

complaint

Mr M has complained about the advice he was given by BlackStar Wealth Management Ltd. It recommended that he transfer deferred pension benefit he held in a defined benefit (final salary) pension scheme into a self invested personal pension (SIPP) and then invest in a number of high risk investments.

background

In November 2014, Mr M was referred to BlackStar by an unregulated introducer.

Mr M signed a number of documents for BlackStar in November 2014. These included the client agreement, fact find, investment risk questionnaire, letters of authority, and a declaration that no advice had been given by the introducer.

The checklist itself had a "set" list of investments. This indicated the investments Mr M was interested in were Colonial Capital Corporate Bonds, and Dolphin Capital GmbH loan notes.

The fact find recorded that Mr M was in his late-fifties and working. He was separated and in reasonable health. He had no investments and held £2,000 in savings. His main residence was valued at £160,000 with an outstanding mortgage of £100,000. He had no loans or credits cards. He had life cover of over £90,000.

The risk questionnaire said Mr M was willing to take a moderate risk in his financial affairs. The telephone note of an interview with Mr M from December 2014 said his objectives were to have a 'decent pension' at retirement and that he was looking to take 25 per cent tax free cash.

Mr M's attitude to risk was discussed, and reduced from a score of 7 out of 10, to 5/6 out of 10 (with 1 being low risk and 10 being high risk).

The transfer analysis report produced in December 2014 indicated a critical yield of 8.55 per cent per year at age 65 and 7.80 per cent per year at age 68 would be necessary for the transfer value to match the guaranteed benefits that were being given up.

The suitability report said Mr M was a medium risk investor and highlighted that the proposed investments were high risk. It also said that BlackStar generally regarded a critical yield of over 6 per cent as a significant risk, but if other factors were more important to Mr M then he should consider transferring.

The suitability report did recommended a transfer of the final salary scheme to a SIPP stating that a main priority was to leave death benefits under the plan to his dependents.

The funds recommended were Colonial Capital Corporate Bonds, Dolphin Capital GmbH and a range of collective funds. About the specific funds BlackStar said, *"Although outside of the conventional asset allocation we suggested for you, an investment into Colonial Capital and Dolphin Capital GmbH does fit with your risk profile and investment understanding. Therefore I recommend that you proceed with the investment."*

Mr M signed to say he had read the report and the SIPP was set up with the transfer value from the final salary scheme being paid in July 2015 for just under £80,000. Mr M took tax free cash of just under £20,000 soon afterwards.

In March 2016, BlackStar advised Mr M that the Dolphin investment had not been placed. In August 2016, Mr M was told that there was a tightening of criteria by the industry regulator and the Dolphin investment was no longer deemed suitable for him. So investment was made into other investments. Colonial Capital went into administration on 8 March 2017.

Mr M complained about the advice in March 2017.

BlackStar sent a final response letter in May 2017. This set out why it did not uphold the complaint. It said, in summary, the advice was based on Mr M's general objectives, attitude to risk, capacity for loss, knowledge and experience. Mr M had confirmed he understood the additional risk to his portfolio and he was fully informed.

The complaint was referred to this service where it was considered by an adjudicator. She decided that the complaint should be upheld. She said, in summary;

- Mr M didn't have capacity for loss. This was his only personal pension. He was in his late fifties and had no time to recover any losses.
- The recommended investments included high risk investments that were unregulated and didn't match his medium attitude to risk.
- The adviser would have been aware of the valuable nature of the final salary pension benefits and knew that a critical yield above 6 per cent posed a significant risk but the adviser didn't advise against the transfer.
- The final salary pension provided largely guaranteed benefits which were put at risk with the pension becoming dependent on investments and future annuity rates. The transfer posed a higher degree of risk than Mr M ought to have been advised to take.
- The transfer allowed Mr M to take his tax free cash but there is no detailed record as to why tax free cash was needed at that time.
- There was nothing to suggest that Mr M was anything other than a retail client. There was nothing to suggest that investing forty per cent of his fund into high risk unregulated funds was suitable for him.

BlackStar didn't agree. It responded and made a number of points. In summary it said;

- Mr M had been introduced to non-mainstream investments by an introducer. His objective was to receive advice on the suitability of these investments.
- The investments were non-readily realisable securities (NRRS) and not unregulated collective investment schemes (UCIS).
- Mr M's income needs in retirement would be met by his state pension. He wanted access to his pension fund now. He wanted the tax free cash. He'd said the scheme wasn't significant to him.
- There was no documented need to repay debts.
- The assessment that he was a moderately experienced investor was decided in discussion with Mr M who had held stocks and shares in the past.
- Mr M had identified the possibility of his pension failing and this was within his recorded attitude to risk.
- BlackStar had met its regulatory obligations.

I've summarised what BlackStar has said but I have read all of its comments.

As no agreement has been reached the case has been referred to me for a final 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.

I agree with the adjudicator and broadly with her reasoning. There is little that I can add to what she has already said. I uphold this complaint.

It is clear that a third party introducer was involved and whether that was a regulated or unregulated body is of little relevance in my view. Mr M may have been introduced to non-mainstream investments by this third party and held a wish to invest. But he was referred to BlackStar for a reason and it was required to give advice that was suitable for him and to act in his best interest.

I don't think Mr M had any significant capacity for loss. He had an outstanding mortgage and little by way of savings. This was his main private pension and it gave him virtually guaranteed benefits in retirement. The guaranteed income from that pension could have allowed him to make some provision for his family on his death if he wished.

Mr M was within a few years of retirement age and it's not clear to me why he was advised to take what was obviously a high risk strategy at that time in his life. It was a time when many would be looking to reduce risk rather than increase it. He would have had little time, or capacity, to make up any losses.

BlackStar says that Mr M wanted to access tax free cash but there is little if any detail about precisely why he needed it. There has been reference to Mr M needing to repay debts but BlackStar says that this was not recorded at the time although it was noted that he needed 'breathing space'. Given that Mr M was apparently giving up guaranteed future benefits to access tax free cash I'd expect to see clear reasons for this documented and recorded.

The suitability report confirmed that Mr M was highly likely to be worse off in retirement if he transferred yet it recommended that he should go ahead with the transfer. The strategy BlackStar recommended was that over forty per cent of the funds should be placed in investments that it described as 'high risk'. I don't think this strategy was suitable for him as it posed a higher degree of risk than he ought to have been advised to take.

I'm not satisfied that the recommendation to transfer was suitable or in Mr M's best interest. I think it's likely that had he been given suitable advice he would have decided not to transfer.

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice.

BlackStar must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using the most recent financial assumptions published (at the date of that decision). In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of his acceptance of the decision.

BlackStar may wish to contact the Department for Work and Pensions (DWP) to obtain Mr M's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on his SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Normally, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this. But Mr M has already taken some tax free cash which can be taken into account.

The compensation resulting from the loss assessment must where possible be paid to Mr M within 90 days of the date BlackStar receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes it to pay the compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

my final decision

I uphold this complaint about BlackStar Wealth Management Ltd. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 April 2019.

Keith Taylor
ombudsman