DRN-4730268

The complaint

Mrs H complains that Flying Colours Advice Limited (Flying Colours) gave her unsuitable advice to transfer two Personal Pension Plans (PPPs) to an expensive Self-Invested Personal Pension Plan (SIPP) and into high-risk investments, causing her losses. She wants compensation for the losses suffered.

Mrs H is represented by a claims management company (CMC) in bringing her complaint.

What happened

Mrs H responded to an offer from Flying Colours for a pension review in August 2016. She completed an enquiry form, ticking the three following objectives from a list of twelve;

> *"Planning for retirement*
> *Improving or maintaining your current standard of living in retirement*
> *Reducing your debts"*

She met with an adviser in September 2016 and a fact find and attitude to risk (ATR) questionnaire was completed. Mrs H had final salary pension benefits worth around £10,600 per annum at age 60 and two PPPs. These were with Aviva and Clerical Medical and were worth around £10,240 and £101,500 respectively. Mrs H paid contributions to the Clerical Medical plan of £730 per month.

In December 2016 Flying Colours sent Mrs H a suitability report. This said she wanted to take the tax-free cash from both PPPs. And use this to repay £26,000 of credit card debt and to rebuild her emergency fund. The report said her other objectives were to invest in line with her attitude to risk (ATR), to better organise her pensions and to target a pension income of around £10,000 per annum at State Pension Age in around nine years' time.

Flying Colours said the remaining funds should be invested through its branded SIPP in a Discretionary Managed Portfolio run by it. It said that charges would be lower than for the existing PPPs. And investment in its *"Core Defensive Portfolio"* (the Portfolio) matched the *"Low-Medium"* ATR it had assessed for her. The asset allocation of the Portfolio was summarised as 26% in equities, 64% in fixed interest securities with the balance in cash or near cash assets.

Flying Colours said its initial fee was 2% of the funds transferred after the tax-free cash payment, around £1,700. The ongoing advice charge would be 0.54% per annum of the fund value. For which it would provide ongoing reviews and advice. Mrs H proceeded and the transfers were completed. Subsequently Flying Colours updated it's notes in 2017, that she'd wanted to use the tax-free cash to repay the credit card debt as she wasn't interested in arranging other borrowing to do this. Annual reviews were carried out each year from 2018 to 2022. And a further Clerical Medical PPP was transferred to the SIPP in 2019, which Mrs H hadn't realised she held.

In December 2022 Mrs H complained through her CMC about the advice to transfer to the SIPP. Many complaint points were raised, including:

- The SIPP was unsuitable as it was aimed at sophisticated investors and it had failed to certify her as a high net worth individual,
- That she had no previous investment experience and a low capacity for loss and *"was unwilling or unable to accept the risk of loss of capital",* had a low ATR and the investments were unsuitable for her,
- That it had failed to establish her assets and liabilities or assessed her financial situation,
- That the SIPP and *"non-standard investments"* recommended weren't suitable and had high charges which hadn't been explained,
- That it *"failed to advise on the overall cost of the solution they were recommending … to ensure their recommendations were suitable".*
- That it was in breach of various Conduct of Business (COBS) rules, including failing to act in Mrs H's best interests and communicating with her clearly.

The CMC said these failures had resulted in losses of *"at least £12,742.80"* but provided no explanation of this. It said Mrs H should be restored to the position she should have been in had she not taken the advice.

Flying Colours didn't accept the complaint. It said the SIPP wasn't a high-cost pension plan. And the investments weren't *"non-standard",* or high risk, or expensive. It said costs had been compared and set out in the suitability report, and its recommendations had reduced the charges from £901 to £402 per annum. It said there was no requirement for Mrs H to be classed as a sophisticated investor. It said it had assessed her investment experience as being *"none and limited"*. And had correctly assessed her capacity for loss and her ATR. It said her basic income requirements in retirement would be met from her two final salary pension schemes. It said the Portfolio recommended was suitable for Mrs H and it had provided risk warnings that the capital wasn't guaranteed.

Mrs H referred her complaint to our service and our investigator looked into it, and she said it should be upheld.

Our investigator said Flying Colours hadn't fully compared charges or potential benefits between the existing PPPs and the recommended SIPP. And there were no projections on its file for the PPPs or for the SIPP, although there was a charges summary in the suitability report. She said the ongoing charges on the SIPP were higher than on the existing plan and the initial 2% advice charge hadn't been considered.

Our investigator said even if Mrs H wanted her tax-free cash to reduce debt there was no evidence that any option to do this from the existing PPPs had been considered. Or that alternative options such as other borrowing or using surplus income were considered. And no comparison had been made about the likely impact on her future retirement income between accessing the cash now and not doing so.

Our investigator said Mrs H didn't appear to need wider investment choice, additional flexibility, or consolidation advantages justifying the higher charges. So, the recommendation wasn't suitable as it wasn't clear there was enough potential for superior benefits to be provided to justify the risk that they might not be. She said Flying Colours should undertake calculations to compare the value of the SIPP investments to a benchmark index. And if this showed a loss it should pay compensation. And she said it should pay Mrs H £300 for the distress and inconvenience she'd been caused.

Mrs H accepted our investigators view, but Flying Colours disagreed. It said our investigator had misunderstood the charging basis of the SIPP and underlying investments. Together these were 0.48% per annum and lower than the PPPs. It said its ongoing advice charge was 0.54% capped at £499 per annum. And whilst the total ongoing cost was higher than the PPPs it said the advice charge should be considered separately, as this would have been incurred if Mrs H had remained in the PPPs. It said it had now located illustrations of future benefits for the PPPs but said it couldn't show these had been provided to Mrs H. And that it had produced a SIPP illustration, but this hadn't been provided until after the transfers had completed.

Flying Colours said it had categorised Mrs H's ATR as *"low-medium".* It said the funds held in PPPs exceeded this categorisation, exposing her to unacceptable risk. It said the Aviva plan didn't offer flexible benefits and whilst it didn't have any evidence about the Clerical Medical plan, it understood that it didn't either.

Our investigator said she now agreed the ongoing charges for the SIPP and Portfolio were lower than for the PPPs. And it was reasonable to exclude the ongoing advice charge of 0.54%, capped at £499 per annum. But she said the 2% cost of the initial advice hadn't been considered, which was the equivalent of around a 0.4% return over five years. So, it wasn't clear whether the advice was cost effective.

Our investigator said Flying Colours hadn't considered how accessing the tax-free cash would impact her future retirement benefits. And it wasn't clear that the debt was a particular concern, as she wasn't in financial difficulty and could use surplus income to reduce it. And if dealing with debt was the main reason to transfer, the fee of 2% was an expensive way to do that. She said it wasn't clear the transfer recommendation had met Mrs H's objectives, so it wasn't suitable. But, she no longer thought it was appropriate to award any compensation for distress and inconvenience.

As Flying Colours doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 29 February 2024, I explained the reasons why I was not planning to uphold the complaint. I said:

I know this will disappoint Mrs H, so I'll explain why I think this is a fair outcome.

I think most of the complaint points raised by the CMC are inaccurate or irrelevant in the circumstances here. Mrs H wasn't transferred to a high-cost SIPP or into expensive or high-risk investments. At the same time, I do think Flying Colours made some relatively minor errors in giving its advice. I've considered whether these have negatively impacted Mrs H, and I don't think they have. In concluding this, I've focused on what I consider to be the main issues and what the actual outcomes were.

At the heart of this is why the pension switches appear to have been recommended. I think this was so Mrs H could access her tax-free cash to repay debt. This isn't something she has complained about, which suggests to me this was what she wanted to do.

When giving advice the adviser needs to consider the customers circumstances and offer suitable advice. This includes consideration of whether any existing arrangements can meet those objectives. And if alternatives like switching or transferring are recommended there should be a fair analysis to show both the advantages and disadvantages involved. So, the consumer can come to an informed decision. In this case there is some ambiguity over whether the PPPs could provide the benefits required and suitable investment solutions thereafter. If they could that might mean there was no need to transfer, which might be more cost effective.

The financial regulator (the FCA) has set out specific guidance about pension switching. It provides examples of what would be unsuitable advice, including:

- *A pension incurring extra product costs without good reason,*
- *A more expensive pension in order to consolidate different pension schemes, but where the extra cost was not explained or justified to the customer.*
- *A pension that did not match the customer's attitude to risk and personal circumstances.*

But having considered evidence so far and taking into account what Mrs H actually did, whilst there were oversights, I think its overall advice was suitable for her objectives, and she was aware of the costs involved.

What were Mrs H's objectives

I thought carefully about what Mrs H's financial objectives were and what she went on to do. When she first contacted Flying Colours, she stated her primary objectives were:

> *"Planning for retirement*
> *Improving or maintaining your current standard of living in retirement*
> *Reducing your debts"*

Consumers objectives often evolve during the fact find process. And it's unusual for all the information needed about existing arrangements to be to hand to enable advice to be immediately provided. And it was around three months between Flying Colours commencing the fact finding process and it making recommendations.

The fact find is dated September 2016. It mentions credit card debt in terms of monthly commitments, without noting the outstanding amount. Or that Mrs H specifically wanted to clear this despite her indicating this on the emailed enquiry form. But it was noted that any surplus income was normally used to repay this liability. I think that suggests she did want to repay it as soon as possible.

The suitability report of December 2016 was prepared on the basis that Flying Colours was, at Mrs H's request, offering advice "restricted to the access of tax-free cash from your Clerical Medical and Aviva pension policies". With this to be used to repay the credit card debt and rebuild her emergency cash fund. With the residual pension funds "invested in accordance with your attitude to investment risk". It continues that only pension products that provide "Flexible Access Drawdown" will facilitate both taking tax-free cash and continuing investment.

From this it seems Mrs H had decided she wanted to repay the debt. And she doesn't appear to have challenged the suitability report at the time. The file note from May 2017 confirms this objective. It says that in September 2016 she hadn't mentioned accessing her tax-free cash to clear debts. But she'd raised this subsequently and confirmed she didn't want to raise further borrowing to repay the debt as funds were available in the pensions. Retrospective file notes must be treated with some caution, but there's no evidence this note wasn't from 2017. It does tie in with the information already provided by Mrs H on the enquiry form and in the suitability report from August and December 2016 respectively.

Drawing pensions to clear debt in advance of retirement is a subjective issue. There was no analysis of the relative merits of this course of action in the suitability report. But it does say that accessing the pensions early would reduce the amount they would provide in the future. However, it's important to note here that Mrs H wasn't giving up any guaranteed benefits that *required her to take financial advice with a recommendation to transfer being made. Had she, then the onus would have been on Flying Colours to clearly demonstrate its advice was in her best interests, which I think would have required such an analysis.*

Mrs H didn't appear to be in financial distress because of the credit card debt and may have been taking advantage of interest free offers and so on. Alternatively, it may have been that the typically high interest rates charged on credit cards meant that clearing the debt would provide a relatively attractive guaranteed investment return compared to leaving the funds invested, particularly for someone with a relatively cautious ATR. There is also more than just the financial aspect of clearing debt to consider, not least certainty. And these other considerations may have been relevant factors for Mrs H.

And it appears Mrs H did go ahead and use the tax- free cash to reduce or clear the credit card debt. Doing this and rebuilding her emergency fund of readily accessible cash by using surplus income would have taken some time. And it seems when she was subsequently able to take benefits from one of her final salary pensions, she opted for the maximum tax-free cash sum. Which she then used to pay off her mortgage even though she was significantly overpaying this at the time. This perhaps indicates she preferred the certainty of return that clearing debt provides.

So, I think accessing the tax-free cash was a prime objective for Mrs H with the secondary objective of appropriately investing the residual funds.

Was it necessary to transfer to access benefits

This is an area where Flying Colours suitability report lacks clarity. It doesn't say the reason for transferring the PPPs was because they couldn't provide just tax-free cash. But it has told our service the Aviva plan couldn't do this, and it thinks the Clerical Medical plan couldn't either, which had much the highest value.

However, the suitability report does set out a table showing the contract features of the PPPs. There is an entry called "Unsecured Pension Available" against which "No" is entered for both. Unsecured pension was an older type of drawdown available from certain types of pension scheme prior to 2011, before the legislation was changed. So, it's likely this does refer to income drawdown or flexible access drawdown (itself introduced in 2015), which Flying Colours refers to in the report. And for whatever reason the letter template used hadn't been updated to reflect the changing names used for fundamentally the same thing, which I'll just refer to as drawdown.

The Clerical Medical plan was a stakeholder pension plan. According to its website it's stakeholder plans don't offer drawdown, where tax-free cash is paid, and the residual funds remain invested. Mrs H didn't require any additional income and if, as this evidence suggests, the existing PPPs didn't offer drawdown, she would need to transfer to a plan that did. That is a different scenario to switching provider in the hope of achieving better investment returns or to simplify administration.

Cost comparison & fees

Flying Colours didn't undertake a full cost comparison between the existing and new pensions and investment in support of its recommendation. I've considered what impact this has had on Mrs H and whether it disadvantaged her. I don't think it has. It did consider ongoing product costs in detail – which were less than half of those of the existing PPPs. It didn't take account of its initial fee of around £1,700, in its analysis of charges. But this fee was clearly disclosed to Mrs H before she was provided with the advice. So, she wasn't *unaware of the costs involved or misled about them. But she wasn't provided with a like for like comparison of charges between the old and the new plans.*

However, there are several aspects to consider here. Significantly the existing PPPs couldn't facilitate drawdown, so a like for like comparison couldn't be made. And as Mrs H was aware Flying Colours services weren't free. It was making arrangements and recommendations and there would have been costs for this even if the PPPs had offered drawdown. The fee agreement dated 27 September 2016 confirmed that there would be a fee of £499 to produce a financial report even if she didn't proceed, but this would be offset against the initial advice fee if she went ahead.

The initial fee needs to be put into context of the possible credit card interest costs. Global statistics company, Statista, has the average UK credit card interest rate in March 2017 as 17.96%. And the advice fee wasn't solely for accessing the tax-free cash as Flying Colours provided investment recommendations which differed from the existing PPPs aligned to the ATR it had (I think correctly) established for Mrs H. And there would have been advice costs in respect of this if the existing PPPs had been retained.

As I've said the ongoing fees for the SIPP and underlying investments was lower than charged by the PPPs. The additional ongoing advice charge was capped at £499 per year. This was increased around six years later, something Mrs H agreed to shortly before making her complaint.

With the initial capped ongoing advice fee added the overall annual cost for Mrs H was higher than the PPPs. But I think it is reasonable to consider this cost separately. It was for additional services not being provided through the PPPs. And Flying Colours did provide reviews and advice on an ongoing basis. If she didn't want ongoing advice, she could have cancelled this at any time.

So, in meeting her objectives Mrs H would have had some additional costs over and above the existing PPP's charges even if these could have facilitated what she wanted. The ongoing product and investment charges of the SIPP were lower than the existing PPPs and it offered more flexibility and choice. The 2% fee wasn't charged on the tax-free cash taken and I don't think it was an excessive or unreasonable charge. Mrs H wasn't given a full analysis of the effect of all charges on future returns, but I think she did have enough information to have made an informed decision, given the primary objective does appear to have been to access her tax-free cash.

Capacity for Loss

I think Mrs H did have some capacity for loss and this was fairly assessed by Flying Colours. Her final salary benefits and State Pension underpinned part of her retirement income requirements and she had the scope to, and did, pay further pension contributions having accessed her tax-free cash. And she had around nine years before her intended retirement, a reasonable period to consider longer term investments.

The investments recommended

I've considered the investments arranged for Mrs H. I don't think they were high risk or expensive as has been alleged by the CMC. The suitability report set out various risk warning about returns not being guaranteed and that capital was at risk. The Portfolio was well diversified being largely comprised of index tracking type funds with low charges, with no specialist or unusual investments held. The investment objective was to "provide some *capital growth with a focus on capital preservation over the medium term … with modest exposure to equities."*

I think the mix of investments (asset allocation) selected by Flying Colours was typical for the risk profile given to the Portfolio. This was a lower categorisation than the funds held in the existing PPP's. And whilst both also offered a "cautious" managed type fund, the charges would have been higher than with Flying Colours had the PPPs facilitated the payment of tax-free cash.

It isn't reasonable to consider the performance of long-term investments over short timeframes. I've looked at the past performance of the "Core Defensive Portfolio" initially recommended by Flying Colours. And also, the "Core Conservative Portfolio" that was switched into in 2019 following a review meeting, where despite her ATR still being assessed at "level 2", Mrs H wanted to invest at "level 4". Broadly that would mean more exposure to assets like equities and property with less in fixed interest and cash investments. And over the five years to 31 January 2024 both these portfolios outperformed their respective Investment Association benchmark indices.

As a further point of comparison, the Clerical Medical Balanced Managed fund Mrs H had been invested in hasn't performed as well as the Core Conservative Portfolio over the five years to 31 January 2024, even though it has a higher risk profile.

In absolute terms I appreciate the returns achieved have probably disappointed Mrs H. Many investors are in a similar position as investment markets have been challenging over the last few years. But there is no evidence that Flying Colours has mis-managed the Portfolios, or that they were riskier than their descriptions implied or that they were unsuitable for Mrs H given her objectives, ATR and capacity for loss.

Conclusion

Considering everything, at this stage I think Flying Colours could have considered the impact of charges in greater detail and clarified the apparent limitation of the existing PPPs to avoid doubt, but that hasn't resulted in an unfair outcome. And I don't think it is reasonable to say that it didn't communicate with Mrs H clearly or failed to act in her best interests, which are requirements of the FCA's Conduct of Business rules.

Overall, I think the advice was suitable. The SIPP facilitated accessing the tax-free cash that appears to have been used to clear the credit card debt, which was one of Mrs H's main objectives. She wasn't moved to an expensive SIPP with inappropriate investments. The ongoing costs were less than she'd been charged by the PPP's and the ongoing reviews and advice that Flying Colours was charging for in addition were provided. And there's no evidence that the investments were mismanaged by Flying Colours or weren't suitable for her ATR and capacity for loss.

As I don't think Flying Colours has treated Mrs H unreasonably or unfairly, I don't think the complaint should be upheld.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Neither Mrs H nor her CMC responded to my provisional decision.

Flying Colours said it accepted my provisional 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 done so, I’ve decided not to uphold the complaint.

As set out in my provisional decision, whilst there were some failings in how Flying Colours gave the advice, overall I think it was suitable and in line with Mrs H’s financial objectives. She was aware of all costs involved. I think the evidence shows that her prime financial objective of repaying credit card debt and that this couldn’t be achieved without transferring both her existing plans.

The recommended pension and investments had lower ongoing charges that Mrs H existing plans and offered the flexibility needed for her to access tax free cash and leave the remainder invested. I think Flying Colours correctly assessed both Mrs H’s capacity for loss and ATR and arranged appropriate investments reflecting that. So, whilst it made some errors these didn’t have a negative impact.

So, I don’t think Flying Colours has treated Mrs H unfairly or unreasonably and that means it wouldn’t be fair for me to uphold her complaint.

My final decision

For the reasons I’ve given above and in my provisional decision, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 7 May 2024.

Nigel Bracken
Ombudsman