

The complaint

Mr F complained that he has suffered a financial loss as Carey & Johnston (CJ) provided inappropriate advice to invest money into a self-invested personal pension (SIPP). He believed that he was put in a position where he had to make investment decisions when he was not in the right state of mind.

He was also unhappy with the fees he was charged and did not realise that he was paying a charge for ongoing advice and felt that CJ did not act quickly enough on instructions to change his investments into cash.

He would like to be compensated for any financial loss he has suffered as a result.

What happened

Mr F first met with CJ in June 2019, looking for advice regarding the investment options for some money he was due to receive from his ex-wife's pension scheme. During the process of reviewing his circumstances his attitude to risk was assessed as low to medium risk. It was also highlighted that he did not wish to take immediate income from this investment and had a six to ten year view on when he was likely to want to take benefits. It was also discussed that he was anxious about potential losses although he had a capacity for loss owing to other defined benefit pensions and investments he held. He was not in good health and he was waiting for some test results to assess his health condition. As a result of this assessment, CJ advised him to set up a SIPP, with the intention of possibly taking tax free cash for a property purchase and entering drawdown in six to ten years.

He followed the advice he was given and set up a SIPP in September 2019, accessing 25% of the total as tax free cash. Mr F was sufficiently concerned about investing into stock market based investments that he asked CJ to leave 25% of the money in cash, with the remaining 50% being invested in a fund with a low to medium risk rating.

Mr F and CJ had a number of meetings throughout 2020, 2021 and 2022 to review his overall financial situation, including his DB pensions and the effect of the covid pandemic. In March 2020, CJ moved a further amount of Mr F's pension benefits into cash. Discussions relating to making some equity re-investment took place throughout this period, but on 23 September 2022 Mr F instructed CJ to move the remaining benefits into cash as the value of his funds had fallen following the budget.

In November 2022, Mr F ended his relationship with CJ and transferred his SIPP to a 5 year fixed term retirement plan with a guaranteed return that does not require income to be taken. He believed that CJ should have recommended this type of investment to him rather than a SIPP based upon his circumstances and attitude to risk.

On 16 May 2023, Mr F complained to CJ about the advice to invest in a SIPP, about the charges he had incurred for advice and that he felt it had not moved his assets into cash quickly enough to avoid losses.

CJ issued its response to Mr F's complaint on 22 June 2023. It rejected his complaint points, saying that while it sympathised with his situation it had provided a thorough review of his circumstances and financial objectives and discussed the main options available to him before recommending the SIPP. It noted that interest and annuity rates were very low at the time, so that these were not considered to be suitable investment options.

It also detailed the ongoing reviews of Mr F's financial situation throughout 2020, 2021 and 2022 and provided a timely response on each occasion it was asked to move funds into cash.

In terms of the fees that Mr F was charged, CJ explained how the fees had initially been explained to Mr F in August and September 2019 and also said:

I made it clear on several occasions that you could discontinue our ongoing advice, and I left that decision with you as to whether you wished us to terminate your ongoing fee. This would have allowed you to come back to us at any time when you wished to have a review. I then wrote my recommendation letter which clearly states that you could switch the charges off at any time. Following that letter itself, we yet again discussed this by phone and you said to leave it as it was.

CJ have said it operated with the best understanding of his wishes throughout the advice process and believed that Mr F understood the risk that any investment may fall, as well as rise, in value.

Our investigator reviewed the evidence and formed the view that the complaint should not be upheld. CJ accepted their findings but Mr F did not and so the complaint has been passed to me to make a final decision.

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 reviewed all the evidence in this case, I agree with our investigator and do not uphold this complaint.

I can appreciate how difficult this situation must have been for Mr F and thank him for explaining his personal circumstances to us. I also fully appreciate how disappointing may be to Mr F, so I will try explain how I have reached my decision.

Firstly, I think it's important to reflect upon the role of this service. Our role is to impartially review the circumstances of a complaint and make a decision on whether a business has made errors or treated a customer unfairly. While I can fully appreciate and sympathise with Mr F's circumstances and his resultant nervousness relating to his financial situation, to uphold his complaint I would have to be satisfied that CJ had indeed treated him unfairly or made some other errors in its dealings with him.

Having said that, I'll cover each of Mr F's complaint points in turn.

The first, and most significant point to address is the suitability of the advice CJ provided to Mr F to invest in a SIPP, and the investments that it held. When doing this, I have to take into account Mr F's articulated financial objectives and his attitude to financial risk, and assess how well CJ's recommendations met these.

From the recommendation letter CJ sent to Mr F on 2 September 2019, I can see that Mr F was assessed as low to medium risk in his outlook. It was noted that he had other sources of potential income including two defined benefit (DB) pensions, would be able to access his state pension at age 66 and wanted to invest the pension funds available to him with a six to ten year time horizon.

Given this, I think that a SIPP was a reasonable recommendation, offering a good degree of flexibility. I can see that the option of a stakeholder pension was considered and rejected as it offered a much lower degree of investment opportunities than the SIPP and also:

Stakeholder plans do not offer the facility to withdraw funds using Flexi Access Drawdown. Since this is almost certainly how you will take tax free cash and income over time in the future, the Stakeholder model is not suitable.

Looking now at the investments that CJ recommended, I can see that the fund it proposed was assessed as medium to low risk, in line with Mr F's attitude to investment risk. It was also noted that

We agreed that your lifestyle at present would not be affected by a significant drop in value. This is because you could afford to leave the funds in your investment pot to recover. Balanced against this, the letter also notes

You are not that comfortable with the idea of this investment fluctuating in value, even though you do not expect to be relying on it alone in the future.

CJ's recommendation was that a large proportion be held in cash, limiting the likely fluctuation of the investment value. From this, I consider that it had taken Mr F's concerns into account when recommending the make up of the investments held within the SIPP and I cannot find that this advice was unsuitable for him.

Mr F has also complained that CJ did not recommend the type of annuity product that he moved his benefits to in November 2022, which he thinks would have been more suitable than the SIPP. CJ, in its response to Mr F's complaint said

All annuity rates were very poor at the time, and you were not interested in such approaches to investment, and I also did not feel they were appropriate.

I have to note here that annuity rates have increased since September 2019, with market conditions changing after September 2022 with higher interest and inflation rates leading to significantly higher annuity rates being available to investors. Given this, I am not sure that the return on the type of product Mr F has now moved his funds into was available when CJ was producing his recommendations, so I don't find that this changes my view on the suitability of the advice to invest into a SIPP.

Turning now to look at the charges that Mr F has complained about, I can see that these related to two main elements; the initial fees charged by CJ and fees for ongoing advice following the investment into the SIPP.

I can see that the charges were clearly outlined in the letter of 2 September 2019. The initial fee of 1.95% was stated by CJ to represent a discount to its usual fee and was estimated to be in the region of £3,200. In the event, as the amount invested proved to be higher than assumed by both Mr F and CJ, the amount he paid in initial fees proved to be higher than this, although still 1.95% of the funds invested. While I appreciate that this may seem high to Mr F, these charges are in line with what I would consider to be reasonable in the industry. From the correspondence, I can see that CJ and Mr F had numerous discussions and

considered a number of options before agreeing the way in which his funds should be invested, so I can't see that CJ has done anything wrong here.

Looking at the ongoing advice fees, these were also clearly stated in the recommendation letter. It also made clear that Mr F could cancel this service with 14 days' notice. CJ has also provided evidence to say that termination of the ongoing advice service was discussed with Mr F on more than one occasion, so I find that it's reasonable to conclude that he was aware that this was an option open to him. I can also see from the evidence provided that CJ and Mr F had numerous meetings and contacts throughout the period, so I find it fair and reasonable that CJ was providing a suitable service under the terms of the agreement and I can't see that it has done anything wrong in this respect either.

Mr F has also complained that he believed CJ was not responsive enough to his instructions to move his investments to avoid him suffering investment loss. I can see that CJ moved investments into cash to react to market conditions on two occasions – the start of the Covid pandemic and after the budget in September 2022. Given the way that investments are priced for sale on the day after the instruction is first received, I also can't see that it has done anything wrong in this respect either.

I can also see that Mr F says that he felt CJ pressured him into making investment choices at a time when he was not in the right state of mind for this. I've carefully considered the evidence provided by both parties, but cannot agree with that the evidence supports his view. While I appreciate that this must have been a very difficult time for him, I must again consider the information impartially. I noted that the initial approach to CJ was made by Mr F, who presumably felt that he needed advice and guidance at that time on how to invest the pension funds he was soon to receive as a result of his divorce. Mr F and CJ had several meetings, before the initial recommendation to invest was sent to Mr F in early September 2019, nearly three months after the first contact. This suggests to me that CJ was taking into account Mr F's input. I can also see that on that letter, CJ wrote a handwritten postscript which said

P.S. Any queries on this whatsoever, please come back to me!

I can't see in any of the documentation I have seen any reference to Mr F having to make any financial decisions in a hurried manner, or any suggestions of a time limit by which he should make a decision. In its response to Mr F's complaint, CJ has also detailed how it tried to deal sympathetically with Mr F and his situation. From other correspondence, and the ways in which it dealt with his requests, I can't see that it treated him unfairly in this respect.

My final decision

For the reasons explained above, I do not uphold Mr F's complaint.

My final decision is that Carey and Johnstone do not need to take any action to resolve this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 27 May 2024.

Bill Catchpole
Ombudsman