DRN-3789018

The complaint

Mr S complains about the advice he received from Cowgills Wealth Limited ('Cowgills') in relation to his former workplace pension with Scottish Widows (the 'SW pension' or the 'plan'). This was a defined contribution scheme and he was advised to switch this plan to a Self Invested Personal Pension ('SIPP') which he says wasn't suitable for him.

Recently, Cowgills business was taken over by Capital Professional Limited trading as Ascot Lloyd. This was after the matters complained of here. For ease of reference, I will refer to the former business name where relevant.

What happened

In 2015, Mr S transferred two pension plans to a newly created SIPP with Standard Life ('SL') following a recommendation made by Cowgills. It was recorded in the recommendation report in November 2015, that he wanted his SW pension, which was invested in its 'Consensus Pension Series fund', to remain untouched.

Mr S had been a member of the SW pension but had opted out as he was applying for fixed Lifetime Allowance protection. At that time, this meant he could no longer make, or receive, contributions into his pension plans without losing this protection.

Subsequently, Mr S received advice about his SW pension from Cowgills in May/June 2016. At around this time, Cowgills recorded details about Mr S' personal and financial circumstances which included that he was married with children; he had a number of buy-to-let properties; and he'd a household income of around £200,000 a year.

Mr S' attitude to risk ('ATR') was assessed by Cowgills to be 'moderate' (investment risk '3') and this was defined as being related to someone who was: *"…prepared to take a moderate amount of investment risk in order to increase the chance of achieving a positive return*."

After looking at Mr S' circumstances and assessing his ATR/capacity for loss, in its suitability report Cowgills gave the following key reasons for giving a recommendation to switch his SW pension valued at £82,670 to a SL SIPP:

- It would provide greater investment opportunities.
- It would provide the opportunity to release funds by way of an income drawdown.
- It would consolidate Mr S' pensions for ease of administration.

Cowgills noted the yearly cost of the SW pension was 0.38%. The costs of the switch were stated to be:

- No initial fee for the advice.
- A yearly fee of 1% payable to Cowgills for ongoing services.
- A 1.27% ongoing annual charge for the recommended SL SIPP and one of its funds' (the 'fund').

Mr S accepted Cowgills recommendation - his SW pension plan was switched to the relevant SIPP and invested in the recommended fund.

In 2022, Mr S complained to Cowgills about the advice it gave him about the switch. He said the advice wasn't suitable for a number of reasons which included: the funds were too high risk for his ATR; he had lost money as a result of the advice; the fund had underperformed; and he doesn't recall discussing the relative merits of switching and/or staying where he was.

Cowgills rejected Mr S' complaint saying its recommendation was suitable based on his circumstances. Mr S remained unhappy so asked the Financial Ombudsman Service ('us' 'we' 'our') to look into the matter. In brief, our investigator recommended upholding the complaint as he thought the advice by Cowgills was unsuitable mainly due to the increased costs.

Cowgills disagreed. It reiterated that the suitability report showed there was 'good reason' for the recommendation to switch pension providers and so, was in Mr S' best interests. It corrected the yearly fees due for its service which were in fact, 0.5% not 1%. It also said the investigator discounted the 'consolidation' reasoning due to Mr S' previous complaint, which it didn't think was fair.

As no agreement could be reached, the matter was passed to me for a decision. I contacted both parties. I clarified that given Mr S' overall pension provision, he was likely to be a higher rate taxpayer in retirement. Mr S noted my comments and added nothing further.

I also set out my initial thoughts to Cowgills, which was that I was intending to uphold the complaint for similar reasons given by our investigator but I said I didn't think, on balance, that the recommended fund was a match for Mr S' ATR. I also clarified the redress that should be used – both parties were told of an alternative benchmark that should be used if the previous provider did not provide the necessary information. Cowgills acknowledged receipt of my initial thoughts but still requested a decision in order to finalise matters.

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.

Having done so, I'm upholding the complaint. Before I explain my reasoning, I understand that both parties have raised a number of points during their respective contact with our Service. Although I may not mention every point each party has raised, I've considered everything they have said but limited my findings to the areas which impact on the outcome of the case. I'll also mention at this stage that where there's a dispute about what happened I've based my decision on the balance of probabilities.

As our investigator has said, the regulator (the Financial Services Authority now the Financial Conduct Authority) has indicated that as long as there are good reasons for a pension switch recommendation, higher fees under the new pension scheme can still be in the clients' best interests. Looking at the reasons given to Mr S at the time of the advice, which I've summarised above, I can't see this recommendation, on balance, was in his best interests.

The fees Mr S paid to his previous pension provider was 0.38%. So, the recommendation to transfer to the SIPP and invest in the selected fund which included a discretionary fund management ('DFM') service, substantially increased costs even when excluding Cowgills ongoing fees, which I understand was, in fact, 0.5%.

The increased costs also meant that Mr S would have to take higher risks to mitigate these costs. Evidence of this is in the Pension Switch Report dated 3 June 2016 produced by Cowgills, which compared both pension plans and the performance of their respective funds. And these showed that the only way Mr S could've been better off by switching into the recommended SL SIPP/fund, was with better performance which, even if achievable, came with increased risks.

Mr S' ATR (attitude to risk) was assessed by Cowgills as 'moderate'. Cowgills description of this ATR related to someone who was: *"prepared to take a moderate amount of investment risk…".* The recommended SL fund was described as:

> *"…a medium to high-risk strategy targeting a return of cash plus 4% fees and charges. The strategy is designed for those who are targeting capital growth and are willing to accept a higher degree of volatility. This portfolio has a higher exposure to equities in order to provide the potential to reach the target returns with a small proportion held in fixed interest securities and cash".*

Comparing the description of Mr S' ATR and the description of the recommended SL fund, I don't agree the switch matched his risk appetite.

Cowgills says Mr S had significant investment experience so understood the increased risks he was taking. One of these is the fact that Mr S transferred other pensions into a new pension (the SL SIPP) in 2015 which was also on the advice of Cowgills. I don't consider this gave Mr S a significant amount of investment experience particularly as it was less than a year before the 2016 advice. And it doesn't appear that Cowgills, at the relevant time, amended Mr S' ATR based on this further experience.

Cowgills provided other reasoning such as consolidation for ease of administration and more investment choice. But again, I don't think these factors provided 'good reason' for switching in light of the increased costs and the impact this could have on the growth of Mr S' pension funds. The SW pension had much lower fees and given the relatively modest amount he was investing, I can't say it was reasonable to recommend a SIPP with a DFM service. And in terms of Mr S having more options when it came to his retirement in the way he withdrew his pension income, even if this were correct, he could have stayed where he was until he was reaching retirement.

All in all, I don't think the recommendation made to Mr S to switch pension providers, was a fair or reasonable one to make. And I think if Cowgills had made a suitable recommendation, Mr S would have stayed with his current provider. I say this because less than one year prior to this advice, Mr S made it clear he had no desire to move his SW pension to the SIPP into which his other pension funds had been transferred. I know he'd subsequently asked Cowgills for advice about the switch. But in my view, this shows he was dependent on receiving suitable advice from someone who was qualified to give that advice. And it's very rare for someone seeking advice to go against the advice they are given.

For all these reasons, I'm upholding the complaint.

Putting things right

My aim is that Mr S should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. As I've said, I take the view that Mr S would have remained with his previous provider. 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 S' circumstances and objectives when he invested.

What must Capital Professional Limited do?

To compensate Mr S fairly, Capital Professional Limited must:

- Compare the performance of Mr S' investment with the notional value if it had remained with the previous provider (Scottish Widows). 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.
- Capital Professional Limited should also add any interest set out below to the compensation payable.
- Capital Professional Limited should pay into Mr 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 shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Capital Professional Limited is unable to pay the total amount into Mr 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 S won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age. I think it's likely that Mr S would be a higher rate taxpayer at his selected retirement age, so the reduction would equal the current higher rate of tax. However, if Mr S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Income tax may be payable on any interest paid. If Capital Professional Limited deducts income tax from the interest it should tell Mr S how much has been taken off. Capital Professional Limited should give Mr S a tax deduction certificate in respect of interest if Mr S 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
Standard Life Wealth (Wrap SIPP) - Portfolio Service 4 (only the proportion of funds that relates to the Scottish Widows pension switch)	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Notional Value

This is the value of Mr S' investment had it remained with the previous provider until the end date. Capital Professional Limited should request that the previous provider calculate this value. If the previous provider is unable to calculate a notional value, Capital Professional Limited will need to determine a fair value for Mr S' investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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 S wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone 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 someone who was prepared to take some risk to get a higher return.
- I consider that Mr S' 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 S into that position. It does not mean that Mr S would have 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 S could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint and require Capital Professional Limited trading as Ascot Lloyd which at the time of the advice was Cowgills Wealth Limited, to pay Mr S the calculated redress as set out above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 October 2023.

Yolande Mcleod
Ombudsman