

The complaint

Mrs C's complaint is about Radcliffe & Company (Life & Pensions) Limited and the transfer process carried out by it when she transferred her defined contribution employer scheme. And upon completion of that transfer, she says it failed to invest her funds leaving them in cash for approximately seven months.

What happened

Our investigator set out a detailed explanation of the circumstances apparent in this case. Neither party has disputed these circumstances, although Radcliffe disputes the conclusions of the investigator. I've included an amended copy of the investigator's background and findings below to set out the context of this complaint.

Mrs C told us:

- She met with a Radcliffe adviser in September 2020 to discuss moving her workplace pension, a defined contribution scheme, as she was shortly due to retire.
- The intention was that she would be going through the same process as her husband, an existing Radcliffe customer.
- Mrs C felt she had been through an advised process, as she'd been questioned about things such as her attitude to risk and fund choices.
- She feels the adviser didn't follow the required FCA processes as they didn't carry out the necessary research or produce a suitability report.
- Mrs C maintains she did not choose the investments that her new policy was to be invested in.
- The policy was transferred to a Self-Invested Personal Pension with @SIPP but Mrs C thinks the adviser from Radcliffe failed to follow her subsequent investment instructions once the SIPP was in place.
- This meant the @SIPP policy remained invested in cash for approximately seven months.
- Mrs C estimates she lost in the region of £29,080 as of the date that she brought the complaint to our Service.

Mrs C wants Radcliffe to apologise for their conduct and the unprofessional service they provided. She'd also like them to compensate her for the loss of investment opportunity with interest and pay her £500 for the distress and inconvenience caused.

The investigator considered the following key issues:

- Was the transfer of the workplace pension to the @SIPP policy carried out as part of an advised process?
- Are Radcliffe responsible for the losses that Mrs C believes she's suffered.

Mrs C and Mr C met with the adviser at Radcliffe on 4 September 2020 having completed an initial fact find on 12 August 2020. At this stage, Mrs C wasn't sure what to do with her

existing policy.

All parties have said that, as Mr C was an existing Radcliffe customer, the intention was to mirror some of the steps that he'd taken with his policy some years previously. However, it was clear that Mrs C also wanted to take some of her tax-free cash entitlement.

Mrs C says that during the meeting, the adviser discussed risk profiling, fund choices, policy providers and the transfer process from the workplace pension to a SIPP. At this meeting, Mrs C also completed a letter of authority for Radcliffe to be appointed as her financial adviser.

Having gone through the process, a policy with @SIPP was opened on 21 September 2020. This was completed on a 'direct client' basis with the process of transferring funds from the workplace pension beginning two days later.

The letter of authority completed at the earlier September meeting was submitted to @SIPP on 16 October 2020 and Radcliffe were appointed as advisers to Mrs C.

The funds from the workplace pension were received to the @SIPP policy on 2 November 2020 and a member pack was dispatched to both Mrs C and Radcliffe as her now financial advisers on 11 November 2020. This noted that the funds transferred would be held in a account in the name of the trustee until investment instructions were received.

On 1 December 2020, Mrs C accessed a lump sum from the pension. According to Radcliffe's case file, there then appears to be an unexplained delay of around seven months for the initial investment with no activity on either side.

The information shows Radcliffe submitted application forms for the cash holdings within the @SIPP policy to be invested in funds with HSBC and Vanguard on 22 June 2021. After this, there were repeated administrative issues with both funds as the minimum investment criteria wasn't met for the HSBC fund and only the Vanguard investment progressed sometime later on 26 July 2021.

Because the investment in the HSBC fund didn't meet the minimum criteria, it was deemed ineligible, and was replaced by an application for an investment with Embark on 26 July 2021 with further administrative issues delaying the start of the investment.

On 12 August 2021, Radcliffe emailed @SIPP explaining the Embark investment wouldn't be going ahead as Mrs C had decided to transfer away from @SIPP entirely.

Mrs C opened a new policy with Advance by Embark and whilst the liquid funds previously earmarked for the HSBC investment were transferred promptly, there were further prolonged issues in releasing the funds from the Vanguard investment. Radcliffe recognised there were delays and asked for the payment process to be expedited.

As Mrs C's advisers, Radcliffe initially logged a complaint with this Service against @SIPP on Mrs C's behalf. This complaint didn't progress as Mrs C didn't feel @SIPP were to blame. Instead, she chose to register her complaint against Radcliffe.

Mrs C explained she'd since reconnected with a previous financial adviser and having explained the situation with Radcliffe – this adviser looked into the opportunities for investment. Based on when and how they believed Mrs C would likely have invested her funds, they estimated she'd likely suffered an investment loss of £29,080 from the transfer of the policy to the @SIPP to the date on which the case was referred to our Service on 21 April 2023.

The investigators findings:

Was the transfer to the @SIPP policy carried out as part of an advised process?

Mrs C has described the level of detail Radcliffe went into when discussing the plans for her workplace policy, including the customer fact find and risk assessment that were completed.

Whereas Radcliffe have confirmed that the transfer was completed on a non-advised, direct client basis and they believe information from the policy provider @SIPP confirms this.

The investigator considered both positions and said it was understandable Mrs C felt she'd undergone an advised process, not least because matters such as her attitude to risk were discussed. And Mrs C maintains she didn't choose the resulting @SIPP policy.

Radcliffe has explained that Mr C was an existing customer of theirs and the initial intention was that Radcliffe would take on Mrs C as a client on similar terms. But they maintain that the initial transfer was to be carried out on a non-advised basis with the intention that Radcliffe would then later be appointed advisers for the purpose of conducting annual reviews to see how the new policy and investments had performed.

The investigator said he was aware Mrs C's proposed transfer was from an existing DC scheme and had no guaranteed benefits. This meant that she wasn't obliged to seek financial advice relating to the transfer.

He said nonetheless, there was significant transfer value, and Radcliffe have told us they offered and outlined the benefit of financial advice. Radcliffe has said this option was discounted by Mrs C on account of cost and the time it'd take.

Whilst a letter of authority was completed in that initial meeting, Radcliffe has explained it wasn't submitted until after the @SIPP policy had been arranged. Again, they've told us, the original intention was that Radcliffe would act as Mrs C's adviser when it was time for the proposed annual reviews, when Mrs C could see the performance of her investments and potentially make changes to her holdings.

Mrs C told the investigator (and appears to have said something similar to Radcliffe) she'd been interested in taking tax free cash as a lump sum from the policy which she did in December 2020 and again in July 2021.

Regarding the choice of investment – Radcliffe said they referenced the providers they usually work with particularly as some of these would've enabled discounted terms to be used. Radcliffe maintain no specific recommendation to transfer was made – therefore, the process was non-advised.

The investigator said the fee paid by Mrs C to Radcliffe of £155 adds weight to the fact this wasn't a full advice process. As this would usually carry a significantly higher fee.

He understood the process may have felt more in depth than the usual non-advised process but he'd seen nothing to suggest that the individual suitability of the @SIPP policy was assessed and recommended to Mrs C and he thought it more likely it was suggested as a provider that Radcliffe worked alongside.

@SIPP wrote to Mrs C detailing the fees she would pay for the non-advised set up of the policy on 22 September 2020 approximately six weeks before the funds were received into the new policy.

The investigator said crucially, on the @SIPP application form, the arrangement has been completed on a direct client basis, rather than arranged through Radcliffe – and no charges have been taken for an advised process. These can be significant and if Radcliffe had given Mrs C, specific, tailored financial advice, he'd have expected them to have charged accordingly.

On balance the investigator thought it likely that Radcliffe, gave Mrs C the choice of what level of service she'd receive. And Mrs C chose a non-advised process.

Are Radcliffe responsible for the loss of investment opportunity?

Mrs C, with the help of a new financial adviser, has quantified the loss of investment opportunity and has suggested that because her investments within the HSBC Global Strategy Balanced Portfolio and the Vanguard Life Strategy Equity Account didn't begin on the 2 November 2020 -and were left in cash until mid- 2021, she has missed out on investment gains of about £28,090.

The transfer from the workplace pension began on 23 September 2020 and funds were received into the @SIPP policy on 2 November 2020. A member pack which gave the policy details was dispatched to both Mrs C and to Radcliffe on 11 November 2020.

Despite the transfer being non-advised, there's a completed letter of authority to show that Mrs C had been taken on as a Radcliffe client. This was submitted after the transfer was organised and Radcliffe were appointed as her advisers on 16 October 2020.

By the time the pension transfer had been finalised and the funds received, Radcliffe were Mrs C's appointed advisers. So, the investigator felt they then became responsible for acting upon her investment instructions. He said this is further evidenced by Radcliffe sending a disinvestment instruction to @SIPP so that Mrs C could take her tax-free lump sum.

The member pack sent by @SIPP on 11 November 2020, explained the position of the transferred funds stating: all money from your plan will be held in a bank account, in the name of the trustee, until we receive investment instructions from you.

Radcliffe has sent us a copy of their letter to Mrs C dated 8 December 2020, they wrote enclosing the HSBC and Vanguard application forms, advising these would need completing and signing before any funds could be invested and that the adviser would ensure these were fully completed before being returned to @SIPP.

The investigator said this letter suggests Radcliffe was overseeing the investment, they'd supplied a prepaid envelope and the forms were to be checked by their adviser before they were sent to the provider.

Therefore, on balance, the investigator wasn't persuaded by their repeated stance that they were not involved, or that Mrs C's imminent investment was nothing to do with them. Mrs C told us categorically that these forms were completed and returned to Radcliffe and yet Radcliffe has emphasised on more than one occasion they heard nothing further and were not in possession of the completed applications. They say they next heard from Mrs C in June 2021.

The investigator said it's difficult to say with certainty whether Radcliffe did receive the completed applications. But they had shown a conscious awareness of the investment. So, if they were not involved in Mrs C's imminent investment, it's difficult to see why they'd need forms back and intended for the adviser to check them. And if they'd heard nothing further, a courtesy call to check with their client was needed.

And he said there was evidence that pointed towards the fact Radcliffe did receive the forms. The complaint raised by Radcliffe on Mrs C's behalf against @SIPP logged at our Service said *'we gave the company an application pack asking for funds to be invested immediately into a fund, however this was not done, and they did not write to us informing us that the action was not done and the funds were sat in cash for a considerable time.'*

This suggests a significant delay which the investigator believed to be between December 2020 and June 2021. As he'd seen the regular emails passed between Radcliffe and @SIPP from June 2021 onwards.

As demonstrated by their letter of 8 December 2020, there'd been a clear awareness of the instruction and as suggested in the other case's complaint form, a suggestion this had indeed been submitted to @SIPP by Radcliffe.

Radcliffe were also able to submit to our Service Mrs C's original investment application forms as part of their submission in July 2023. And in the investigator's conversation Radcliffe stated they wouldn't have submitted these application forms to @SIPP in June 2021 as they'd have been considered out of date having been physically signed seven months earlier.

The Letter of Authority sent by Radcliffe to @SIPP signed by Mrs C said In respect to all policies detailed below in parts C or D. I/we understand that this will involve the ongoing authority for my/our new adviser to:

- *'Obtain policy information and request the transfer of servicing rights*
- *Be responsible for giving financial advice*
- *Provide ongoing servicing in respect to all policies detailed below in parts C or D.'*

Radcliffe has been adamant that the delay on the investment wasn't their responsibility, but the investigator said he'd seen enough evidence to conclude they were aware of Mrs C's intention to invest as it featured in the initial meetings, and they wrote to her to ensure she was aware of what needed to be done when the transfer had completed.

Added to this, they'd asked Mrs C to complete a letter of authority, so she was a client of theirs as far as @SIPP were concerned.

Radcliffe has suggested that Mrs C was a client of theirs solely for the purposes of an annual review. Their Terms of Business, signed by Mrs C on 4 September 2020 state:

We will agree and confirm the frequency and timing of those reports based on your needs. The extent of any ongoing review will be determined by your needs We will also make arrangements for all your investments to be registered in your name unless you first instruct us otherwise in writing. We will forward to you all documents showing ownership of your investment as soon as practicable after we receive them;

Radcliffe have supplied email threads and chasers from June 2021, showing their increased levels of involvement once the mistake and the delay had been highlighted.

The investigator said he'd seen nothing to suggest that their terms had changed or that Mrs C was now a different type of client. If this matter had truly been Mrs C's sole responsibility, the investigator said he didn't understand why Radcliffe went to these lengths to finalise the investment details if this wasn't a service she was entitled to.

Overall, the investigator was persuaded that Mrs C expected Radcliffe to complete the process of these investments on her behalf. So, he concluded Radcliffe was responsible for Mrs C's investment remaining in cash.

Mrs C agreed with the findings of the investigator.

Radcliffe did not and it said in response there was a lack of a formal client relationship at the time of the alleged negligence. Which effectively removed the need for the client to pay a fee for their services, yet we'd still placed full burden on them to act for the client. And therefore, it disagreed with the investigator's findings.

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 agree with the investigator's findings and for the same reasons.

It's not necessary to discuss Radcliffe's responsibility for the transfer as Mrs C has accepted the investigator's findings in relation to this. That it was ultimately a non-advised sales process and therefore Radcliffe is not responsible for the transfer.

However, Radcliffe has disagreed with the investigator's findings in relation to its responsibility to make sure Mrs C's investment instructions were put in place. Given the evidence set out by the investigator – and this has not been disputed – I cannot reasonably see how Radcliffe isn't responsible.

It's said there was a lack of formal client relationship, but Mrs C had signed its terms of business on 4 September 2020 which agreed it would *'make arrangements for all your investments to be registered in your name unless you first instruct us otherwise in writing. We will forward to you all documents showing ownership of your investment as soon as practicable after we receive them;'*

And it submitted a letter of authority (signed by Mrs C on 4 September 2020) to the SIPP provider on 16 October 2020 well before the transfer completed which said *'I/we understand that this will involve the ongoing authority for my/our new adviser to:*

- *Obtain policy information and request the transfer of servicing rights*
- *Be responsible for giving financial advice*
- *Provide ongoing servicing in respect to all policies detailed below in parts C or D.'*

At the point of alleged negligence, as Radcliffe has put it, it did have a formal client relationship with Mrs C, she had agreed to its terms of business and it had submitted a letter of authority to her SIPP provider setting out it was responsible for the ongoing servicing of the policy. How and when it took its fee is its prerogative but its position that it was only really responsible for Mrs C as a client once a year had passed isn't supported by the evidence. Furthermore, as the investigator pointed out, its actions don't support its position that it was not responsible for the implementation of Mrs C's investments. And I say this in relation to both before and after the failure to invest occurred.

Looking at this at a basic level, Radcliffe was aware of Mrs C's investment plans, it had been in contact with her and was aware of the situation, it had been receiving information from the SIPP provider, it had involved itself in the bringing about of Mrs C's investments when it sent Mrs C the forms to fill in to complete this action and it is a professional firm with the obligation to act in their clients' best interests. With that in mind, when as it says it didn't receive a response from Mrs C (although the evidence doesn't support this) it should at the very least have contacted Mrs C to chase this or find out what had happened. Had it taken this very simple action which I think is the minimum you'd expect of a professional firm in this situation, Mrs C's funds likely wouldn't have remained uninvested.

Radcliffe has said this was during the second lock down in December 2020 and therefore Mrs C may have had some concerns over proceeding and may have not replied for this reason. Or there is also the possibility that given issues with covid 19 documents may have gone undelivered or been lost. However, again had it acted fairly and reasonably I think it ought to have contacted Mrs C and I've got no reason to believe that Mrs C had changed her mind. Radcliffe had been expecting Mrs C to return the forms, when and if it didn't receive them it ought to have chased Mrs C. It sent Mrs C a letter on 8 December which said:

'Dear Mrs C...,

See enclosed application forms which require your signature before funds can be invested. Therefore, please can you sign where marked and return in the pre-paid envelope. redacted will make sure these are fully complete before we return them to @SIPP. Yours sincerely...'

Its argument is Mrs C wasn't a client of theirs but the agreed terms and signed documents suggest otherwise, as does the above letter. And by getting involved as above, I think Radcliffe made it their responsibility. And in doing so I think Mrs C quite understandably thought it was Radcliffe's responsibility as well. I appreciate Mrs C did carry out the transfer on a direct basis seemingly to save costs and did make withdrawals without its involvement. However, it did get involved in the investment implementation and it had agreed terms with Mrs C to this effect. Ultimately had it acted fairly and reasonably I think Mrs C wouldn't have been left in cash and the investments would've been made in a reasonable timescale. I therefore uphold the complaint on this point and require Radcliffe to put things right, as set out below.

Putting things right

The investigator concluded that the Vanguard investment could've been in place by 20 January 2021 and the investments made within the Embark platform by 27 January 2021. Neither party has disputed the reasoning behind these dates but to simplify the calculation I intend to bring the start date forward for the HSBC investment so that the calculation is based on investment on 20 January for both funds.

The investment in the HSBC Global Strategy Balanced Portfolio wasn't made until much later in April 2022 and whilst on the Embark SIPP platform. This was due to errors in the investment instructions but it's clear at a later date Mrs C was able to invest in the intended fund so I agree with the investigator this should be brought forward to an earlier date.

The Vanguard investment was made whilst still with the original SIPP provider and was transferred in-specie across to the Embark SIPP before going to Aviva under the advice of the new adviser on date 28 February 2023. So I think this should be the end date for the calculation and it should be brought up to date by applying a rate in line with the actual performance of the Aviva portfolio to the date of this decision. Mrs C's financial adviser has

been able to provide us with a snapshot of the platform showing the growth to date of the funds and so it will be possible to do this as at the date of this decision and to apply this rate to any loss found in the calculation.

Both investments should be made on a 50% of SIPP value basis, so 50% of the SIPP value on 20 January 2021 should be used for the Vanguard Investment and the remaining value should be used for the HSBC Global Strategy fund. This should then be run until the transfer date to Aviva of 28 February 2023. And any loss to be brought up to date as set out above.

The result of this calculation will be that Mrs C will either have suffered no loss or she will be put back into the position she would've been in if these investments had been made on these dates. I note Mrs C has moved to a new advisory firm and so Radcliffe's ability to attain the required information to carry out this loss calculation may be hampered. Therefore Mrs C and her new adviser will either need to provide the necessary information or give Radcliffe the necessary authority to get this information. In the interests of completing this loss calculation in time I suggest Radcliffe start this process immediately.

Fair compensation

My aim is that Mrs C should be put as closely as possible into the position she would probably now be in if Radcliffe had acted fairly.

I take the view that Mrs C would have invested as I've said below. So I'm satisfied that what I've set out below is fair and reasonable given Mrs C's circumstances and objectives when she invested.

What must Radcliffe do?

To compensate Mrs C fairly, Radcliffe must:

- Compare the performance of Mrs C's actual investment with that of the benchmarks shown below.
- Radcliffe should also add any interest set out below to the compensation payable.
- Radcliffe should pay into Mrs C's pension plan to increase its value by the total amount of the compensation and any interest. 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 Radcliffe is unable to pay the total amount 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 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 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 to Mrs C £400 for distress and inconvenience caused by finding out her investment hadn't gone ahead and the likely ramifications of this in terms of her loss. I think this will have come as a shock to Mrs C and caused her distress.

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

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Mrs C's SIPP	Transferred into new arrangement	50% of SIPP Invested in the Vanguard fund on 20 January 2021 remaining value invested in the HSBC fund	Date of investment	Date of transfer to Aviva. The loss then needs to be brought up to date using a return based on the performance of the Aviva plan to the date of this decision.	8% simple per year from date of 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 paid or 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.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investment 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Radcliffe totals all those payments and deducts that figure at the end.

My final decision

I uphold the complaint. My decision is that Radcliffe & Company (Life & Pensions) Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 19 April 2024.

Simon Hollingshead
Ombudsman