complaint

Mr W has complained about advice from Capital & Income Solutions Ltd as a result of which he took the tax free cash from his pension plan and invested it in a bond, transferring his residual pension funds into a self invested personal pension (SIPP). Mr W says he paid higher charges than were necessary and the overall value of his pension fund reduced.

background

The background to this complaint was set out in my provisional decision dated 15 March 2017. I've recapped it here:

In brief, Mr W met with a mortgage adviser who introduced him to Capital & Income Solutions Ltd, a regulated business authorised to advise on pension switches. Following advice Mr W transferred his personal pension plan into a SIPP, with the tax free cash invested in a bond. Mr W continued to pay monthly contributions into the SIPP.

The recommendation letter (which Mr W signed) said he was looking to withdraw the maximum tax free cash to finance a 'buy to let' property. But Mr W has since said this idea came from the mortgage adviser and he never seriously intended to do that.

Mr W complained to Capital & Income Solutions Ltd, who didn't uphold his complaint. He then asked us to look into the matter.

Our adjudicator investigated the complaint. She concluded it should be upheld.

In summary she said that Capital & Income Solutions Ltd hadn't made enough effort to get to know Mr W, confirm his situation, and test whether his apparent interest in a buy to let property was serious. The adjudicator noted that Capital & Income Solutions Ltd had pointed out that it wouldn't normally recommend that course of action. But the adjudicator thought that if things had been properly explained to Mr W he wouldn't have gone ahead. She thought he should have been advised to keep his existing pension plan.

Capital & Income Solutions Ltd didn't agree. It said it had relied on the information Mr W had given - including a completed and signed fact find when the mortgage adviser introduced him. In its report it had recommended that he retain his existing pension. It had said it was relying upon the information supplied and that he should challenge this if there were any inaccuracies – but he didn't. Capital & Income Solutions Ltd queried why Mr W hadn't returned the cancellation notice if he didn't want to go ahead with the transfer.

The adjudicator responded to these points but didn't change her view.

I agreed the complaint should be upheld – and for the reasons given by the adjudicator. I said:

Essentially Mr W was of limited means, he didn't have any other pension provision (aside from his state pension) and so he was dependent on his pension fund to provide an income in retirement. He wasn't an experienced investor and he doesn't seem to have prior experience or interest in property as an investment.

It's clear that Capital & Income Solutions Ltd had reservations about what Mr W was apparently planning to do. I think if things had been discussed with Mr W in any depth Capital & Income Solutions Ltd would have realised that he'd only had a passing interest in a buy to let purchase. That's supported by the fact within a matter of weeks Mr W had decided against using his tax free cash for that purpose.

I think Mr W would have heeded advice to think about things further. Capital & Income Solutions Ltd shouldn't have recommended the transfer – at least not without exploring matters further with Mr W. And if it had done I think Capital & Income would have realised Mr W's circumstances were such that he shouldn't have been advised to use part of his pension fund – his tax free cash – for a buy to let property. If Mr W had been advised against, I don't think he'd have gone ahead.

I know Mr W didn't try to cancel the transfer. But Capital & Income Solutions Ltd shouldn't have recommended it in the first place. And I don't think Mr W would have fully understood what was going on and that, if he'd decided against buying a property, he should try to stop the transfer going ahead. Or, if had already taken place, try to get it reversed.

And I set out how I thought Mr W should be compensated. I said:

Where unsuitable advice has been given we try to put the consumer in the position they'd be in but for the unsuitable advice. That can be complicated. It may involve asking a business that's not a party to the complaint – such as the pension provider Mr W was with before he transferred to the SIPP – to carry out some calculations to see what Mr W's pension would have been worth if he'd stayed with that provider.

But that might take some time. And we're dependent on calculations done by a party who isn't a party to the complaint. So what we might do instead is to use a benchmark or index to work out the sort of return or growth that might have been achieved. We'd select an index that matches the consumer's attitude to risk.

The recommendation letter said Mr W's attitude to risk had been identified as a below average risk. On the basis Mr W was only prepared to take a small amount of risk, we might say that redress should be calculated using a combination of the average rate for a one year fixed rate bond and the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index).

We also need to take into account what's happened since. I understand that in December 2015 Mr W used his pension fund to buy an annuity. So we need to look at what his pension fund was actually worth then and what it might have been worth. Any shortfall would mean Mr W would have had less money to buy his annuity and so his income going forwards will be less. We might say that a top up annuity should be bought. But if the amount is small it probably won't be possible to do that. In that case we'd just make a cash award for the difference in fund values.

Mr W also took tax free cash. That might mean he's suffered a loss on that too – if he'd have got more tax free cash if he'd left his existing personal pension in place.

But here I think the tax free cash can be ignored. That's because – once it became clear that Mr W wasn't going to use it towards a buy to let property – it was reinvested in a bond. That seems to have been in line with Mr W's attitude to risk and I don't think he'll have suffered any loss on it.

Because it's complicated we've done some calculations to see if Mr W has suffered a loss and if so, how much. We've taken into account that Mr W continued to make contributions into his pension. And, for the reasons I've explained, we've ignored the tax free cash in our calculations.

We've worked out that, as at the date Mr W bought his annuity – 8 December 2015 – his loss was £1,102.87. That's based on the difference between the actual fund value used to buy his annuity - £67,772.10 – and what his fund value would have been using a 50/50 combination of the two benchmarks I've mentioned above. We've calculated that as £68,874.97. So that means his fund value would have been £1,102.87 higher.

In more detail:

The calculation was based on the two transfers of £41,660.91 and £34,847.50 on 29 November 2012 less the immediate tax-free cash payments of £10,415.23 and £8,711.87. It takes into account the contributions of £110 paid between 1 January 2013 and 1 October 2015.

For half of the value invested, we added growth using the Bank of England's average rate for fixed rate bonds. For the other half, we added growth using the movement of the FTSE WMA Stock Market Income total return index (now called the FTSE Private Investors Income total return index).

The resulting total of £68,874.97 was compared with the actual value as at 8 December 2015 of £67,772.10. The loss as at that date was £1,102.87.

If Mr W is a basic rate taxpayer that should be reduced to £882.30 and that amount paid to him. That's because the money would otherwise have been used to provide an income which would be subject to tax.

From what I've seen I think Mr W's income (his state pension and his annuity) means that he will pay basic rate tax on his annuity or part of it at least. If Mr W thinks that's wrong he should let us know.

To the £882.30 we've added simple interest at 8% a year. As at 8 March 2017 (when we did our calculations) interest amounts to £109.95 gross. It will continue to accrue at 24p gross a day until settlement. That interest is subject to income tax. Capital & Income Solutions Ltd should provide Mr W with a certificate of tax deducted for that interest if he requires it.

I've also made an award for the distress and inconvenience that Mr W's suffered because of the unsuitable advice he was given and which will have caused him worry and upset.

So that meant Mr W should get £882.30 plus interest to the date of settlement. And £300 for the distress and inconvenience that he'd suffered.

Mr W accepted my provisional findings. Capital & Income Solutions Ltd hasn't replied.

my findings

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

Mr W has accepted my provisional decision and we haven’t had any comments from Capital & Income Solutions Ltd.

I don’t see any reason to change what I said earlier. So my views remain as set out in my provisional decision.

my final decision

I uphold the complaint.

Capital & Income Solutions Ltd should pay Mr W £882.30 plus interest to the date of settlement.

Capital & Income Solutions Ltd should also pay Mr W £300 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 9 June 2017.

Lesley Stead
ombudsman