complaint

Ms J has complained about advice she was given by BlackStar Wealth Management Ltd in 2012. This was advice to transfer the funds from her personal pension plan with provider A to a SIPP with provider B.

background

In August 2012, Blackstar wrote to Ms J noting that she wished to use her pension to purchase an overseas property via an agent of the property developer. It said that she had only requested its advice as to a suitable SIPP to facilitate the purchase as her existing pension arrangements would not allow this purchase.

Later that month around £20,000 was transferred from Ms J's plan with provider A to the SIPP with provider B.

In January 2013, 'Food Water and Energy SA' wrote to provider B. It thanked it for purchasing SCS Farmland in Argentina (through the SIPP).

In July 2013 provider B sent an e-mail to Blackstar which said that it was 'not associated' with this investment as the appropriateness test was sent by another business and the transaction was on a 'non-advised' basis.

Ms J wrote to Blackstar making a complaint in September 2014. Blackstar sent a final response in December 2015. It said, in summary:

- Ms J signed a client agreement in June 2012. She agreed to pay a fixed initial fee of £1,800. An on-going fee of 1% of the pension fund value would also apply.
- At a meeting in August 2012, Ms J decided to proceed with the transfer of her pension with provider A to the SIPP with provider B. This was in preparation for making her fund available to facilitate the purchase of an off plan [Dominican Republic] property, should she decide to proceed to sign contracts and complete the purchase.
- At this point the purchase itself could not go ahead. This was due to the size of the current pension fund and was conditional upon adding additional contributions.
- Ms J was in the process of selling a buy to let investment property to make up that shortfall.
- Its report from August 2012 said that Ms J had only requested its advice as to a suitable SIPP to facilitate this purchase. Only a SIPP would meet her stated objectives despite it being more expensive than her plan or a stakeholder plan.
- The transfer went ahead in later that month and the SIPP received the funds from provider A.
- It was only in January 2013 that there was an additional transaction relating to the purchase of "Direct Land Purchase & Leaseback in Argentina".
- Provider B said that this transaction had been conducted as an execution only trade submitted via a different adviser. It said that Blackstar was not associated with this investment in any way.
- Blackstar decided not to charge its agreed 1% annual fee to the SIPP. This was because it had not been involved with the investment of Ms J's SIPP funds.
- It appears that Ms J had elected not to transfer her servicing away from Blackstar yet at the same time sought an investment service from a different adviser.

- The reason for the complaint appeared to be that the SCS Farmland Investment had failed to deliver any capital or income payments. However, Blackstar were only notified about this investment after the event by provider B.

Ms J referred the complaint to this service. She completed a questionnaire. This said:

- A representative ("rep") of CGI Investments ("CGI") showed her a brochure that had been produced by a different adviser which included a number of investments.
- The CGI rep told her that he was working with Blackstar. As CGI were not registered IFAs and that Blackstar would organise the set-up of the SIPP to transfer her pension into so that she could invest into the Dominican Republic property. Although she could not raise enough money to invest into that property, the CGI rep subsequently recommended SCS Farmland to her as an alternative.
- She was warned that she could lose her entire pension investment. And at no point did anyone tell her not to go ahead.

One of our adjudicators considered the complaint. He recommended that the complaint should be partially upheld as the SIPP was not a suitable recommendation. But he said that Blackstar should only be responsible for losses up to the date of investment in SCS Farmland. It should not be responsible for losses arising from the failed investment. Blackstar accepted the adjudication.

Ms J's representative didn't agree. It said:

- It was clear from the documentation and Ms J's answers to our questionnaire that an unregulated business [CGI investments] played a large role in the facilitation of this pension transfer.
- A recent update issued by the FCA said 'Providing a simplified or limited advice process to consumers to facilitate investment into unregulated, high risk, illiquid products, whether they are based in the UK or overseas, or delegating regulated activity to an unauthorised party will not mean that the firm can avoid liability or regulatory action for unsuitable advice (or lack of advice).'
- The guidance was recently issued. But it only reiterated the current rules.
- If Ms J had been correctly advised by Blackstar, the transfer to provider B would never have taken place. Her pension funds would have remained with provider A. So Blackstar should be made liable for the whole of Ms J's loss.

Provider B has subsequently said that other than a fee for the establishment of the SIPP no fees were paid to Blackstar and in connection with the SCS Farmland investment no fees were paid to any party. It also said that it was now unable to confirm which business sent in the SCS Farmland investment paperwork.

Blackstar said that it was clear from its email exchange with provider B and also correspondence from Ms J herself, that a different financial adviser was involved with this investment. This was clear as Ms J indicated to Blackstar that it was her intention to pursue the matter through the FSCS. This would only be a route available once that adviser was declared in default. This was announced on 29th July 2014.

Ms J's representatives also said:

- It had never alleged that Blackstar was involved In Ms J's decision to invest into SCS Farmland. But if Blackstar had warned Ms J not to move her pension, the subsequent investment into SCS Farmland would not have been made.
- The SIPP was in existence and her pension fund had already been transferred. So Ms J felt as though she had to do something before those funds were absorbed by provider B's charges. Unfortunately, Ms J was persuaded by an unregulated introducer to invest these funds into SCS Farmland.
- It could not see how the change of investment from the intended Dominican Republic property to SCS Farmland should have any bearing on the redress Ms J should receive from Blackstar.

Blackstar added:

- Ms J accepts the fact that a different financial business was involved in her thinking from an early stage. It was not aware of the different financial businesses involvement at any point in time until after Ms J placed the trade directly with the SIPP provider. This was further supported by the fact that Ms J completed the SCS farmland paperwork along with the SIPP provider requirements and either submitted it directly, or via the different financial business.
- Blackstar were never at any point made aware of Ms J's interest in SCS Farmland.

As no agreement has been reached the case has been referred 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.

Ms J complains that Blackstar gave her inappropriate advice to transfer the proceeds of her personal pension arrangement to a SIPP. It seems to be accepted that the transfer of benefits took place despite the fact that there was some doubt as to whether or not Ms J would go ahead and complete the purchase. Also, the transfer value itself was not large enough to complete the purchase of the Dominican Republic property on its own.

Blackstar's final response letter said that Ms J was in the process of selling a buy to let investment property and that upon the sale, some of the sale proceeds would be paid into the SIPP which would enable the investment to proceed if required.

Blackstar's report said that the proposed SIPP was more expensive than both Ms J's current plan and also a stakeholder plan.

I don't think the transfer should have been recommended. It was not clear that Ms J would actually go ahead with the investment and it was not clear that there would be sufficient funds to complete the intended investment. It seems to have been conditional on a property sale. In my view, there was no need to set up the SIPP until it was clear that Ms J wanted to, and could proceed with the investment.

There seems to be no real dispute about the fact that Blackstar did not give Ms J any advice to invest in SCS Farmland. It appears that Blackstar originally arranged the transfer in preparation for a different investment but Ms J subsequently invested in SCS Farmland instead. She has said that she was unable to sell her buy to let property and so didn't raise the additional capital she needed to make the planned investment.

Ms J's representatives say that as her pension fund had already been transferred, she felt that she had to do something with that money before it was absorbed by annual management fees. Unfortunately, it says, Ms J was persuaded by an unregulated introducer to invest these funds into SCS Farmland. It could not see how the change of investment to SCS Farmland should have any bearing on the redress Ms J should receive from Blackstar.

As I have said, Blackstar should not have recommended the SIPP transfer. Not only was the transfer premature but the intended investment was an unregulated collective investment scheme. I don't think it was a suitable investment for the whole of Ms J's personal pension. Blackstar could not recommend the SIPP without considering the underlying investment. The intended investment was too risky in my view.

But it was not the intended investment that caused the loss. That investment didn't proceed. Ms J decided to invest in a different investment vehicle but there is no evidence that Blackstar had any involvement in the choice of that investment. It seems that Ms J received further advice from another party which may have been unregulated – although she has referred to taking a complaint to the FSCS – and the SIPP provider also allowed the purchase knowing that it was being completed on a 'non-advised' basis.

So although Blackstar's actions could be said to have set these events in motion, I'm not satisfied that it caused the losses arising from the failed investment. I agree with the adjudicator that the losses for which it is responsible should be limited.

I consider that Blackstar are only liable for losses between the date of the pension transfer and the date of the SCS Farmland investment.

my final decision

I uphold this complaint in part. BlackStar Wealth Management Ltd must calculate and pay redress as set out below. Blackstar should undertake the following loss assessment and if a loss is identified pay redress to Ms J:

A. Ask the personal pension product provider (provider A) to calculate what the notional transfer value of Ms J's personal pension policy would have been (assuming that she had not transferred) to the date when Ms J's SIPP invested in SCS Farmland.

B. Find out what the value of Ms J's SIPP was at the same date as in **A** above.

C. If the notional transfer value (in **A** above) is higher than the SIPP transfer value (in **B** above), then the difference represents the loss and will be payable as redress.

If there is a loss then interest should be added at 8 per cent simple from the date of the SCS investment to the date of settlement. If for any reason it is not possible to augment Ms J's SIPP with any identified redress, Blackstar should pay that amount to Ms J after making a notional deduction for tax at her likely marginal rate in retirement. It should be assumed that she will be a basic rate tax payer.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 7 March 2019.

Keith Taylor
ombudsman