DRN-3983770

Financial Ombudsman Service

The complaint

Mr C has complained, through his representative, that Serenity Financial Planning Ltd gave him unsuitable advice to transfer his stakeholder pension to a self-invested personal pension (SIPP). He says there was no benefit in transferring.

What happened

I issued my provisional decision on this complaint on 10 February 2023. The background and circumstances to the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've copied the relevant parts of the decision below and it forms part of this final decision.

"One of our investigators considered Mr C's complaint. He sent his assessment of it to both parties in October 2022. The background and circumstances to the complaint and the reasons why the investigator thought it should be upheld were set out in that assessment.

However to recap, in January 2016 Mr C was contacted by an adviser from Serenity Financial Planning Ltd to review his existing pensions along with his wife's. A fact find was conducted which recorded that Mr C was in his early forties, married, and had two financially dependent children. He was employed on a salary of £21,000 per year and had additional income of £2,400 from a jointly owned venture that he and his wife had set up. He had cash savings of £600. Mr and Mrs C owned their own home valued at £330,000, with a mortgage of £293,000. It was recorded that they had a loan with an outstanding balance of £15,000.

Mr C had said his planned retirement age was 65. He had three pensions at the time of the advice. They were valued at £42,621, £437 and £282.

Mr C was advised to transfer (technically known as a switch) the pension valued at £46,621 to a SIPP. It was invested in the PIA Dimensional Multi Option: Global Perspective 4 portfolio.

The cost for the advice was £810 plus a 0.25% initial platform charge. In addition, there was an ongoing adviser charge of 1% of the fund value annually; an annual platform charge of 0.30%; and annual fund charge of 0.22%. In total the annual charges were about 1.52% of the transfer value.

A Risk Tolerance review was conducted and Mr C scored higher than average. Mr C's Attitude to Risk was agreed as Moderately Adventurous Risk - Category 5 (out of 7).

Mr C's existing fund in the stakeholder pension had the same risk rating (according to the fund fact sheet), and an annual charge of 1% guaranteed maximum.

The reasons for recommending to switch from the stakeholder pension were recorded as:

- *Its charges weren't competitive.*

- *It couldn't facilitate the investment strategy the adviser had recommended.*
- *It reflected the agreed strategy to consolidate Mr C's investments and it would simplify the process of managing them and help keep paperwork to a minimum.*

The investigator referred to the regulator's conduct of business sourcebook (COBS) which contained rules that firms were bound to follow. In particular, he thought COBS 2.1.1 was relevant, which required firms to act honestly, fairly and professionally in accordance with the best interests of its clients. And COBS 9.2.1 which set out the obligations on firms in assessing the suitability of investments.

The investigator also thought the Financial Services Authority's (FSA) checklist for pension switching (the regulator at the time the document was published in 2009) still provided helpful guidance. He said it highlighted key issues it thought should be focussed on which included:

- *Charges - had the consumer been switched to a pension that was more expensive than their existing one(s) or a stakeholder pension, without good reason.*

The investigator said the reasons for the recommendation provided in the suitability report weren't personalised and appeared generic. He said consolidation wasn't achieved, as the adviser recommended that two out of the three pensions stayed where they were.

The investigator acknowledged that the recommended solution had cheaper fund related charges than the original stakeholder pension. However he thought this was somewhat misleading, as it didn't include the 1% ongoing adviser charge. He thought the issue of adviser charging was a key point, because the SIPP provider would only accept instructions for any changes to the fund from an adviser. The investigator said this wasn't mentioned in the suitability report, and he didn't think Mr C would likely have accepted the recommendation if he'd known about it.

The investigator didn't think the ability to self-invest or have access to a greater fund choice were features of the SIPP that were important to Mr C. He said Mr C had left investment management and decision making to professionals. And the investigator thought the existing stakeholder pension provided sufficient choice and diversity of funds.

The investigator also didn't think Mr C had a need for ongoing advice. He wasn't contributing to the pension on a regular basis, had no lumps sums he was planning to add, and as the advice was for a solution that retained its risk profile with automatic rebalancing by the fund managers, there was little need of ongoing advice.

In summary, the investigator didn't think the existing stakeholder pension's charges were uncompetitive. And he thought Mr C's existing funds were appropriate for his risk profile. The investigator didn't think there were good reasons to switch, and he therefore recommended that the complaint should be upheld.

Serenity didn't agree with the investigator's conclusions. It said, in summary, that it thought Mr C (and Mrs C) benefited from the ongoing financial planning and coaching service that they'd engaged with and were happy with up until they decided to terminate it in 2019.

Serenity said Mr and Mrs C had sought its help with their difficult financial situation which could only be resolved over time. It said they knew Mr and Mrs C appreciated the ongoing advice and help given.

Serenity said, in summary:

- *It was evident that Mr C required ongoing support and advice. It felt insufficient weight had been given to the extensive work it had undertaken pre and post advice. It provided details of a number of meetings it had held with Mr C.*

- *It believed Mr C was in a better position after the advice because he was in a lower cost pension and in funds aligned to his risk tolerance; had a greater understanding of financial matters; had a clear cashflow forecast showing their dependence on their pensions and their sustainability. The charges and a charges comparison report were included in the suitability report. His previous fund was invested almost entirely in equities and didn't match his risk profile. It switched Mr C to a more appropriate strategy which matched his risk profile.*

- *It thought the case could set a precedent where a firm couldn't recommend moving to a more suitable product which included ongoing advice charges if the overall cost was higher.*

- *It provided a full explanation of the service it provided, including its process for selecting platforms and investments. It said it undertook extensive whole of market research and due diligence. It said the platform selected was just one of the preferred platforms available to its clients. It offered a range of model portfolios.*

- *Mr (and Mrs) C had six pension accounts. Four were with one provider. It advised Mr C to retain two of his pensions as it wasn't suitable to switch them. Mr and Mrs C wanted their finances simplified. Four plans were switched as a result of its recommendation, simplifying Mr (and Mrs) C's affairs. All their plans were included in the ongoing financial planning service with the financial planner taking responsibility for their oversight.*

- *It referred to the Serenity Client Methodology document which explained it only offered a comprehensive financial planning relationship and didn't provide advice on a transactional basis. The scope of the relationship was a series of three or more meetings ahead of the implementation of any financial product.*

- *Each year it renewed its commitment to Mr C's ongoing financial planning and coaching service by asking Mr C to sign a new Service & Fee Agreement which also confirmed the agreed fee. It provided copies of the signed agreements as evidence of Mr C's commitment to an ongoing service.*

- *Notes from several meetings in 2015 recorded, amongst other things that: Mr and Mrs C felt they needed to get their finances under control and develop a plan for the future; they had unease about the level of credit card borrowing in place which they estimated at £30,000 (a later note on 10 June 2016 said this was actually over £50,000); an explanation was given about why the portfolio recommended aligned with their stated tolerance for risk (using a risk profile questionnaire and considering Mr and Mrs C's need and capacity to accept risk); the implications and cost differences of the recommendations was given and how the fee for ongoing financial planning and coaching would be paid.*

- *Meeting notes from 2017 and 2018 recorded the financial planner had covered areas and support in basic household budgeting; and helped Mr and Mrs C manage their credit card debts; by 3 December 2018 the credit card debts had risen to £64,000, with monthly repayments of £934.*

- *Mr C ended the ongoing financial planning and coaching service in October 2019. His e-mail said "What you have done so far for us has been enlightening to out mindset and hopefully helpful to our pension, but given our limited portfolio, we cannot see any benefit to our future finances in carrying on at this time. Thank you for everything you have done, we really appreciate it." It said this didn't read as someone ready to complain or who had experiences dissatisfaction.*

- *His previous fund was invested 99% in equities and didn't match his risk profile. It switched Mr C to a more appropriate strategy which matched his risk profile. Serenity had considered the other funds available in the existing pension and found only six may have been suitable for Mr C. It provided reasons why it didn't recommend these funds – they weren't aligned to Serenity's investment philosophy or discounted due to either asset allocation or geographic spread. Four were also poor performers over the previous five-year period.*

- *It didn't think comparing the performance of the two funds was appropriate in calculating fair compensation because the original funds presented significantly more risk.*

What I've provisionally 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.

On the one hand the SIPP arranged, in itself, had lower charges than Mr C's existing pension. And I think the new funds recommended were appropriate for Mr C's circumstances at the time. I also accept that the original funds, if looked at as a snapshot in time – and considered in isolation – presented significant risks.

However on the other, although the original pension was invested almost entirely in equities at the time of advice, this would gradually reduce during the years leading up to retirement. So there was a risk mitigation strategy behind it. And Mr C was willing to accept a moderately adventurous risk and had over 20 years to retirement

So I think there were factors both for and against a switch.

The regulator has made it clear that where advice is to switch an investment and additional costs apply, they must be justifiable. As explained by the investigator, the advice to switch resulted in additional charges. Overall the total charges on the new arrangement were about 0.7% higher than the original plan when taking the firm's 1% ongoing adviser charge into account.

I accept that its good practice for clients to regularly review their financial position and investments to ensure they are meeting their needs and are on track. However as explained by the investigator, Mr C had over 20 years to his intended retirement date. And the fund manager automatically rebalanced the fund to ensure its risks were aligned to its risk mandate. So was there a real need for it?

It's clear that Mr C (and Mrs C) did have substantial credit cards debts, and the costs of servicing them were high. Serenity did meet with Mr C on a number of occasions. The meeting notes show that the main point of discussion was the servicing of the credit card debts. And this is consistent with the goals for life document which Mr C had completed in May 2015 which recorded his number one priority was "…to have debts cleared."

The "meeting note and action points" document from 28 July 2017 recorded that:

"The big issue they have at the moment is that they are spending around £780 a month on servicing their credit card debts which doesn't seem to be reducing enormously and as such be (sic) are going to spend some time to see if we can work on this. A key part of this would be to get as much on 0% credit cards as possible to keep the interest down and then look to make inroads into the payments." It went on to record that the total credit card debts were £52,185.

As I've said above, I think there were factors for and against a switch. I think the combination of funds recommended for Mr C which presented less risk were better suited to his circumstances at the time. Although he did have a long period to retirement date, he didn't have a lot of other pension or investment provision to fall back on. The overall costs of the SIPP were higher than the original pension. However I think Mr C did benefit to some degree from the ongoing reviews provided by Serenity.

Taking all the above into account, I don't think it would be reasonable to conclude that the initial advice to switch was clearly unsuitable in the particular circumstances.

However, having said all that, at the time that the initial advice was given the ongoing advice charge was 1%. This resulted in the total charges being 0.7% higher than the original plan. However in July 2017 Mr C agreed to pay Serenity a fixed fee of £823. The value of his plan at that time was £46,959. Serenity has said that Mr C wasn't in a position to pay the fee from his income, so he agreed to pay the fee from his pension.

The £823 was 1.75% of his fund value. In addition, there were also the other ongoing charges (platform and annual fund) of 0.55%. So this effectively meant Mr C was paying charges of 2.3% on his pension. The ongoing advice given was largely about managing the credit card debts. Payments from the pension should relate to advice about the pension. And in any event, charges totalling 2.3% would have acted as a significant drag on performance. Whilst I accept that Mr C signed to agree to the charges, I can't see that its relative costs or its effect on the pension were explained to Mr C.

Serenity has emphasised its holistic approach to financial planning and the services it provides. It was clearly aware of Mr C's overall financial position and his debts. So I think it should have been taking these into account when providing its advice about Mr C's pension.

I don't think Serenity was acting in Mr C's best interests when, knowing of his high debts and his financial difficulties, and on finding he couldn't afford to pay its fees from his income, it arranged for them to be taken from the pension. It would have known this would have a significant affect on its performance and, ultimately, on the level of benefits provided from it. But Mr C could have got help about his debts from other sources and which were free if required, rather than depleting his pension fund from July 2017.

My provisional decision

Accordingly, my provisional decision is that I uphold Mr C's complaint in part.

I intend to order that Serenity Financial Planning Ltd refunds all the ongoing adviser charges paid to it by Mr C from 28 July 2017. Interest at the rate of 8% simple should be added from the date each payment was made to Serenity to settlement date. I've selected this date to reflect that it did provide a service to Mr C, albeit mainly about his credit card debts. But in my view it shouldn't have been using the pension to effectively subsidise largely non-pension related advice from July 2017.

The amount calculated should be paid into Mr C's pension plan, to increase its value by the

amount of the compensation and any interest. Serenity should allow for the effect of charges and any available tax relief.

However Serenity shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance. If Serenity is unable to pay the compensation into Mr C's pension plan, it should pay that amount direct to him. But had it been possible to pay it 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.

The notional allowance should be calculated using Mr C's expected marginal rate of tax at his selected retirement age. I think Mr C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal 20%. However, if Mr C 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%.

I also intend to award Mr C £300 for the distress and inconvenience I'm satisfied has been caused to him by the matter."

I asked Mr C and Serenity to let me have any further evidence or arguments to consider before I made my final decision.

Mr C, through his representative, said he had nothing further to add.

Serenity responded to say, in summary, that it appeared none of the original complaints had been upheld, albeit it accepted that the pension charges shouldn't have been used to fund advice that wasn't for pension provision when its fee increased in July 2017. It said this was a result of its desire to help someone who was in severe financial difficulty. And that part of the fee was for advice about the ongoing suitability of the fund. It requested that I didn't refund part of the fees that it would have received had it maintained its percentage-based fee in force prior to July 2017. It said it would be happy to refund the excess to Mr C's pension.

It also didn't agree Mr C should be paid £300 for upset and inconvenience. It said Mr C received life changing support at a hugely discounted rate and at the end of the relationship Mr C was happy with everything Serenity had done for him. It said it accepted it had made a mistake in taking the fees solely from the pension and not signposting Mr C to free debt advice. But Mr C's representative hadn't made any reference to this and I'd dismissed the representative's accusations of failure. So it didn't think it should pay the £300.

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've seen no reason to depart from my provisional decision that the complaint should be upheld.

Mr C's complaint about the transfer included concerns about the higher charges when the ongoing adviser charges were taken into account. Ultimately, one of the main reasons to transfer is in the hope of building up a higher fund at retirement, and charges are clearly a factor on performance. I accept the increase in charges came later. But my decision to uphold the complaint wasn't just about where the charges were paid from. It was also the extent of the charges, and that they would have been a significant drag on performance. Mr C wouldn't have known about the technical issue with the charges or, likely, their impact, when he ended his relationship with Serenity.

I’ve only ordered Serenity to refund charges from 28 July 2017 to reflect that it did provide a service to Mr C (both before and after that date), albeit mainly about his credit card debts. Serenity has emphasised its holistic approach to financial planning and the services it provides, and it has acknowledged it could have signposted Mr C to free debt advice. So I think Serenity keeping a proportion of the overall fees is fair – the proportion reflected in keeping the fees paid prior to 28 July 2017. I think this is fair in all the circumstances. I also think the £300 is fair. Mr C may have been happy with his relationship with Serenity when leaving it. But as I say, he wouldn’t have known about the charges issue and the impact it would have on his fund. I think he was caused a degree of distress and inconvenience and that £300 is appropriate in the circumstances.

My final decision

My final decision is that I uphold Mr C’s complaint.

I order Serenity Financial Planning Ltd to calculate and pay compensation to Mr C as I outlined in my provisional decision and copied above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 27 March 2023.

David Ashley
Ombudsman