

The complaint

Mr M complains that he received unsuitable advice about his pension from Tidal Wealth Management (TWM), an appointed representative of Cowley & Miller Independent Financial Services Limited (Cowley & Miller). Mr M has also complained about the lack of ongoing advice received from TWM.

What happened

Mr M met with Harry Young of TWM and was advised to move from a Group Personal Pension (GPP) to a Self-Invested Personal Pension (SIPP) with the same provider.

On 18 November 2014 Mr M signed an ongoing service agreement with Cowley & Miller, choosing a 'silver service' for 0.75% of the value of the investments or a fixed fee of £750.

On 19 January 2015 an illustration was produced which detailed a tax-free cash lump sum of £69,569 with all of the fund moving into drawdown.

The illustration detailed initial commission of £2,000 to be paid to Cowley & Miller. Mr M signed the GPP to SIPP switch forms on 23 January 2015 and Cowley & Miller sent the correspondence to Standard Life on 28 January 2015.

On 6 February 2015, the provider issued a letter to Cowley & Miller which confirmed the change from a GPP to a SIPP.

On 17 February 2015 Horizon Stockbroking e-mailed Mr M the bank details of IG Markets (a trading platform) and confirmed a call will be made to discuss this in more detail.

Mr M's tax-free cash was invested into high risk Contracts For Difference (CFD) this was done through Horizon but Harry Young (trading as TWM) signed the forms as a witness. Mr M says that TWM advised him on this investment and told him that it was safe and not subject to any risk.

Approximately six months later in August 2015, the entire investment was lost. And I understand Horizon went into default.

In May 2016, TWM had ceased to be an appointed representative of Cowley & Miller. And on 14 June 2018 Mr M found out through the SIPP provider that he no longer had an appointed financial adviser.

Mr M complained to us that the advice to invest in the CFD was unsuitable for him and that the advice was given by TWM whilst representing Cowley & Miller. And he also said he hadn't been provided with the ongoing service that he'd paid for.

Cowley & Miller didn't uphold the complaint. It explained that it had no paper or money trail for Mr M's investment in the CFD. It said TWM became an appointed rep of another firm

(which was no longer trading) and they believed it was the new firm who should be held accountable.

The investigator pointed out the advice to invest in the CFD was before TWM had joined the other firm and whilst they were still with Cowley & Miller. He provided Cowley & Miller with the documentation regarding the CFD investment.

Cowley & Miller responded to say this only showed that Harry Young was a witness to the investment but provided no evidence that he gave advice.

The investigator didn't think it was plausible that Mr M made this investment decision without advice. He said without TWM's advice, Mr M wouldn't have invested in an area that was clearly unsuitable for him. He said he accepted that Cowley & Miller may not have been aware of the advice, but it was responsible for its representatives' actions.

What I've decided – and why

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

Before I continue I should clarify that this decision is only considering the investment of the tax-free cash and the ongoing advice service. Mr M's said he isn't complaining about the transfer to the SIPP.

It seems its accepted by all parties, that investing in CFD's through the Discretionary Fund Manager, Horizon Stockbroking, was unsuitable for Mr M. And out of step with the balanced attitude to risk that was recorded by TWM. But for the avoidance of doubt, I think the investment of his tax-free cash in a high-risk CFD, an unregulated investment not suitable for your regular investor, and which put his entire capital at risk, was unsuitable for Mr M's circumstances.

Cowley & Miller's defence is that it isn't responsible for the advice. I don't doubt what it has told us about the lack of information it had about Mr M's investment in the CFD. But the evidence shows that TWM was at the time of the investment an appointed representative of Cowley & Miller. The evidence also shows that TWM advised Mr M acting in his capacity as an appointed representative of Cowley & Miller to transfer his pension to a SIPP in February 2015. And that the investment in the CFD using tax-free cash released from the SIPP, occurred less than two weeks later, and Harry Young of TWM was involved. His signature was on the Power of Attorney form (acting as a witness) allowing Horizon to act on Mr M's behalf.

More compelling still, is the evidence shows the arrangements to invest in the CFD were made before the pension transfer actually took place and the tax-free cash became available to invest. When TWM submitted the transfer paperwork to the provider and the instruction to commence drawdown, he said Mr M wished to take the maximum tax-free cash. At the same time he was involved with the arrangements to set Mr M up with Horizon Stockbroking to use the tax-free cash amount to invest in CFD.

So it's clear to me the advice to invest in the CFD was part of the overall pension advice given to Mr M. And in any event the regulator had already made clear prior to this transfer in 2013, that advisers needed to take account a customer's overall investment strategy when advising on pension transfers and switches.

Furthermore, the regulator in 2014 specifically referred to cases where advisers were under the false impression they could advise on the suitability of a SIPP in the abstract:

'Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable.' 'The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (whether or not such investments are regulated products). Despite the initial alert, some firms continue to operate a model where they purportedly restrict their advice to the merits of the SIPP wrapper. '

Whilst Mr M's complaint isn't about the underlying investments within the SIPP, the investment of the tax-free cash was wrapped up in the pension advice. Both events happened concurrently, and the evidence points to TWM being the driving force behind the tax-free cash withdrawal and the investment within the CFD. So I think the above makes clear that TWM should've considered the suitability of the investment within the CFD as part of their advice even in the event they didn't give advice about the CFD. But I don't agree that they were separate events, there is a clear link of causation.

Cowley & Miller has also questioned why it is held responsible when Horizon Stockbroking made the investments for Mr M. However, I can only look at the complaint that has been brought to us which is against Cowley & Miller. Whether other parties - for example a DFM - might also be responsible for the same losses or some of the losses is a distinct matter, which I am not able to determine here. And without TWM's involvement I don't think Mr M would have proceeded with this strategy. Had TWM given Mr M suitable advice and properly informed him of the risks involved in the investment, as was the adviser's responsibility, I don't think Mr M would've gone ahead with this investment.

Mr M has said he had no need at the time to take tax-free cash, so suitable advice ought to have been to retain it within the SIPP. If that advice had been given, Mr M wouldn't have suffered the losses that he has.

Whilst I appreciate Cowley & Miller as principle says it has been left in the dark over this arrangement – as it wasn't informed by TWM – it is responsible for TWM's actions whilst it was an appointed representative of it. And I'm satisfied, given TWM arranged the pension transfer which Cowley & Miller accepts it was responsible for, that Harry Young/TWM was acting in its capacity as an appointed representative of Cowley & Miller when the advice was given and arrangements made to invest in the CFD around the same time period.

Therefore, I think it is fair and reasonable to hold Cowley & Miller responsible for the loss of Mr M's tax-free cash from his SIPP.

Mr M has also complained that he paid for an ongoing service agreement but yet didn't receive anything for this. And it wasn't until years later that he found out he no longer had an adviser. He says he is unhappy that he was left in limbo and without an adviser. However, TWM left Cowley & Miller some months after the initial advice. Cowley & Miller said it stopped receiving commission and it understood Harry Young took his clients with him to the new principal firm. Mr M says he wasn't told about this but I don't think I can fairly hold Cowley & Miller responsible beyond the time that it was receiving commission from the provider. Mr M may wish to complain about the new principle firm regarding the later fees charged (although I understand they are now in default). The SIPP provider will be able to give him information about the fees paid.

Cowley & Miller will have received some ongoing commission as it was payable monthly. It hasn't presented any evidence it did anything to justify that ongoing commission. Mr M said he didn't receive any reviews or ongoing advice. And considering the experience he has had, I think it is fair that Cowley & Miller should refund any fees it was paid for ongoing advice/renewal commission.

Finally Mr M has told us he suffered mental anxiety, worries and money problems due to the loss of his tax-free cash. This wasn't an unsubstantial loss and represented all of Mr M's tax-free cash. I think it would've had a big effect on him and therefore I think Cowley & Miller should pay Mr M £400 in respect of the distress and inconvenience this would've caused him.

So it follows that I uphold this complaint and find Cowley & Miller responsible for Mr M's losses.

Putting things right

To put Mr M as closely as possible back in the position he would've been but for the unsuitable advice. Cowley & Miller should compare the performance of Mr M's CFD 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.

It should also pay any interest set out below.

If there is a loss, Cowley & Miller should pay into Mr M's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Cowley & Miller are unable to pay the compensation into Mr M'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 compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.

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

Cowley & Miller should provide the details of the calculation to Mr M in a clear, simple format.

Income tax may be payable on any interest paid. If Cowley & Miller consider that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much has been taken off. It should also give Mr M 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
-----------------	--------	-----------	------------------------	--------------------	---------------------

Mr M's tax-free cash invested in CFD.	Illiquid/lapsed	Standard Life My Folio Managed iii	date of investment	date of settlement	8% simple per year from date of final decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)
---------------------------------------	-----------------	------------------------------------	--------------------	--------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------

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.

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

Any withdrawal, income or other distribution out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Cowley & Miller total all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr M wanted capital growth and was willing to accept some investment risk.
- The Standard Life My Folio Managed iii fund was where the 75% remainder of Mr M's pension was invested. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- It is a reasonable measure of comparison given Mr M's circumstances and balanced risk attitude.
- Cowley & Miller should also refund any fees it received as ongoing/renewal commission to Mr M. And pay Mr M £400 for the distress and inconvenience caused.

My final decision

I uphold Mr M's complaint against Cowley & Miller Independent Financial Services Limited and direct it to put things right as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 April 2022.

Simon Hollingshead
Ombudsman