Financial Ombudsman Service

complaint

Mr A complains about the suitability of the advice provided by Multicorp Rose Limited ("Multicorp") to switch the value of his personal pension into a self-invested personal pension ("SIPP"). He believes the switch was unsuitable because it led to a financial loss. To put things right, he wants compensation on the basis he hadn't been advised to switch and remained invested in his previous personal pension.

Mr A is represented in this complaint by a third party claims management company ("CMC").

background to this complaint

In early 2016 Multicorp's representative met Mr A to review his personal pension then valued at about £18,000. The representative recorded Mr A's circumstances as follows:

- he was aged 47 and divorced;
- he had three financially dependant children;
- he had been unemployed for 13 years due to ill-health and was in receipt of State benefits of £5,304 per year;
- his previous occupation was warehouse manager;
- he had £800 cash in his current account;
- his only private pension provision was the personal pension at the centre of this complaint – the plan was invested in a with profits fund and had an ongoing fund charge of 0.875% per year
- he was a low risk investor (as determined by Multicorp); and
- his objectives were for the value of his pension fund to grow, to monitor the performance of his fund online, to receive ongoing financial advice and to retire at 67

Multicorp compared the costs of Mr A's personal pension to its preferred SIPP. The outcome of this comparison was confirmed to Mr A in a document titled *'Initial Pension Review'* which stated:

> *"After analysing your existing pension funds in comparison to the [provider] SIPP I can confirm that this plan will need to provide you with returns of 0.19% per annum more than your current policy (as detailed in the previous tables) in order to provide you with the same fund at retirement (based on the current transfer value and growth of 5.4% per annum)."*

Multicorp's representative then issued a suitability report to Mr A recommending he switch the value of his personal pension into its preferred SIPP. The representative confirmed he had discounted a stakeholder plan as the recommended SIPP had no set up fee, no minimum contribution and Mr A would benefit from access to Multicorp's portfolios. The suitability report included a tariff of charges for the SIPP and Multicorp's fees, as follows:

- £108 initial SIPP set up fee
- 3.50% initial adviser charge
- 1.00% annual adviser charge

- 0.40% annual platform charge
- 0.54% annual management charge

The suitability report stated the yearly cost comparison as:

> *"Old scheme total costs £105.78*
>
> *New scheme total costs £276.78"*

Mr A accepted the recommendation. The switch was completed in July 2016.

In January 2018 the CMC representing Mr A complained to Multicorp about the suitability of its pension switch advice in 2016. The CMC stated the advice to switch was unsuitable because Mr A's SIPP was valued at £8,022.43 less than the notional value of his previous personal pension.

Multicorp rejected this complaint. It was satisfied its recommendation to switch was suitable and that Mr A hadn't suffered a financial loss of £8,022.43, as claimed by the CMC.

The CMC contacted us. Our adjudicator recommended that this complaint be upheld for the following reasons:

- Mr A had a relatively modest pension fund;
- his objective for improved investment returns could have been met by switching funds within his previous personal pension, if suitable;
- he had the flexibility to retire at his chosen retirement age with his previous personal pension;
- his desire to view the value of his pension fund online wasn't a suitable reason for switching into higher charging product;
- the annual charge on the previous personal pension of 0.875% was lower than the recommended SIPP;
- the cost comparison Multicorp provided to Mr A was misleading when it stated that the SIPP needed to generate a return of 0.19% per year more than his personal pension in order to produce the same return – our adjudicator noted this comparison failed to take into account both the 3.50% initial adviser charge and 1.00% annual adviser charge associated with the switch into the SIPP; and
- the switch into the SIPP led to increased costs without good reason

To put things right, our adjudicator recommended Multicorp to:

- compare the investment performance of the recommended SIPP to the notional position Mr A would be in now had he instead invested 50% in the FTSE UK Private Investors Income Total Return Index and 50% in average fixed rate bonds from the outset – and, if this showed a loss, to pay the difference to Mr A; and
- pay to Mr A £600 (plus VAT) to cover the cost of receiving financial advice to determine whether he should set up a new pension plan

The CMC agreed with our adjudicator's recommendation that this complaint be upheld, but disagreed with the redress methodology. Instead, the CMC said redress should be based on the notional position Mr A would have been in had he remained invested in his previous personal pension.

Multicorp didn't agree with our adjudicator's findings. It said, in summary, that:

- its recommendation for the SIPP was correct, based on the ongoing service Mr A is receiving and his long-term objectives;
- since switching, Mr A has had an annual review, where his circumstances were re-evaluated and his risk profile re-assessed from low to balanced – had he remained invested in his previous personal pension, this review process wouldn't have been carried out since he wasn't receiving service to ascertain ongoing suitability;
- the maximum Mr A's previous personal pension (not including terminal bonus) would have grown was capped at 2.75% per year – this effectively means his fund could, at best, keep pace with inflation and, at worst, begin to erode;
- its recommendation was for the long term and taking a snapshot of the last 18 months contradicts the foundations of financial advice and long term financial planning;
- before bringing this complaint, Mr A had never expressed dissatisfaction about its recommendation to switch into the SIPP or that he intended to engage the CMC; and
- the basis of this complaint was originally about a missing terminal bonus of £8,022.43 on the switch from the personal pension into the SIPP which it had since disproved, not that Mr A felt the advice was unsuitable – it was concerned the nature of this complaint had changed and that it wasn't given the opportunity to investigate it

Despite its position, Multicorp offered Mr A £300 as a goodwill gesture. And in response to our adjudicator's recommendation that it pay Mr A £600 (plus VAT) to cover the cost of financial advice, it also offered to switch the value of his SIPP into a new to a personal pension without cost.

The CMC, on behalf of Mr A, rejected Multicorp's offer. Since agreement couldn't be reached, this complaint has been referred to me to make 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.

When considering what is fair and reasonable, I'm required to take into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

The basis of Mr A's complaint

Multicorp says the original complaint received from the CMC was about a missing terminal bonus of £8,022.43 on the switch from the personal pension into the SIPP, not that Mr A felt the advice to switch was unsuitable.

I've read the initial complaint letter the CMC sent to Multicorp dated 18 December 2017. In my view, the CMC's letter clearly sets out the basis of the complaint to be about the suitability of the advice to switch the value of Mr A's personal pension into the SIPP (as later repeated in our complaint form) and not specifically about a missing terminal bonus. In that complaint letter the CMC stated, amongst other things:

> *"On review of the claimant's pension we requested from [previous personal pension provider] the notional value had he not been persuaded to transfer his pension…the value as 22 September 2017 £25,932.30 including terminal bonus, the value of the claimant's SIPP as of 27 November 2017…is £17,909.87, that is a total loss since the transfer £8,022.43."*

In its initial response to this complaint, Multicorp stated the value of the terminal bonus was transferred into the SIPP and wasn't missing. So it didn't uphold the complaint.

It seems to me that Multicorp misinterpreted the basis of this complaint when it initially received it. And that inadvertently latched onto the figure of £8,022.43 and erroneously determined that the complaint was about a "missing" terminal bonus rather than the suitability of its advice. As a result, it failed, at least initially, to deal with the complaint about suitability. It was only in response to our adjudicator's findings that Multicorp provided its position on the suitability of its advice to switch into the SIPP.

Based on what I've seen, I'm satisfied that this complaint has always been about the suitability of Multicorp's advice to switch the value of Mr A's personal pension into a SIPP. So I'm proceeding on that basis.

The regulator's view on pension switching

In December 2008 the regulator issued a report entitled "*Quality of advice on pension switching".* The report summarised the findings of the regulator's thematic review of pension switching advice and gave examples of good, compliant and poor practices it found on the quality of advice given since pensions A-day on 6 April 2006. The regulator noted, amongst others, the following as examples of what it considered to be unsuitable advice:

- A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was flexibility of a drawdown option, but there was no evidence that this option was needed).
- A pension that was more expensive than a stakeholder pension, but a stakeholder pension would have met the customer's needs.
- A new pension and the customer had lost benefits from their ceding pension (for example, guaranteed annuity rates) without these being explained or justified.

In Mr A's case, his previous personal pension was invested in a with profits fund and had an ongoing fund charge of 0.875% per year. There was a guarantee attached to the plan that the investment return will always average 4% per year for money invested before 1 July 1994.

It's not in dispute that Multicorp told Mr A that the switch into the SIPP would lead to increased costs. But the fact that higher costs were disclosed doesn't automatically mean the switch should be regarded as suitable; this is because disclosure isn't the same as suitability.

Mr A was relying on Multicorp to provide expert advice and act in his best interests. In my view, the way in which Multicorp disclosed the cost information is confusing and could have misled Mr A. Let me explain why.

In its document titled *'Initial Pension Review'*, Multicorp stated the proposed SIPP needed to grow by 0.19% per year to provide the same fund at retirement as Mr A's personal pension. Its suitability report then goes on to state the difference in cost between the personal pension and SIPP was £171 per year. I consider this to be misleading because the figure of 0.19% fails to take into account both the 3.50% initial adviser charge and 1.00% annual adviser charge, which would have a material impact on the critical yield required. In reality, the critical yield was substantially higher than 0.19% per year. Based on the personal pension fund value of about £18,000, the initial fees deducted on switching to the SIPP amounted to about £738. The ongoing fees, including the annual adviser charge, would amount to about £335 (after allowing for deduction of the initial fees). This figure of £335 is higher than the "*New scheme total costs £276.78"* stated by Multicorp.

So while Mr A knew the switch would lead to higher costs, I'm not satisfied Multicorp placed him into an informed position about the true cost.

Was the switch into the SIPP suitable?

At the time of Multicorp's advice, Mr A had been unemployed for a number of years due to ill-health and it seems there wasn't any real prospect he would resume pension contributions or required the flexibility offered by the SIPP.

Mr A's personal pension was valued at about £18,000. Multicorp's rationale for transferring was because it was apparently important to Mr A that he receive ongoing advice and view his pension fund online. From the information provided in the suitability report, there's no evidence the SIPP would provide better investment performance or that the provision of ongoing advice would lead to a better overall outcome. Bearing in mind Mr A was recorded as a low risk investor and that the SIPP needed to be invested to reflect this, there was, in my view, limited scope for a better overall return once the higher costs of the SIPP and ongoing advice were included.

In addition, there's insufficient evidence that the alternative options of remaining in the personal pension or switching to a lower cost stakeholder pension were adequately explored before being discounted by Multicorp. Finally, switching into the SIPP led to the loss of the guarantee attached to the personal pension that the investment return will always average 4% per year for money invested before 1 July 1994.

If it was a genuine desire of Mr A's to receive ongoing advice and to view the value of his pension fund online this could have been achieved at a lower cost. And he could have taken benefits from age 67 under his previous personal pension if that was one of his objectives.

Taking everything into account, I find that there's insufficient justification for recommending the switch into the SIPP. I haven't seen evidence of a good reason for the extra product and adviser costs that were incurred upon the switch into the SIPP. As a result, I can't see how this was in Mr A's best interests. So I'm going to uphold this complaint.

What would Mr A have done?

In my view, had Multicorp acted in Mr A's best interests, it wouldn't have recommended the switch into the SIPP. On balance, had suitable advice been provided, I think it's more likely than not Mr A would have remained invested in his previous personal pension and in the same with profits fund to match his low risk profile. I conclude that compensation should be based on this position.

fair compensation

To compensate Mr A fairly, Multicorp must:

- Compare the performance of Mr A's SIPP with his previous personal pension if that had remained in force and invested in the same with profits fund. If the *fair value* is greater than the *actual value*, there's a loss and compensation is payable. The calculation date should be made as at the date of this final decision.

  Since I've concluded the recommendation for the SIPP was unsuitable, Multicorp must pay compensation direct to Mr A and not into the SIPP. Had compensation been paid into a pension plan it would ordinarily provide a taxable income at a later date. However, Mr A has been unemployed for a number of years due to ill-health and there doesn't seem there's any real prospect he'll resume pension contributions at a later date. Taking into account his wider financial circumstances, I think it's more likely than not Mr A will be a non-taxpayer in retirement. As a result, compensation shouldn't be reduced to notionally allow for any income tax that would otherwise have been paid. Therefore if the investment comparison shows a loss, this should be paid in full as a cash lump sum to Mr A.

- Pay Mr A £600 plus VAT (£720 in total) to cover the cost of receiving financial advice to determine whether he should set up a new pension plan.

fair value

This is what Mr A's previous personal pension would have been worth at the calculation date if it had remained invested in the same with profits fund.

actual value

This means the actual amount of Mr A's SIPP at the calculation date.

my final decision

I uphold this complaint. My decision is that Multicorp Rose Limited must calculate and pay compensation to Mr A, as set out above. Multicorp Rose Limited must provide details of its calculation in a clear, simple format.

Simple interest is to be added to my award at a rate of 8% gross a year from the date of this final decision to the date of payment. Income tax may be payable on any interest awarded.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A either to accept or reject my final decision before 28 April 2019.

Clint Penfold
ombudsman