DRN-4423398

The complaint

Mr C complains, through his representative, that Throgmorton Private Capital Ltd gave him unsuitable advice to transfer his Personal Pension Plans to a Self-Invested Personal Pension (SIPP).

What happened

I issued my provisional decision on this complaint on 5 October 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 it below and it forms part of this final decision.

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Mr C's complaint was considered by one of our investigators. He sent both parties his assessment of the complaint in September 2023. The background and circumstances to the complaint and the reasons why he didn't recommend that it should be upheld were set out in that decision. However in summary, Mr C was advised to transfer his pension plans to the SIPP in 2008. At the time he was in his mid-forties, married, had a salary of £7,000 a year and was taking dividends of around £50,000. He was recorded as having a medium attitude to risk, and was open to spreading his pension across a mix of lower and more speculative risk funds.

Throgmorton recommended that the transfer value of approximately £54,000 be invested:

- *Index Linked Gilts Fund (15%)*
- *AXA Retirement Distribution Fund (20%)*
- *Blackrock Gold and General Fund (8%)*
- *JP Morgan Natural Resources Fund (7%)*
- *AXA Cash Fund (50%).*

Mr C complained about the advice he'd been given through his representative in 2022. Throgmorton didn't uphold the complaint, and Mr C subsequently referred it to us.

Our investigator didn't think the complaint should be upheld. He said although he didn't think that Throgmorton had carried out the advice process itself to the standards required by the regulatory guidance, he was satisfied that, ultimately, its recommendations relating to the transfers were reasonable.

The investigator said that from what he could see the charges on the SIPP that Throgmorton was recommending were lower than the existing plans. And it offered a greater variety of funds. Mr C's existing plans were invested in with-profits, and offered little to no other choice of funds. As Mr C had stated he had a medium attitude to risk and was open to moving his *pensions to a portfolio of low to speculative risk funds, the wider range of funds available allowed him to do this. The investigator said consolidating the pensions would also make them easier to manage.*

The investigator also thought that the funds recommended were appropriate for Mr C at the time. He said 15% were allocated to speculative funds, 35% in medium risk funds and the remaining 50% in cash. He said although having 50% invested in cash might not immediately align with Mr C's attitude to risk, he thought it reasonable given Mr C had expressed concerns about the volatility in markets at that time. He said it was a short-term strategy to preserve a large portion of Mr C's fund, and the plan was to review his investments again in a years' time with a view to switching.

The investigator also considered the guarantees that were offered on some of the pensions Mr C was transferring – three retirement annuity contracts (RACs). He said whilst he accepted they provided good value, he thought given Mr C's attitude to risk, there was a likelihood that the SIPP could have met if not exceeded the value of the guarantees offered.

Overall, the investigator was satisfied that the potential benefits of transferring outweighed the benefits offered by the existing pensions.

Mr C's representative didn't agree with the investigator's findings. It said, in summary, that Mr C was advised to invest in two very high-risk volatile funds from 2008 through to 2017. Combined with the 50% invested in cash, it provided for a very unbalanced portfolio and was unsuitable for the level of investment experience Mr C had.

It said it didn't agree that the loss of benefits from the retirement annuity contract could have been justified at the time the advice was given or their replacement with an unbalanced investment strategy. The representative said it didn't agree the recommendations made by Throgmorton were suitable; the risks taken were not in line with his attitude to risk, and the fact that the fund value increased significantly appeared more down to good luck than good management.

The investigator responded to say that although two funds were high risk they represented only a small percentage of the total amount invested. So if they didn't perform well Mr C's pension wouldn't have suffered a significant loss. He said the cash fund was a short-term option to preserve the pension as Mr C had cited concerns about market volatility. The investigator thought that across the whole portfolio with the potentially protective effects of diversification, Mr C's investments aligned with medium risk. Especially given that Mr C was happy to spread his investments across a range of different risk funds.

Throgmorton didn't provide any further evidence or arguments to consider.

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.

I think at first sight the combination of funds recommended does appear unusual for a medium risk investor – including some higher risk funds and 50% in cash. But as the investigator said, only a relatively small proportion was invested in the higher risk funds. And the documentation from the time clearly shows some thought had gone into the investment strategy to protect a significant proportion of the fund from the market volatility that was prevailing at the time. The transfer didn't go through until a few months later in January 2009. And a decision was made to switch the money from cash into other funds very shortly after the transfer. I think it's clear that some thought had gone into the investment strategy, *and I don't think that strategy in itself was unreasonable for Mr C given his circumstances at that time.*

Mr C transferred four plans in total; a Stakeholder pension and three RACs. The suitability letter refers to the reduction in yield on the SIPP being 1%. However it's not clear to me if that includes the initial charge of £4,295 – which was about 8% of the transfer value. The information that's been provided - the statement of investments dated 8 January 2009 for each of the transfer values - shows a reduction in yield of 1.1% for the £35,138 Stakeholder plan transferred. And for the three RACs it was 1.2% for the £8,316 transferred, and 1.3% reduction in yield on the two other transfer values (£1,261 and £2,447).

I understand the charges on the existing plans were 1%. So this would suggest the charges on the new plan were between 0.1 - 0.3% higher than the existing plans. Having higher charges in itself doesn't mean that a transfer is unsuitable. And here they were only slightly higher. However I think there needs to be a good reason(s) to transfer to a higher charging contract to make a transfer worthwhile.

The RACs provided a guaranteed minimum basic annuity and tax-free lump sum at retirement date. Projections from the time provided figures for the tax-free lump sums that were based on three times the basic annuity. However this had subsequently changed to a maximum of 25% of the fund value at retirement date. The figures weren't based on the 25%, but the basic annuity would have been adjusted upwards to reflect any restriction on the tax-free cash.

In total, the three RACs would have provided as a minimum a basic annuity of £1,632 plus a tax-free lump sum of £4,896 (based on the three times the annuity). These were based on a growth rate of 4.5% - in effect the RACs provided a guaranteed growth rate of 4.5%. Figures were also provided assuming investment growth of 8.5%. These were, in total, an annuity of £3,600, and tax-free lump sum of £10,800.

The illustrations for the SIPP relating to the three RACs projected figures of £1,864 for the annuity and £9,438 tax-free cash in total. This was at the growth rate of 7%. But growth in excess of 8% would have been needed to provide these figures given the reduction in yield was between 1.1 and 1.3%.

Whilst the projections for the SIPP were slightly higher than the minimum guaranteed figures for the RACs, the RACs' minimum figures were based on the lower growth rate of 4.5%. The estimates for the RAC using 8.5%, a growth rate significantly closer to the rate used for the SIPP's figures, provided for an annuity of nearly double that provided by the new plan.

The suitability report recorded that the three RACs were all invested in with-profits funds. And that the Stakeholder Plan was invested:

70% - UK equity
15% - UK equity
15% - European equity

So Mr C had about £40,000 in a Stakeholder pension invested in these three funds. And three RACs with about £12,000 invested in with-profits funds.

Given that a growth rate in excess of 7% was required to match the minimum benefits payable from the three RACs, I can't see there was any significant upside to Mr C transferring given he was a medium risk investor. He was guaranteed to get similar benefits from the RACs at this growth rate, and if the with-profits fund performed well benefits in excess of the minimum, which the SIPP was unlikely to match (given Mr C's attitude to risk).

One of the reasons given for the transfer was that it enabled Mr C to invest in a wider range of funds. But he already had a range of funds available to invest in through his Stakeholder plan. The with-profits funds were themselves invested in a spread of asset classes. So I think Mr C was already well placed – had some minimum guarantees through the with-profits funds, potential to increase the minimum benefits subject to performance, and was exposed to more risks through his Stakeholder pension.

The SIPP did allow a wider choice of investment. Although the SIPP itself may have had cheaper charges than the Stakeholder plan, once all the charges were taken into account the illustrations provided suggest it was 0.1% more expensive. I accept this wouldn't have had a significant impact on the returns.

On the one hand, it may have been that the Stakeholder plan provided a sufficient range of funds for Mr C's needs, and there was no real need for him to transfer from it. However, on the other, I think the existing funds Mr C was invested in through the Stakeholder weren't aligned to his medium attitude to risk – they provided a greater degree of risk. So even if Mr C had remained in that plan he would have needed to switch funds.

As I've said above, I'm satisfied that some thought went into deciding the funds that Mr C invested into following the transfer to the SIPP, and that they were suitable given his circumstances. On balance, I think Mr C did benefit from the wider investment choice following the transfer of the Stakeholder pension in this particular case. But even if I was wrong about that, given the minimal difference in charges - 0.1% - I think the value of the SIPP that is derived from the transfer of the Stakeholder pension provides a fair reflection of what value Mr C could have received when he transferred to another provider in 2017, having been invested in line with his attitude to risk.

So I'm not intending on making an award in relation to the transfer of the Stakeholder plan.

However, for the reasons I've explained above, I don't think Mr C was likely to benefit by transferring the RACs. They provided minimum guaranteed benefits that Mr C was unlikely to improve on following transfer given his attitude to risk. They also provided a blend of benefits when combined with the Stakeholder pension funds/or SIPP funds – some in with-profits with a minimum guarantee and some at risk.

So I'm currently not persuaded that there were good reasons to transfer the RACs to the SIPP. In my opinion Mr C should have been advised to retain the RACs. I think it was always unlikely he would benefit from the transfer given the nature of the benefits provided by the RACs in the context of the degree of risk he was willing to take.

My provisional decision

My provisional decision is that I uphold this complaint in part.

My aim in awarding fair compensation is to put Mr C as far as it's possible back into the position that he would likely have been in had Throgmorton not given unsuitable advice. I think Mr C would have remained in the three RACs. I intend to order Throgmorton Private Capital Ltd to calculate whether Mr C has suffered a financial loss, and if so pay him fair compensation by:

- *Obtaining a notional transfer value for the three RACs from the previous provider as at the date that the benefits were subsequently transferred from the SIPP (which I understand was in March 2017). I'll call this A.*

- *Compare that value with the actual transfer value provided from the SIPP at the date of transfer, but only that part of the transfer value derived from the three RACs' original transfer values. I'll call this B.*

- *If the value of A is higher than the value of B, then Mr C has suffered a loss and compensation is payable. I'll call this C. However if the value of B is higher than the value of A no loss has been suffered, and no compensation is payable.*

If there is a loss - C should be adjusted to allow for an appropriate return on it from the date of transfer in March 2017 to date. I think the FTSE UK Private Investors Income Total Return index provides a reasonable proxy given Mr C's attitude to risk. It's made up of a range of indices with different asset classes, mainly UK equities and government bonds.

Any compensation payable should if possible be paid into Mr C's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't 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, it should be paid directly to Mr C as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr C has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

David Ashley
Ombudsman

I asked Mr C, through his representative, and Throgmorton Private Capital Ltd to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr C's representatives said it had no further submissions to make.

Throgmorton said it had no further information to add.

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 the findings set out in my provisional decision copied above.

My final decision

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

I order Throgmorton Private Capital Ltd to calculate and pay compensation to Mr C as set out in my provisional decision.

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

David Ashley
Ombudsman