DRN-3146873

## The complaint

Mr C has complained about the transfer of his two pension plans to a new self-invested personal pension ("SIPP") in 2015. He said that the transfer was unsuitable for his needs and led to him suffering a financial loss.

Mr C is represented in this complaint by a third party ("Representative").

## What happened

In 2015, a regulated financial advisory business, which I shall call Firm C, recorded the following information about Mr C:

- He was 52, in good health, divorced and didn't have any financial dependants;

- He was employed on an annual salary of £20,000;

- His assets comprised his residential home valued at £220,000, cash savings of £30,000, investments of £5,000 and two pension plans (the subject of this complaint) valued in total at £88,631. The pension plans were invested in a balanced managed fund;

- His liabilities comprised a mortgage of £131,000 secured against his residential home;

- He had a 'high' risk profile which was defined as, *"Your aim is to be reasonably speculative with your investments in the hope of high returns. The risk to your capital is high, and the value of the original investment may go down significantly as well as up significantly. Reasonably speculative portfolios typically have a higher proportion in equities and various global asset classes. You understand that investment returns cannot be guaranteed and you accept that you might get back less than you put in, especially in the short term"*;

- He was concerned that the financial markets were overheating and his objective was to review his two pension plans with a view to reducing the potential for losses should there be a downturn in the markets; and

- He was interested in transferring to a SIPP with a view to investing in *"more esoteric investment strategies"* to achieve his objective.

On 17 July 2015, Firm C issued a suitability report to Mr C recommending that he transfer the value of his two pension plans to a new SIPP and then invest money with a Discretionary Fund Manager ("DFM") to align with his 'high' risk profile. Firm C didn't specify in its suitability report the amount that should be invested with the DFM. Mr C accepted the recommendation.

On 30 July 2015, Firm C sent a paper application form to its recommended SIPP provider to set up a new account. On the same day, another business, Quays Wealth Management

Limited ("Quays Wealth"), submitted an online application. Having received two applications from different businesses, the SIPP provider was unsure which business was meant to be representing Mr C. So it asked him to clarify his intentions by providing a signed letter of authority stipulating his preferred servicing agent. The SIPP provider subsequently received a letter of authority signed by Mr C on 30 July 2015 instructing it to transfer the servicing of his SIPP, including all renewal and trail fees, to Quays Wealth.

That letter of authority was signed before the SIPP account opened on 26 August 2015. Over the next several weeks, Quays Wealth facilitated the transfer of Mr C's two pension plans to the SIPP. On 3 November 2015, a total amount of £91,249.24 was transferred to the SIPP. The SIPP provider deducted £2,737.48 from the account in respect of the initial advice fee and paid this to Quays Wealth who forwarded it to Firm C.

On 10 November 2015, Quays Wealth instructed the SIPP provider to transfer £85,100 of the SIPP fund value to the DFM for investment. An agreement existed between Quays Wealth and the DFM. This set out the generally allowable assets and securities that could be held in a client's portfolio. It also confirmed that the DFM remained responsible for ensuring the investment remained consistent with the underlying client's risk profile. Mr C later suffered a substantial financial loss on his investment managed by the DFM.

In 2017, the DFM was declared in default by the Financial Services Compensation Scheme ("FSCS"). Then, in 2018, Firm C was declared in default by the FSCS.

*<u>This complaint</u>*

Mr C was unhappy about the financial loss he suffered following the transfer to the SIPP. The Representative, on behalf of Mr C, complained to Quays Wealth about the suitability of the advice to transfer the value of his two pension plans to a new SIPP and to then invest money with the DFM. In summary, it said that Mr C was an inexperienced investor, had a conservative risk profile and a low capacity for loss. It thought that the recommendation to transfer didn't meet Mr C's needs and was unsuitable because it exposed his pension fund to more risk than he was willing and able to tolerate. It said that the advice had led to Mr C suffering a financial loss of £101,687.43. To put things right, it requested compensation.

Quays Wealth didn't uphold this complaint. It explained that Firm C provided the pension transfer advice to Mr C and so that business was responsible for ensuring the recommended SIPP and underlying investment with the DFM was suitable for his needs. It explained that it had acted as a locum for Firm C and simply provided administrative services to it during the period in question. And that upon the closure of Firm C, it had then assumed the servicing rights for some of that business's clients, including Mr C, through a transfer of agency. It said that in Mr C's case, the transfer of agency was actioned and the initial advice fee of £2,737.48 was paid to it in error. It said that it forwarded the fee to Firm C because that business had provided the pension transfer advice to Mr C. Quays Wealth stated that the DFM stole Mr C's money and that his claim for compensation should therefore be referred to the FSCS.

Based on the information provided by Quays Wealth, the Representative submitted a claim for compensation to the FSCS about Firm C. But the FSCS rejected Mr C's claim for compensation. This was because the evidence the FSCS had received from the SIPP provider confirmed that Quays Wealth had been appointed as Mr C's servicing agent before the SIPP account opened and the pension switch being completed in November 2015. This led the FSCS to conclude that Quays Wealth, and not Firm C, was responsible for ensuring that the SIPP and investment placed with the DFM was suitable for Mr C's needs.

Our investigator recommended that this complaint should be upheld. He acknowledged that Firm C and not Quays Wealth provided the pension transfer advice to Mr C. But he thought that from the point Quays Wealth became the servicing agent to Mr C's SIPP, it then had a regulatory duty, under COBS 2.1.1R, to act in his best interests. He concluded that this duty required Quays Wealth to assess the suitability of the proposed pension transfer it was facilitating. Our investigator said that the pension transfer led to Mr C incurring additional costs without good reason and the underlying investment in the DFM exposed his pension fund to an unsuitable level of investment risk. He thought that Mr C's existing pension plans met his needs. So he concluded that had Quays Wealth carried out a suitability assessment, it likely would've advised against the pension transfer. To put things right, our investigator recommended that Quays Wealth carry out a loss assessment and, if this showed a loss, to pay redress to Mr C. He also recommended that Quays Wealth pay £300 to Mr C for the trouble and upset he had suffered.

Quays Wealth didn't accept our investigator's opinion and provided additional comments and evidence. Our investigator considered this but wasn't persuaded to change his opinion. Since agreement couldn't be reached, this complaint has been referred to me for review.

**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.

When considering what's fair and reasonable, and in accordance with the Financial Services and Markets Act 2000 and the Dispute Resolution section in the FCA's handbook, I need to take into account relevant: law and regulations; regulators' rules, guidance and standards, and codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Before I go on, I'd like to clarify that the scope of this final decision is limited to the consideration of the acts and/or omissions of Quays Wealth in its dealings with Mr C. I won't be considering the acts and/or omissions of Firm C or the DFM because this complaint is not about those businesses. And I'd like to make clear that the purpose of this final decision isn't to repeat or address every single point raised by the parties. So if I haven't commented on any specific point it's because I don't believe it's affected what I think is the right outcome.

The following facts aren't in dispute:

- On 17 July 2015, Firm C issued a suitability report to Mr C recommending that he transfer the value of his two pension plans to a new SIPP and then invest money with a DFM to align with his 'high' risk profile. The suitability report didn't specify how much money was recommended to be invested with the DFM;

- On 30 July 2015, Mr C signed a letter of authority confirming that the servicing of his SIPP, including all renewal and trail fees, should be transferred to Quays Wealth;

- On 19 August 2015, Quays Wealth became authorised and regulated by the FCA, following which it was required to adhere to the regulator's rules;

- On 26 August 2015, the new SIPP account opened;

- Over the following several weeks up to 10 November 2015, Quays Wealth facilitated the transfer of Mr C's existing pension plans and then, following completion of the transfer, instructed the SIPP provider to transfer £85,100 of the SIPP fund value to the DFM for investment.

Quays Wealth said Firm C provided the advice about which Mr C has complained and that this complaint should therefore be about that business. It said its role in the transaction has been misunderstood by this service and that it cannot be held responsible for the advice provided by another business. Its stressed that its role in the transfer was as a locum for Firm C and that it simply provided administrative services. It said that its locum agreement didn't require it to check the suitability of the advice provided by another business. It also said that Mr C lost money on his investment due to the actions of the DFM which were outside of its control. Because of these reasons, it disagreed with our investigator's view that it should've checked whether the recommended SIPP and subsequent investment in the DFM was suitable for Mr C's needs or that its responsible for the financial loss that Mr C has suffered.

I acknowledge that Firm C and not Quays Wealth advised Mr C to transfer and invest money with the DFM. I'm satisfied that I understand Quays Wealth's role in the transaction. This service has an inquisitorial remit when considering complaints – this means we're able to look at what's relevant to a complaint, even if it hasn't been specifically outlined by the consumer or their representative, in order to consider what would be a fair and reasonable outcome.

It seems to me that there's two questions I need to answer to decide this complaint about Quays Wealth, as follows:

1. Did Quays Wealth owe a duty of care to act in Mr C's best interests in order to protect him from potential harm when it facilitated the pension transfer and, if so, did this extend to assessing the suitability of the transaction including the proposed investment in the DFM?

2. If the answer to the first question is 'yes', then was the transfer to the SIPP and investment in the DFM suitable based on Mr C's needs and circumstances?

I've considered these questions and all the evidence afresh including our investigator's assessment. Having done so, I agree with the outcome recommended by our investigator for these reasons:

- The letter of authority signed by Mr C on 30 July 2015 confirmed his instruction to the SIPP provider to transfer the servicing of his account, including renewal and trail fees, to Quays Wealth. In my view, from 19 August 2015 when Quays Wealth became authorised and regulated by the FCA, it had a regulatory responsibility, under COBS 2.1.1R, to act fairly and professionally in accordance with the best interests of Mr C. I'm satisfied that this regulatory responsibility extended to assessing the suitability of the pension transfer it was facilitating on Mr C's behalf. I say this because I don't think it was reasonable in the circumstances for Quays Wealth to become the servicing agent for Mr C's SIPP and then blindly implement the recommendation of another business without checking whether it was in its client's best interests;

- Another key factor was time. Quays Wealth became authorised and regulated by the FCA, and also the servicing agent for the SIPP, about three months before the transfer was completed. I'm satisfied that this timeframe provided Quays Wealth adequate time and opportunity to assess the suitability of Mr C's SIPP including the proposed transfer and to put a stop to it if it had any concerns that it wasn't in Mr C's best interests. I think this is a reasonable expectation;

- Quays Wealth said it didn't assess the suitability of the transfer because it was acting as a locum for Firm C. But since I've concluded that Quays Wealth should've assessed this, I've considered it. Mr C's two pension plans were invested in a balanced managed fund. It was recorded that Mr C was concerned the financial markets were overheating and wanted to review his two pension plans with a view to reducing the potential for losses should there be a downturn in the markets. The two pension plans represented the entirety of his private pension provision. The transfer to the SIPP led to higher costs and investment on a higher risk basis compared to the two existing pension plans. In my view, Mr C had simple investment requirements. Given that he wanted to de-risk, I'm not convinced that he had a 'high' risk profile or that he wanted to invest in *"more esoteric investment strategies"* through a SIPP at additional cost. The information recorded about his background and circumstances simply doesn't support this. It's my view that Mr C's objective to de-risk could've been achieved simply by switching to lower-risked rated funds on his existing pension plans and for a lower overall cost compared to the recommended SIPP and investment by the DFM. Therefore, it's my conclusion that the transfer wasn't suitable based on Mr C's needs and circumstances;

- Quays Wealth didn't determine Mr C's 'high' risk profile or recommend he transfer to the SIPP and invest with the DFM. But the point I've made above is that I think it had a regulatory duty to assess whether the transfer was in Mr C's best interests and to stop the transaction if it had any concerns. I think that had Quays Wealth assessed whether the proposed transfer was in Mr C's best interests, it would've informed him it wasn't suitable for the reasons I've set out above. I say this because I don't think any competent business acting in Mr C's best interests would've concluded that the transfer was suitable bearing in mind it involved investing the majority of his private pension provision on a higher risk basis and with additional cost when his objective to de-risk could've been achieved through his existing pension plans; and

- I acknowledge Quays Wealth's comments about the actions of the DFM. But I don't think the issues concerning the DFM affect my decision. This is because had Quays Wealth stopped the transaction, as I've concluded it ought to have done, investment in the DFM wouldn't have occurred. Because Quays Wealth failed to do this, Mr C ended up transferring to an unsuitable SIPP which led to him exposing the majority of his private pension provision to more risk than he was likely willing and able to tolerate, and higher costs without good reason. As such, it's my view that Quays Wealth is liable for any financial loss Mr C has suffered as result of the pension transfer and investment with the DFM.

**Fair compensation**

In assessing what would be fair compensation, my aim is to put Mr C as close as possible to the position he'd probably now be in but for Quays Wealth's failings.

I think Mr C would've invested differently. It's not possible to say *precisely* what he would've done, but I'm satisfied that what I've set out below is fair and reasonable given what was recorded about Mr C's circumstances and objectives in July 2015. What I've set out below is in line with that previously recommended by our investigator.

**What must Quays Wealth do?**

To compensate Mr C fairly, Quays Wealth must compare the performance of Mr C's SIPP with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there's a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

Quays Wealth must also pay any interest set out below.

If there's a loss, Quays Wealth must pay money into Mr C's SIPP 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. Quays Wealth shouldn't pay the compensation into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the SIPP isn't possible or has protection or allowance implications, it should be paid directly to Mr C as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid. Typically, 25% of the loss could've been taken as tax-free cash and 75% would've been taxed according to Mr C's likely income tax rate in retirement – which I've decided is likely to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

| Investment | Status | Benchmark | From ("start date") | To ("end date") | Additional interest |
|---|---|---|---|---|---|
| SIPP | Still exists | For half the investment: *FTSE UK Private Investors Income Total Return Index;*<br><br>For the other half: *Average rate from fixed rate bonds* | date of transfer | date of settlement | 8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of Quays Wealth being notified of Mr C's acceptance of this decision |

In addition, Quays Wealth must:

- pay Mr C £300 for the trouble and upset I'm satisfied the loss in value of his pension fund has caused him; and

- provide details of the calculation to Mr C in a clear, simple format.

Income tax may be payable on any interest paid. If Quays Wealth considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

***Actual value***

This means the actual transfer value of the SIPP at the end date. If, at the end date, any underlying investment in the SIPP is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. Quays Wealth should take ownership of the illiquid investment by paying a commercial value acceptable to the SIPP provider. This amount should be deducted from the compensation and the balance paid as above. If Quays Wealth is unable to purchase the underlying investment(s) the *actual value* should be assumed to be nil for the purpose of calculation. Quays Wealth may wish to require that Mr C provides an undertaking to pay it any amount he may receive from the underlying investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the SIPP. Quays Wealth will need to meet any costs in drawing up the undertaking.

***Fair value***

This is what the SIPP would've been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Quays Wealth should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other distribution out of the SIPP 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's many regular payments, to keep calculations simpler, I'll accept if Quays Wealth totals all those payments and deducts that figure at the end instead of deducting periodically.

**Why is this remedy suitable?**

I've chosen this method of redress for the following reasons:

- It was recorded that Mr C was concerned that the financial markets were overheating and wanted to review his two pension plans with a view to reducing the potential for losses should there be a downturn in the markets. Therefore, I think he wanted capital growth with a small risk to his capital;

- The average rate for the fixed rate bonds would be a fair measure for an individual who wanted to achieve a reasonable return without risk to his capital;

- 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's a fair measure for an individual who was prepared to take some risk to get a higher return;

- I consider that Mr C's true risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr C into that position. It doesn't mean that Mr C would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could've obtained from investments suited to his objective and risk profile.

**Further information**

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to its database, or by entering this address https://www.bankofengland.co.uk/boeapps/database/, and then clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates – Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolvingcomplaint/understanding-compensation/compensation-investment-complaints. Alternatively, Quays Wealth can just type 'compensation for investment complaints' into the search bar on our website: https://www.financial-ombudsman.org.uk/**.**

## My final decision

I uphold this complaint. Quays Wealth Management Limited must redress Mr C as I've 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 26 July 2022.
Clint Penfold
**Ombudsman**