DRN-3903994

## The complaint

Mrs B complains that the advice she was given in 2017 by Capital Professional Limited (CPL), to transfer her existing Self-Invested Personal Pension (SIPP) into an alternative SIPP arrangement, and then invest those funds with a Discretionary Fund Manager (DFM) was unsuitable.

In this complaint Mrs B is represented by a third-party, but for clarity I'll refer to all representations as being made by Mrs B herself.

## What happened

Mrs B had her personal pension funds held in a SIPP and invested in a fixed-term annuity with Liverpool-Victoria (LV). This fund was due to mature in January 2017 with a value of approximately £131,000.

This product had been arranged as part of CPL's ongoing servicing of Mrs B's pension funds, so just before its maturity, in December 2016, a financial review was undertaken of her circumstances and financial objectives. Her circumstances were recorded as follows:

- She was 59 years old and married
- She was retired
- She received monthly pension income from her previous employer of £470
- She and her husband had a joint monthly income of £3,470
- Following normal expenditure, they had surplus monthly income of £1,470
- They owned their own home outright, worth £435,000
- They had joint savings of approximately £100,000
- She had an ISA worth £14,500
- They intended to move house by using their savings and equity in their home to fund this
- Her husband was to retire shortly and begin taking his pension benefits
- She wished to defer making a decision about her pension arrangement until after the house move was complete

It was agreed that the funds within her existing SIPP should be sold and the funds held in a cash account pending any further investment decisions. This was completed by LV.

In order to give Mrs B advice about where she could invest her pension funds, CPL asked her to complete a risk and objectives questionnaire, which she sent back on 27 March 2017. And as a result, on 13 April 2017, a Retirement Planning Recommendations Report was completed by CPL.

Mrs B's key financial objective was recorded as moving her LV funds from cash to an actively managed fund with potential for capital growth. It also listed the following as her specific investment objectives:

- Investments selected from the whole of the market
- Have her investments regularly monitored to ensure ongoing suitability
- Minimise the cost of investment switches/charges
- Minimise administrative paperwork from providers
- Be able to view investment values online
- Be able to assess performance of investments on a regular basis
- Have her attitude to risk (ATR) regularly reassessed to ensure ongoing suitability of investments
- Ensure portfolio remains within her desired ATR
- Have a transparent and simple charging structure
- To be able to change investment strategy without switch charges
- Ensure the investment structure allows the greatest possible protection afforded by the FSCS

The report confirmed Mrs B's ATR as '*Low to Medium'* and her capacity for loss as *'Low'*, and that she didn't require any income from her pension at that time.

The report recommended Mrs B transfer her existing SIPP arrangement into a Flexi-Access Drawdown arrangement within a Nucleus SIPP, and invest her funds in a Managed Cautious Portfolio under a Discretionary Fund Manager (DFM). This advice was accepted in full by Mrs B and the transfer was completed.

Following further advice in 2020 from CPL Mrs B began taking an income from her pension fund.

On 8 April 2021, through her representative, Mrs B complained to CPL. She said, in summary, that the advice to switch her LV SIPP to a Nucleus SIPP was unsuitable because:

- It was unnecessary
- It served to generate unjustified fees
- There was no need for investment flexibility or additional investment choice
- There was no justifiable expectation that the proposed investments within the Nucleus SIPP would outperform the previous arrangement after fees were taken into account.

She requested that she should be given compensation to put her in the position she would've been in had her pension funds remained with LV.

By August 2021 Mrs B hadn't had a response to her complaint from CPL so referred it to our service. But on 18 October 2021 CPL sent Mrs B its final response letter. In it CPL didn't uphold her complaint. It said it had highlighted that the level of income Mrs B was intending to withdraw was unsustainable given the probable fund value and her life expectancy. It also highlighted that if a comparison was made between her current fund value, and that which would've been achieved if she'd remained in LV's cash fund, she had not been disadvantaged and had actually gained by transferring her SIPP to Nucleus. Whilst it did agree there was no justification that the new SIPP arrangement would outperform Mrs B's previous SIPP with LV, this would've been incredibly unlikely given the level of income Mrs B was taking from her Nucleus SIPP. And it maintained that Mrs B was better off having transferred.

Unhappy with this response Mrs B asked our service to investigate her complaint. And having done so our investigator didn't think CPL had acted fairly. She didn't think the advice it had given to Mrs B to transfer to the Nucleus SIPP and enter into a DFM arrangement was suitable. She couldn't see that CPL had demonstrated that Mrs B was likely to be better off under the new arrangement, and hadn't compared the potential growth, nor the level of fees and charges against alternative funds already available within her existing SIPP.

So in order to put Mrs B back as closely as possible to the position she would've been in had her funds been suitably invested within the SIPP provided by LV, and not transferred, she thought CPL should do a loss calculation between the performance of her Nucleus SIPP against a benchmark. And if a loss was identified she told CPL how she thought Mrs B should be compensated for this.

Mrs B accepted the investigator's view, but CPL did not. It asked for the complaint to be assessed by an ombudsman, so it has come to me to make a final decision.

On 9 January 2023 I issued a provisional decision setting out my initial thoughts on the merits of the complaint. I agreed with the conclusions of the investigator, but I set out my initial thoughts regarding my proposed redress methodology and compensation for Mrs B. In my provisional decision I said:

*When assessing the suitability of the advice given to Mrs B by CPL, I have to consider it in light of the information available when the advice was given, and not by using hindsight. I've also looked at it in the context of the rules and guidance in existence at the time.*

*Within the Financial Conduct Authority (FCA) handbook, COBS 2.1.1R, part of the Conduct of Business rules, 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 CPL advised Mrs B were set out in COBS 9. The purpose of the rules and guidance was to ensure that regulated businesses, like CPL, took reasonable steps to provide advice that was suitable for their clients' needs and to ensure they weren't inappropriately exposed to a level of risk beyond their investment objectives and risk profile.*

*COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I consider when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.*

*In 2009 the then regulator, the Financial Services Authority (FSA), published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focused on:*

- *Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?*
- *Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.*
- *Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?*
- *Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put inplace.*

***The advice to switch***

*When considering a case where someone has switched their pension funds to a new provider, the consumer's circumstances at the time must be considered. And in order to make the advice to switch suitable, the switch would need to be in the person's best interests. And in order to be in her best interests, the new arrangement would need to be demonstrably better, in terms of the benefits it provided or was reasonably likely to provide, including potential growth, to that available through her current arrangement.*

*Following their meeting in December 2016, CPL advised Mrs B to temporarily hold her pension fund in cash, pending finding a suitable alternative fund. I consider this advice to be sensible and necessary, given her current arrangement within her existing SIPP was maturing, and because she'd reasonably suggested there was a delay in re-investment due to her personal circumstances.*

*But having considered her overall financial objectives of achieving capital growth whilst remaining within her 'low to medium' ATR, remaining in a cash fund for any extended period wouldn't have been suitable.*

*So I agree that she needed to move her funds out of the cash fund she was in, or in other words go on to make some form of investment. But CPL only made reference in its suitability report to the one alternative arrangement – the transfer to the Nucleus SIPP, with the Flexi- Access Drawdown arrangement and to invest her funds in a Managed Cautious Portfolio under a Discretionary Fund Manager (DFM). It didn't provide any information about other options, nor discuss the option of remaining in her existing SIPP. So as it didn't provide a comparison of the projected growth between the proposed fund choice, and the existing alternatives provided by LV, I can't see how Mrs B would've been able, with the information CPL provided her, to have made an informed choice. Nor that it would be reasonable to expect her to have been able to do this.*

*She already held a SIPP provided by LV, and I've not seen anything which would lead me to think she was unhappy with the service provided by LV. In fact it has been documented by CPL that she was happy with the returns her investments with LV had produced. So I think that had she been given the option by CPL, its likely she would've stayed in her LV SIPP, and invested in a fund which matched her objectives and ATR. And having looked at her SIPP I can see this was possible. She already had access to an extensive range of investment options, many of which that matched her ATR and investment objectives and so would've been a suitable alternative.*

*But CPL didn't give Mrs B any of this information. I can see in its recommendation report that it has recorded Mrs B's key objective was to have her funds 'actively managed' and that wasn't possible with LV. But it appears this was only because LV's funds weren't* *included in CPL's Centralised Investment Proposition. Just because a firm doesn't have a relationship with a SIPP provider doesn't justify recommending a transfer away, especially when that transfer incurs significant cost to the consumer. Mrs B could've remained in her current SIPP and just changed the fund she was invested in, selected from the extensive range available to her. And I think it likely the fees and charges associated with a fund switch within her existing SIPP would've been lower because of the reduced amount of administration required by such a move. I'm also not persuaded she was someone seeking any particular form of more specialist fund that wasn't available with her current provider. So I cannot see any persuasive reason that it was suitable for her to have been advised, without any apparent consideration of alternatives, to transfer from the SIPP she was in with LV, to the SIPP provided by Nucleus, and in doing so incurring the transfer fees.*

*It seems reasonable to me to conclude it's more likely than not that the fees generated for other parties, including CPL for example, were likely to be higher where advice on a transfer is given rather than just further investment within an existing product. And this is before the additional costs associated with the DFM are considered.*

*For clarity the following is what she was charged as a result of the switch:*

*The advice given by CPL incurred a fee, and on this occasion, the transfer fee was 3% of the fund value, which was equivalent to just under £4,000. But in addition to this fee, there were ongoing annual fees associated with the advice and Nuclear SIPP:*

- *1% ongoing adviser fee*
- *a wrap fee of 0.35%*
- *Total portfolio charge of 0.51%*
- *A DFM annual fee of 0.15%*

*This meant, in addition to the initial advice fee, the annual charges associated with the Nucleus SIPP and its fund management totalled 2.01%.*

***Was the fund suitable***

*Having looked at the Managed Cautious Portfolio Mrs B's pension fund was placed into, I agree that this was suitable. I can see it was diverse and it matched her ATR and financial objectives. But I need to decide if it was suitable or necessary to place Mrs B in a DFM service. And to do this I have taken into account the regulator's July 2012 finalised guidance on centralised investment propositions, which says the decision whether to use a DFM or not is likely to need to at least take into account the following issues:*

- *Likely cost: Do the overall costs justify the potential for improved performance*
- *Size of fund under management*
- *Investor's knowledge and experience*
- *Level of disclosure.*

*And having considered these I can't see that the cautious risk rating of the selected fund warranted the regular input of a DFM.*

- *The funds were held in relatively low-risk assets with reduced volatility and modest projected growth. And as there was an on-going adviser fee charged it would be expected that CPL would regularly review the investments in full itself, and this wouldn't represent value for money in combination with the*

*DFM fee.*

- *The fund was modest in value. Mrs B was more likely to have benefited from a regular review by CPL of her range of mixed-asset funds and taking into account anything that might need to be done if she reached a stage where she intended to start thinking about taking benefits*
- *The regulator said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments the DFM might make, and would likely benefit from the regular reports on their investments.*

*I can't see that Mrs B would've benefitted from this at all. She was looking to invest her pension fund in a relatively low risk fund, had little to no experience in investments and was willing to take very little risk.*

*As a result of all of the above, I agree that CPL's recommendation to switch the funds Mrs B held in the SIPP managed by LV, into a SIPP with Nucleus, was unsuitable. I can't say for certain what she would have done, but I think that had Mrs B been given suitable advice, the option she would most likely have selected was to retain her pension funds within the LV SIPP, and she would have invested in a cautious fund, broadly similar to the one she was placed in with Nucleus, but without the services of a DFM.*

*Had the SIPP transfer from LV to Nucleus not happened, she wouldn't have incurred the 3% transfer fee, nor the 0.15% DFM annual fee. But from what I've seen I do think it likely she would've chosen to retain an element of ongoing advice from CPL. I say this because she had an ongoing relationship with them, and had the intention at the time of the advice to take some income from her pension fund at some point in the following few years. So as ongoing advice was likely to have been needed by her, I consider the 1% annual fee charged by CPL to be fair. And in terms of the remaining charges (0.35% wrap fee and 0.51% portfolio charge) I can't say for certain what these would've been had she remained with LV in a cautious fund, but I think it would be fair to say they would've been broadly similar.*

*I'm also satisfied that Mrs B has been caused some distress and inconvenience by being given poor advice to transfer her pensions plan, and having to revise her pension arrangements. I consider the compensation of £250 as suggested by the investigator fair and reasonable in the circumstances.*

In my provisional decision I set out the methodology I thought CPL should use to fairly calculate if Mrs B had suffered any financial loss. I invited both Mrs B and CPL to respond and submit any further additional information or arguments they wished me to consider. Mrs B accepted my findings, and CPL responded to say it had no further submission to make

**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, and in light of there not being any new information submitted by either Mrs B or CPL, I see no reason to depart from the findings in my provisional decision.

**Putting things right**

My aim is that Mrs B should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs B would have remained with her previous provider in the existing SIPP. However, I cannot be certain what fund(s) she would have invested her pension in, other than taking the view that it would have been appropriate for the approach to have been cautious, and broadly similar to the investment approach and fund she was advised to take within the Nucleus SIPP. So overall I think it likely that fund investment performance would've been broadly similar.

However I do think the initial reduction in fund value due to the unnecessary 3% transfer fee meant a loss in initial value and subsequent investment loss from this amount. I also think the reduction of the 0.15% DFM annual fee needs to be taken into consideration.

So in order to put Mrs B back as closely as possible to where she would've been had she been suitably advised, I think CPL should undertake a loss calculation.

**What must CPL do?**

To compensate Mrs B fairly, CPL must:

- Compare the performance of Mrs B's pension with the notional value if there had been neither the initial 3% transfer fee reduction in value, nor the 0.15% DFM annual fees. 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.
- CPL should pay into Mrs B's pension plan to increase its value by the total amount of the compensation. 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 CPL is unable to pay the total amount into Mrs B's pension plan, it should pay that amount direct to her. 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 Mrs B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs B's marginal rate of tax at her selected retirement age, which was likely to have been the current basic rate of tax.
- If there is a fee associated with ceasing the DFM arrangement, then CPL should meet this cost
- CPL should add interest as set out in the table below.

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

| Portfolio name | Status | Benchmark | From (“start date”) | To (“end date”) | Additional interest |
|---|---|---|---|---|---|
| Nucleus SIPP (Managed cautious portfolio) | Liquid | Fund value calculated without the 3% initial transfer fee and ongoing annual 0.15% FDM fees reduction | 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.

**Fair value**

This is what the investment would have been worth at the end date had it produced a return using fund values which had not been reduced by the fees as shown in the table above.

The withdrawals Mrs B made from her fund should be deducted from the fair value calculation at the point they were actually paid so it ceases to accrue any return in the calculation from that point on. To keep the calculations simpler, I’ll accept if CPL total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

I consider this remedy fair and reasonable as the growth her pension fund achieved with the Nucleus SIPP is likely to broadly reflect that which it would’ve achieved had she invested in a similar way with LV but takes into account the unnecessary fees and charges imposed.

## My final decision

I uphold this complaint.

I require Capital Professional Limited to pay Mrs B the amount as calculated above, and in addition pay £250 for the distress and inconvenience it has caused her.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs B to accept or reject my decision before 14 February 2023.

Chris Riggs
**Ombudsman**