Financial Ombudsman Service

complaint

Mr F has complained about the advice he received from Consumer Wealth Limited to switch his personal pensions to a self-invested personal pension (SIPP). A subsequent investment in Greyfriars portfolio six fund had become illiquid.

background

In July 2015, Consumer Wealth advised Mr F to switch two personal pension plans, valued at almost £58,000, to a SIPP. It recommended that he invest 49% of the SIPP into an equity fund and 49% into the GAM Portfolio 6 fund. The remaining 2% was held in cash.

Mr F's objectives were recorded as reducing his plan costs, improving investment performance, wider investment choice, greater access to his pension benefits, access ongoing advice and passing benefits to his family in the event of his death.

In late 2016, the Financial Conduct Authority, asked Greyfriars Asset Management to stop taking new investment into the portfolio six fund.

Mr F complained to Consumer Wealth, he said he understood the portfolio six fund wasn't paying out and he was unable to move his pension.

An adjudicator reviewed Mr F's complaint and recommended it should be upheld. He said that based on Mr F's objectives it wasn't necessary to switch his pensions. He couldn't access the funds for 15 years', his existing plans already allowed him to pass the benefits on his death and consolidating two plans didn't justify the costs incurred.

This meant the only objectives that were relevant would be the pension plan charges and the available investment options.

The charges comparison between the existing pension plans and the proposed SIPP were broadly similar. The smaller personal pension plan had lower charges than the SIPP and the higher value plan had higher charges than the SIPP. However, this comparison didn't take into account the adviser costs for switching the plans.

In terms of the investment options, half of Mr F's pension was invested in equities, which on its own was a higher risk than Mr F's medium attitude to investment risk. The other half was invested in portfolio six which comprised of mini-bonds invested in niche areas with an objective of achieving a return of 8-10% per year with low volatility.

The adjudicator felt that the high level of return expected, indicated the high risk nature of the underlying investments in portfolio six. There was no evidence Mr F understood the nature of the specialist investments, and its inclusion in Mr F's pension portfolio didn't appear to reduce the overall risk so as to match his attitude to risk.

Consumer Wealth disagreed, they said the portfolio six was researched and considered lower risk. Mr F was recommended a suitable and diverse investment portfolio. They couldn't have provided ongoing advice for his existing pensions and Mr F benefited from lower charges.

The adjudicator didn't change his view and so the case has been referred to me for a decision.

my findings

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

I agree with the adjudicator and with his reasoning. I uphold this complaint.

In the adviser's recommendation report, there were a number of objectives for Mr F's pension planning. At the time of advice, Mr F had the two existing personal pensions and was contributing to another policy through his employer. Mr F was 40 years old, employed and expected to retire at 65. He was a home owner with a mortgage and no other assets were listed.

The objectives for Mr F's retirement plans were noted as:

- A reduction in the existing fees and charges
- The potential for improved investment performance
- Greater flexibility and options to take advantage of the wider pension choice that came into effect in 2015
- Fund choices which meet his circumstances and are aligned to his attitude to risk
- Consolidation of the existing pension arrangements into a new pension plan
- The ability to pass on benefits to family
- The capability to track the performance of the pension fund
- Access to ongoing pension and investment advice so that he could continue to have all of the information necessary to make the right decisions regarding his pension benefits and other personal financial arrangements
- The desire to protect some of the pension from the volatility of the stock market.

In relation to charges, Consumer Wealth stated the cost of Mr F's stakeholder pension was 1% per annum, and his personal pension was 0.85% per annum. Those charged compared to the SIPPs first year cost of 0.912% and 0.863% thereafter. On the basis of those figures, the SIPPs ongoing charges were slightly lower. That said the initial charge for arranging the new plan was 2.59%. I think it is reasonable to say it would take somewhere between 10 and 20 years for the reduction in ongoing charges to recoup the initial adviser charges. So there was little advantage to change Mr F's pensions for the purpose of reducing charges.

Mr F wanted improved investment performance and his existing provider had a large fund range to consider. He could've invested at a medium level of risk in the available funds. Most likely some wouldn't be linked to the stock market. Mr F couldn't access his pension benefits for at least 15 years and in the event of his death his pension benefits could have been passed to his family.

Overall there appeared to be little benefit in moving his existing pensions and consolidating them into a SIPP.

The portfolio six fund had underlying investments which are typically only available through a SIPP and not accessible in Mr F's existing pension benefits. Consumer Wealth has said that as the fund was lower risk and not correlated to the stock market it met Mr F's objective of having some low volatility for some of his pension.

When looking more closely at the composition of the portfolio six, it is made up of a range of bonds which are connected to niche investment markets such as:

- purchasing overseas hotel rooms off plan
- property development of grade listed buildings in Germany
- investing in the development of a waste treatment and energy recovery facility in Wales
- commercial property development in United States of America
- renewable energy development

I think that individually these investments would, on balance, be considered suitable for more experienced investors who have the capacity to take higher risk. These niche investments offer relatively high returns which generally is an indicator of the underlying investment risk.

These investments were also unregulated and I wouldn’t expect to see this proportion of a pension fund invested like this. So whilst the investments had been amalgamated into a single fund, I don’t think it makes it suitable to investment virtually half of Mr F’s pension in a fund like this. I don’t agree that the fund was low risk and when combined with the other equity fund which was recommended, I’m not satisfied that it matched Mr F’s medium attitude to investment risk.

I’m satisfied that the investments recommended were unsuitable for Mr F given his attitude to risk and so the advice to switch wasn’t suitable for him.

fair compensation

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

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

what should Consumer Wealth do?

To compensate Mr F fairly, Consumer Wealth must:

- Compare the performance of Mr F'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.

  Consumer Wealth should add interest as set out below.

  If there is a loss, Consumer Wealth should pay into Mr F'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 Consumer Wealth is unable to pay the total amount into Mr F's pension plan, it should pay that amount direct to him. 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 Mr F's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr F 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 Mr F would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr F £250 for the unnecessary switch of his pensions to an unsuitable SIPP and the illiquid portfolio six fund.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
SIPP	mixed	FTSE UK Private Investors Income Total Return Index	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. Consumer Wealth 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 Consumer Wealth is unable to purchase the investment, the *actual value* should be assumed to be nil for the purpose of calculation. Consumer Wealth may require that Mr F provides an undertaking to pay Consumer Wealth any amount he 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. Consumer Wealth 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if Consumer Wealth totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mr F wanted capital growth and was willing to accept some investment risk.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr F's circumstances and risk attitude.

my final decision

I uphold the complaint. My decision is that Consumer Wealth Limited must pay the amount calculated as set out above.

Consumer Wealth Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr F either to accept or reject my decision before 12 January 2019.

Keith Taylor
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