Financial Ombudsman Service

complaint

Mrs B complains that RJH Mortgage and Financial Services Limited inappropriately advised her to transfer a number of her existing pension plans to a new plan, and then subsequently transfer it again from the new plan to another provider.

background

In 2008 Mrs B was advised by RJH Mortgage and Financial Services Limited (RJH) to transfer three of her existing pension plans to a single personal pension. At the time of the advice she was a director of her own limited company and she intended to retire at the same time as her husband - within about 4/5 years, but this depended on whether he was able to arrange for his company to be managed without his help. Her risk profile was recorded as 7 out of 10 on a scale of 1-10.

In 2011 RJH advised Mrs B to transfer the pension again - this time to a Self Invested Personal Pension (SIPP). At that point it says Mrs B had no confidence in the stock markets and asked RJH whether there were any alternative investments she could invest in. RJH introduced Mrs B to another company, in order to discuss possible investments in unregulated funds.

The adjudicator who investigated the complaint concluded that both sets of advice were not appropriate. This was because, in summary:

- Mrs B transferred three existing plans to the new pension. However the new plan had a higher charging structure overall. Mrs B could have switched into lower charging funds in the one existing plan that was more expensive if that was a priority at the time.

- The projected benefits and fund value in the new plan were lower than the projected benefits of the existing plans, even though two of the existing plans used lower growth rate assumptions.

- One of the existing plans offered a guaranteed annuity rates. This was a valuable benefit that should not have been given up.

- The advice to transfer to the SIPP was for the purpose of investing in unregulated high risk investments. The adjudicator thought that Mrs B should have been advised against a transfer given she was approaching retirement age and therefore should have been advised to safeguard her provision. The adjudicator thought the SIPP was also a higher charging product and overall he wasn't persuaded that the recommendation to transfer was appropriate.

RJH didn't agree with the adjudicator's findings. It said, in summary:

- The available evidence clearly showed that Mrs B's needs and objectives were to bring all her funds together for maximum growth. If the existing plans had been left as they were there could be potential problems if the funds needed changing – particularly in terms of time taken. It was possible to switch funds with the new provider quickly online, and it said that Mrs B considered this a huge plus.

- It had known Mrs B for about 40 years. She was never a cautious investor. RJH felt that the point had been ignored by the adjudicator and that he focused only on the money side alone for the transfers.

- The charges weren't the main factor behind the transfer. Mrs B fully understood what guarantees were lost and it was thought that the growth she could get by transferring would outweigh the loss of the guarantees. Mrs B was aware she was losing this guarantee. She signed all the forms and fully understood that the recommendation was based on what she wanted to achieve.

- If it was to recommend switches into cheaper funds within the existing plans, as the adjudicator seems to suggest, the portfolio would have been based on recommending cheaper funds only rather than looking at the performance of each fund, its history and ratings.

- It had conducted the redress calculations proposed by the adjudicator and these showed that the growth in the new plan outperformed the benchmark suggested by the adjudicator.

- If it had advised Mrs B to remain in her existing plans, the commission to be paid to RJH for the advice would have meant that the existing plans would have been more expensive than the new ones.

- Mrs B had said in her initial complaint letter that she was a cautious investor but several ATR questionnaires showed this wasn't the case. But it didn't appear this had been raised with Mrs B.

- In 2008 it was acceptable, based on the regulations and instructions at the time, to transfer a plan with guaranteed annuity rates provided that all the forms had been completed and the client accepted the disadvantages with the transferring plan. It was never Mrs B's intention to take the annuity route.

- Mrs B was advised to transfer into a SIPP only because she had decided to proceed with investing in riskier funds only available in a SIPP. RJH never discussed those funds with Mrs B so as not to run the risk of giving advice.

- The SIPP charges were less than the plan that the firm had firstly arranged Mrs B to transfer into.

Mrs B has said the following:

- It was not her idea to bring all plans together. This was upon RJH's recommendation that she should collate her pensions under one roof as this was in her best interest. The idea of not having to sign papers was a positive, however by no means was it a huge 'plus'. It would never be a major reason for moving her pensions.

- It is true that RJH knew Mrs B for 40 years and that she never was a cautious investor. However, it was RJH's duty to reduce her risk as she approached retirement. Instead, RJH referred her to a company selling unregulated investments.

- RJH seemed to place great importance on the fact that Mrs B understood the advice by signing paperwork. As RJH knew her for 40 years, it knew that she placed great faith in everything RJH advised.

- Throughout her meetings with RJH very little was mentioned about increased charges or lost guarantees. RJH said that the new plan was better because she could access all her funds and it could generate 'lots of growth'.

- RJH never discussed the possibility of charging her even if she remained in her existing plans. This discussion never happened.

- The idea that RJH advised her to transfer to a SIPP in order to access riskier funds is wrong. This process started when she was told about the guaranteed returns of some funds. As she approached retirement, the idea of guarantees sounded great. All she knew was that she was being placed in these guaranteed funds.

- She did wish to achieve maximum growth, but not to the detriment of her entire pension fund. RJH did speak to her about the unregulated funds by telling her she should invest in them.

- The firm's view that the SIPP charges were lower than the existing pension was inaccurate and misleading. It had not compared the charges on the two arrangements on a like for like basis. RJH had quoted the ongoing charges of the direct retail unit trust and OEIC versions of the funds not the providers' insured versions which were lower cost. It had also not rebated natural trail commission which it had been paid in addition to its explicit ongoing fees.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The fact that Mrs B signed paperwork accepting that she understood the advice given doesn't mean that the advice was suitable. RJH was the expert and was acting in its professional capacity. It was obliged to consider all of Mrs B's circumstances and objectives at the time and then provide advice that *it* considered was suitable.

The comparison of the estimated pensions that could be payable at retirement date showed that the proposed new pension plan was projected to provide slightly lower benefits compared to the existing ones. This was despite the fact that some of the assumed growth rates used on the existing plans were *lower* than used for the new plan (albeit these plans made up a small proportion of the overall value). But the comparison also didn't make any allowance for the fact that one of the plans had guaranteed annuity rates attached (GARs).

In terms of the *headline* rate, there wasn't a large difference between the GAR at age 60 and the prevailing annuity rates at that time. However in percentage terms there was a material difference and it was still a valuable guaranteed benefit. So even though the underlying funds with GARs had experienced little growth over the previous few years, it would have to be assumed at outset that the comparative monies in the new funds would significantly outperform the existing funds merely to provide *the same* level of benefits. Particularly with the new plan's higher charges taken into account.

Whilst Mrs M may have been willing to accept risk that's only sensible if there is likely to be a material reward. Given the outperformance that was required I think there was likely to be limited potential to improve on the existing pension with a GAR. And only by investing in funds presenting appreciable risks. Although her exact full retirement date was unclear the period to retirement was likely to be limited. And the GAR provided protection in the event that annuity rates fell.

I note that the firm has said Mrs B didn't want to go down the annuity route (in which case the value of the GAR may not be material). But I think if the real value of the GAR was explained in layman's terms, and the risks/ likely rewards of trying to improve on it, Mrs B would likely have remained in that plan with its guarantees; she could have used her other plans to provide flexibility at retirement if that was her requirement.

The suitability letter said the reasons for the adviser's recommendation to transfer rather than stay with the original plans were largely the administrative efficiencies of a single pension. Using a single wrap with superior technology made monitoring and switching funds easier. No charge was made for switching. And reports could be obtained immediately. It also said that closer to retirement the portfolio could be switched to less or no risk. And the new plan had a cheaper charging structure.

The projections for the combined transfer values showed the existing plans providing slightly higher benefits at retirement even though lower growth rates had been used on the two smaller plans and no allowance made for the GAR. Two of the existing plans had materially lower charges and one of these had a GAR. So it doesn't appear that the overall charges on the new plan were lower than the existing plans. The underlying investments in the largest original plan were in line with Mrs B's attitude to risk. And she could have switched funds within that plan *if* she either wanted to reduce the charges slightly on it or change the degree of risk taken.

RJH has argued that had Mrs B remained in her existing plans then its commission would have meant that these plans would have a higher charging structure to the new plan. However two out of the three existing plans would have been cheaper even with the ongoing commission of 0.75% that was subsequently taken by RJH (the fund being initially over £280,000). Clearly the firm should be paid for providing its services. But given my view is that the advice should have been to remain in the existing plans it may have been agreed between the parties for payment to be made by way of a fee.

So given the level of charges overall was higher, the GAR offered by one of the existing plans and that there doesn't appear to be any material advantage gained by transferring, I'm not persuaded that the advice to transfer was suitable.

Having said that, it isn't clear that Mrs B has suffered a loss as a result of the firm's advice. In deciding on appropriate redress my aim is to put Mrs B back into the position that she would have been in, as far as it's possible, but for the unsuitable advice. So although I am upholding her complaint, if her new plan had a higher value on subsequent transfer than the notional value calculated using the method outlined below, then the firm isn't obliged to pay her more as she hasn't lost out financially.

In respect of the advice to invest in the SIPP, the Financial Conduct Authority's (FCA) view is that when a financial adviser recommends a transfer to another pension then the adviser should have regard to the underlying investment. Otherwise it will not be able to assess the suitability of the transaction as a whole.

On this particular case, the firm was aware that the reason behind the transfer to the SIPP was to enable investment into higher risk unregulated funds. If RJH wasn't aware of the exact nature of the underlying investments it shouldn't have advised Mrs B to transfer at all.

RJH has said that the SIPP charges were lower than those of the existing plan. Mrs B has disputed this saying the firm has not made a comparison on a like for like basis. What is not in dispute is that the firm were paid an initial fee of over £5,000 for the advice to transfer to the SIPP. Even though the SIPP *may* have been cheaper (which Mrs B disputes) it would be a few years before that initial fee would be recouped. And given Mrs B's age, although her retirement date was unclear there was always the possibility that her circumstances could change and retirement be sooner rather than later.

Like the adjudicator, I'm not persuaded that the firm should have advised Mrs B to transfer to the SIPP. So I think the higher charges/costs that Mrs B incurred (in comparison to her existing arrangement) through that advice should be refunded. Again, if, ultimately, the charges incurred *over time* have now been lower, the firm won't have to pay Mrs B redress in respect of it.

my final decision

My final decision is I uphold this complaint.

I order RJH Mortgage and Financial Services Limited to:

- Calculate and pay redress (if any) for the advice to transfer the first pension to Mrs B as per the methodology set out below.

- Calculate the total additional charges (if any) that Mrs B has incurred in the SIPP between the date of its inception and the date of this decision. This should be done by asking the relevant providers for details of the *actual* charges/costs incurred (including the initial fees). Pay this amount directly to Mrs B, together with interest at the rate of 8% per year simple over the same period.

- Pay Mrs B £200 for the distress and inconvenience caused to her as a result of its inappropriate advice.

fair compensation

To compensate Mrs B fairly RJH should put her as close to the position she would probably now be in if she had not been given unsuitable advice. I think that Mrs B would have invested differently. It is not possible to say precisely what she would have done differently. But I am satisfied that what I set out below is fair and reasonable given her circumstances and objectives at the time of the advice.

what should RJH do?

To compensate Mrs B fairly for the transfer advice RJH should compare:

1. The value transferred from the first new plan recommended to the SIPP, with

2. The combined transfer values of the plans that did not offer guaranteed annuity rates, on the assumption that their performance would have mirrored the return illustrated by the FTSE WMA Stock Market Growth Total Return Index (the WMA index) over the same period of time, and

3. The value of the plan that offered guaranteed annuity rates, taking into account the guaranteed annuity rates (as below).

If there is a loss, RJH should pay such amount as may be required into Mrs B's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the compensation and any interest.

If RJH is unable to pay the total amount into Mrs B's pension plan, it should pay that amount direct to her. The amount should be reduced to notionally allow for the income tax that would otherwise have been paid.

For the purpose of calculation of fair compensation, I have assumed that Mrs B would be a basic rate taxpayer at retirement and that rate would be 20%. At retirement she would have been able to take 25% as a tax-free lump sum but the remaining 75% would have been subject to income tax at her marginal rate of tax. So the *notional* allowance for tax would equate to a 15% reduction in the total amount (20% on 75%).

8% simple interest should be added to the compensation in respect of the first transfer advice from the date of the calculation (date of transfer to the SIPP) to the date of my decision.

Additionally, 8% simple interest per year should be added to any compensation due from the date of decision (if compensation is not paid within 28 days of the business being notified of acceptance).

why is this remedy suitable?

I have chosen this method of compensation because:

- Mrs B wanted to achieve growth and was willing to accept investment risk (as indicated by her risk profile).

- The WMA index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. The mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs B's circumstances and risk attitude.

- The interest on the loss is for being deprived of the compensation money since the date of the calculation.

how to calculate the compensation

The compensation payable to Mrs B is the difference between the fair value and the actual value of the plans. If the actual value is greater than the fair value, no compensation is payable.

actual value

This means the value transferred from the plan recommended to the SIPP.

fair value

To arrive at the fair value RJH should do the following:

- In respect of the plans that did not offer guaranteed annuity rates, RJH should work out what the transfer value of these plans would have been (on the date of the transfer of the first plan recommended to the SIPP) if they had performed in line with the FTSE WMA Stock Market Growth Total Return Index .

- In respect of the plan offering a guaranteed annuity rate, RJH should work out what the transfer value of that plan would have been had it remained with the original provider (on the date of the transfer of the first plan recommended to the SIPP) by using the formula 'Transfer value = TV x (GAR/CAR)', where

    - TV is the notional transfer value of the plan as at the date the first new plan was transferred.

    - GAR is the guaranteed annuity rate applicable at that date.

    - CAR is the current annuity rate applicable.

additional capital or contributions

Any additional sum that Mrs B paid into the new plan should be added to the calculation from the point it was actually paid in so that it starts to accrue a return in the calculation from that point on.

If Mrs B stopped making contributions to any of the existing plans and, instead, made them in the new plan, the calculations should assume that the new contributions would have been made in the existing plans on the same dates and in the same amounts.

If the new plan received a higher level of contributions to the one the existing plans were receiving, it should be assumed that the existing plans would have received an increased contribution, in order to reflect those paid in the new plan.

withdrawals and income payments

Any withdrawals or income payments that Mrs B may have received from the new plan should be deducted from the calculation at the point they were actually paid so they cease to accrue any return in the calculation from that point on.

If there are a large number of regular payments, to keep calculations simpler, I will accept if RJH adds all those payments to the actual value and compares the total with the fair value instead of periodically deducting them.

further information

The information about the WMA index can be found in the website of the Wealth Management Association or the FTSE Group.

David Ashley
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