

The complaint

Mr W complains that Campbell & Associates Independent Financial Advice Ltd (Campbell) mis-advised him to transfer his personal pension plan (PPP) and take benefits for which it received a large commission causing him losses. He wants the losses re-imbursed.

What happened

Mr W says Campbell advised him to transfer his PPP with Aegon to a new plan with Royal London in 2016 and to take his 25% tax free cash sum. He says he was provided with little information about the transfer and was subsequently contacted by the Financial Conduct Authority (FCA) over an investigation it was conducting into Campbell. He says this led him to question the advice he'd been given to transfer his pension. Mr W complained to Campbell, and it said it had no access to any records due to the FCA action.

So, Mr W referred his complaint to our service, saying he thought he'd lost around £7,000 because of the poor advice. Our investigator looked into it, but she didn't uphold the complaint.

Our investigator contacted Campbell and it confirmed it was under investigation by the FCA. It said it had no access to any of its files and had been told not to contact any clients, so it had no comment to make about the complaint Mr W had made. Our investigator asked Mr W some questions about what had happened and asked both Aegon and Royal London for information about the PPPs and the transfer, which was provided. Mr W said he didn't have any specific financial objectives at the time or a requirement for the tax-free cash but was advised this was the best thing to do. The Aegon plans value was around £154,000 and around £38,500 tax free cash was paid once it was transferred to Royal London. An adviser charge of 3%, around £4,600, was deducted from the new plan and paid to Campbell.

Our investigator said whilst there was limited information available, the advice didn't appear to have been unsuitable. She said the existing Aegon plan didn't facilitate the payment of just tax-free cash and the new Royal London plan had lower ongoing charges. She said whilst there was no information about Mr W's risk profile at the time, the new investment was similar in risk to the existing plan but at a lower cost. She said the initial adviser charge of 3% was typical and the application form had been signed by Mr W authorising this payment to be made to Campbell. She said whilst he'd said he didn't need the tax-free cash at the time he'd had the benefit of the money.

Mr W didn't agree. He said he felt the only reason transfer was recommended was to charge the commission which he said was an excessive amount for "*very little work*", which hadn't been disclosed to him.

As Mr W doesn't agree it has come to me to decide.

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 am not upholding the complaint.

I'm aware that Mr C has some serious health concerns and hope he is feeling better. And I appreciate his frustration and understand his concern about the lack of evidence available from Campbell.

What I'd normally expect to see from a business are its "fact find" notes recording details of the clients circumstances and objectives at that time, its assessment of their attitude to investment risk and its written recommendations explaining why its advice was suitable. We don't have that evidence and there is no indication of when it might be available. Whilst the FCA's involvement is relatively unusual, it isn't uncommon for our service to consider complaints where the evidence is incomplete, inconclusive or contradictory. In those circumstances, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances

Transferring or switching a pension can be the right advice for someone. The new plan might offer lower charges or additional features of value to the consumer that justify any advice costs being incurred. So, I asked Mr W some further questions about how he met Campbell, what had happened and what he had done with the tax-free cash sum he'd received. Because if he'd re-invested this or used it for some other purpose, the advice he'd been given might have been appropriate. He said he'd dealt with Campbell previously with it advising him on pension and mortgage matters. He said it contacted him to say his Aegon pension was high risk and should be moved to lower risk funds. And had said to take the tax-free cash to "*spend*" how he liked and it had been used for home improvements.

When giving financial advice, advisers need to provide recommendations which are suitable for the consumers objectives and circumstances. In terms of pension transfers and switching the Financial Services Authority (now FCA) published a report and checklist for advisers in 2009 that remains applicable. It identified four main areas where consumers had lost out in the past:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason
- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age.
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.
- They had switched into a pension where there is a need for ongoing investment reviews, but this was not explained, offered or put in place.

From the evidence that is available and Mr W's comments I've considered what happened here compared to this checklist. In this case the new plan with Royal London was markedly cheaper than the existing Aegon arrangement, at less than half the ongoing annual charge.

So, whilst there was an additional adviser fee on the transfer of 3%, this would be offset by the lower costs going forward provided there was a reasonable period of time for this to happen. The exact calculation for this is quite complex and is something that Campbell would be expected to consider. But it's likely that if both plans performed similarly the impact of the initial fee would be offset in around six to seven years through the lower annual fees.

Mr W was around 55 years old when he transferred in 2016, so, it appears there was a reasonable prospect of the initial fee being offset in this case.

From the information Aegon has provided Mr W doesn't appear to have lost any guaranteed benefits through the transfer. And he doesn't appear to have been switched into investments outside his likely attitude to risk. As our investigator noted, the new investment funds had a similar risk profile to the existing Aegon funds. However, the new investment would be managed and automatically rebalanced on an ongoing basis by Royal London to maintain the chosen risk profile, which wasn't a feature of the investments held with Aegon. That might mean the new arrangement was of lower risk than the existing investments, particularly if these weren't subject to ongoing reviews. And this perhaps ties in with Mr W's recollection that Campbell had said the Aegon investments were too high risk. And it didn't take any ongoing advice fees from the new arrangement for duplicating work being undertaken by Royal London. Mr W has also been provided with annual statements by Royal London, confirming valuations and so on, so if he was unhappy with investments, I think it's likely he would have queried things sooner than he did.

Aegon has confirmed its plan couldn't facilitate the payment of only tax-free cash. And whilst Mr W has said he had no requirement for this he does seem to have put it to specific use, which he benefited from. Mr W had been paying regular contributions to his Aegon plan of around £400 per month, but these weren't continued to the new arrangement with Royal London. I asked him about this, as this might indicate there had been a change of plans at the time. He said he hadn't initially realised that regular payments hadn't been continued with the new plan, which he'd wanted. It would be unusual for an adviser not to want to maximise the sale and its earnings through additional adviser charges on any regular contributions, so it isn't clear what happened here. But Mr W did become aware that he wasn't contributing and could have made arrangements to start contributions with Royal London if he wished.

In terms of the fee that was charged, I think Mr W would have been aware that Campbell was charging for its services in some way. And whilst the fee might seem high, it wasn't untypical at the time and often much of an adviser's work is in the background compared to the time spent with the customer. In terms of the evidence available here, the application form was signed by Mr W confirming that a 3% adviser fee would be paid from the transfer. So, it wasn't commission, but a fee specifically agreed. This was also shown on the illustration that Royal London has provided. Even if Mr W wasn't given a copy of the illustration by Campbell as he should have been, he would have been sent documents directly by Royal London after it received the transfer value from Aegon. With these confirming the fee to be paid, the payment of the tax-free cash and that he had the right to cancel the arrangement if he'd changed his mind and didn't want to proceed.

So, whilst the evidence isn't complete there do appear to be some reasonable justifications for the advice that was given. The new plan had lower charges and automatic investment rebalancing. There's also some indication that there was a requirement for the tax-free cash. And the fee charged for the advice wasn't untypical, which Mr W would have been made aware of by Royal London even if Campbell hadn't. So, taking everything together, the advice doesn't appear to have been unsuitable for Mr W at the time, and that means I can't reasonably uphold his complaint.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 19 November 2024.

Nigel Bracken
Ombudsman