DRN-4566279

The complaint

Mrs C complains that IronMarket Ltd trading as IronMarket Group, provided her with poor advice to transfer her personal pension to a Self-Invested Personal Pension (SIPP).

What happened

Mrs C had transferred her previous pension arrangement to a SIPP in 2016. So she was already in a SIPP when Ironwork sent Mrs C a letter in May 2018 saying, in summary, that in order to improve the service it was offering it was adopting a new investment platform provider. It went onto outline the benefits of the new provider and said it wanted its clients to have access to a 'superior offering'. The letter said all Mrs C had to do was sign the forms provided and IronMarket would do the rest.

Mrs C signed the forms and approximately £124,000 was switched to another SIPP provider (the provider of the new investment platform) in June 2018. IronMarket subsequently provided advice about Mrs C's retirement by letter dated 19 July 2018. It recommended that she took 25% tax-free cash and advised on a portfolio of funds in which to invest the residual amount.

Mrs C subsequently complained about the advice she'd been given through a representative. IronMarket didn't uphold the complaint, and it was referred to us.

Our investigator thought that the complaint should be upheld. He noted that IronMarket had said the pension switch had not been effected on a non- advised basis. But the investigator thought this was incorrect – referring to the recommendation in the 19 July 2018 letter. The investigator said at the time of the advice Mrs C was in her mid-fifties, divorced, and earning around £25,000 a year. She was recorded as having a balanced attitude to risk and a low capacity for loss. The investigator said Mrs C was noted as having no savings and £12,000 worth of debt. He thought given Mrs C's circumstances she should have been advised to reduce her exposure to risk. He thought that Mrs C needed to protect the value of her pension. And said that Mrs C could have taken tax-free cash and invested in lower risk funds in her existing pension - there was no need to switch.

The investigator referred to information in the recommendation letter about the charges on the new SIPP. It said there was a 0.56% fund charge, 0.3% platform charge and a 1% advice charge – 1.86% in total. He said the letter didn't provide a comparison of costs with the existing SIPP, and there was no evidence the advice was provided on a lower cost basis. The investigator said the existing SIPP's products and charges schedule detailed no administration charge and a £108 charge for all securities. It said a 0.4% charge applied to all assets on the wealth platform.

The investigator thought that extra product costs had been incurred without good reason. He thought the complaint should be upheld, and went on to recommend how IronMarket should calculate and pay fair compensation to Mrs C.

IronMarket didn't agree with the investigator's findings. It said, in summary, that the letter dated 19 July 2018 wasn't about the switch – it was an entirely separate piece of work relating to Mrs C's subsequent advice about withdrawing her tax-free lump sum from the SIPP. It said Mrs C was sent a letter dated 4 May 2018 detailing an administrative switch to the new SIPP. Mrs C signed and returned the new SIPP's application form. The new SIPP provider confirmed the transfer on 18 June 2018.

It said the investigator was incorrect to find the switch wasn't effected on a 'non-advised' basis. It said it was an administrative switch which didn't require specific advice. It said as such, there was no charges comparison between the new and existing SIPP arrangements. IronMarkets said the investigator had concluded that the new SIPP was more expensive than the old SIPP using an erroneous price comparison drawn from pricing connected to an unrelated transaction – the advice given to Mrs C in July 2018. It said the price comparison in the migration letter (dated 4 May 2018) confirmed the switch resulted in a reduction in both platform and portfolio costs.

There was a further exchange between another one of our investigator's and IronMarket. And then the investigator sent an e-mail to IronMarket on my behalf on 6 February 2024. I said, in summary, that the letter dated 19 July 2018 wasn't about the switch itself, but included advice about the underlying investments. I said the 4 May 2018 letter was outlining the benefits of switching SIPPs.

I said in my view it was all part and parcel of the same transaction. But that in any event, I thought the content of the 4 May 2018 letter was tantamount to regulated advice.

I referred to the Perimeter Guidance in the Financial Conduct Authority's Handbook. PERG 8.28 - Advice or Information - explained how providing information could become advice if there was an element of opinion expressed. PERG 8.28.2 (3) and (4) provided:

3) Regulated advice includes any communication with the customer which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell.

4) A key to the giving of advice is that the information:

is either accompanied by comment or value judgment on the relevance of that information to the customer's investment decision; or

is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision.

PERG 8.28.4 (3) provided:

A person may provide information on a selected, rather than balanced, basis which would tend to influence the decision of the recipient.

And PERG 8.28.6

An explicit recommendation to buy or sell is likely to be advice. However, something falling short of an explicit recommendation can be advice too. Any significant element of evaluation, value judgment or persuasion is likely to mean that advice is being given.

I said I thought there were value judgements in the 4 May 2018 letter, they were persuasive, and influenced Mrs C's decision to switch.

I went on to say that even if the 4 May 2018 letter wasn't providing regulated advice, IronMarket clearly arranged the transaction. This was a regulated activity in itself (Article 25

(1) in the Regulated Activities Order). So I said IronMarket was bound by the regulator's Principles for Business including:

A firm must pay due regard to the interests of its customers and treat them fairly.

And COBS 2.1.1, the client's best interests rule - *A firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

I said IronMarket therefore had a responsibility to consider whether a switch of SIPPs was inappropriate for Mrs C in any event.

I said given Mrs C's low capacity for loss, the *advice* that *was* given in the 19 July 2018 letter wasn't suitable – the investments recommended presented too great a risk for Mrs C's circumstances. So I thought compensation was due from that point in any event. I said I thought the issue was therefore whether compensation should be calculated from the date of the slightly earlier switch.

As I said above, I thought the advice given on how to invest and the SIPP switch was all part and parcel of the same transaction – Mrs C disinvested from her original SIPP and the intention was always to re-invest through IronMarket following the switch. So I thought the date of the switch was the relevant date to calculate compensation.

I said there was some dispute about whether the new SIPP was more expensive than Ms C's existing SIPP. The 4 May 2018 letter suggested the new SIPP was 0.16% cheaper. The charges information sheet for the existing SIPP referred to a charge of £108 on all securities plus a 0.4% charge "on all assets" on the platform. It didn't mention the 0.72% charge referred to IronMarket's letter. I said if the 0.72% 'Portfolio Cost' was incorrect, the original SIPP was cheaper. However I said even if the charges in the letter were correct and the new SIPP was slightly cheaper in itself, once the adviser charges were included Mrs C was paying higher charges overall following the transfer. I asked IronMarket to clarify where the 'Portfolio Cost' charges on the original SIPP were derived from.

In conclusion, I said I wasn't persuaded that the switch/transaction was suitable/appropriate. And I thought fair compensation should be calculated from the date of the switch. I said I intended to uphold the complaint and make an award in line with investigator's recommendation.

IronMarket responded to say, in summary, that it didn't think the advice given in the 19 July 2018 letter was part and parcel of the same transaction. It said the advice given in July 2018 was initiated by Mrs C and was unrelated.

It said the 4 May 2018 letter outlined the benefits of the switch which were a combination of cost savings for a like for like product and improvement in service. It said the reference to "superior offering" was the only value judgement in the letter, so it thought it was an unfair reflection of an otherwise informative, clear and not misleading document.

It said it was unclear why the investments were considered 'too great a risk' when the investment portfolio was matched to Mrs C's risk output in terms of both volatility and risk/return balance. It said Mrs C's capacity for loss was considered in equal measure to the risk assessment outputs and, as capital was required to last through a significant period the investments were demonstrably better at enabling that. It said Mrs C was already investing in the portfolio make up prior to this piece of advice (19th July 2018).

IronMarket said it didn't believe that the new SIPP was more expensive. It said it was cheaper and this was demonstrated in the 4 May 2018 letter. It said the portfolio costs were the cost of the underlying investments aggregated from the charges published and provided by the individual investment companies themselves and were correct. It said the costs weren't higher because of ongoing adviser charges being added as Mrs C was already paying adviser charges on the original SIPP.

IronMarket said it was clear that Mrs C hadn't suffered a financial loss; the portfolio she was invested in returned 10% during the period in question. Further, it said it knew how Mrs C may have invested because she was already invested prior to the advice, and the make-up of that investment was the same as the underlying investments following its advice.

IronMarket said the appropriateness of the switch was considered, and it thought the switch was in Mrs C's best interests.

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.

About a month before the advice Mrs C was given in July 2018 about taking tax-free cash and investing the remainder of her pension, Mrs C had switched from one SIPP provider to another. IronMarket has said this switch was effected on a non-advised basis.

As I set out above, I think what was said in the 4 May 2018 letter was tantamount to regulated advice. IronMarket has said there was only one value judgement in the letter, and finding advice was given was unfair. However I think the whole tone of the letter was to set out the information in such a way as to persuade Mrs C to sign the agreement to move to the new SIPP provider's platform (albeit the 4 May 2018 letter didn't explicitly explain it meant switching SIPPs).

The letter was headed "Action Required" in bold. It said the new platform offered lots of advantages over the existing platform, and that by adopting it IronMarket would deliver a better service. It went onto outline two key areas it would help it improve, including in development of its own model portfolios that it said had outperformed the benchmark and its peers. It said it wanted its client to have access to the superior offering.

I think there was a value judgement and an element of opinion expressed in the letter which was objectively likely to influence and persuade Mrs C in her decision making. In my view the letter amounted to advice.

IronMarket has said that my understanding of the charges was incorrect. And that the charges on the new SIPP were lower than the original SIPP; it said Mrs C was already subject to an ongoing adviser charge on her existing SIPP. The investigator had obtained some information from the original SIPP provider that said it charged 0.4% on the assets held in the portfolio, rather than the 0.72% referred to in the 4 May 2018 letter. That information was generic, and wasn't specific to Mrs C. So her charge may have been different and if Mrs C was already subject to the same annual ongoing adviser charge, I accept that the new SIPP may have been cheaper by the 0.16% as set out by IronMarket. However I don't think this is key to whether the switch was suitable/appropriate.

The regulator has made it clear that it considers in order to suitably advise on a pension switch a firm needs to consider the suitability of the underlying investments to be held in it. I think that naturally follows from the actual nature of the transaction where a client is effectively being advised to sell their assets in their SIPP to move to another SIPP. If the assets in the new SIPP aren't considered, it's difficult to see how a firm can ensure its advice is suitable and in its client's best interests. As I've said, I think the transaction should have been considered in the round with consideration of the underlying assets.

Whilst it doesn't appear that IronMarket considered the nature of the underlying assets at the time of sending its 4 May 2018 letter, it's not disputed that it provided regulated advice in its letter dated 19 July 2018.

The letter recorded that Mrs C's capacity for loss was 'Low'. This was consistent with her financial position – she had no other savings, some debt, and it was noted the pension would form the major part of her retirement plans as it was her sole pension (aside from the State pension). The balanced portfolio Mrs C was recommended to invest in presented appreciable risks. Given her circumstances and her limited financial provision, I don't think she was in position to absorb the types of significant losses those assets could be exposed to, and the resulting impact this could have on her standard of living in retirement. So I'm not persuaded that the advice given about how to invest the pension in the 19 July 2018 letter was suitable.

As I've said, I think the 4 May 2018 letter was tantamount to regulated advice. And that in order to suitably advise on a pension switch a firm needs to consider the suitability of the underlying investments. If, as IronMarket has said, its 19 July 2018 letter was entirely separate and it didn't consider the underlying investments as part of the switch, then I think that was a regulatory failing in itself. And when it did advise Mrs C about how to invest her money in July 2018 the advice was, in my view, unsuitable. So I think any losses resulting from the unsuitable investment flow naturally from the switch – Mrs C should have been advised on suitable investments as part of the switch.

So in summary, I don't think the 'advice' given in either the 4 May 2018 letter or the July 2018 was suitable.

However, as I said previously, even if IronMarket didn't give regulated advice in its 4 May 2018 letter it arranged the switch. This was a regulated activity in itself. So IronMarket was bound by the regulator's rules including its Principles which said:

A firm must pay due regard to the interests of its customers and treat them fairly.

And its COBS rules including 2.1.1, the client's best interests rule - *A firm must act honestly, fairly and professionally in accordance with the best interests of its client.*

IronMarket acknowledged that, if it merely arranged the switch of SIPPs, it was obliged to act in Mrs C's best interests and ensure the transaction was appropriate. I said the advice that was given in July 2018 was all part and parcel of the switch as I understood that IronMarket always intended to advise on the underlying investments in the new SIPP.

As I've said above, IronMarket has said the advice given in July 2018 *wasn't* linked – it was entirely unrelated following a request from Mrs C for advice on taking her benefits. IronMarket had prompted the switch through its 4 May 2018 letter – Mrs C hadn't approached it asking it to arrange it for her own reasons. In prompting then facilitating the switch IronMarket effectively arranged for Mrs C to sell the assets held in her exiting SIPP. If IronMarket wasn't intending on advising on the underlying investment once it had arranged the switch, as I said above, I can't see how it was ensuring the transaction was in Mrs C's best interests or appropriate. And without any plan for the underlying investments in the new SIPP there was clearly the risk of consumer detriment. Taking all the above into account, I think any losses from Mrs C not being invested appropriately in her new SIPP also flow from the regulatory failings in arranging the switch.

So for the reasons I've explained above, in my view, whether the switch was advised or arranged by IronMarket, it failed to meet its regulatory obligations.

However, having said all that, my understanding is that Mrs C made several withdrawals from the SIPP and then closed it in November 2019. IronMarket provided a graph showing the performance of the balanced portfolio which Mrs C was invested which appears to show around a 10% increase in value from around the time the funds were re-invested. It appears that Mrs C's portfolio may well have performed better than the benchmark index used for comparative purposes. So it might well be that Mrs C hasn't lost out financially in any event, but that will only be confirmed with an actual loss calculation.

Putting things right

In deciding on fair compensation, my aim is to put Mrs C as close as possible to the position she would probably now be in if IronMarket had acted in accordance with its regulatory obligations.

I think it should have provided Mrs C with suitable advice. And if it had done so I think Mrs C would have invested differently. It's not possible to say precisely what she would have done, but I'm satisfied that what I have set out below is fair and reasonable given Mrs C's circumstances and objectives when she invested.

To calculate and pay fair compensate (if it due) to Mrs C, IronMarket Ltd should:

- Compare the performance of Mrs C's investment with that of the benchmark shown below. 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 then there is no loss.

- It should add any interest set out below to the compensation payable.

- If there is a loss, IronMarket should pay into Mrs C's pension plan 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. IronMarket shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If IronMarket is unable to pay the compensation into Mrs C'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 calculated at the appropriate date 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 C won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mrs C's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Mrs C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs 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%.

- Pay Mrs C £150 for the distress and inconvenience caused by the matter.

- Provide details of the calculation to Mrs C in a clear, simple format.

Investment	Status	Benchmark	from ("start date")	to ("end date")	additional interest on the compensation
New SIPP	Closed	For half the Investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of switch to new SIPP	Date SIPP was closed	8% simple interest per annum from the date Mrs C closed her SIPP to the date of settlement

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, IronMarket 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. And apply those rates to the investment on an annually compounded basis.

Any withdrawal from the SIPP 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 are a large number of regular payments, to keep calculations simpler, IronMarket can total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- In making her complaint Mrs C has said she had a low attitude to risk. I accept this is inconsistent with her recorded attitude to risk at the time of the transaction. However it is consistent with her circumstances and low capacity for loss also recorded at the time.

- 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 their 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 think the 50/50 combination represents a reasonable proxy for the degree of risk that Mrs C’s circumstances made it suitable for her to take. It does not mean that Mrs C would have invested 50% of her 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 Mrs C could have obtained from investments suited to her circumstances.

My final decision

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

I order IronMarket Ltd to calculate and pay any compensation due to Mrs C as outlined above under “Putting things right”.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs C to accept or reject my decision before 29 March 2024.

David Ashley
Ombudsman