

NEWS IN BRIEF

Private bank is not under continuing duty to correct its advice

A couple who lost more than GBP40,000 on an investment recommended by Lloyds' private banking service have failed to recover the loss in the England & Wales High Court.

Philip and Wendy Worthing invested GBP700,000 in a portfolio provided by Lloyds' Mayfair Asset Management Service in January 2007. The portfolio, which included equities and properties, was described by the Lloyds financial advisor as 'medium risk'.

It proved a bad time to invest in securities of any risk at all. The nascent global financial crisis became more severe throughout 2007, ultimately triggering the banking crash of summer 2008. The Worthings finally cashed in their investment in July 2008, at a loss of nearly GBP43,000.

The couple believed they had been poorly advised, and in particular that they were induced to invest in a medium-risk portfolio when their risk profile indicated they were risk-averse.

They did not, however, bring compensation proceedings against Lloyds until March 2013. This meant that their claim against Lloyds for negligence, breach of contract, and breach of its statutory duties was statute-barred in respect of the advice it gave them in January 2007.

However Lloyds had also conducted a review of the investment in March 2008, by which time the portfolio had already fallen in value. As a result of this review, the bank advised the Worthings to stick with the investment, even though it acknowledged the market was 'volatile'.

Because this review took place less than six years before the Worthings launched their compensation action against Lloyds, it was not statute-barred. Accordingly the couple claimed that Lloyds was in breach of its duties at this particular point, in that it should then have warned them about the scheme's high risks. Its failure to correct the original investment advice and its subsequent advice to retain the investment, they said, was in breach of a continuing contractual duty to correct its initial default. It should have either advised them that the investment be transferred into a 'cautious' profile, or advised them to sell it.

Judge Keyser QC, accepted that there was indeed a continuing contractual relationship between the Worthings and the bank. However he decided that the contractual obligation that the Worthings sought to enforce related to January 2007, and was thus a subsisting unperformed obligation. Nor, he said, did the contract's terms mean that, for each moment when the defendant had not corrected its earlier advice, there was a continuing breach consisting of the failure to correct it. In any case, he did not accept that Lloyds' original assessment of the Worthings' risk appetite was wrong. 'Even if the original advice had been wrong, the defendant was not under a continuing duty with regard to the original advice', Keyser J said. 'The claimants are not able to avoid the limitation bar to a claim based on the original advice by casting the omission of a later correction as a continuing breach of duty.' (*Worthing & Worthing v Lloyds Bank*, 2015 EWHC 2836 QB.)

If you would like a free initial consultation then contact me Chris Berry at: BERRYS SOLICITORS specialising in PRIVATE CLIENT CARE.

Address: Berrys Solicitors
247 Church Street
Blackpool
FY1 3PE
Phone: 01253 620 022
Fax: 01253 297 117
Email: berrys.mail@btconnect.com
Website: <http://www.berrys-solicitors.co.uk>
Solicitor: Christopher Berry Principal

Berrys Solicitors is Authorised and Regulated by the Solicitors Regulation Authority
Firm No: 261147