DRN-3506362

The complaint

Mr D complains that LP Financial Management (LFPM) gave him unsuitable advice to switch two Personal Pensions into a Self-Invested Personal Pension (SIPP). A subsequent investment was made in an unregulated holiday resort investment.

What happened

In September 2012, Mr D signed a letter of authority for Atlantic Partnership LLP (a firm whose director was also a director of LPFM), to obtain information about his Personal Pension plans.

At the time he worked as a service engineer and he had two Personal Pensions worth in the region of £80,000 in total. He had no other pensions or investments.

In October 2012, Mr D signed a request for a full transfer of the combined value of both his pensions to The Lifetime SIPP Company Ltd, which was administered by Hartley. The IFA was recorded as LPFM while Atlantic Partnership LLP were recorded as investment managers.

On 23 October 2012, Hartley issued an invoice to LPFM, for both the first years' management fees and the transfer in charge.

On 01 November 2012, Hartley received a BACS transfer in the region of £80,100 from the personal pension provider, which was then held in cash.

In January 2013, LPFM wrote to Mr D offering to review his pension transfer. They advised him that: *'As part of the administration process Atlantic Overseas Investments forwarded the relevant information to Lansdown Place (LPFM) to complete the transfer to Lifetime SIPP. The transfer was processed by LPFM as Lifetime SIPP (now Hartley) requires all pension transfers to be completed by a firm that is regulated by the Financial Service Authority. At this point I would like to stress that LPFMs involvement in this process is only in relation to the transfer of your pension and we have not been involved in any subsequent investments you have made within your SIPP.'*

The letter went on to say: *'we would like the opportunity to fully review the pension contracts you had in place prior to requesting the transfer to Lifetime SIPP to determine if you have been financially disadvantaged. If after reviewing your pension contracts we feel that you have been disadvantaged as a result of this transaction we will make an appropriate offer of redress to put you back in the position you would have been in, prior to the transfer.'*

On 28 January 2013, an email written by a director of LPFM confirmed a conversation with Lifetime SIPP. It stated that Lifetime SIPP were: *'seeking clearance to complete this transfer'* and went onto say: '*I asked her to send details so that we can approve – she is aware that they should not accept any future instruction from Atlantic in connection with ourselves.'*

On the same day the compliance director of LPFM wrote back saying *'we really shouldn't do this, let me talk to (the individual who was both a director of LPFM and Atlantic) to see if we can move it to the new IFA.'*

Having consulted with another IFA firm in May 2013, Mr D completed a Lifetime SIPP '*member investment declaration'* to make an investment in the region of £47,350 from his Lifetime SIPP pension funds into the Aubek Resort Group – Harmony Bay, while the residual funds remained in cash.

The review by LPFM of Mr D's pension transfer was concluded in June 2013 and a letter was issued to him stating that LPFM had *'no Involvement with any investments you have made within your SIPP.'* The letter went onto say: *'this particular transaction focussed on the transfer of your existing contract to a specific pension provider at your request and was not focused on specific investment advice relating to your previous or future pension scheme, we did not establish your attitude to risk or make any observations in relation to the risk profile of the pension contacts you had in place prior to them being transferred.'*

In conclusion the letter said: *'On reviewing the information available it is clear that you have requested that the pension transfer be completed on an Execution Only basis and that you did not seek or receive any financial advice in relation to the suitability of transferring these benefits.' 'If the above is an accurate reflection of your situation I would ask that you sign the enclosed Execution Only form so that we can complete our audit trail in relation to this matter.'*

In September 2019, the Financial Services Compensation Scheme (FSCS) accepted a claim against the other IFA firm who had then ceased trading, in relation to unsuitable investment advice following a change in the fund status of Mr D's investment in Harmony Bay. The FSCS have agreed to a reassignment of rights to enable Mr D to pursue his complaint against LPFM in relation to the initial transfer itself.

LPFM argued that the complaint had been made out of time, it said that Mr D should've been aware in 2013 that something was wrong when it carried out its review. An ombudsman looked into whether this was a case we could consider and decided that it was. He said LPFM didn't set out in clear and fair terms that something had gone wrong in 2012. And that it used jargon and nuance in its letters to Mr D which in essence shifted the responsibility away from it.

Our investigator then looked into the merits of the complaint. He upheld the complaint, in summary he said:

- The evidence didn't support that the sale was credible as execution only.
- LPFM received an invoice from the SIPP provider for the first year's management fees and transfer in charge.
- LPFM in its letter to the customer in 2013 said that the transfer was processed by it as the SIPP provider required all pension transfers to be completed by a regulated firm.
- LPFM facilitated the transfer and therefore is responsible for it.
- LPFM should've put things right in 2013 but instead concluded that the transfer was execution only.
- Had LPFM acted fairly it would've advised Mr D not to transfer and he wouldn't then have suffered the subsequent losses that he has.

- The losses that occurred due to the subsequent advice to invest in Harmony Bay (and as redressed by the FSCS) should be treated as a withdrawal for redress purposes – as Mr D shouldn't be compensated twice.

LPFM responded to the investigators' view to say:

- Its responsibility should end when the new IFA firm took over agency and advised Mr D to invest in Harmony bay in 2013.
- Despite the fact the transfer was completed without its knowledge and without following its guidelines by a non-authorised director it can understand why we put the blame at LPFM's door but it tried to fix things and Mr D ignored LPFM and moved his business elsewhere.

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.

Prior to this decision I wrote to both parties to say:

'I broadly agree with the findings of our investigator in relation to LPFM's responsibility for the transfer – as already set out in his views to both parties. And so I have little to add in respect of that.

However, I am minded to make a change to the redress. LPFM have argued that it's liability should end when a new IFA advised Mr D. From the limited information available from the SIPP administrators, I can see it received instructions on 9 May 2013 from Mr D that he'd been advised by the new IFA firm to make an investment in Harmony bay – this looks like it completed on 30 May. I think 30 May 2013 would be a fair date to cap any responsibility of LPFM – as it gave the new IFA time to consider Mr D's investments going forward.

I appreciate that it looks like the new IFA firm only switched part of Mr D's funds and left the rest invested as it was before. But as regulated financial advisers it should've considered Mr D's whole portfolio – I don't know whether it did or not as we don't have that information. But in any event it would appear that from the point of the new IFA firm's involvement, the agency transferred to it and LPFM would've no longer been authorised to give Mr D investment advice. And Mr D didn't refer back to LPFM for any future advice. So therefore, I don't think it would be fair and reasonable to continue LPFM's responsibility beyond 30 May 2013.'

LPFM responded to say it agreed with my findings and accepts the complaint should be upheld but its responsibility capped, as set out above. We received no comments from Mr D's representatives. Therefore, what I've said above remains and forms part of this decision. As LPFM accept the outcome and I've had no further comment from Mr D's representatives, I don't think it is necessary to set out the reasons why I've upheld the complaint in any more detail. I've set out the key points as established by the investigator – as to why this complaint should be upheld.

Conclusion

In summary, we have little evidence to go on, but what we do have doesn't suggest that Mr D decided to make the transfer without advice. The switch moved Mr D from two established Personal Pensions and into a SIPP with the funds held in cash. I don't think this was suitable for Mr D. And the evidence set out above in the background is sufficient in my view to say that LPFM should be held responsible. I appreciate what LPFM has said about one of its directors being the driving force behind this (against the interests of the rest of the business) but regardless the evidence shows that LPFM's agency was used allowing the transfer to proceed (likely by this director).

However, whilst it was at fault due to its actions at the time of the switch, Mr D transferred the agency of the SIPP to a new IFA (possibly linked to the aforementioned director) and I think it is fair and reasonable that LPFM's responsibility for redress ends at that point.

Putting things right

To compensate Mr D fairly LPFM should:

1. Compare the performance of Mr D'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.

2. Pay any interest due if a loss is found, as set out in the steps below.

- If there is a loss, LPFM should pay into Mr D'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. LPFM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If LPFM are unable to pay the compensation into Mr D'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr D won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D would have been 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%.
- In addition, LPFM should pay Mr D a further £150 for the stress caused by having his funds moved from a secure product into an arrangement that exposed him to the risk of unregulated investments. This is in addition to the £100 paid following the LPFM transfer review – if that has already been paid. If not £250 should be paid.
- Provide the details of the calculation to Mr D in a clear, simple format.
- Income tax may be payable on any interest paid. If LPFM consider that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much has been taken off. It should also give Mr D a tax deduction certificate in respect of interest if Mr D 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")	Additional interest

The Lifetime SIPP Company Ltd (Now Hartley)	Still exists	Notional value from previous provider	Date of transfer from previous provider	New IFA assumes responsibility 30 May 2013	*See below

* If the above calculation results in a loss, Mr D's loss needs to be brought up to the present date. LPFM should therefore use the loss figure calculated up to the end date and then apply investment growth using the benchmark, FTSE UK Private Investors Income Total Return Index, to the calculation date.

* The compensation amount must where possible be paid to Mr D within 90 days of the date LPFM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes LPFM to pay Mr D.

Notional Value

This is the value of Mr D's investment had it remained with the previous provider until the end date. LPFM should request that the previous provider calculate this value.

Any additional sum paid into the The Lifetime SIPP Company Ltd (Now Hartley) should be added to the *notional value* calculation from the point in time when it was actually paid in. Any withdrawal from the The Lifetime SIPP Company Ltd (Now Hartley) 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 is a large number of regular payments, to keep calculations simpler, I'll accept if LPFM totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically. (it doesn't appear there were any withdrawals before the Harmony Bay investment).

If the previous provider is unable to calculate a notional value, you will need to determine a fair value for Mr D'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 chosen this method of compensation because:

- Mr D 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 index set out below appropriate and in line with his previous investment strategy.
- 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 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 D's circumstances and risk attitude.

My final decision

I uphold Mr D's complaint and direct LP Financial Management Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 27 July 2022.

Simon Hollingshead
Ombudsman