.

The fund was recommended as it was suitable to Mr P's medium to long term financial objectives. It was also suitable to his balanced risk profile. Mr P preferred commercial property as an asset class. According to Greystone, the fund offered diversification to Mr P's existing portfolio.

In 2011 the fund ran into trouble and by 2013 it had zero value.

One of our adjudicators looked at the complaint. He said:

- The fund was an unregulated collective investment scheme (UCIS). 61% of Mr P's pension portfolio was already invested in other UCIS. UCIS are considered as high risk, speculative investments. Only a small percentage of a portfolio should be invested in them.

- Mr P had an overall asset portfolio valued at almost £3 million. 91% of it was invested in property related assets. As such, by advising him to invest in a property related asset again, he was further exposed to a single asset type. This further increased the risk profile of his portfolio.

- Greystone failed to record Mr P's circumstances, needs and objectives.

The adjudicator concluded that the complaint should be upheld.

Greystone did not agree. It said:

- Due to the passage of time, Greystone has not been able to locate its file, which covers the period 2001 to 2005. This is also because the adviser no longer works for Greystone. Greystone is confident that the file from that period would have contained evidence that the adviser knew Mr P very well.

- The particular adviser would have taken notes at each meeting with Mr P. Those notes would have recorded any changes to Mr P's circumstances, needs and objectives. During the period between 2001 and 2006 the adviser would have developed a strong relationship with Mr P.

- The fund was suitable for a balanced risk investor. Greystone disagrees with the fund's high risk classification by the adjudicator.

- Mr P preferred to invest in property. He felt more comfortable, given his personal investments in property. Greystone believes that his complaint is about investment performance, which should be dismissed.

- The loss was not caused by the advice. It was caused by the unprecedented fall in the commercial property market.

- It does not agree with the redress proposed. It seems that Greystone is asked to transform an investment into a guaranteed capital-secure investment. Mr P was prepared to take a risk.

As agreement has not been reached the complaint has been referred to an ombudsman for a decision.

**my findings**

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

It is clear from the file that Mr P was well known to the adviser who had been dealing with him for a number of years. Mr P had a large property portfolio that he had accumulated over a number of years.

The firm has argued that commercial property is not a high risk investment. Indeed a building with an established number of tenants would represent a fairly low risk long term investment.

However the Rock City fund had bought a large office space on a specific business park east of Glasgow. The building had been bought with significant levels of borrowing as well as money put up by the investors. The high level of gearing meant that provided the value of the property increased the returns to investors would be enhanced. If however property values fell the gearing in the fund would mean that the losses to the investors would be magnified. If the values of the property fell to below the level of the borrowing the sums put up by the investors would be wiped out.

Mr P was advised to invest in the Rock City development in 2006. He invested £50,000. Mr P had a significant pension provision in the region of £250,000. I note that in 2007 it is recorded that Mr P had 11 rental and development properties. In 2008 these were valued at £2.7 million subject to mortgages of around £750,000. He was highly geared and whilst he had been successful in the past using these highly geared schemes there was no guarantee that the next scheme would be successful.

The report from the fund manager for the financial year ended 6 April 2010 shows that the fund was launched in February 2007 with some £13.4 m worth of equity and gross assets of £72.48m. This showed that the fund had a high level of borrowing that it was paying for from the rents that it was receiving. The report and accounts showed that the latest value for the assets held by the fund was £40m .The fall in value was as a result of the significant tenant exercising a break clause and vacating the property. Due to the collapse in demand for commercial property in the location the major tenant was not replaced.

The firm should have in my opinion highlighted the risk of the proposed property purchase. It was a single site with a large sitting tenant. There was no thought given by the firm to the risks to the fund should the major tenant decided to move out of the office block. This is what unfortunately happened. The consequences of the tenant moving out and the inability of the fund to find a replacement major tenant meant that the income to the fund (i.e. rents) dropped to such an extent the loan interest payments were  not paid and the investment failed.

I note that the firm has argued that the failure of the investment was due to circumstances outside its control and that it was down to economic circumstances and investment performance rather than the suitability of the investment. I disagree and consider that the investment was unsuitable from the start and had the firm explained the risks involved and the consequences of those risks. Mr P would not have invested in the fund.

The Rock City Fund was a very highly geared arrangement and whilst if the property value increased would produce significant returns to the investors the consequences of failing values would be that the investors' stakes could be wiped out. If this had been explained to Mr P I consider that he would not have gone ahead with the investment. This is particularly because the fact find that was completed for Mr P in July 2007 stated that Mr P had a cautious to balance attitude to risk.

The benchmark I have set out in the redress below is the one that the Financial Ombudsman Service uses for balanced risk investors.

**fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr P 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 P 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 P's circumstances and objectives when he invested.

**what should Greystone do?**

To compensate Mr P fairly, Greystone must:

- Compare the performance of Mr P'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.

  Greystone should also pay interest as set out below.

  If there is a loss, Greystone should pay such amount as may be required into Mr P's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

  If Greystone is unable to pay the total amount into Mr P's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

The *notional* allowance should be calculated using Mr P’s marginal rate of tax at retirement.

For example, if Mr P is likely to be a basic rate taxpayer in retirement, the *notional* allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mr P would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- Pay to Mr P £350 for the inconvenience caused to Mr P as a result of the advice.

Income tax may be payable on any interest awarded.

| investment name | status | benchmark | from (“start date”) | to (“end date”) | additional interest |
|---|---|---|---|---|---|
| Rock Capital Group City Park Fund | still exists | FTSE WMA Stock Market Income Total Return Index | date of investment | date of my decision | 8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance) |

***actual value***

This means the actual amount payable from the investment at the end date.

My aim is to return Mr P to the position he would have been in but for the unsuitable advice. This is complicated where an investment is illiquid (meaning it could not be readily sold on the open market) as in this case. It would be difficult to know the *actual value* of the investment. In such a case the *actual value* should be assumed to be nil to arrive at fair compensation. Greystone should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the total payable to Mr P and the balance be paid as I set out above.

If Greystone is unwilling or unable to purchase the investment the *actual value* should be assumed to be nil for the purpose of calculation. Greystone may wish to require that Mr P provides an undertaking to pay Greystone any amount he may receive from the investment in the future.

***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

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 investment 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 Greystone totals all those payments and deducts that figure at the end instead of deducting periodically.

**why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr P wanted capital growth and was willing to accept some investment risk.
- The WMA index is made up 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.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr P's circumstances and risk attitude.
- Mr P has not yet used his pension plan to purchase an annuity.

**my final decision**

I uphold the complaint. My decision is that Greystone Financial Services Limited should pay the amount calculated as set out above.

Greystone Financial Services Limited should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P either to accept or reject my decision before 3 March 2017.

Adrian Hudson
Ombudsman