

The complaint

Mr C is represented. His complaint is that Boyd Coughlan, now Mattioli Woods Limited ('MWL'), gave him unsuitable advice in 2012 to transfer his personal and occupational pensions into a Self-Invested Personal Pension ('SIPP'). He says the costs associated with the transfer, the loss of benefits in his occupational pension, and options he could have considered within the existing pensions were not properly advised on.

What happened

For further background – Mr C became a client of Boyd Coughlan (hereafter referred to as MWL) in 2009, when he joined an Aegon Group Personal Pension ('GPP') associated with his employment at the time; earlier, in 2007, he had established an Aviva Personal Pension ('PP'); MWL undertook agency for the PP in 2011; the transfers into the SIPP, advised by MWL, happened in 2012; and in 2018 Mr C converted the SIPP into an annuity (which was also advised by MWL).

One of our investigators looked into the complaint and concluded it should be upheld. He made the following main findings –

- The April 2012 suitability letter issued by MWL to Mr C set out his profile at the time.
- He had been made redundant and was around six years from retirement, but he was actively seeking new employment. His PP was worth around £61,800 and his GPP was worth around £10,600. He also had a cash holding of £25,000 [which included the balance of his redundancy payment].
- He had a *cautious to realistic* risk profile (scored as 4 out of 10), and his objective was to achieve growth in his pension. There is also evidence that he had no intention of accessing his pension until he reached retirement age.
- MWL recommended the transfer of both pensions into the SIPP on the grounds that Mr C would benefit from increased visibility of his pension funds, diversity within those funds, ongoing portfolio balancing and reviews, and the prospects of improved performance. However, evidence suggests most of these were probably surplus to his objective of achieving pension growth. Furthermore, the transfers came with a 2% annual increase in costs, which stood to hinder the pension growth objective.
- Proximity to retirement could make ongoing financial advice useful (in terms of retirement planning leading up to that event), but in Mr C's case his existing pensions already had oversight from fund managers and his firmly held intention to do nothing with the pensions until he reached retirement age suggests ongoing advice would have been less valuable for him.
- It is also notable that he did not have much capacity for loss, given how close he was to retirement, the relatively modest values of his pensions and his unemployment.

- Overall, the recommendation was unsuitable for Mr C because of the associated increased costs and the lack of a specific need, on his part, for most of the benefits sold to him. The outperformance required in the SIPP to break even with those costs could not be guaranteed, but application of those costs was certain, so they were likely to drag on performance.

MWL disagreed with this outcome and asked for an Ombudsman's decision. It highlighted that all fees (and the associated outperformance) were transparently disclosed to Mr C in the course of its advice, and that it 'suggested more than once' to him that he delay his decision on the recommended transfers until he found new employment, but he proceeded with the transfers anyway.

The matter was referred to an Ombudsman.

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 have reached the same conclusion expressed by the investigator, for broadly the same reasons.

General rules and guidance

The regulator's Principles for Businesses, at Principle 6, required MWL to pay due regard to Mr C's interests and treat him fairly. That responsibility was echoed in the regulator's Conduct of Business ('COBS') rules at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients. In other words, Mr C was entitled to advice from MWL which, overall, was required to be in his best interests.

The regulator provided guidance in 2016 on 'assessing suitability'. I note the investigator referred to the same guidance in his view and explained that whilst it post-dated the 2012 advice event in Mr C's complaint, it remains broadly relevant because it served as a reminder to firms, in 2016, of what was already, and previously, expected to be the minimum practice they observed. I echo the same explanation, and I consider the guidance relevant to Mr C's complaint.

The 2016 guidance included an expectation upon firms to objectively consider their clients' needs and objectives. This leads me into my next findings about evidence of what Mr C's goal was, and about MWL seemingly extending that goal to mix with its recommendation.

The suitability letter dedicated around a page and half to persuading him about the benefits of the "SELECT Portfolio Asset Management (PAM) service" associated with the SIPP MWL recommended. I do not say or suggest, in general terms, that there is anything wrong in a firm recommending such services, so long as they are suitable for the client. I address suitability separately below. Presently, I'm considering what seems like a somewhat blurred and non-objective approach taken by MWL in handling Mr C's goal.

The letter's overall treatment of the PAM service, and its benefits, gives the impression that it was presented to Mr C, discussed with him and following such discussion it was something he favoured and wanted – akin to something he had a goal for.

I consider it fair and reasonable to draw a distinction between what Mr C wanted, as a goal,

when he engaged MWL's service and what he was sold by MWL thereafter. I appreciate that sometimes, depending on the circumstances, a client's goal could be informed by advice, but such circumstances do not appear to exist in this case. In a nutshell, Mr C was redundant, relatively close to retirement and he sought to attend to his pension arrangement by putting it in a position to achieve as much growth as possible by the time he retired. He was probably unaware of the PAM service before it was sold to him – this seems to be illustrated by the fact it was presented and sold to him afresh – so the service and its contents were not part of his goal, they were part of the solution MWL recommended.

I have addressed this in order to explain why my suitability considerations in this decision are based only on Mr C's objective for growth. I repeat, in general terms there was nothing wrong in MWL recommending a service to him so long as it was suitable for him. However, the aforementioned rules and guidance exist to ensure that, amidst any such service offerings from a firm, a client's best interest remains paramount. I consider that a fundamental part of meeting that requirement is the need to objectively approach the client's goal/objective (as the 2016 guidance stated).

Guidance on the pension transfers

In 2009, the regulator produced a checklist for the transferring and replacement of existing pensions. It highlighted four key issues that advising firms were expected to consider. One of them was 'charges', and the question to address was – is the consumer being moved into a pension that is more expensive than the existing one(s), or more expensive than a stakeholder pension, without good reason?

In 2012 further guidance from the regulator, on the same matter, included the following –

“Replacement business

2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.

2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.

2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation.”

Both of the above were relevant to the 2012 recommendation. I am aware that the 2012 guidance was published in July that year, after the April recommendation to Mr C, but the regulator's consultations with firms on the guidance had been ongoing since April. Therefore, I consider it would have been a live matter for regulated firms in the sector (including MWL) at the time of advice to Mr C.

The pension transfers

The shortcoming the regulator identified in paragraph 2.11 (quoted above) does not apply to MWL in this case. Its suitability letter made it quite clear and transparent to Mr C, in straightforward language, that the increased costs in its recommendation, their impact on growth and the unfavourable comparison of these factors with his existing pension arrangement all had to be considered.

With regards to paragraph 2.12 (quoted above), my finding is different. I consider, on balance, that in its advice to Mr C MWL committed the wrongdoing the regulator described in the paragraph.

Its suitability letter included the following –

“As discussed at our meeting and covered elsewhere in this letter, the objective of moving to the SELECT SIPP is to make use of our SELECT PAM Service. It is my firm belief (although I cannot guarantee it) that your situation will be better from being within the newly proposed SELECT PAM service, within the SELECT SIPP, resulting from improved performance potential and from ongoing rebalancing and reviews, when compared to if your pension monies remain where they have been.” [my emphasis]

As I addressed earlier, and in relation to the first emphasis in the quote above, Mr C’s objective was pension growth, the PAM service was part of the recommended solution (it was not his *objective for* the transfer). The second emphasis shows that, whilst no guarantee was given, MWL’s recommendation was wholly or partly *based on improved performance prospects*.

The need for improved performance was an unavoidable aspect of the transfer recommendation. The proposed transfer increased costs for Mr C. As a result, the outperformance required in the SIPP just to make up for the increased costs was clear to all. The suitability letter gave some explanation about why the outperformance figure (or impact of costs on growth figure) in the transfer illustrations was slightly over estimated. However, as quoted below, MWL also conceded (in the letter) that the 2% per year required outperformance figure was broadly reliable.

“... we do still believe that on balance, the stated additional growth required percentage is most helpful in aiding your understanding of the relative costs of the options, hence we quote it.

There is nothing to show that MWL considered and set out to Mr C exactly how it intended to help him achieve the required annual outperformance. This had to be meaningfully discussed and planned for, to ensure the transfer recommendation was suitable for him and in his best interest. MWL should have presented a reasonably clear and competent plan on how the SIPP/PAM service would *more likely* [the same words used in paragraph 2.12] achieve improved performance – improved performance needed to at least compensate for the additional costs.

The absence of such a plan automatically calls into question why Mr C was being led into undertaking additional costs in the first place, especially as it was not something he needed to do. There is no evidence that there was a problem in retaining his pre-existing pension arrangement as it was. Even if MWL’s consideration of his growth objective made it consider grounds to rebalance the investments held in the pensions, fund switches within them would have sufficed. With no disregard intended towards him, his pension arrangements held relatively modest values (totalling around £72,000), so it could be said that his position did not call for a sophisticated and costly solution.

I do not consider that access to the PAM service was good enough reason to justify the additional costs. It also did not amount to a meaningful plan to achieve the improved performance that was needed. I have noted the general reasons for which MWL believed the service could potentially improve investment performance for Mr C, but those reasons did not establish why improved performance was more likely to be delivered to him in the recommended arrangement. As quoted above, MWL also reminded him that there was no guarantee in the matter. Indeed, in considering the transfer illustrations, it seems a significant part of the SIPP's performance was bound to serve no other purpose than meeting fees (including the 2% annual increase in fees).

In addition, it is noteworthy that Mr C had only six years to retirement, so he did not have the luxury of a long term over which there might have been a chance of the recommended arrangement eventually working in his favour. Instead, the relatively shorter term he had available to him, the modest total pension value, the increase in costs and the risk of the required outperformance not being achieved all made it probable, or at least distinctly possible, that he could be worse off by the time of his retirement. This was a position he did not need to be placed in. As I said above, his existing pensions could have been rebalanced through fund switches, if deemed necessary, in aid of his growth objective, or they could have been left as they were.

The PAM service might have had components that were attractive to Mr C and/or components that enhanced service delivery in the recommended SIPP arrangement, but there is a lack of evidence that he approached MWL seeking such things. He wanted pension growth so, like the investigator, I too consider that most of the service's components were probably surplus to his requirements.

The above analysis supports the conclusion, on balance, that there was no good reason to justify, and make suitable, the increased costs associated with the solution MWL recommended.

Overall, on balance and for the above reasons, I find that MWL's pension transfer recommendation was unsuitable for Mr C, and it was not in his best interest. But for that unsuitable advice, I consider it more likely (than not) that he would have either retained his pension arrangement as it was (because there is no evidence that there was a problem with it) or, with suitable advice, he could have had the funds in the PP and GPP switched and rebalanced in pursuit of his growth objective.

Putting things right

fair compensation

My aim is that Mr C should be put as closely as possible into the position he would probably now be in, but for MWL's unsuitable pension transfer advice in 2012. As I have found, but for that advice he would probably have retained his previous pensions as they were or rebalanced them through fund switches.

I cannot say, with certainty, which he would have done. Therefore, I consider it fair to use the redress benchmark applied below, for the reasons given in this section and those given further below.

The benchmark is based on a balanced/medium risk profile. There is available evidence that this was broadly Mr C's risk profile at the time of advice. This approach should cover, as closely as possible, what would have happened in either of the aforementioned scenarios. If the pensions were retained as they were that would mean they were already

invested suitably in line with his medium risk profile, and if they were rebalanced, they would have been suitably rebalanced in line with his medium risk profile.

The start date for the calculation of redress is the date the pension transfers was executed. As confirmed above, the SIPP was converted into an annuity in 2018, so the date the SIPP ceased to be held stands as the natural end date for the calculation.

what must MWL do?

To compensate Mr C fairly, MWL must:

- Compare the performance of the investment in the table below with the benchmark in the table below. If the actual value is greater than the fair value, no compensation is payable. If the fair value is greater than the actual value, there is a loss and the difference is the compensation payable to Mr C.
- Pay the compensation, including interest (as set out below), into Mr 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 MWL is unable to pay the total amount into the pension plan, it should pay that amount direct to Mr C. 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 is not a payment of tax to HMRC, so Mr C would not be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide the details of the calculation to Mr C in a clear and simple format.

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

Investment	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
The Standard Life/SELECT SIPP	No longer exists	The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total	Date of the pension transfers	Date the SIPP ceased to be held	8% simple per year on any loss from the end date to the date of settlement

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actual value

This means the actual amount 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 from the SIPP 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 MWL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

why is this remedy suitable?

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Mr C had a medium risk profile and he wanted capital growth in his pension.
- I consider that Mr C's medium risk profile can be reflected in the above benchmark, in the sense that he was prepared to take some risk to achieve growth in his pension. It does not mean that he would have invested in some kind of index tracker investment. Rather, I consider this a reasonable benchmark that should broadly reflect the sort of return he could have achieved from investments in his pensions (based on the same profile), but for the unsuitable pension transfers.
- The interest payment is to compensate him for being deprived of the compensation between the end date and the date of settlement.

My final decision

I uphold Mr C's complaint. I order Mattioli Woods Limited to calculate and pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 3 September 2025.

Roy Kuku
Ombudsman