complaint

Mrs W complains that Cowley & Miller Independent Financial Services Limited (Cowley & Miller) gave her unsuitable advice to transfer her pension to a Self-Invested Personal Pension (SIPP) and invest in high risk funds.

background

Mrs W had a work-related personal pension with a value of around £37,000. She says she was contacted via a cold call by a company offering a free pension review. She was recommended to invest in carbon credits. She then completed a fact find with Cowley & Miller.

Mrs W was classified as a capital growth investor, which was the second highest risk category out of five options. However, a separate risk and suitability document completed by Mrs W stated that she would prefer a cautious approach to risk. And further correspondence shows she was confused about the risk categorisation of carbon credits.

Cowley & Miller recommended that Mrs W transfer her pension fund to a self invested personal pension (SIPP), and use it to invest in carbon credits. It stated that the investment represented only 10% of her net wealth.

The transfer to the SIPP was completed in April 2012 and the funds were subsequently invested into carbon credits.

In February 2017 Mrs W's representative complained about the advice she had received from Cowley & Miller. But Cowley & Miller didn't uphold the complaint. It said, in summary, that it had taken all reasonable steps to ensure that Mrs W was informed of the risks associated with her preferred (and ultimately chosen) investment.

One of our adjudicators investigated the complaint and was satisfied that Cowley & Miller had provided advice that was unsuitable – so he upheld the complaint. The adjudicator said, in summary:

- Mrs W was confused about the level of risk associated with carbon credits;
- although Cowley & Miller said that Mrs W specifically wanted to invest in carbon credits, this didn't absolve it of responsibility;
- the investment did not represent 10% of her net wealth and Cowley & Miller had based this on incorrect figures as they added property interests and her husband's share of the property;
- Cowley & Miller was the regulated party and Mrs W should have received best advice for her circumstances and her Attitude To Risk (ATR), and
- Cowley & Miller were fully aware that the SIPP was being set up to facilitate an investment that ultimately led to the losses suffered by Mrs W.

Cowley & Miller did not agree with the adjudicator's decision. It again argued that Mrs W approached them with a view to invest in carbon credits and that they advised her to open a SIPP to allow her to invest into these funds and that she was fully aware of the risk she was undertaking. It also said that Mrs W hadn't wanted an ongoing advice service for her investment but that, if she had taken ongoing advice she might have been able to minimise any potential losses.

Our adjudicator considered the comments made by Cowley & Miller and did not change his decision. As agreement has not been reached, the complaint has been referred to me for a final decision.

my findings

I've considered all the evidence and arguments in order to decide what is fair and reasonable in the circumstances of this complaint.

Mrs W was self-employed, and held an existing personal pension which was her only pension entitlement. The fact find shows no evidence of previous dealings in stocks and shares and the pension planning report makes it clear that she had no history of equity investments.

Cowley & Miller say that Mrs W approached it with the aim to invest in carbon credits. However whilst this may be true, I'm satisfied from the evidence I've seen that Cowley & Miller recommended the transfer and investment.

Cowley & Miller recorded Mrs W as being a capital growth investor which was the second highest of the five risk categories. However, I agree with the adjudicator that Mrs W should not have been classified as a high risk investor. It is clear from emails and the assessing client suitability document that Mrs W was not a high risk investor. It may be true that she wanted to improve the return of her current pension arrangements but consideration should have been given to her ATR when advising her on the proposed investment or any alternatives. I consider her to have a low to medium ATR based on the assessing client suitability document that was completed.

I feel with the clear evidence of no historical investment experience that it is unfair for Cowley & Miller to state that Mrs W had a reasonable knowledge of investments and a level of financial awareness due to her already having an existing pension contract in place and because she had her own business. In my view it is clear that she was an inexperienced investor. Cowley & Miller should have treated her as such. Once she became a client of Cowley & Miller it had a responsibility to act in Mrs W's best interests.

I accept that Cowley & Miller provided Mrs W with information on the SIPP and the funds they recommended. But this is not the same as providing sufficient advice. It wasn't enough for Cowley & Miller to provide risk warnings or to ask Mrs W to sign declarations.

Cowley & Miller has not provided evidence that it dealt with Mrs W as an insistent client and from what I have seen she was not. Within the pension planning report I have found that Mrs W came to Cowley & Miller with the aim of discussing the carbon credits investments. At this point, irrespective of any advice she had previously received, it was then Cowley & Miller's responsibility to consider whether this investment met her needs. Cowley & Miller was the regulated party, and it should have ensured that its advice was suitable.

Looking at the advice Cowley & Miller provided, it said that Mrs W should invest no more than 10% of her net wealth into the carbon credits. As the adjudicator has established, Mrs W's net wealth was not around £360,000 as that figure included her mortgage debt and her husband's share of property. And I also agree with the adjudicator that Cowley & Miller should not have considered net wealth in total, it should have considered pension wealth as standalone assets. Mrs W invested 100% of her pension wealth into a scheme that I believe had a far greater risk profile than she was willing to take. I'm persuaded that the figures presented to Mrs W were made in a way to make the £37,000 look appropriate for her and inaccurate net asset values were used to enforce this.

Overall I agree with the adjudicator that Cowley & Miller should have advised Mrs W not to transfer, knowing the funds would be invested in carbon credits. The recommended investments were unregulated and thus by definition high risk. It follows that they were unsuitable for Mrs W who should not have been exposed to investments beyond her risk appetite. And I consider that the advice to take out a SIPP was also inappropriate for Mrs W due to the fund size and the level of charges that would be levied initially and on an ongoing basis.

fair compensation

My aim is that Mrs W should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

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

what should Cowley & Miller do?

To compensate Mrs W fairly, Cowley & Miller must:

- Compare the performance of Mrs W's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

  Cowley & Miller should add interest as set out below.

  If there is a loss, Cowley & Miller should pay into Mrs W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief.

  Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

  If Cowley & Miller is unable to pay the total amount into Mrs W's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid.

  The *notional* allowance should be calculated using Mrs W's actual or expected marginal rate of tax at her selected retirement age.

  For example, if Mrs W is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs W would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mrs W £250 for her trouble and upset.

Income tax may be payable on any interest paid. If Cowley & Miller deducts income tax from the interest it should tell Mrs W how much has been taken off. Cowley & Miller should give Mrs W a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
Pointon York SIPP	still exists	for half the investment: FTSE UK Private Investors 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)

actual value

This means the actual amount payable from the investment at the end date.

It may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Cowley & Miller should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as I set out above.

If Cowley & Miller is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Cowley & Miller may require that Mrs W provides an undertaking to pay Cowley & Miller any amount she may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Cowley & Miller will need to meet any costs in drawing up the undertaking.

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, Cowley & Miller 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.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs W wanted capital growth with a small risk to her 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 her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It’s a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs W's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs W into that position. It does not mean that Mrs W would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs W could have obtained from investments suited to her objective and risk attitude.

SIPP fees

The SIPP only exists because of the unregulated investment. In order for the SIPP to be closed and further SIPP fees prevented, the investments need to be removed. But if Cowley & Miller can't buy them Mrs W is faced with future SIPP fees. I think it is fair to assume five years' of future SIPP fees. So, if Cowley & Miller can't buy the investments, it should pay an amount equal to five years of SIPP fees based on the current tariff. This is in addition to the compensation calculated using a nil value for the investment.

my final decision

My decision is that I uphold this complaint. I order Cowley & Miller Independent Financial Services Limited to pay Mrs W fair compensation as set out above.

Cowley & Miller should provide details of its calculation to Mrs W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs W either to accept or reject my decision before 17 October 2018.

Alison Cribbs
ombudsman