complaint

Mr S's complaint is about the advice he received from Capital & Income Solutions Ltd ("C&IS") to transfer his benefits from his former employer's final salary scheme into a Self Invested Personal Pension (SIPP). He says he was not told of the risks associated with the transfer, particularly that the value of his retirement benefits could be less than that he would have received from the final salary scheme.

background

Mr S was advised to transfer his deferred pension benefits from his former employer's occupational pension scheme. The transfer value was about £160,000 and represented about 11 years pensionable service. He had other pension benefits valued at about £23,000. Mr S was employed and a member of his employer's defined contribution scheme. He had a partner but no other dependants. His attitude to risk was recorded as medium. The transfer to a SIPP was recommended as the investment growth required to match the value of the benefits being given up, the critical yield, was 3.3% a year.

I issued my provisional decision on 8 August 2013. I concluded that a transfer from the final salary scheme was not unsuitable, but the transfer to a SIPP was unsuitable. The critical yield had been calculated assuming that a transfer to a stakeholder pension was made. The difference in charges meant that the investment return required in the SIPP was much higher and that Mr S did not require the additional flexibility or investment choice.

Mr S responded and said that he had asked an actuary to confirm the transfer value analysis and had been told it '*was not too far out*' and he supported my provisional decision.

C&IS responded and said the following:

- Mr S's complaint is that he was '*mis-sold a SIPP'* and it noted that I did not consider the advice to transfer was unsuitable.
- It provided projections comparing the SIPP and a stakeholder pension in its recommendation to Mr S. The report explained that Mr S could choose a stakeholder pension and had enclosed an illustration and application form for such a pension.
- Mr S 'had everything to hand to make an informed decision' but he had chosen the SIPP. It also said that Mr S had not made a complaint about the choice between stakeholder and personal pension.
- It questioned my assumptions that the SIPP charges would have been '*much higher'*, that Mr S would have chosen a stakeholder pension if he had been given suitable advice and that Mr S would have invested differently.
- The SIPP was '*wrongly titled'* and was '*simply a personal pension with a SIPP facility*'. A plan holder was not charged if they did not use the SIPP, as was the case for Mr S.
- The recommended funds had an average annual management charge of 1.30% after taking account of a fund discount of 0.25% for funds with values of £50,000. It did not '*believe that 0.3% would have made a significant difference to the quoted critical yield*'. It used a visual projection in its reports as a critical yield might not be understood clearly by all clients. Having had the visual projection set out to him Mr S chose to proceed with the SIPP.
- Most final salary schemes offer the option of 25% tax free cash so if this was taken into account *'the critical yield would be drastically reduced as there would be less pension to provider for within the transfer value monies'.*

- It had interpreted the provisional decision to the effect that I had implied that if Mr S had chosen a stakeholder '*he would have a different risk profile*'. However, it said that it did not understand how this could be the case as it received Mr S's risk profile before it advised him.
- Mr S was recorded as having a medium attitude to risk at the time of the original advice but that he had categorised himself as having a low attitude to risk by the time of his first review. It said that after Mr S had informed it of his low attitude to risk, it had switched his funds to match this new risk profile. The new fund selection had been made up of 5% cash, 51% bonds, 14% property and 30% equities.
- Mr S had categorised himself as having a low attitude to risk at the time of his first review. The APCIMS Stock Market Index would not be appropriate after this time because it would be classed as '*average risk at the very least*'. It suggested that a fair comparison would be with the Cautious / Defensive Managed Sector over 3 years.
- Mr S's SIPP had grown by 13.46% since it started and he had not suffered a loss.

In light of C&IS's response to the provisional decision, I reconsidered how Mr S's redress should be calculated if the complaint was upheld. I wrote to both parties and explained that, if the complaint was upheld, I considered the method to calculate the compensation should be changed. In particular, I explained that the comparator used from the date of the first review of Mr S's SIPP should be changed from the APCIMS Index to an equal split between the APCIMS Index and the return matching the average return from fixed rate bonds with 12 to 17 months to maturity ('average rate for fixed rate bonds'). This was to reflect the lower attitude to risk Mr S had categorised himself as having from the date of the review.

Mr S did not have any comments on my further letter.

C&IS responded and said that as the SIPP had been in existence for approximately three years, fair compensation should be based on a comparator comprised of 75% of the average rate for fixed rate bonds and 25% of the APCIMS Index. It considered the 50 / 50 split was suitable for a client with a below average risk rating and not one who is a low risk investor.

my findings

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

This service was set up by law to resolve complaints "quickly and with minimum formality". This means we do not expect consumers to present their case to us as if they were making a set of legal "pleadings". We generally look *beyond* the particular way in which a consumer has expressed their complaint - to assess whether they have suffered financial detriment for which the business might be responsible. Where we are satisfied that a business involved in a dispute has notice of the areas of concern that they need to address, we do not consider it unfair for us to go beyond the particular points made by the consumer - in order to review the *underlying* grievance or complaint. We will focus on the *substance* of the complaint - not the precise terms in which the consumer expressed the complaint.

Mr S's complaint is about the advice he received from C&IS to transfer his benefits from a former employer's final salary scheme into a SIPP. As I explained in my provisional decision, I do not consider the advice to transfer was unsuitable. However, the complaint was about the transfer to a SIPP. In my view, the advice should have considered the options available and whether the SIPP was suitable. C&IS may have provided information to Mr S about his option to start a stakeholder pension but it recommended that he start a SIPP. In my view, the transfer to the SIPP was unsuitable because the yield required after allowing for charges was too high.

Regarding how Mr S's loss should be calculated, I note that the description of the attitude to risk Mr S identified himself as having at the anniversary of his policy is as follows:

> *'I accept a risk of losing a small amount of money on the understanding that there is a potential to earn more than cash based investments over the medium to long term*.'

I consider the 50 / 50 split between the APCIMS Index and the average rate for fixed rate bonds is suitable for someone who was prepared to take a small level of risk to achieve growth on their investments. I consider using this comparator is reasonable, particularly considering the description of the attitude to risk Mr S selected. I think that this comparator should be used from the date Mr S's funds were switched following the anniversary of his SIPP. Lastly for completeness, I consider that for the time period until the date Mr S's funds were switched following the anniversary of his SIPP, the comparator that should be used to calculate any loss is the APCIMS Index.

fair compensation

In assessing how to calculate fair compensation, my aim is to put Mr S in as close to the position he would probably now be in if C&IS had not been given unsuitable advice.

I take the view that he would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I set out below is fair and reasonable given his circumstances and objectives when he invested and at the date of the first review of his SIPP.

Step 1: fair compensation until the date Mr S's funds were switched following the first review of his SIPP

To compensate Mr S fairly for the time period from the start of the SIPP until the date Mr S's funds were switched following the first review of his SIPP, C&IS must

compare

- the performance of Mr S's investment

with

- the return illustrated by the FTSE APCIMS Stock Market Income Total Return Index ('APCIMS income index') over the same period of time (**fair value 1**)

If there is a loss, C&IS should pay this to Mr S.

I have decided on this method of compensation because Mr S wanted growth and was prepared to accept some investment risk until the date of the first review of his SIPP.

The APCIMS income index is a combination of diversified indices of different asset classes, mainly UK equities and government bonds. Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting him into the position he would have been in had he not received inappropriate advice from the firm.

how to calculate the compensation?

The compensation payable to Mr S is the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the value of Mr S's SIPP if it was terminated on the date his funds were switched following the review of the SIPP.

To arrive at the *fair value,* C&IS should work out what the original investment would be worth, if it had performed in line with the APCIMS income index from the date of investment to the date his funds were switched following the first review of his SIPP.

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

Any withdrawal or income payment that Mr S received from the investment should be deducted from the *fair value* calculation 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 will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

Step 2: fair compensation from the date Mr S's funds were switched following the first review of his SIPP

To compensate Mr S fairly for the time period from the date Mr S's funds were switched following the first review of his SIPP, C&IS must compare

- the performance of Mr S's investment

with

- the position he would now be in if 50% of his investment had produced a return matching the average return from fixed rate bonds with 12 to 17 months maturity as published by the Bank of England and 50% had performed in line with the APCIMS Stock Market Income Total Return Index ('APCIMS income index') using the **fair value 1** figure calculated in step 1 above as the starting figure

If there is a loss, C&IS should pay this to Mr S.

I have decided on this method of compensation because Mr S wanted growth with small risk to his capital from the date of the first review of his SIPP.

The average rate from fixed rate bonds would be a fair measure for a consumer who wanted to achieve a reasonable return without risk to his capital. It does not mean that Mr S would have invested only in a fixed rate bond. It is the sort of investment return a consumer could have obtained with little risk to the capital.

The APCIMS income index, which is a combination of diversified indices of different asset classes, mainly UK equities and government bonds would be a fair measure for a consumer who was prepared to take some risk to get a higher return. I consider that Mr S's risk profile was in between, as he was prepared to take a small level of risk. I take the view that a 50/50 combination is a reasonable compromise that broadly reflects the sort of return Mr S could have obtained from investments suited to his objectives and risk attitude.

Although the comparison may not be an exact one, I consider that it is sufficiently close to assist me in putting Mr S into the position he would have been in had he received appropriate advice.

how to calculate the compensation?

The compensation payable to Mr S is the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

The *actual value* is the value Mr S will receive if he terminated the investment on the date of my decision.

To arrive at the *fair value,* C&IS should work out what 50% of **fair value 1** would be worth if it had produced a return matching the average return for fixed rate bonds for each month from the date the funds were switched following the review of his SIPP to the date of my decision and apply those rates to that part of the investment, on an annually compounded basis.

C&IS should add to that what 50% of **fair value 1** would be worth if it had performed in line with the APCIMS income index from the date the funds were switched following the review of his SIPP to the date of my decision.

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

Any withdrawal or income payment that Mr S received from the investment should be deducted from the *fair value* calculation 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 will accept if the business totals all such payments and deducts that figure at the end instead of periodically deducting them.

In addition to the financial loss, I consider that Mr S has suffered some distress and inconvenience as a result of seeing his pension fund fall in value. I consider that a modest payment of £200 is appropriate to compensate for that loss.

my final decision

I uphold the complaint. My decision is that Capital & Income Solutions Ltd should pay Mr S the amount calculated as set out above and £200 for the distress and inconvenience caused.

Simple interest is to be added to my award at a rate of 8% gross a year from the date of my decision to the date of settlement. Income tax may be payable on this interest.

Roy Milne
ombudsman