

## **complaint**

Mrs W has complained about advice from Capital & Income Solutions Ltd as a result of which she took the tax free cash from her pension plan and invested it in a bond, transferring her residual pension funds into a self invested personal pension (SIPP). Mrs W says she paid higher charges than were necessary and the overall value of her 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, Mrs W met with a mortgage adviser who introduced her to Capital & Income Solutions Ltd, a regulated business authorised to advise on pension switches. Following advice Mrs W transferred her personal pension plan into a SIPP, with the tax free cash invested in a bond. Mrs W continued to pay monthly contributions into the SIPP.*

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

*Mrs W complained to Capital & Income Solutions Ltd, who didn't uphold her complaint. She 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 Mrs W, confirm her situation, and test whether her 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 Mrs W she wouldn't have gone ahead. The adjudicator thought Mrs W should have been advised to keep her existing pension plan.*

*Capital & Income Solutions Ltd didn't agree. It said it had relied on the information Mrs W had given - including a completed and signed fact find when the mortgage adviser introduced her. In its report it had recommended that she retain her existing pension. It had said it was relying upon the information supplied and that she should challenge this if there were any inaccuracies – but she didn't. Capital & Income Solutions Ltd queried why Mrs W hadn't returned the cancellation notice if she 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 Mrs W was of limited means, she didn't have any other pension provision (aside from her state pension) and so she was dependent on her pension fund to provide an income in retirement. She wasn't an experienced investor and she 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 Mrs W was apparently planning to do. I think if things had been discussed with Mrs W in any depth Capital & Income Solutions Ltd would have realised that she'd only had a passing interest in a buy to let purchase. That's supported by the fact within a matter of weeks Mrs W had decided against using her tax free cash for that purpose.*

*I think Mrs 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 Mrs W. And if it had done I think Capital & Income would have realised Mrs W's circumstances were such that she shouldn't have been advised to use part of her pension fund – her tax free cash –for a buy to let property. If Mrs W had been advised against, I don't think she'd have gone ahead.*

*I know Mrs 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 Mrs W would have fully understood what was going on and that, if she'd decided against buying a property, she 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 Mrs 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 Mrs W was with before she transferred to the SIPP – to carry out some calculations to see what Mrs W's pension would have been worth if she'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 Mrs W's attitude to risk had been identified as a below average risk. On the basis Mrs 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 Mrs W used her pension fund to buy an annuity. So we need to look at what her pension fund was actually worth then and what it might have been worth. Any shortfall would mean Mrs W would have had less money to buy her annuity and so her 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.*

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

*But here I think the tax free cash can be ignored. That's because – once it became clear that Mrs 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 Mrs W's attitude to risk and I don't think she'll have suffered any loss on it.*

*Because it's complicated we've done some calculations to see if Mrs W has suffered a loss and if so how much. We've taken into account that Mrs W continued to make contributions into her 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 Mrs W bought her annuity – 8 December 2015 – her loss was £925.25. That's based on the difference between the actual fund value used to buy her annuity - £40,423.49 – and what her fund value would have been using a 50/50 combination of the two benchmarks I've mentioned above. We've calculated that as £41,348.75. So that means her fund would have been £925.25 higher.*

*In more detail:*

*The calculation was based on the two transfers of £40,789.14 and £3,532.75 that took place on 29 November 2012 less the immediate tax-free cash payments of £10,197.28 and £883.18. 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 £41,348.75 was compared with the actual value as at 8 December 2015 of £40,423.49. The loss as at that date was £925.25.*

*If Mrs W is a basic rate tax payer that should be reduced to £740.20 and that amount paid to her. That's because the money would otherwise have been used to provide an income which would be subject to tax.*

*But from what I've seen I think Mrs W's income (her state pension and her annuity) means that she isn't a tax payer. So the higher figure (£925.25) should be paid to her.*

*To that we have added simple interest at 8% a year. As at 8 March 2017 (when we did our calculations) interest amounts to £90.26 gross. It will continue to accrue at 20p gross a day until settlement. That interest is subject to income tax – and so a deduction should be made, even if Mrs W isn't a tax payer. Capital & Income Solutions Ltd should provide Mrs W with a certificate of tax deducted for that interest if she requires it.*

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

*So that meant Mrs W should get £925.25 plus interest to the date of settlement. And £300 for the distress and inconvenience she'd suffered.*

*Mrs 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.*

Mrs 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 Mrs W £925.25 plus interest to the date of settlement.

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

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

Lesley Stead  
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