DRN-3287195

The complaint

Mr T complains that Quadros Financial Solutions Limited ("Quadros") provided him with unsuitable advice that resulted in the transfer of some pension benefits to a new self-invested personal pension ("SIPP") in July 2017.

What happened

Mr T has been assisted in making his complaint by a firm of solicitors. But, for ease, in this decision I will generally refer to all communication as having been with, and from, Mr T himself.

Mr T says that he received a cold call offering him a review of his pension arrangements. He accepted that offer and was introduced to Quadros.

Mr T met with Quadros in May 2017. At that time he was aged 46 and lived with his partner and their two children. He was making regular contributions to a pension scheme provided by his then employer. And he held further pension savings invested in a with-profits arrangement. The advice he received from Quadros only related to his pension savings held in the with-profits plan.

Quadros recommended that Mr T move his pension savings into a new SIPP. It said that the transfer would allow him to better grow his pension savings through the use of a Discretionary Fund Manager ("DFM"). And it noted that his existing plan didn't offer the flexible retirement benefits Mr T would expect to need at retirement.

Quadros did note in its suitability report that the costs of using the SIPP arrangement, including its ongoing advice fee, would be greater than Mr T was already paying. But it says that those additional charges could have been recouped by better investment performance. Quadros measured Mr T's attitude to risk as being high medium. Mr T accepted Quadros' recommendation and moved his pension savings to the new SIPP.

Mr T's complaint has been assessed by one of our investigators. She didn't think the recommendation Quadros had given to Mr T had been suitable. She didn't see any reasoning to suggest why the investment approach offered by the existing plan was insufficient for Mr T. And given the extended period left until Mr T's retirement she thought any decisions about flexibility would have been better taken nearer the time. So she thought that, had Quadros provided Mr T with suitable advice, he'd have left his pension savings within the existing plan. Our investigator asked Quadros to pay Mr T some compensation.

Quadros didn't agree with that assessment. I said that its measurement of Mr T's attitude to risk was in line with the investments it had recommended. And it said that Mr T's more recent actions suggested that its original measure of his attitude to risk had been either correct, or close to being correct. It also said that it disagreed with how the investigator had proposed it should put things right. It said that, even if we thought its investment approach had been incorrect, Mr T would have still made the switch to the SIPP.

As the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr T accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr T and by Quadros. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority ("FCA"). Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

<u>*The applicable rules, regulations, and requirements*</u>

Within the FCA's handbook, COBS 2.1.1R required a regulated business to "*act honestly, fairly and professionally in accordance with the best interests of its client*".

The FCA's suitability rules and guidance that applied at the time Quadros advised Mr T were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Quadros, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

Mr T was seeking advice, and a recommendation, from Quadros. It was Quadros that was the expert when looking at the pros and cons of the transfer, and how Mr T could best use his pension savings to provide for him when he retired. Whilst it needed to ensure that it gave full and detailed information to Mr T to support its recommendation, it was primarily responsible for ensuring that the advice it gave was suitable for Mr T's circumstances. So regardless of whether Mr T might, have had some financial experience he was entitled to rely on the advice that Quadros gave to him when deciding how to proceed.

Quadros advised Mr T to move his pension savings into a new SIPP. It said that it advised Mr T that he should make use of a DFM to manage his pension investments. But I haven't seen anything that sets out in any level of detail why Quadros thought that would be appropriate. Its notes from the time suggest that Mr T's existing pension scheme was outperforming what might be considered a reasonable benchmark. It doesn't seem to me that there was anything unusual about Mr T's circumstances that meant he might have needed more bespoke investment funds, or significant additional diversity.

By agreeing to transfer his pension savings, Mr T needed to pay a fee of 3% of their value to Quadros. I understand that fee was only due if he agreed to the transfer, so there was a clear conflict of interest in the advice that Quadros gave. Without recommending the transfer took place, Quadros would not receive a fee for its advice.

Quadros' analysis showed that the charges Mr T would need to pay following the transfer would be much higher than those he was paying on his current pension plan. On his current plan Quadros identified that Mr T was paying an annual management charge of 1%. If he agreed to the transfer to the SIPP Mr T would need to pay an annual platform charge of 0.35% plus a charge of 0.63% to the DFM. And Quadros would add its own on-going management charge (in addition to the 3% initial advice charge) of 1% per annum. Overall Quadros calculated that, before taking account of its ongoing fees, Mr T's pension investments would need to return an additional 0.4% per annum to recoup the additional investment charges.

I think it is reasonable to conclude that the information Quadros provided did make these charges differences clear. But I don't think that is the end of the matter. Quadros was providing Mr T with advice, and needed to ensure the approach it recommended would be in his best interests. I haven't seen anything that persuades me Quadros had any evidence-based expectation that the transfer to the SIPP would result in Mr T being better off. It is clear that the charges would be higher. I don't think there were any reasonable grounds to conclude that the alternative investment approach it was recommending would produce sufficient excess returns to justify those additional charges.

Quadros also noted that the existing pension didn't offer the flexible retirement benefits Mr T might expect to need at retirement. Again, I haven't seen any contemporaneous evidence to support that conclusion. Mr T was aged 46 at the time. I doubt that he had a clear understanding of when he would retire, let alone what form he might want his retirement benefits to take. I agree with our investigator that any decisions intended to provide the basis on which Mr T might take his retirement benefits would have been better taken nearer to the time of his retirement. At that point Mr T would be able to better articulate his needs in retirement, and the regulatory landscape would be set. I don't think that there was any need to transfer Mr T's pension savings, for this reason, from the existing scheme at that time.

Overall I don't think it was appropriate for Quadros to advise Mr T to transfer his pension savings into the SIPP. I haven't seen anything to persuade me that he needed the additional flexibility and investment funds that the SIPP would offer to him. And I'm not persuaded that any investment performance improvements would have been sufficient to outweigh the significant additional charges Mr T would need to pay. So I think that Mr T's complaint should be upheld and Quadros needs to put things right.

Putting things right

My aim is that Mr T 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 T would have remained with his previous provider. I am not satisfied that it is reasonable, as Quadros suggests, that there were any compelling reasons why Mr T would be persuaded to move his pension savings to the SIPP. Given that he has now complained about that transfer I don't think Quadros, or I, can draw any comfort from Mr T's past apparent contentment with the information presented to him in the annual reviews.

However, I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr T's circumstances and objectives when he was advised to make the transfer.

What must Quadros do?

To compensate Mr T fairly, Quadros must:

- Compare the performance of Mr T's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Quadros should add interest if necessary as set out below:

- Quadros should pay into Mr T'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 Quadros is unable to pay the total amount into Mr T'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr T won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. I think that it's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr T would be able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Should this compensation not be paid with 28 days of Quadros being informed of Mr T's acceptance of my final decision, simple interest at a rate of 8% per annum should be added to the compensation due from the date of my final decision to the date of settlement.

- Pay Mr T an additional sum of £250 to reflect the inconvenience he has been caused by the disruption to his retirement planning.

Income tax may be payable on any interest paid. If Quadros deducts income tax from the interest it should tell Mr T how much has been taken off. Quadros should give Mr T a tax deduction certificate in respect of interest if Mr T asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")
Novia SIPP	Still exists	Notional value from previous provider	Date of transfer	Date of my final decision

Actual value

This means the actual value of the investment at the end date.

Notional Value

This is the value of Mr T's investment had it remained with the previous provider until the end date. Quadros should request that the previous provider calculate this value.

Any withdrawal from the Novia SIPP should be deducted from the notional 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'll accept if Quadros totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Quadros will need to determine a fair value for Mr T's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr T wanted Capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 T's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Quadros Financial Solutions Limited should pay the amount calculated as set out above. Quadros Financial Solutions Limited should provide details of its calculation to Mr T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 6 March 2023.

Paul Reilly
Ombudsman