DRN-3901986

The complaint

Mr C complains that Future Wealth Management (FWM) invested his pension funds through Horizon Stockbroking Ltd (HS) into high-risk investments.

At the time of the investment FWM was an appointed representative of Pi Financial Ltd (Pi).

What happened

Mr C received advice from a third party in 2013 to transfer various pensions into a Self-Invested Personal Pension (SIPP). The SIPP was opened and his pensions transferred in summer 2013.

Mr C says he was introduced to FWM by an adviser who had arranged mortgages and insurances for him and family members in the past ('DG'). An introducer agreement between DG, Pi and FWM was signed on 15 January 2015. A SIPP New Financial Adviser Declaration was signed by FWM's adviser ('HY') referring to FWM and its FCA reference number and was received by the SIPP administrators in late January 2015. The SIPP administrator confirmed FWM became Mr C's new adviser on the SIPP in January 2015.

An FWM fact find was completed. It's undated but it refers to Mr C's last year's income in 2014 which indicates it was completed in 2015.

In November 2015, Mr C invested £35,000 (the majority of his funds) through HS into investments including contracts for difference (CFD) which are high risk. The HS application form notes HY as his financial adviser.

Mr C complained to Pi in 2019. They rejected his complaint explaining that they had no records of Mr C being a client of Pi or that there was any evidence FWM gave advice to invest through HS.

Mr C referred his complaint to this service. One of our investigators upheld Mr C's complaint. holding Pi responsible for the advice given to Mr C to invest in HS and into high risk CFDs which he considered to be unsuitable.

Pi disagreed. In summary they said:

- Mr C was not their client and that being the financial adviser on the SIPP didn't mean they gave advice on the investment.
- Investment decisions could have been made independently by Mr C or on advice by a third party (for example DG or HS).
- Pi received no remuneration for any transactions for Mr C.
- DG was an adviser who routinely referred clients to HS and they assumed it was him who gave Mr C advice.
- DG completed the fact find, conducted the whole advice process, set up the dealing account and controlled all communications with the SIPP and HS. He had free access to HY's office and obtained-with or without HY's consent- FWM's stationary.
- This isn't an isolated case and was reported to the regulator. DG abused his friendship with HY.
- DG worked as an agent for a regulated firm. So in Pi's view any claim should be made either to that firm (for DG's actions) or to the Financial Services Compensation Scheme about HS's action who are in liquidation.
- Pi is taking legal action against DG for acting outside the introducer agreement, advising clients, using the Pi logo without consent and passing himself off as being an adviser of FWM/Pi.

The investigator didn't change his mind and as no agreement could be reached the complaint was passed to me for a decision.

I issued a provisional decision in which I upheld Mr C's complaint. I invited both parties for any further comments or evidence they wanted me to consider.

As requested in my provisional decision, Mr C provided evidence around the current status of his SIPP. He provided a SIPP statement which shows the SIPP is still open and he hasn't made any withdrawals. He had no further comments.

Pi did not respond.

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.

I have received no further comments or evidence which gives me reason to depart from the findings in my provisional decision. I repeat them below.

There's no dispute that DG was involved here. Mr C said it was him who he was in contact with throughout and that he never met HY. There's no evidence who exactly-if anyone- gave Mr C formal advice to invest in Horizon. I haven't seen a suitability report and it's possible that any recommendation was only given verbally. I acknowledge it's quite possible that DG promoted the investment to Mr C given that it was also him who signed the HS papers as a witness. And I consider it's possible that no advice as such was actually given by FWM.

However, based on the evidence I do have I'm satisfied that it's more likely than not FWM knew about Mr C investing in HS and that FWM facilitated the investment. HY signed the adviser declaration and became Mr C's adviser on the SIPP. I can't see any reason for him to do this if he didn't have the intention to assist Mr C with his pension, particularly as Mr C was invested in cash at this point. Mr C said he thought DG didn't have investment permissions and for this reason passed him on to FWM. So there's no indication in my view DG pretended to be an FWM adviser.

It's possible that DG completed the fact find with Mr C, however it's not unusual for an introducer to complete some initial details from the client on behalf of the firm they are introducing to. I have no reason to think this wasn't passed on to FWM.

I've also seen emails between FWM's administrator and HS in October 2015 who refer to applications for someone with Mr C's surname. FWM had a number of clients who were invested with HS at the time. And according to Pi, DG and HY were friends and there was an introducer agreement which had been recently signed. So I see no reason why DG would have needed to pass by FWM in this case after having introduced Mr C to FWM in the first place. FWM had multiple clients who were invested through HS.

I think it's more likely that DG and FWM were working together in arranging investments through HS. Even if FWM weren't giving Mr C investment advice, based on what I've seen they were at the very least helping to arrange the investments.

Mr C was planning to invest in CFDs which are derivatives and complex, so FWM still had to assess whether the investments were appropriate for Mr C in accordance with Chapter 10 of the Conduct of Business Rules (COBS), even if they didn't advise him.

COBS 10.2.1R at the time of the investment set out that firms

'must ask the client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the firm to assess whether the service or product envisaged is appropriate for the client.'

(2) When assessing appropriateness, a firm:

a) must determine whether the client has the necessary experience and knowledge in order to understand the risks involved in relation to the product or service offered or demanded;

The fact find showed that Mr C was self-employed in a manual job with income of around £30,000 a year and that other than his pension, an ISA of £5,000 and £10,000 in cash, he had no other investments. His HS application left the section about understanding and experience blank. There was no indication that he had any significant investment experience, particularly involving anything high risk or complex like CFDs. So I think it fairly obvious the HS account and the intended investments in CFDs weren't appropriate for Mr C.

What should FWM have done?

COBS 10.3.1R stipulated that in this scenario Mr C should have been given a warning. I can't see that FWM provided this.

I also considered COBS 10.3.3G. At the time of the investment it said:

'If a client asks a firm to go ahead with a transaction, despite being given a warning by the firm, it is for the firm to consider whether to do so having regard to the circumstances.'

So even if FWM had given a warning, I don't think they could have then simply carried on arranging the investment. If Mr C still wanted to proceed, they needed to consider whether by facilitating this investment they were acting in Mr C's best interest taking into account all of the circumstances.

Pi have pointed to Mr C's personal responsibility for his decision and actions. And I'm not saying that COBS or the Principles require anyone without experience in CFDs to be stopped from investing this way. However, COBS 10.3.3. acknowledges in my view that there will be occasions where the overall circumstances should result in a transaction being prevented from going ahead.

FWM also had to act in line with the regulator's Principles for Businesses. I consider particularly relevant here is Principle 6 - A firm must pay due regard to the interests of its customers and treat them fairly.

And there is also, at COBS 2.1.1R:

'A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).'

So I think if FWM needed to consider whether it was in Mr C's best interest to facilitate this investment for him.

I think it was clear -or ought to have been clear- that Mr C had no real investment experience or knowledge and that he was about to invest in a complex and high-risk investment. He also had very limited assets and the money he invested was his only retirement provision. So he had no real capacity for loss. Losing his investment would have significantly affected his financial position. If FWM wasn't already involved in previous discussions with Mr C, I would have expected them to probe Mr C further on his understanding about his intended investment and provided their own warnings of risk.

If they had done so, I don't think it's likely that Mr C would have given them any information which could have reasonably persuaded FWM he had a good understanding of what he was investing in. And it likely would have become clear that this was being suggested to him by a third party (assuming FWM wasn't involved in the promotion).

Mr C told his service he was being told (from what I can gather likely by DG) that he would get guaranteed returns of 8%. And that was evidently not the case. Overall, I think in the circumstances, FWM-as the registered adviser on the SIPP and a regulated firm- should not have facilitated the HS investment for Mr C as it was clearly not appropriate for him.

would the investment have happened anyway?

I considered what likely would have happened if FWM had given their own warning why the HS investment wasn't appropriate and if they had refused to arrange the investments.

Even though FWM didn't provide their own warning about the investment not being appropriate, I've seen a copy of a letter by HS which was signed by Mr C in late October 2015 which made it clear that:

- he would be investing in CFDs which were high risk
- it was noted Mr C had no experience in this product and so HS considered the product wasn't suitable for Mr C.

- he could still invest, but he may be exposing himself to risks that fell outside his knowledge and experience

- CFDs were high risk including the risk that he could lose more than the invested amount

More recently Mr C said he didn't think the signature on this document was his. He said he never signed his surname in this way. However, whilst I note that other signatures on documents are different, the signature in his passport for example is more similar to the one on the HS document. It's not unusual for a person to sign their name differently at different times and there isn't enough for me to say someone else forged his signature. I think on balance it's more likely he did sign this declaration.

Given that he still proceeded after receiving this warning, I considered whether a similar warning from FWM would have made a difference to his actions.

On balance, I do think it's more likely it would have triggered Mr C to question whether this was the right thing to do if FWM, as his newly appointed adviser on the SIPP, had also given him a separate warning and ensured he properly understood the consequences and risks of his actions. And if they had told Mr C they were not arranging the investment as they didn't consider it to be in his best interest.

I've also considered the argument that Mr C, likely with DG's help, could have invested his funds directly without any involvement from FWM. And so any warning from FWM and them refusing to assist with the investment might not have made any difference to Mr C's situation. He might have invested in any event-with or without FWM's assistance.

I carefully thought about this. Mr C was in a SIPP and direct investments without advice are of course possible. And I appreciate that Mr C's connection to DG was a lot closer than to FWM. He had known DG for years and had never met FWM. So it's possible that any warnings or explanations from FWM would have had less weight than what DG was telling him. However, as I said above I think if FWM had given appropriate warnings and had refused to assist, I think on balance it would have caused Mr C to pause and rethink his actions.

However, even if I'm wrong and Mr C was still interested at that point, I think it would have been unlikely that the investment would have gone ahead without FWM's involvement.

Some SIPP providers, in line with their own due diligence obligations, will not accept certain business without a regulated adviser being involved. And to my mind there must have been a reason why FWM was involved in the first place. FWM accepted clients introduced from unregulated introducers who subsequently invested in unregulated or high-risk investments, including HS or certain unregulated bonds. And Pi has said previously that it was the introducers who were driving the investments. But nonetheless, instead of these unregulated advisers arranging investments themselves, they introduced them to FWM. Presumingly, to give reassurance to other parties involved that a regulated firm was taking some responsibility for their clients. So I think it's less likely that if FWM as the regulated adviser had refused to be involved in these activities, the investment would have been accepted by the SIPP and/or HS.

Other parties involved

I think it's possible that DG's and HS's actions separately caused Mr C's losses. However, I'm deciding the complaint against Pi. In my view FWM failed in their obligations in line with COBS and the Principles and didn't act in Mr C's best interest. If they had, I think it's more

likely than not Mr C wouldn't have invested in the way he did. So in my view FWM could have prevented Mr C's losses and it's fair and reasonable to require them to compensate him for his losses in full.

If Pi feel that other parties' actions have contributed to these losses, they are free to pursue this directly with them once the paid the full redress to Mr C.

Putting things right

In awarding fair compensation for Mr C's losses my aim is to put him as close as possible to the position he would probably now be in if Pi had acted in line with their regulatory obligations. I think Mr C would have invested differently. It's not possible to say precisely what he would have done. However, I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances when he invested.

To compensate Mr C fairly, Pi must:

Compare the performance of Mr C's investment with that of the benchmark shown. 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. Pi should add interest as set out below**.**

If there is a loss, Pi should pay into Mr C's pension plan to increase its value by the 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 a payment into the pension isn't possible or has protection or allowance implications, Pi should pay that amount direct to Mr C. But had it been possible to pay into the SIPP, 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.

Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this. Income tax may be payable on any interest paid. If Pi deducts income tax from the interest, it should tell Mr C how much has been taken off. Pi should give Mr C 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
SIPP	open	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of this final decision	See below

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. To arrive at the fair value when using the fixed rate bonds as the benchmark, you 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 additional sum that Mr C paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair 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 Pi 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 compensation because:

- Mr C wanted income with some 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 C'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 C's into that position. It does not mean that Mr C 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 C could have obtained from investments suited to his objective and risk attitude.
- In addition, Pi should pay Mr C £350 for the distress he suffered when he realised he had lost the majority of his pension.

Pi should pay interest at the rate of 8% simple per annum on the compensation calculated from the date of my final decision until settlement if it's not paid to Mr C within 28 days of us notifying Pi that Mr C has accepted my final decision.

Details of the calculations should be provided to Mr C in a clear and simple format.

My final decision

I uphold Mr C's complaint and require Pi Financial Ltd to calculate and pay Mr C compensation as 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 14 February 2023.

Nina Walter
Ombudsman