

Complaint

Ms C has complained that the advice she received from Milsted Langdon Financial Services Limited to transfer her additional voluntary contribution (AVC) provisions away from her employer's in-house arrangement. Ms C has complained that the advice she received was unsuited to her requirements and involved a higher charging regime than her existing in-house arrangement.

Background

At the time of advice, in May 2010, it was noted that Ms C:

- was aged 52
- was a member of her employer's pension scheme
- expected to have 31 years of pensionable service if she worked through until age 65
- was a member of the in-house AVC scheme. Her AVC policy was written to age 60, was invested in the with profits fund, monthly premiums of £379.60 were being paid into the arrangement and the policy was recorded as having a value of approximately £58,000 as at 31 March 2009
- had £4,000 invested in a cash ISA
- had needs that were identified as being *"Review existing AVC – protect capital + invest ethically."*
- had a balanced attitude to investment risk, this was defined as,

"You prefer to invest in a broad range of stock-market linked investments, in return for the potential for real capital growth. In doing so, you understand that you accept the risk of some capital loss."

Milsted Langdon Financial Services Limited wrote to Ms C in May 2010 to set out its recommendations. It noted that:

- The existing plan was invested in a with profits fund which was categorised as having a risk rating that was low to balanced. The policy had a transfer value of around £66,000 of which approximately £10,000 was terminal bonus.
- The loss of potentially £10,000 if terminal bonuses were withdrawn following a fall in the markets was not acceptable to Ms C.
- Ms C was happy with a far more dynamic investment strategy with her future contributions. She was recorded as having an adventurous attitude to risk.
- Ms C was interested in ethical investments.

The business recommended that the AVC plan be transferred to a Self Invested Personal Pension (SIPP). It recommended that the transferred funds were invested in a structured investment product. It noted that:

- If the investment was held for the full term, there are no charges for Ms C to pay directly as they are already taken into account in the terms of her Plan. These charges would not be more than 4.0%, of her initial investment.
- There were charges with the SIPP but despite benefitting from 100% capital protection, the recommended plan is significantly cheaper than your existing AVC.

Ms C's adviser e-mailed her in June 2010. The main reason for recommending the plan was stated to be that it was deposit based and therefore it was potentially eligible for protection under the Financial Services Compensation Scheme (FSCS).

I have noted the correspondence on file between Milsted Langdon Financial Services Limited and the SIPP provider that shows that the charges being applied were significantly higher than had been indicated to Ms C at outset.

It has also been confirmed that there is no provision within the terms and conditions of the structured product plan to allow for the transfer of Ms C's holding to a third party unless Ms C were to die during the term of the plan.

One of our adjudicators investigated the complaint and concluded it should be upheld. In summary, he concluded that the advice given in respect of the AVC policy was likely to leave Ms C worse off at retirement than before the switch into the structured product plan. He was minded to uphold the complaint.

Milsted Langdon Financial Services responded to the adjudicator's assessment and it noted, amongst other things that:

- It agreed that the adviser did not make the charges clear. However, it stated that this has been addressed and a refund of £406.05 had been credited to Ms C's pension account and the monthly ongoing charges had been reduced from £99.78 to £31.50 per month.
- The new investment gives the client protection at maturity from any capital loss as there will be no market value reduction or loss of terminal bonus, the capital is guaranteed. A bank deposit account with a guaranteed capital balance and the potential for significant upside is a more suitable investment for this client than a with profits fund where the terminal bonus could be worth nothing at Ms C's retirement date.
- The contract it recommended is principally invested in a bank term deposit supported by the Financial Services Compensation Scheme (FSCS). This gives the client a much greater degree of capital protection than her previous contract.

Ms C made final submissions but having noted their content I am satisfied that nothing was stated that is of material significance to my decision below.

My findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusions as our adjudicator for broadly the same reasons.

I am satisfied that Ms C was not an experienced investor. Ms C sought advice from Milsted Langdon Financial Services about her AVC provisions, I am satisfied she did so because she wanted professional advice and I am satisfied that having received such advice she acted upon it.

Whilst the business has discussed the risks of the existing in-house with profits pension fund provider failing, I consider that the risk of this happening was so small that it would not be

necessary to discuss this with an investor. In my opinion, the advice to transfer into a deposit-based contract was done after the business had significantly exaggerated the risks of the in-house AVC provider defaulting. The structured product that was sold only guaranteed the funds if the business that was providing the guarantee was still in force at the time.

The Bank that had issued the guarantees on the structured product had previously run into financial difficulties and was now mainly owned by the taxpayer.

It is apparent that Milsted Langdon Financial Services misrepresented the level of charges that would be applied if Ms C transferred to the SIPP arrangement as can be seen by the fact that the business has agreed to refund some charges and reduce other future charges. I have noted, for example, that the SIPP charges before the reduction offered by the business represented approximately one third of the contribution being paid. In my opinion had the correct level of charges been explained to Ms C she would not have transferred her accrued fund to the new SIPP but would have remained invested in the in-house AVC arrangement.

Ms C's attitude to investment risk with regards to the capital that has been built up in her AVC was recorded as being low risk and I am of the opinion the with profits fund was in line with that attitude to risk

I consider that a reasonably competent body of advisers faced with a client in Ms C circumstances and with her objectives in March 2010 would have explained to her that her investment in the with profits fund was not inappropriate for her existing fund and her future contributions.

I would have expected such a body of advisers to have recommended that Ms C continue to invest her future additional contributions into the same with profits fund. I find it strange that the business did not query the attitude to risk of Ms C where she states that she was cautious with regards to the contributions that had been paid but adventurous in respect of future contributions. In my opinion, Ms C was led by the business and there is no evidence that she was concerned with the with profits fund that she was investing her contributions in until the business started raising unnecessary concerns.

Whilst I am aware that Ms C is recorded as stating that she would like to invest in an ethical fund in my opinion had the extra costs that she would incur been highlighted she would not have invested her future contributions but continued to use the in-house with profits fund.

My final decision

I uphold this complaint.

I direct Milsted Langdon Financial Services to:

- 1) Obtain from the in-house provider what the notional transfer value would have been at the calculation date on the assumption that the contributions continued to be paid into the in-house AVC arrangement invested in the with profits fund.
- 2) Obtain the actual transfer value at the calculation date of the new SIPP.
- 3) Determine the loss as at the calculation date as (1)-(2).

- 4) Interest should be added to any loss identified in (3) at a rate of 8% per annum simple from the date of calculation to the date of settlement.
- 5) If the in-house provider will allow reinstatement then the business should pay redress to augment the current transfer of the SIPP from its own funds to make up the required sum to the in-house provider. (If the total transfer value of the SIPP exceeds the reinstatement cost then no redress will be payable).
- 6) If reinstatement is not possible then the business should pay into a pension arrangement for Ms C the sum determined in (4). If no pension arrangement can be found willing to accept the redress then the sum in (4) should be paid to Ms C as a lump sum after deduction of tax at the basic rate.

Adrian Hudson
Ombudsman