

The complaint

Mr C complains that some advice he received from Hilltop Finance Limited (“Hilltop”) in November 2021 about the transfer of his pension savings was unsuitable.

What happened

Mr C has been assisted in making his complaint by a firm of solicitors. But in this decision, for ease, I will generally refer to all communication as if it has been with, and from, Mr C himself.

I issued a provisional decision on this complaint last month. In that decision I explained why I didn’t think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr C approached Hilltop in 2021 for advice about two pension plans that he held. He discussed his circumstances with Hilltop in a phone call in October 2021. A further phone call then took place in early November, followed by Hilltop issuing a formal advice report to Mr C around a week later.

Hilltop identified that Mr C was 63 years old and was actively planning for his retirement. He was already in receipt of two small annuities and wanted to use the remainder of his pension savings to provide him with flexible benefits. Hilltop identified that the two pension plans Mr C held would only allow him to purchase an annuity when he retired.

Hilltop discussed Mr C’s attitude to risk. Understandably, as he was approaching retirement, Mr C did not wish to take undue risks with his pension savings. Mr C agreed with Hilltop that a risk appetite of 3 (out of a score of 10) would be appropriate meaning it classed him as a low-risk investor. Hilltop told Mr C that the investments he currently held for his pension savings were at a much higher risk rating of around 5-6.

Hilltop advised Mr C to consolidate his remaining pensions into a new self-invested pension plan (“SIPP”) with a firm I will call A. It recommended that he should invest half of his savings into an actively managed plan led by a discretionary fund manager (“DFM”). And it recommended that the remaining monies be held in two passive investment funds. Hilltop told Mr C that its recommended investments would result in a small increase in the fund charges that he needed to pay. And it also recommended that Mr C should make use of its ongoing advice service for which a charge of 1% of his pension savings would be made each year. Mr C had agreed to also pay 3% of his pension savings to Hilltop should he accept its initial advice.

In January 2024 Mr C complained to Hilltop that the advice he’d been given was unsuitable. In brief he said that;

- Hilltop had failed to gather sufficient information about his financial circumstances and experience.
- Hilltop had failed to ensure that its recommendations were suitable for his circumstances and needs.
- Hilltop had failed to consider and explain the high costs associated with the SIPP that was recommended to him.

Hilltop didn't agree with Mr C's complaint. It said that it thought its recommendation had been based on full understanding of Mr C's circumstances. It thought the investments it had recommended to Mr C were in line with his agreed attitude to risk and that the SIPP would provide the flexibility that Mr C was seeking for his retirement. It said that it had clearly set out the additional charges that Mr C would need to pay. Hilltop thought that the advice it had provided was suitable. Unhappy with that response Mr C brought his complaint to us.

I think it would be helpful to first deal with some comments that Hilltop has made in response to our investigator's assessment. It has asked that I should deal with each of the complaint points made by Mr C in turn, concluding whether each should be upheld.

Unlike the Courts, I am not limited to looking only at the issues a consumer has focused on in their complaint. Our approach is "inquisitorial" - rather than the "adversarial" procedures of the courts, where the lawyers for the two sides "fight it out". By law, I am required to resolve complaints fairly. This means I decide what questions to ask to get to the bottom of things. And it means I can concentrate on the relevant facts of the case, rather than the complaint as presented.

Here, regardless of the individual aspects of Mr C's complaint, his basic contention is that the advice he received was not suitable for his circumstances or sufficiently explained to him. I don't need to find every part of the advice was unsuitable to conclude that to be case. So I have looked at Mr C's circumstances, and the advice he received, as a whole when reaching my decision.

Within the FCA's handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client".

The FCA's suitability rules and guidance that applied at the time Hilltop advised Mr C were set out in COBS 9. The purpose of the rules and guidance is to ensure that regulated businesses, like Hilltop, take reasonable steps to provide advice that is suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

In order to ensure this was the case, and in line with the requirements of COBS 9.2.2R, Hilltop needed to gather the necessary information for it to be confident that its advice met Mr C's objectives and that it was suitable. Broadly speaking, this section sets out the requirement for a regulated advisory business to undertake a "fact find" process.

Hilltop gathered information about Mr C in a phone call that took place in early October 2021. I have been provided with a recording, and transcript, of that conversation that allows me to have a good understanding of the questions that were asked and the answers that Mr C provided. I am satisfied that the questions Hilltop asked, and the information it gathered, was sufficient to allow it to provide Mr C with the advice he had requested.

Mr C was approaching the time at which he would retire and was actively considering how he could best use his retirement savings. As I said earlier Mr C was already in receipt of two small annuities. And he would shortly be entitled to receive his state pension. It doesn't seem that Mr C wished to use the remaining two pension plans to provide him with a fixed income during his retirement. Instead Mr C told Hilltop that he either wished to fully encash one or both of those pensions or to use them for a flexi drawdown arrangement.

Neither of the two pension plans Mr C held would allow him a flexi drawdown arrangement. One of the plans would allow Mr C to take his benefits as Uncrystallised Funds Pension Lump Sum payments. But that pension plan only accounted for around 0.8% of the amount he was seeking to transfer. So Mr C could not achieve his flexibility requirements through the use of his existing plans. And given the impending nature of his retirement, the transfer of his benefits to a flexible plan was something he would need to arrange in the near future.

So on balance I don't think it was inappropriate for Hilltop to advise Mr C to transfer his pension savings into a new arrangement that would allow flexible access. And I think the SIPP that Hilltop recommended was suitable for that need. So I don't think that part of the recommendation was unsuitable.

Mr C had agreed to pay a fee of 3% of his pension savings to Hilltop if he accepted its advice and proceeded with the transfer. So that would form something of a drag on the value of Mr C's pension savings as he approached retirement. And given the proximity of his retirement Mr C would have little opportunity to recoup those fees through investment growth.

But as I have explained earlier, Mr C could not meet his objectives through his current pension arrangements. So he would need to take some action whether he moved to the SIPP recommended by Hilltop, or he asked the firm to provide alternative options. So I think it would be reasonable to conclude he would have needed to pay the 3% fee to Hilltop even if an alternative pension arrangement had been proposed.

In its advice report, and to a limited extent in the phone conversation it had with Mr C beforehand, Hilltop set out the difference in the charges between Mr C's existing pension investments and those that were now being proposed. The advice report clearly set out that the new charges would be slightly higher than those Mr C was already paying – they would rise from an average charge of around 0.54% to an average charge of around 0.7% (a difference of around £160 per annum). But there was a reasonable expectation, given the active management of half of Mr C's pension investments, that increase in charges would be offset by better investment returns.

There was also an additional charge that Mr C agreed to pay for ongoing advice and support from Hilltop. He agreed to pay 1% per annum for that service. In my experience the charge that Hilltop asked Mr C to pay wasn't unreasonable. And Hilltop explained to Mr C the benefits he might receive from the use of its ongoing advice service. Mr C appeared to be happy that the service he was being offered was appropriate for his circumstances.

So overall I'm not persuaded that the charges Mr C needed to pay for the advice, or the increased charges for ongoing pension investments he held, would lead to a conclusion that the advice was unsuitable. I think Mr C was given clear information about those charges. And I think that any increased charges came with what Mr C

would have seen as attractive benefits – either in the prospect of better investment returns or the ongoing advice services that he would receive from Hilltop.

I am sorry to see that Mr C feels his pension investments haven't performed as strongly as he had hoped. But the information from Hilltop, both in the phone calls and written reports he was sent, did not give Mr C any guarantees about future investment performance. Should Mr C now feel alternative investments would better suit his circumstances and future plans he could discuss those with Hilltop as part of the ongoing support he has chosen.

I understand how disappointing these findings will be for Mr C. But I am currently persuaded that the advice he received from Hilltop in 2021 was suitable for his needs and circumstances. I think that Hilltop gathered appropriate information on which to base that advice. And I think Mr C was provided with sufficient information to ensure he was fully informed on what Hilltop was proposing before he made his decision to transfer.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Hilltop has told us that it accepts my provisional decision. Mr C's representative has provided us with some further comments. Although here I am only summarising what Mr C has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr C says he still thinks his complaint should be upheld. He says that Hilltop failed to justify placing half his funds into the more costly DFM arrangement. He says it failed to explore less costly alternatives such as using a non-DFM SIPP with passive funds.

Mr C says that the additional charges he needed to pay would have caused a significant drag on his pension savings. He says the warnings Hilltop provided were not sufficiently personalised for him to understand how long it might take to break even, or the risks of eroding his pension savings at this critical time. He says that overall Hilltop's advice was neither suitable nor in his 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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr C and by Hilltop. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional comments that Mr C has made in response to my provisional decision. I am sorry to tell him that those comments haven't caused me to think I should change those provisional findings. But I would like to make some further comments on the specific points that he has raised.

The advice that was given to Mr C did consider the use of passive investment funds for his pension savings. In fact around half of Mr C's pension savings were invested in that way following Hilltop's advice. The decision to make use of the DFM for half of the pension investments was borne out of a discussion with Mr C where he expressed a preference for part of his pension savings to be actively managed. And as I explained in my provisional decision it wouldn't be unreasonable to think that the additional focus of the DFM might lead to higher returns than would be seen on more passive investments so offsetting any additional charges.

There is little doubt that the initial advice charge Mr C agreed to pay to Hilltop would have caused some drag on the value of his pension investments. But as I explained, I don't think Mr C had much choice but to make changes to how his pension savings were held. I am also mindful that the solution Hilltop proposed, in line with Mr C's objectives, allowed for the investment of his pension savings for an extended period of time. The impact of the charges wouldn't be anywhere near as great as if Mr C had intended to use his pension savings to say purchase an annuity in the near term.

So I remain satisfied that the advice Mr C received from Hilltop in 2021 was suitable for his needs and circumstances. I think that Hilltop gathered appropriate information on which to base that advice. And I think Mr C was provided with sufficient information to ensure he was fully informed on what Hilltop was proposing before he made his decision to transfer.

My final decision

For the reasons given above, and in my provisional decision, I don't uphold the complaint or make any award against Hilltop Finance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 August 2025.

Paul Reilly
Ombudsman