complaint

Mr L has complained about the advice he received from BlackStar Wealth Management Ltd to switch two personal pensions to a self-invested personal pension (SIPP). The majority of the funds were then invested in two specialised and high risk investments.

background

Mr L took advice in 2014 and then transferred around £50,000 in total to a SIPP. This was his only private pension and he had no other investments at the time although he did have an interest in a buy to let property. The existing plans had been invested in balanced lifestyle and dynamic lifestyle funds.

BlackStar assessed Mr L's approach to investment risk as 'medium' and he had over 15 years until his likely retirement at age 60.

Around 90% of Mr L's transferred pension was invested in Colonial Capital and Dolphin Capital. In March 2017 Mr L was informed that Colonial Capital had been placed in receivership and so he had lost his investment.

Mr L complained to this service and the complaint was investigated. The adjudicator said it should be upheld. It was the adjudicator's view that the investments were similar to unregulated or non-mainstream investments and in any event they were high risk – meaning they weren't suitable for Mr L.

The adjudicator noted Mr L didn't have any other investments and couldn't reasonably be regarded as an experienced investor by virtue of holding buy to let property and having started up his own business.

BlackStar didn't agree saying the investments weren't UCIS but were non-readily realisable securities. And it was appropriate, under the relevant regulations to recommend them to Mr L who'd confirmed he was an experienced investor. The investments had been discussed with him and he'd confirmed his understanding.

The adjudicator didn't change his view. He said that the regulator had issued guidance regarding 'non-readily realisable securities' (crowd funding) which noted it involved high risk and was only suitable for a certain criteria of investors. The adjudicator noted that BlackStar appeared to have relied on the fact that Mr L had received regulated advice in order to allow it to discuss crowd funding with him. The adjudicator's view was the main issue was that BlackStar was required, as Mr L's professional advisers, to recommend a suitable investment strategy for his pension which it had failed to do.

As no agreement has been reached the case has been referred to me for a 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.

Mr L was in his mid-forties and there was a reasonable time to switch plans with a view to improving investment performance and achieve potentially greater returns. However, in doing so he relied on BlackStar as his professional advisers to recommend suitable alternatives to the plans he already had.

Mr L's attitude to investment risk had been assessed as medium. This was largely in line with the medium/dynamic funds he already held. These both included life-styling features which provided for risk reduction in the years up to retirement.

The investments BlackStar recommended were loans to two companies with projected returns of 12% to 13% per annum. These returns were much higher than might have been expected from a medium risk approach and were clearly higher risk. And I'm not satisfied that investing 90% of Mr L's pension in these two investments which were effectively crowd funded was appropriate or suitable for Mr L in my view. It was a high risk approach.

Dolphin Capital was an established German company investing in the refurbishment of listed buildings (in Germany) for residential use. Colonial Capital was a new start-up with no track record. It invested in distressed residential property (which had been foreclosed) in Chicago USA. The investments were specialised and risky. Even successful new companies can take many years to return a profit and the risk of total failure and total loss of investment is relatively high.

Both investments were overseas and had similar underlying assets. They were therefore exposed to similar risks which meant there was a potential lack of diversity. Given Mr L's recorded risk approach and his limited personal pension provisions, the investments were not suitable.

BlackStar has sought to justify its advice based on Mr L's agreement to his classification as an experienced investor. The evidence provided does not confirm Mr L was experienced. He had no other investments or pensions. His business and the buy to let property may have formed part of Mr L's retirement planning but he had a reasonable expectation that BlackStar's advice was about improving his retirement benefits via improved investment performance. He wouldn't have expected to have to rely on his other assets as a result of losing a significant part of his pension value as a result of BlackStar's advice. That was the risk he was exposed to.

I also note BlackStar's argument that Mr L had set up a number of companies over the years. However, whilst setting up and running a business might appear to demonstrate he had an entrepreneurial approach, I don't think that means he understood the complexities and significant risks of investing in speculative overseas property development companies. He was taking advice from experts and entitled to rely on that advice. The advice should have been suitable for Mr L and BlackStar should have acted in his best interest but I'm not satisfied that was the case here.

fair compensation

My aim is that Mr L 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 L 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 L's circumstances and objectives when he invested.

what should BlackStar do?

To compensate Mr L fairly, BlackStar must:

- Compare the performance of Mr L'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.

  BlackStar should add interest as set out below.

  If there is a loss, BlackStar should pay into Mr L'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 BlackStar is unable to pay the total amount into Mr L'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 L's actual or expected marginal rate of tax at his selected retirement age.

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

- Pay to Mr L £200 for the inconvenience and the distress when he was informed he'd lost almost half of his pension value.

Income tax may be payable on any interest paid. If BlackStar deducts income tax from the interest it should tell Mr L how much has been taken off. BlackStar should give Mr L 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	still exists	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

actual value

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

fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

on-going SIPP fees

The SIPP only exists because of the unregulated investments. In order for the SIPP to be closed and further SIPP fees prevented, this investment needs to be removed. But if BlackStar can’t buy it Mr L is faced with future SIPP fees. I think it is fair to assume five years’ of future SIPP fees. So, if BlackStar can’t buy the investment, 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.

why is this remedy suitable?

I’ve decided on this method of compensation because:

- Mr L 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 L's circumstances and risk attitude.

my final decision

I uphold the complaint. My decision is that BlackStar Wealth management Ltd must pay the amount calculated as set out above.

BlackStar Wealth management Ltd should provide details of its calculation to Mr L in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr L either to accept or reject my decision before 20 March 2019

Keith Taylor
ombudsman