

complaint

Mr C complained about the advice by Professional Financial Services (PFS) to invest in the Waste to Energy Partnership (WTEP) within his Self-Invested Personal Pension (SIPP). He believes the investment was unsuitable for him and he has been financially disadvantaged as a result.

Professional Financial Services (PFS) is a dissolved partnership. The former partners of PFS are jointly and severally liable for this complaint. During this complaint we have corresponded with one of PFS's former partners and his solicitors.

background

Mr C set up a SIPP in 2007. In May 2010, Mr C transferred funds of £82,786 from two personal pensions plans with Aviva into the SIPP. He took a tax-free cash payment of £20,649 on 28 May 2010. On 11 August 2010, Mr C invested the sum of £50,000 into the WTEP.

Mr C complained to PFS, via his representatives, in December 2017. He said the investment had been too high risk and not suitable for him. PFS said he had referred his complaint outside the regulator's time limits.

When Mr C referred his complaint to this service, PFS didn't consent to us looking at the complaint. They didn't think it had been brought to us within the relevant timescales. An ombudsman looked into the objection and decided that the complaint about the WTEP investment had been made within time and we could consider it.

Our investigator subsequently considered the merits of Mr C's complaint and found that :

- The sales file had not been provided but she had requested information from the SIPP provider which showed PFS likely recommended the investment
- WTEP was an Unregulated Collective Investment Scheme (UCIS) which was high risk and not suitable for Mr C given his attitude to risk, investment experience and that he had already invested a large amount into another UCIS three years earlier.
- PFS should compensate Mr C.

Mr C accepted the investigator's view. PFS's former partner replied and said:

- He tried to assist by providing the original sales file, but it couldn't be traced.
- He didn't give the initial advice to Mr C. He had met with Mr C in 2013 to discuss his pension and other assets after the original adviser (another former partner of PFS) could no longer give advice.
- He had gone through the investment prospectus with Mr C and he had confirmed to him he understood the illiquid nature and risks of the investment. Mr C told him he saw renewable energy as an opportunity for growth and returns and the PFS partner who had originally advised him was a close friend, so he didn't think he would have been advised to go into a "duff investment".
- Any complaint correspondence should be sent to the partner who had given the initial advice

As no agreement could be reached the complaint was passed to me for a decision.

my findings

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 agree that this complaint should be upheld.

The original point of sale documentation couldn't be provided by PFS, but the SIPP provider was able to provide some documents. I've seen the SIPP application form from 2007, the transfer forms Mr C completed when he transferred his Aviva pensions to the SIPP in 2010 and the forms he completed for the WTEP. The SIPP application form shows PFS as the adviser. On the transfer form three years later Mr C had to confirm whether he had received advice. He ticked a box to say he had received advice and the firm named again was PFS. And the WTEP forms also record PFS as the financial adviser. So I'm satisfied Mr C was advised by PFS to invest into the investment through his SIPP.

UCIS investments aren't suitable for most investors and should in any event only form a very small part of someone's portfolio. The regulator has been clear on this and issued good and bad practice about the promotion and advice on UCIS in June 2010. Based on what we know about Mr C's circumstances at the time, it's clear he didn't have the investment experience, attitude to risk or capacity for loss to take on such a non-standard and specialist investment, particularly as he had already invested £100,000 three years earlier into another UCIS which meant other than cash, his entire SIPP only included UCIS investments. PFS shouldn't have recommended Mr C to invest into WTEP as it was clearly not in his best interest.

I appreciate that PFS's former partner says when he talked to Mr C in 2013 he said he understood the risks and thought the investment was a good idea. This might have been the case and the attraction in UCIS for many customers lies in the advertised returns. But UCIS are complex and only suitable for the most experienced investors. Mr C likely didn't fully understand all the risks and in any event -as explained above- he didn't have the capacity to lose such a large portion of his retirement provision, particularly as he was already at retirement age by this point. It was PFS's responsibility to give Mr C suitable advice which was in his best interest and I think they failed to do this here.

I do appreciate that it was another former partner of PFS who gave this advice and not the partner we have been corresponding with. And I understand that he feels it's unfair he's been left dealing with claims arising out of PFS's business. However, Mr C has a valid claim against PFS's partners and we have been corresponding with the complaint contact person as recorded with the regulator. He can share a copy of this decision with his former partner if he wishes to do so.

Mr C should be compensated as quickly as possible. How the former partners organise this is down to them.

putting things right

In assessing what would be fair compensation, my aim is to put Mr C as close as possible into the position he would probably be in now if he had been given suitable advice. I think Mr C would have invested differently. It is not possible to say precisely what he would have done, but I am satisfied that what I have set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

To compensate Mr C fairly PFS should:

- Compare the performance of Mr C's WTEP investment with the following benchmark:

For half of the investment: FTSE UK Private Investors Income Total Return Index
For the other half: Average rate from fixed rate bonds

from ("*start date*"): date of investment
to ("*end date*"): date of this final decision

If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

If there is a loss, PFS should pay it into Mr C's pension plan, to increase its value by the amount of the compensation. PFS's payment should allow for the effect of charges and any available tax relief. PFS shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If PFS are unable to pay the compensation into Mr C's pension plan, PFS should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr C's actual marginal rate of tax in retirement-presumed to be 20%.

However, if Mr C would have been able to take a tax-free lump sum from these funds, 25% of the loss would be tax-free and 75% would have been taxed according to Mr C's income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

- In addition, PFS should pay Mr C £250 for the trouble and upset caused by the disruption to his retirement planning. This should be paid to him directly.
- Provide the details of the calculation to Mr C in a clear, simple format.
- PFS must pay the compensation within 28 days of the date on which we tell them

Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Income tax may be payable on any interest paid. If PFS consider that they are required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr C how much they have taken off. They should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Actual value

This means the actual amount payable from the investment at the end date. If, at the end date, the investment is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the investment. So, the actual value should be assumed to be nil to arrive at fair compensation. PFS should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If PFS is unable to purchase the investment the actual value should be assumed to be nil for the purpose of calculation. PFS may wish to require that Mr C provides an undertaking to pay PFS any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. PFS will need to meet any costs in drawing up the undertaking.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the fair value when using the fixed rate bonds as the benchmark, PFS should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Any withdrawal, income or other distribution out of the investment should be deducted from the fair value 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 PFS total all those payments and deduct that figure at the end instead of deducting periodically.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr C wanted income with some growth accepting a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- 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.
- I consider that Mr C's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr C into that position. It does not mean that Mr C would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could have obtained from investments suited to his objective and risk attitude.

Further information

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address www.bankofengland.co.uk/boeapps/database , clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates - Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

There is guidance on how to carry out calculations available on our website. It can be found by typing 'compensation for investment complaints' into the search bar on www.financial-ombudsman.org.uk.

my final decision

I uphold this complaint and ask Professional Financial Services to compensate Mr C 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 29 January 2021.

Nina Walter
ombudsman