

The complaint

Mrs L complained that her pension plan was transferred into a SIPP without her authority. The transferred funds were held in cash which caused a financial loss for which she would like to be compensated.

What happened

Mrs L became a client of Advizertech Ltd, an appointed representative of The On-Line Partnership Limited (On-Line) in 2016. It helped her to set up a personal pension and an individual savings account (ISA) which was held on a third party platform.

In 2018, she was advised to stop making contributions into the personal pensions as she was in danger of breaching the lifetime pension contribution limit.

In February 2023, Mrs L's financial advisor passed away. She subsequently obtained the login details for the platform where she believed her ISA was held. When she accessed her account on the platform, she discovered that as well as an ISA, she also had a self-invested personal pension (SIPP), which she said she was unaware of. The funds within this SIPP were held in cash, and had been since the Sipp's establishment in August 2020.

Mrs L contacted On-Line Partnership to discuss this and ascertain what had happened. On-Line told her that her late financial advisor had transferred her personal pension to the SIPP on 6 August 2020.

Following this, Mrs L complained to On-Line about the transfer on 10 March 2023. She stated that she was unaware of the transfer and had not given her permission for it. The funds transferred into the SIPP had fallen in value owing to the adviser charges eroding the capital value, which had been held in cash. She also estimated that if her pension funds had been left in the previous pension and not transferred, they would have grown by c£20,000.

Mrs L then transferred the SIPP to another provider later in two tranches on 13 and 14 March 2023.

On-Line Partnership issued its final response to Mrs L's complaint on 13 April 2023. It upheld the part of her complaint relating to the funds being held in cash and said the funds should instead have been invested in the HSBC Global Strategy Balanced Portfolio.

It did not, however, uphold her complaint about the pension transfer itself. It confirmed that Mrs L did authorise the pension switch from her personal pension to the SIPP, and had copies of a suitability report her adviser had prepared for her dated 3 August 2020 and a SIPP application dated 5 August 2020, signed by Mrs L.

On-Line also contended that the transfer was made to meet her financial objectives, which were outlined in the suitability report. These were to consolidate her investments onto one platform, simplifying management and investments. It also said that the charges on the existing personal pension were uncompetitive. The HSBC Global Fund was selected as an investment appropriate to Mrs L's identified attitude to risk.

On-Line went on to say that it considered the initial adviser charges to be justified and appropriate given the advice given to transfer to the SIPP.

It concluded that it should refund the ongoing adviser advice charges and compensate Mrs L for the lack of growth while her funds were held in cash and not invested as they were intended to be. It calculated that this should be c£13,300 and offered Mrs L this amount to settle on a full and final settlement basis.

Mrs L responded back to the final response to reiterate that she had not received the suitability report in 2020 and had not consented to the transfer. She also claimed that she had not signed the SIPP application form.

On-Line Partnership provided a further response to the complaint on 10 May 2023. It didn't uphold her further complaint points that she did not know about the documents which led to the transfer, but again offered her c£13,300.

Unhappy with the response, Mrs L raised a complaint to this service.

Our investigator reviewed the evidence and formed the view that the complaint should be upheld as they felt that the advice given to Mrs L was unsuitable, and that the increased charges associated with the SIPP were disproportionate in relation to any benefits Mrs L would gain from the transfer.

On-Line was unhappy with elements of the view, particularly related to how the redress should be calculated. As it disagreed with the investigator's view, the case has been passed to me to review the evidence again and make a final decision.

One of On-Line's representations was that it felt that Mrs L was likely to be a higher rate taxpayer in retirement. Mrs L has agreed that this is likely to be the case.

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 considering the view of our investigator, I have reached the same conclusion and will be upholding Mrs L's complaint.

Let me explain how I have reached my decision.

There is no disagreement between Mrs L and On-Line that it was inappropriate for her SIPP funds to be held in cash rather than invested in an equity based fund, so On-Line has clearly made a mistake here.

Where there is a disagreement however, is that Mrs L believes that her personal pension should not have been transferred to the SIPP, so the financial loss calculation should be based upon the lost growth in value of that investment. On-Line believes that the transfer from the personal pension to the SIPP was properly authorised by Mrs L, so the loss calculation should be based upon the lost growth as a result of the transferred funds being held in cash rather than invested as recommended by her adviser.

Before I consider the evidence surrounding these arguments, I'll comment briefly on Mrs L belief that she did not sign the SIPP application form and that she was not given the suitability report dated 3 August 2020. I also note Mrs L's concerns about the veracity of the signatures on these documents. I am not qualified to determine whether these are indeed

her signature, but in terms of her complaint, I can reassure her that this issue has no bearing on how I have reached my decision.

Instead, my decision hinges on whether the advice to transfer her pension from her personal pension plan to the new SIPP was appropriate and suitable in the circumstances.

In order to do this, I have to take into account the costs, charges and benefits associated with the transfer and also the extent to which the advice meets Mrs L's financial objectives. The suitability report states that Mrs L's objectives were:

1. *Consolidate your existing investments and pensions where possible so it is easier to manage your investment portfolio and see how it is performing*
2. *Consolidate your pension with your existing ISA on the [X] platform*

While I consider the first objective to be appropriate, the second is more in line with a recommendation, as it implies that only one course of action could fulfil the objective – that of transferring the pension.

The report went on to recommend the following:

I have recommended that you switch the [previous provider] Personal Pension [XXXXXX] for the following reasons:

- *The charges are not competitive*
- *This plan cannot accommodate your needs and objectives*
- *It reflects our agreed strategy to consolidate your investments on the [X] platform. This helps simplify the process of managing them and keeps paperwork to a minimum.*

The charges on the personal pension were 0.76% p.a. of the total investment value of the fund (c£950 p.a.). The charges for the recommended SIPP were a 2% adviser charge for the initial investment (c£2,500) and a total of 0.98% p.a in platform, adviser and investment management charges (c£1,200 p.a). Consequently, I'm satisfied that the charges on the SIPP were higher than those of the personal pension.

Both the previous personal pension and the SIPP provided a death benefit of the return of the funds, although the benefits with the personal pension were slightly higher, reflecting the higher fund value as the adviser charges related to the transfer to the SIPP were deducted from the fund value.

Furthermore, the effect of the higher charges in the SIPP were to reduce the projected value of the fund at her scheduled retirement date by up to c1.5%.

Given this, I'm satisfied that the transfer from the personal pension to the SIPP would have resulted in Mrs L receiving a lower projected fund value at retirement while incurring higher charges. This does not, of course, mean that the advice was necessarily unsuitable if it met Mrs L's objectives. The suitability report describes those objectives as being primarily about consolidating her investments into one place for ease of management. Given that Mrs L only had two investments, however, I'm not convinced that moving her pension savings onto the platform along with her ISA provided any significant benefit to her, particularly as she only gained access to the platform following the death of her adviser. When taken in conjunction with the fact that one of the reasons to recommend the transfer being given as considering the charges on the personal pension as being 'not competitive', I can't see that the advice to transfer to the SIPP was suitable for Mrs L.

Consequently, I'm satisfied that the transfer should not have been recommended and that Mrs L should have remained invested in the personal pension.

Putting things right

It is the aim of this service to ensure that people are compensated to an extent that would put them back into the position they would have been in had the errors the business made not occurred. In the circumstances of this complaint, I think it's reasonable for the calculation of Mrs L's likely financial loss to be based upon the transfer from her personal pension not having taken place.

To do this On-Line should:

- Compare the performance of Mrs L's investment with the notional value if it had remained with the previous provider from the 6 August 2020 until 13 and 14 March 2023, when Mrs L transferred her benefits to another 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.
- On-Line should also add any interest set out below to the compensation payable.
- If there is a loss, On-Line should pay into Mrs L's pension plan with the new provider, 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. On-Line should not pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If On-Line is unable to pay the compensation into Mrs L'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 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 Mrs L won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mrs L's actual or expected marginal rate of tax at her selected retirement age. For the purposes of this calculation, Mrs L has agreed that she is likely to be a higher rate taxpayer at her selected retirement age, so the reduction would equal 40%.
- However, if Mrs L 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 30%.
- In addition, On-Line should pay Mrs L £200 for the distress and inconvenience it has caused her.
- Provide the details of the calculation to Mrs L in a clear, simple format.

Income tax may be payable on any interest paid. If On-Line considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs L how much has been taken off. On-Line should also give Mrs L 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
Personal	No longer in	Notional	6 August	13 and 14	8% simple

Pension	force	value from previous provider	2020	March 2023 (proportionate to the transfer of funds to a new provider on these dates)	per year on any loss from the end date to the date of settlement
---------	-------	------------------------------	------	--	--

Actual value

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

Notional Value

This is the value of Mrs L's investment had it remained with the previous provider until the end date. On-Line should request that the previous provider calculate this value.

Any additional sum paid into the personal pension should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the previous personal pension 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 On-Line totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, or if this cannot be determined using publicly available unit price information On-Line will need to determine a fair value for Mrs L'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:

- Mrs L wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, and the information is not publicly available, then I consider the measure below is appropriate.
- 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 Mrs L's circumstances and risk attitude.

My final decision

For the reasons explained above, I uphold Mrs L's complaint.

The On-Line partnership Limited should pay Mrs L the sums calculated as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 February 2024.

Bill Catchpole
Ombudsman