Financial Ombudsman Service

complaint

Mr H believes he was given inappropriate advice by Bartholomew Hawkins Ltd ("the business") between August 2010 and September 2012. An adviser acting on behalf of the business recommended that Mr H and his late wife invest a total of £246,000 in five investment bonds. Sadly, Mrs H died in October 2013.

background

The first two bonds started in August 2010 when £150,000 was invested (£80,939 and £69,061 respectively). A further £8,000 was invested in December 2011, £80,000 in June 2012 and £8,000 in September 2012.

Our adjudicator thought the complaint should be upheld in part. In summary, he said:

- The funds for the first two bonds, which started in August 2010, came mainly from the surrender proceeds of five bonds Mr and Mrs H already held.
- He thought it was likely Mr and Mrs H were advised to surrender the existing bonds by the business' adviser.
- But it would have been better if the adviser had recommended that switches be made within the bonds.
- Four of the new bonds Mr and Mrs H were advised to take out didn't match their risk profile.
- The adjudicator thought Mr and Mrs H were only prepared to take a cautious degree of risk. But the funds selected posed a higher degree of risk.
- Only the last bond matched their risk profile.
- Also, Mr and Mrs H were advised to take withdrawals of over 5% a year. This could have led to a tax liability.
- Mr H should be compensated for any investment loss and tax liability incurred. The business should also pay £500 for the trouble and upset Mr H had been caused.

The business didn't agree with the adjudicator's opinion. In response, it said:

- There's no evidence its adviser had any influence on Mr and Mrs H's decision to surrender their bonds. If any advice was given, this was before the adviser started working for the business.
- Mr and Mrs H's risk profile was noted as 4 on a scale of 1 to 10. This is equivalent to a cautious attitude to risk.
- The bonds the adviser recommended matched Mr and Mrs H's attitude to risk.
- The benchmark the adjudicator proposed as a way of assessing the loss has a similar risk profile to the funds actually chosen.
- The volatility was 4.3% and the equity content was 36%.
- The final bond was invested in fixed income funds. This was to rebalance the portfolio as the equity exposure had increased.
- In any event, there has been no loss. The current value of the investment bonds is more than the alternative the adjudicator suggested.
- It doesn't believe Mr H will have a tax liability because of the withdrawals taken. The business thinks this is a "red herring".
- It doesn't accept it has done anything wrong, or that Mr H has suffered any loss. So it doesn't agree he should be paid £500 for trouble and upset.

Mr H also didn't accept the adjudicator's conclusions. In summary, he said:

- He's disappointed an adviser can ignore correct procedures and not get punished. The adviser earned over £10,000 in commission by breaking the rules.
- In the time it has taken to investigate the complaint, the surrender penalties have reduced significantly and markets have been favourable.
- He asks if it's fair that someone can break the rules and by chance it does not disadvantage the customer.
- The money for the commission came out of his investments. So this should be repaid to him in full.
- He doesn't think £500 is sufficient for the trouble and stress all this caused him and his late wife.

As the matter remains unresolved, it has been passed to me for consideration.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I will start by considering the surrender of the existing bonds.

I accept there's no clear evidence Mr and Mrs H were advised they should surrender the bonds. But there's no doubt the business' adviser was aware Mr and Mrs H held them. This is not least as I understand he had originally sold the bonds a few years before.

There is also a section in the adviser's suitability report issued in August 2010 that refers to the surrender of the bonds. This mentions discussions that have taken place, including the possibility of switching into different funds. As it would not be possible to make a switch once the bonds were surrendered, this would imply it was discussed before then. The report says switching was dismissed because the range of funds available was limited. But this is unlikely to have been something Mr and Mrs H would have known, unless brought to their attention.

I have also considered the request Mr and Mrs H sent to the bond provider, requesting the surrenders. I accept this seems to have been sent directly by them. But they also instructed the provider to send the proceeds to the adviser. They refer to him being at a different company to the business. But the Financial Conduct Authority's records show the adviser as being registered with the business at this point.

So overall I think there's sufficient evidence it's more likely than not the adviser was involved in Mr and Mrs H's decision to surrender the bonds.

I turn now to the advice the business gave to invest in the new bonds.

Mr and Mrs H were retired. They were looking to obtain an income with some growth from their capital. But I think it's unlikely they would have wanted to place their capital at significant risk.

The business recorded them as having a "balanced" attitude to risk. It did this after Mr and Mrs H completed an attitude to risk questionnaire. But having considered the answers given, I'm not persuaded this was an accurate reflection of their views. For instance, they said they were prepared to accept a fall in the value of their portfolio of less than 5%.

I appreciate the answers given should be viewed as a whole. But taking these into account, as well as Mr and Mrs H's circumstances, I think the degree of risk they wanted to take was lower than that ascribed to them by the business.

I have considered the investments the business recommended in light of the above. I note the first four bonds were invested in a spread of funds. I can understand this was intended to diversify the investment across a number of areas and asset types. But I think the overall risk posed by the funds was greater than Mr and Mrs H were prepared to take. The funds contained significant proportions in equities and property. Relatively low amounts were placed in more cautious areas, such as corporate or government bonds.

The last bond, which started in September 2012, was based largely in more cautious areas. So I think this was compatible with Mr and Mrs H's risk profile.

I note the business says Mr and Mrs H were advised to invest in this way for this bond so as to balance the risk profile of their portfolio. But I've not seen evidence the previous bonds were invested with a view to compiling a portfolio of investments where the risk should be viewed overall.

For instance, there's nothing to suggest that the investments recommended in August 2010 were based on the assumption that more money would be invested later on. Instead, it seems that each time advice was given, it was to meet the requirements and risk profile at that point. So I think each bond should be viewed individually as to whether it matched Mr and Mrs H's attitude to risk. I've explained above why I don't think the first four bonds did so.

In addition, Mr and Mrs H were advised to take withdrawals from the bond in order to provide them with a regular income. This was their main priority. But the level of withdrawals was greater than 5% of the capital invested. Therefore, this could cause a tax liability. I've not seen evidence this was discussed, or that Mr and Mrs H were made aware of this risk.

I note the business argues it's unlikely Mr H has incurred a tax charge, given his circumstances. But if he has, I think the business should compensate him for this. If Mr H produces evidence he has been charged tax because of the level of withdrawals taken, the business should reimburse him. This is also the case if Mr H decides to surrender the bonds, provided this is within six months of the date of this decision.

I note Mr H wants the commission paid to the business for the sale of the bonds to be returned to him. He also says he and his wife were not made aware of the commission at the time the bonds were sold.

As an initial point, I do think the fact that the business would be paid by way of commission was disclosed to Mr and Mrs H. They signed a client agreement in August 2010 that payment should be made by commission (or product charges). Also, the illustrations and other documentation confirmed the commission payable on each transaction.

But I think Mr H's main point is that he doesn't think it's fair for the business to keep the commission, if it has been found to have given wrong advice. I understand his feelings. But the method of redress used takes account of the current value of the investments. This includes the effect on the investment of the charges, including the commission the provider paid to the business.

The business says there's been no loss, based on the method of calculation proposed by the adjudicator. I appreciate this may be correct, if the underlying investments in the bond have performed well. But the business should still undertake the full calculation as set out below.

I have also noted the points made by both sides about the adjudicator's opinion that Mr H should be paid £500 for the trouble and upset he's been caused. I appreciate it may turn out that there has been no investment loss. I also appreciate it's not clear if Mr H will incur a tax liability as a result of the withdrawals he has taken. But I still think he has been caused trouble and upset by this entire matter. This is taking into account the fact that his wife became seriously ill and died during the time Mr H was pursuing the complaint. So I think it is appropriate he should be compensated accordingly.

I understand Mr H feels £500 is not a sufficient sum. But overall I think this is fair and reasonable in the circumstances of this case. This is not intended as a fine or punishment imposed on the business. Rather, it's a monetary amount to reflect the trouble and upset Mr H has suffered.

fair compensation

In assessing what would be fair compensation, I consider that my aim should be to put Mr H as close to the position he would probably now be in if Mr and Mrs H had not been given unsuitable advice.

I take the view that Mr and Mrs H would have invested differently. It is not possible to say *precisely* what they would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr and Mrs H's circumstances and objectives when they invested.

what should the business do?

To compensate Mr H fairly, the business must:

- Compare the performance of Mr and Mrs H's investments with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.

  A separate calculation should be carried out for each investment.

  The business should also pay interest as set out below.

- Pay Mr H £500 for the trouble and upset this matter has caused him.

- Reimburse Mr H for any tax liability caused by the level of withdrawals taken, if Mr H provides evidence of this.

Income tax may be payable on any interest awarded.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
investment bond August 2010 (£80,939)	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	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)
investment bond August 2010 (£69,061)	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	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)
investment bond December 2011 (£8,000)	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	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)
investment bond June 2012 (£80,000)	still exists	for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds	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)

for each investment:

actual value

This means the actual amount paid or payable 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, the business should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 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 the business 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 and Mrs H wanted income with some growth with a small risk to their 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 their capital.
- The WMA 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 Mr and Mrs H's risk profile was in between, in the sense that they were prepared to take a small level of risk to attain their investment objectives. So, the 50/50 combination would reasonably put Mr H into that position. It does not mean that Mr and Mrs H would have invested 50% of their 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 Mr and Mrs H could have obtained from investments suited to their objective and risk attitude.

my final decision

I uphold the complaint in part. My decision is that Bartholomew Hawkins Ltd should pay the amount calculated as set out above.

Bartholomew Hawkins Ltd should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H either to accept or reject my decision before 30 December 2015.

Doug Mansell
ombudsman