DRN-4318467

The complaint

Mrs L complains Mulberry Wealth Management Limited provided her with unsuitable financial advice. She says she was advised to re-mortgage a property for more than she needed in order to invest in an unsuitable product. She says this has caused her a financial loss.

What happened

In late 2018, Mrs L received advice from Mulberry in relation to a buy to let mortgage (BTL) on a property she owned. She was advised to raise capital from the property by taking out an interest only mortgage for £150,000.

A few months later (in April 2019), and after the mortgage had completed Mulberry provided Mrs L with investment advice. The advice centred on using £100,000 of the money raised from the re-mortgage to generate additional income. She was advised to invest £20,000 in an ISA and the remaining £80,000 in a General Investment Account (GIA). Mrs L didn't accept this recommendation and the investment didn't proceed.

In April 2020, Mrs L raised a complaint with Mulberry. She said originally, she only needed to release £50,000 of equity from the investment property for home refurbishment and repairs, holidays and day to day living. But she says was convinced by the adviser to take out an additional £100,000 to generate additional income. But she said as a result of the mortgage payments, rather than having additional income she had interest to pay. While she didn't proceed with the investment products recommended by Mulberry, she said she has found herself tied into a fixed rate mortgage which she is unable to repay early as there were large penalties.

I issued a provisional decision in July 2023. This is what I said:

"Mrs L's complaint and the losses she claims refer to mortgage advice she received to take out an advance on a BTL mortgage and also subsequent investment advice – both sets of advice were given by Mulberry, albeit several months apart. At the start of my findings I will set out what I can and can't look at as part of my considerations of the complaint.

The Financial Conduct Authority (FCA) sets the DISP rules within its handbook. These set out our powers to consider complaints – known as our jurisdiction. The rules cover a number of different things that determine what type of complaints we can look into – this includes whether the activity complained about is regulated. If not, then we would be unable to consider a complaint.

One of the complaints (and arguably her main complaint) Mrs L makes relates to the activity of providing advice on a mortgage by Mulberry - so I've thought about whether this is a type of activity which is covered within the rules. The rules sets out a list of activities we're able to consider, and ancillary activities in connection to them.

In respect of mortgage advice, it requires the mortgage to be regulated by the FCA. If a mortgage is unregulated, the rules don't allow us to consider a complaint against the advisor

- which is this case is Mulberry. I'm satisfied the advice Mulberry gave Mrs L in late 2018 doesn't fall within the scope of a regulated activity. That's because the BTL mortgage Mrs L took out is unregulated. I also haven't found this advice to be ancillary to any other regulated activity. I note the documentation relating to the mortgage advice refers to a need to invest to generate income. But no specific investment products or strategy was mentioned within this advice instead the fact find completed records that the £100,000 was for a possible investment property. All of this means I can't consider the complaint points Mrs L makes about the mortgage advice.

Mrs L did receive separate advice several months later, in April 2019, in relation to investments – and this is something I can consider. This advice is covered by the regulated activities within the rules. The consequence for Mrs L's complaint about Mulberry is that I'm only able to consider the merits of the complaint in relation to the investment advice given. So, I can only look at this in isolation – without consideration of the BTL mortgage and the implications of the advice to take out the mortgage.

I've reviewed the information available from the investment advice, including the recommendation letter sent by the advisor to Mrs L on 29 April 2020. I've also considered what Mrs L has told us about her needs and circumstances at the time.

The suitability letter provides details of Mrs L's circumstances and objectives at the time. It says "you would like to invest as tax efficiently as possible and also to provide you with a sustainable income which we have initial agreed would be £3,600 per year paid in monthly instalments."

Her attitude to risk is also detailed and the advisor said the "…funds were recommended based on the level of risk you are prepared to accept." It is also explained that Mrs L competed a risk profiling questionnaire – and from this her "…risk profile suggested a profile of 3 on a scale of 1 to 5, and this kind of investor will be typically described as: 'prepared to take a moderate amount of investment risk in order to increase the chance of achieving a better return on the investment. A typical Moderate investor will usually invest in a variety of assets to obtain diversification and therefore reduce risk. Equities and property, which can boost longer term returns but are associated with more risk would often account for a higher proportion of assets than fixed interest gilts and bonds or cash. At shorter investment terms the proportion of higher risk assets is usually reduced. The range of asset types helps reduce the overall risks while increasing the chance of better returns."

From what I've seen Mrs L appears to have been in a position in which she was able to invest the amounts committed to the ISA and GIA. While she seems to be a relatively inexperienced as an investor, I don't think means she couldn't have understood the level of risk involved with the portfolio and that it wouldn't be consistent with her attitude to risk. But I don't have a lot of information from which to make a finding on this. The suitability does suggest an attitude risk questionnaire was completed and the fund recommended was consistent with Mrs L's agreed attitude to risk, and a fund fact sheet was enclosed – although I haven't been provided with all of this information.

There is a dispute about Mrs L's need for income. The suitability letter says that her objective was to increase her income. The recommendation was designed to do this as the two investments were designed to pay a monthly income and retain capital (depending on performance of the underlying fund). But I note Mrs L has questioned the level of income the recommended products would generate in comparison to the costs of the mortgage she had taken out a few months earlier. While I understand the point she makes about the mortgage costs exceeding the projected income from the investment, I don't think this gives me grounds for saying the advice was unsuitable. In order to generate more income, Mrs L would likely need to take a greater risk with her capital – which would make the *recommendation unsuitable for her recorded attitude to risk. The mortgage costs were established before the investment advice was given – and as previously mentioned I can't consider the mortgage advice that resulted in this outgoing.*

Even if I was to find that the investment advice was unsuitable for Mrs L, I don't find that she has suffered a loss as a result of this. If I were to uphold the complaint, I would look at putting Mrs L back in the position had she not invested the funds by returning them to her. But she decided not to go ahead with the recommendation, so there is nothing to refund. From what Mrs L has said, she decided to take a different approach with using her funds as she intended to buy a new property instead. Unfortunately, this didn't complete, but I don't find this has anything to do with the suitability of the investment advice. As the money wasn't invested in line with the recommendation, I haven't established there is a loss caused by the investment advice given by Mulberry. So, despite not having full information about how Mrs L's attitude to risk was assessed and the fund make up, I wouldn't be able to recommend compensation anyway.

I appreciated Mrs L has described financial losses as a result of having to pay her BTL mortgage. She also mentioned the early repayments charges preventing her from paying the capital back to reduce the mortgage. But none of this relates to the investment advice. So, I can't reach a finding that unsuitable investment advice has caused these losses – or the associated stress and upset.

I've carefully considered all of the submission Mrs L has made. She has confirmed the crux of her concerns are that she only ever wanted to borrow £50,000 and the extra £100,000 that the advisor suggested for her to release from her BTL property has caused financial debt, worry and stress. But for the reasons I've already explained, I can't consider this advice. I appreciate Mrs L may feel Mulberry isn't being held accountable for the consequences of its mortgage advice. But I'm not saying Mulberry has nothing to answer for, nor am I saying it does have something to answer for. I simply can't consider the mortgage advice either way as it's not within our remit to do so. If this was a complaint about a regulated mortgage (and in our jurisdiction to consider) then I could make a decision on all the points Mrs L has raised, but as her BTL mortgage isn't regulated, I've no power to consider this part of her complaint about Mulberry. And I haven't found unsuitable investment advice has caused the losses she claims."

Mrs L responded and made further submissions. In summary she said:

- The information in the application summary was falsely filled in as it states that the £100,000 was for capital raising to potentially buy another property/investment.
- The mortgage lender told her the mortgage would never have been given on the grounds of a savings investment. So, she believes Mulberry lied on the form as it was always its intention to sell her an investment plan.
- She was pushed into a far bigger mortgage than she ever wanted and has now found out it was supposedly to invest in another property.
- After the application came through and while the savings investment was being considered, she found a property but that was not on the horizon when she first sought to raise funds. After the property purchase fell through, she didn't receive any help from Mulberry.

Mulberry didn't provide any further comments or evidence for me to consider.

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.

I’ve considered the further submissions made by Mrs L. I acknowledge that she believes the information recorded on the paperwork available from the mortgage application is false and doesn’t present her intentions at the time. I also note the comments made by Mrs L about the basis for the mortgage being accepted. And her ascertain that she was pushed to take a bigger mortgage than she needed

The first point I need to reiterate is that these points all relate to the mortgage advice she received. I explained in my provisional findings that the mortgage advice Mulberry gave her in late 2018 doesn’t fall within the scope of a regulated activity – so not something I can consider.

While Mrs L disputes the accuracy of the information that was recorded, it is contemporaneous evidence to the events that lead to her agreeing to accept the advance of £150,000. There is no information within the mortgage advice documentation that indicates specific discussions about investment advice and/or products were held. So I’m not persuaded to change the conclusions that I reached in my provisional decision on my ability to look into the concerns Mrs L raises about the mortgage advice.

Mrs L has also raised concerns that Mulberry didn’t provide her with further support after her property purchase fell through, subsequent to the investment advice. While I understand why she would have liked further support, I don’t find that Mulberry had a responsibility to support her after this purchase fell through. As I explained in my provisional decision, I’m only able to look at the investment advice she received in April 2019. The property purchase didn’t form part of the this investment advice and therefore two matters aren’t related. So, I don’t find that there has been a failing by Mulberry in not providing further support here.

In summary, I do empathise with Mrs L and understand the difficult financial situation she has found herself in. I’m not saying that Mulberry hasn’t done anything wrong during the mortgage advice process - but rather this isn’t something I able to consider. And for the reasons previously explained, I haven’t found grounds to recommend compensation for the investment advice she received in April 2019.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs L to accept or reject my decision before 22 September 2023.

Daniel Little
Ombudsman