

complaint

Mr C has complained about advice he received from BlackStar Wealth Management Ltd in 2015. It recommended that he transfer existing pension benefits and invest through a Self-Investment Personal Pension (SIPP).

background

Mr C was introduced to BlackStar by a third party introducer. He signed a client agreement as a retail client in 2014. Mr C completed a fact find which recorded that he was approaching 55 years of age and married with no financial dependents. He was noted as being in good health and was in work. He earned around £28,000 per year and had an outstanding mortgage and a car loan. He had savings of around £3,000.

Mr C was assessed as having an attitude to risk of 'medium', six on a scale from one to ten.

It was noted that he hoped to have an income of £15,000 per annum in retirement in today's value. His other recorded objectives included that he take tax free cash at 55 and combine his pensions and invest *"...in a selection of alternative investments"*.

BlackStar advised Mr C in relation to four pension plans he held. This included deferred benefits in a defined benefit scheme with a former employer. The fund value was just over £90,000 with a guaranteed final salary of around £8,000. The three other funds had a combined value of around £90,000 but without any guaranteed final salary.

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BlackStar completed a Financial Planning Report (FPR) in February 2015. The report recommended that Mr C transfer the value of all four of these pensions to a SIPP. Then after taking his Pension Commencement Lump Sum of just over £45,000 Mr C should invest £30,000 each into Colonial Capital Corporate Bonds and Dolphin Capital GmbH. The balance was to be invested in a range of collective funds.

The SIPP account was opened in March 2015 and investment made into Colonial Capital Corporate Bonds. It seems that the Dolphin Capital investment wasn't made and the money was left in cash.

An annual review by BlackStar in June 2016 noted that the categorisation of 'medium risk' was *"still appropriate"*.

Mr C complained about the advice. BlackStar didn't uphold the complaint and so it was referred to this service. Our adjudicator investigated and decided that the advice was unsuitable. She said, in summary;

- Mr C was recorded as being 'moderately experienced' because he had held ISA style investments in the past. She didn't think this would have meant he was able to understand complex unregulated investments.
- BlackStar was required to ensure that the recommended investments were suitable. The unregulated investments were not suitable for Mr C and it did not require a tightening of criteria as it had suggested in 2016 for it to recognise the investments were unsuitable for Mr C in his circumstances. These were non-mainstream investments which the FCA had said were unlikely to be suitable for the vast majority of consumers.

- Part of the advice was to transfer away from his final salary pension scheme and give up the guaranteed benefits. The transfer analysis said that this fund provided a guaranteed pension of around £8,000 at 65 or 66. The return required to match this with the transfer value was over 11 per cent. The likelihood of returns like that was very limited. BlackStar itself noted in the financial planning report that achieving a return of more than 6 per cent would require significant investment risk “...on a consistent basis...”. So that element of the transfer could not represent good advice.
- Once the transfer was complete the advice was to place around £60,000 into unregulated investments which was too high. Colonial Capital went into administration in 2017 and the investment was lost.

BlackStar didn't agree. It responded and said, in summary;

- Mr C held an unencumbered property with a substantial pension which he had decided to invest in alternative investments.
- The existing pension projection showed that he was forecast to be above his income needs.
- Very specific risk warnings were given.
- It referred to the FCA alert from January 2017 and noted that a pension transfer should not be assessed by reference to the critical yield alone.
- Mr C's objectives could not be met by remaining in the existing schemes.

As no agreement has been reached the case has been referred to me for a 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 her reasoning. I uphold this complaint. I'm not satisfied that the advice BlackStar gave was suitable for Mr C or in his best interest. He may have been referred to it with an established desire or intention to invest in a selection of 'alternative' investments but it was still the responsibility of BlackStar to assess the suitability of these investments for him in his circumstances. Mr C does not seem to have had extensive investment experience. And he doesn't appear to have had significant capacity for loss. These pensions represented almost all of his private pension provision. He also had existing liabilities. He had a mortgage (according to the fact find) and other debts including a car loan. His cash savings were only around £3,000.

Mr C was assessed as having a 'medium' attitude to risk. I'm not satisfied that the investments recommended were suitable in light of that assessment. The Colonial Capital and Dolphin bonds were both categorised as being high risk.

Mr C held deferred benefits in a final salary scheme which would provide guaranteed future benefits including a final salary of around £8,000. BlackStar says that Mr C had an income need of £15,000 in retirement and so it's not clear to me why he would give up a guarantee which provided over half of his future requirement and then speculate with the funds in alternative investments.

This was a very high risk strategy in my view and far too risky for Mr C given his circumstances. BlackStar says that Mr C could not achieve his objectives without transferring out of the existing schemes. If that were true then part of the role of the adviser

is to recognise that some objectives may not be realistically achievable or in the best interest. The first recorded objective was to invest in the two unregulated bonds. But that doesn't seem to be an objective in itself. Investment would normally be a means to achieve an objective rather than an objective in itself. Another objective was recorded as achieving a higher pension in retirement yet BlackStar recommended that the final salary pension should be given up despite the very high returns that would be necessary even to match the benefits it would provide.

Overall, I am not satisfied that BlackStar gave suitable advice or acted in Mr C's best interest when it recommended the pension transfer and subsequent investment.

putting things right

The aim of redress is to put Mr C in the position he would have been in had BlackStar not given unsuitable advice.

BlackStar must calculate any losses and pay redress to Mr C. It must calculate the losses caused by transferring out of the defined benefit scheme and by transferring out of the three personal pensions. I'm not satisfied that Mr C would have transferred with suitable advice. BlackStar must;

1. In relation to the defined benefit scheme, undertake a redress calculation in line with the methodology issued by the Financial Conduct Authority in October 2017.
2. For the three remaining personal pension plans, calculate the notional transfer value of those plans at the date of calculation, assuming Mr C would have remained in the same funds. These notional values should then be compared with the actual current value of the SIPP proportionately.
3. If the calculations demonstrate a loss, the compensation amount should, if possible, be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
4. If the payment into the pension is not possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum. The compensation can be reduced by 20%. The loss was to Mr C's pension and so would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed at the rate he paid income tax in retirement.
5. The valuation of the Colonial Capital investment may prove difficult, as there is no market for it. To calculate the compensation, BlackStar should agree an amount with the SIPP provider as a commercial value, and then pay the sum agreed plus any costs and take ownership of the investment. If BlackStar is unable to buy the investments, it should give it a nil value for the purposes of calculating compensation.
6. Pay five years' worth of future fees payable by Mr C to the SIPP; if the Colonial Capital Corporate Bonds cannot be purchased. Had BlackStar given suitable advice the SIPP would not exist. It is not fair that Mr C continues to pay the annual SIPP fees if it cannot be closed. To provide certainty to all parties, I think it is fair that BlackStar pays Mr C an upfront lump sum equivalent to five years' worth of SIPP

fees (calculated using the previous year's fees). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

7. Pay an amount into Mr C's SIPP so that the transfer value is increased to compensate for the loss, less the tax free cash Mr C has already received. This payment should take account of any available tax relief and the effect of charges. It should also take account of interest as set out below. If it is not possible to pay the compensation into the SIPP, BlackStar should pay it as a cash sum to Mr C. Mr C may not be able to pay all of the redress into a pension plan. But had it been possible to pay the compensation into the plan, it would have provided a taxable income. Therefore the total amount to be paid to Mr C should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr C's marginal rate of tax in retirement. Mr C is likely to be a basic rate taxpayer in retirement. The notional allowance will be a reduction in the total amount equivalent to the current basic rate of tax.
8. Simple interest should be added at the rate of 8% a year from the date of calculation until the date of payment. Income tax may be payable on this interest.
9. Pay Mr C £500 for the distress and inconvenience caused.
10. BlackStar may ask Mr C to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the Colonial Capital investment. That undertaking should allow for the effect of any tax and charges on the amount Mr C may receive from the investment and any eventual sums he would be able to access from the SIPP. BlackStar will need to meet any costs in drawing up the undertaking. This only applies if BlackStar pays the loss in full. If BlackStar pays the loss in full it may take an assignment from Mr C of any claim he may have against any third parties. This may only relate to the pension transfer and investment in Colonial Capital. BlackStar must provide a draft of the assignment to Mr C for him to consider and agree. The assignment should be in place before compensation is paid. BlackStar must agree to pay the compensation in full before using this option.
11. As Mr C has already accessed a Pension Commencement Lump Sum this should be deducted from the final redress amount.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 April 2019.

Keith Taylor
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