

## **complaint**

Mr W has complained about advice he received from BlackStar Wealth Management Ltd in 2015. It recommended that he transfer the benefits he held in a defined benefit occupational pension scheme (OPS) into a self investment personal pension (SIPP).

## **background**

Mr W was in his early fifties. The accrued benefits in his OPS provided for a transfer value of over £300,000. BlackStar recommended that he transfer the funds into a SIPP. This would have allowed Mr W to access benefits at 55 which was noted as an objective. It also gave him control over the funds which was consistent with his wish to make provision for his daughter.

Mr W was assessed as having a 'medium-high' attitude to risk. A transfer analysis prepared at the time noted that the critical yield required to match the benefits of the OPS was 13.85%.

Once the SIPP was arranged and the transfer took place another business was appointed as a discretionary fund manager. This second business recommended the specific investment portfolio for Mr W. Mr W has suffered losses as the portfolio included assets that have performed poorly and some that have failed. The recommended portfolio didn't match his attitude to risk.

Our adjudicator decided that this complaint should be upheld. He said that Mr W was giving up guaranteed future benefits and these benefits were his greatest asset. The critical yield required to match the benefits he was giving up was 13.85%. This was high and meant that the strategy to transfer was high risk and not suitable for Mr W.

The adjudicator set out how redress should be calculated. He said that BlackStar should compensate for the losses that flowed from the transfer to the SIPP but not the losses that arose out of the portfolio. The investment portfolio was recommended by the discretionary fund managers and so it was responsible for the portfolio losses.

BlackStar didn't agree. It reiterated that Mr W wanted to access the benefits at 55 which he couldn't do without transferring out of the OPS. He wanted to pay off his mortgage and take control of the funds. He had made it clear that he intended to retire at 55 which the transfer could have allowed him to do.

As no agreement has been reached the case has been passed to me for a final decision.

## **my findings**

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

I agree with the adjudicator and with his reasoning. I uphold this complaint and I'll explain why.

It is apparent that Mr W had objectives which meant that accessing his pension benefits and tax free cash before 60 was an attractive option for him. But BlackStar had a duty to act in his best interests and only make recommendations that were suitable for him. I'm not

satisfied that it was in Mr W's best interest or suitable for him to transfer out of the OPS. He was giving up guaranteed future benefits in exchange for benefits that would depend upon investment and the associated risks.

The critical yield necessary to match the OPS benefits was 13.85% which could probably only be achieved by adopting a high risk investment strategy. I'm not satisfied that Mr W was a high risk investor. He does not appear to have any great investment experience. At the time of the advice the only investments recorded were premium bonds.

Mr W's home was subject to a mortgage as was a rental property he held. The pension was his greatest asset and I'm not satisfied that he should have been advised to take this degree of risk with it. Whilst Mr W may have had a strong desire to take benefits at 55, with suitable advice I think he would have chosen not to transfer.

*putting things right*

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for the unsuitable advice.

BlackStar must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr W's acceptance of the decision.

However, in the calculation, the actual value of the SIPP should not be used. This is because BlackStar was not responsible for the investment portfolio recommended. Instead, a notional value should be calculated. This notional value should be the value that the SIPP would have had at the date of the calculation if the invested funds had performed in line with the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index). This index reflects a level of return that Mr W could have expected if the portfolio had been invested in line with his attitude to risk. The actual value of the SIPP cash account should be used.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr W as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I consider that total fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance.

**determination and money award:** I require BlackStar to pay Mr W compensation as set out above, up to a maximum of £150,000.

The compensation resulting from the loss assessment must where possible be paid to Mr W within 90 days of the date it receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes BlackStar to pay the compensation.

**recommendation:** If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that BlackStar pays Mr W the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes it to pay Mr W from the date it receives notification of his acceptance of the decision, as set out above.

If Mr W accepts my determination, the money award is binding on it. My recommendation is not binding.

Further, it's unlikely that Mr W can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr W may want to consider getting independent legal advice before deciding whether to accept this decision.

BlackStar should also pay Mr W £500 for the distress and inconvenience caused by the inappropriate advice to transfer benefits and the impact this has had on Mr W's retirement planning.

### **my final decision**

I uphold this complaint. BlackStar Wealth Management Ltd must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 February 2019.

Keith Taylor  
**ombudsman**