complaint

Mr C has complained about advice in 2015 to transfer a personal pension plan (PPP) to a Self-Invested Personal Pension (SIPP). He believes the advice was unsuitable and the risks too high.

background

In 2015, Mr C was introduced to Economic Financial Solutions IFA Limited (trading as Torch Wealth Management) (Torch) by an unregulated third party.

An undated, unsigned "Fact-Finding" document recorded the following information about Mr C:

- He was 51, living with his partner and had no dependents
- He was employed and owned his home
- He had a Qualifying Recognised Overseas Pensions Scheme (QROPS) worth around £60,000 and a PPP worth about £59,000
- His pensions had retirement ages of 65
- The following points were answered as not disclosed -
    - Income and expenditure
    - Liabilities
    - Protection
    - Investments
- His attitude to risk was assessed as 6 on a scale of 1 to 10 (where 10 was the highest). This was categorised as *"High Medium"*
- He could tolerate *"medium"* investment losses

His existing PPP was invested in a managed fund with an Annual Management Charge (AMC) of 1% pa.

Mr C was advised to transfer his PPP fund to a SIPP, with the funds to be managed by a Discretionary Fund Manager (DFM). Allowing for the charges applied to Mr C's existing PPP, Torch said he'd received an average return of 4.22%.

The recommended fund had an expected return of 7.975%, with the underlying assets in *"a spread between AIM Companies, UK Property Bonds, Growth Euro Bonds, Preference Share Holdings and also the FTSE."*

Torch said Mr C's existing pension fund was risk rated 7 whereas he'd been assessed as 6 out of 10. The recommended fund would match his views on risk.

Torch had negotiated a reduced annual SIPP fee of £200 plus VAT and would charge a fee of £2,504 (4%) to arrange the plan, along with 0.75% pa to cover the *"Core"* annual review service.

There was no mention of the 1% pa AMC the DFM would charge for managing the investment, or the 1.5% commission payable on all transactions.

Mr C transferred £62,108.32 to the SIPP and invested £58,384 with the DFM. Further contributions were made to the SIPP and a further £5,000 invested with the DFM.

Mr C withdrew his investment from the DFM in January 2018 – his SIPP account received £59,074.98; crystallising losses of £4,309.02.

Mr C complained to Torch. It didn't uphold the complaint saying that, having properly assessed his views on risk, its role had been to match this to a suitable fund or portfolio. Torch didn't think it was responsible for the day to day management of the fund. If Mr C was unhappy with the performance, he should speak to the DFM.

Mr C asked us to look into the matter. Our adjudicator didn't think Torch's advice was suitable. Although Mr C received the advice report, our adjudicator thought it was misleading.

The report said Mr C's existing pension was higher charging, but our adjudicator didn't agree. Torch's comments hadn't been put into context and failed to account for *all* of the costs associated with its advice. It hadn't set out clearly the impact *all* the charges would have on Mr C's fund. Had it done so, it would've been clear Mr C needed to achieve greater growth just to stand still.

And, contrary to what Torch told Mr C about reducing risk, the increased costs were likely to lead to him needing to consider taking greater risks, to cover the additional costs associated with Torch's advice.

The adjudicator wasn't satisfied Mr C's needs couldn't be satisfied by a stakeholder friendly plan, like the PPP he already held. Whilst it might not offer some of the options made possible by Pensions Freedoms legislation; there was nothing to show these were needed when Torch gave advice. According to Torch's records, Mr C couldn't access his benefits for at least 4 years and in all likelihood wasn't planning to do so for nearer 14 years.

Torch didn't agree with the adjudicator, saying it was confused by the assessment: Mr C had complained about the advice, saying the risks weren't appropriate. He hadn't complained about the advice to transfer to the SIPP, or about the fees Torch had applied.

Torch believed it was a question of whether or not the portfolio funds suited Mr C's agreed investment strategy.

It also said there was still £1,584.76 invested with the DFM and so the losses had been within what was expected.

The adjudicator explained that as part of his investigation he'd considered the suitability of the advice. He didn't think the basis for recommending the transfer was appropriate or that proper consideration had been given to whether Mr C's needs could be met by keeping his existing PPP.

We made some further enquiries about any monies still held by the DFM. It confirmed it does hold some funds – these represent dividends received following the disinvestment.

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've come to the same conclusions as the adjudicator and for broadly the same reasons.

I accept Mr C's initial complaint centred on the suitability of the investment recommendations Torch made. But I agree it was right, when considering that issue, that we also consider the overall suitability of Torch's advice.

When thinking about what suitable advice looks like, Torch had a responsibility to consider Mr C's objectives and how these could be best achieved. In doing so, an important consideration was the total cost of following the advice.

Mr C was told his existing plan had higher charges. I think that was misleading. I agree Torch should have provided a *full* charges comparison (including those it would deduct for its advice). And it should've made clear to Mr C the impact all the new costs would have, compared to his existing plan.

From what I've seen, Torch didn't do that and so Mr C wasn't in a position to make an informed decision about whether it was right to follow Torch's advice.

I agree that, had Torch clearly compared the two arrangements (including an allowance for the deductions it would make), it would've been clear to Mr C that he'd need to achieve additional growth simply to cover the extra costs of following Torch's advice.

I think Torch should have known, in general terms, that achieving higher growth would normally necessitate taking higher levels of risk – which isn't the impression it gave Mr C. So in this respect I agree that the advice was misleading.

Torch says there are still funds held by the former DFM and that this means Mr C's losses are within reasonable parameters. As I've mentioned, the DFM has confirmed it does hold dividends received following disinvestment. It's also told us these can be returned to Mr C's SIPP bank account on receipt of an instruction to do so. The sum is broadly in line with that suggested by Torch.

I acknowledge this reduces the investment loss Mr C may have suffered, but this doesn't alter my view about the suitability of the advice Torch gave. But I think it right that any compensation takes account of all of the DFM funds. The method of calculating any compensation due allows for this.

To be clear, I don't think the advice Torch gave Mr C was suitable. I'm not persuaded his objectives could only be satisfied by transferring to a SIPP, which led to him incurring higher overall charges.

fair compensation

My aim is to put Mr C as closely as possible in the position he would probably now be in if he had been given suitable advice. Mr C's objectives could have been met by his existing PPP or a new stakeholder to accommodate future contributions. But, rather than ask Mr C's former provider (who isn't a party to the complaint) to carry out hypothetical calculations, I've used an index.

I take the view that Mr C would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

what should Torch do?

To compensate Mr C fairly, Torch must:

- Compare the performance of Mr C's investment with that of the benchmark shown below. 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.

  Torch should add interest as set out below.

  If there is a loss, Torch should pay 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 Torch is unable to pay the total amount into Mr C's pension plan, it 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 total amount 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 or expected marginal rate of tax at his selected retirement age.

  For example, if Mr C is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr C would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr C £250 for the unnecessary trouble and upset caused by the unsuitable advice.

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

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
PPP funds transferred to the SIPP along with the additional contributions received	still exists	FTSE UK Private Investors Income Total Return Index	date of investment	date Mr C disinvested his DFM investment	8% simple a year from the "end date" to date of settlement

actual value

This means the actual amount payable from the investment at the end date – and should include the funds transferred back to Mr C's SIPP, any cash held by the SIPP and the value still remaining with the DFM.

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, 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 are a large number of regular payments, to keep calculations simpler, I'll accept if Torch totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

I've decided on this method of compensation because:

- Mr C wanted capital growth and was willing to accept some investment risk.
- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr C's circumstances and risk attitude.

my final decision

I uphold the complaint. My decision is that Economic Financial Solutions IFA Limited (trading as Torch Wealth Management) should pay the amount calculated as set out above.

Economic Financial Solutions IFA Limited (trading as Torch Wealth Management) should provide details of its calculation to Mr C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr C either to accept or reject my decision before 27 October 2018.

Lesley Stead
ombudsman