Financial Ombudsman Service

complaint

Mr P is unhappy with the level of service provided by Bluefin Personal Consulting Limited (Bluefin). He feels they should have told him about a change in the law in 2011 which meant that he didn't need to take an annuity at the age of 75.

background

In 2007, Mr P was advised by Bluefin about his pension income options. At the time, his aim was to reduce the value of his fund as much as possible before he was required to buy an annuity at the age of 75. So, he was advised to start taking income from his pension via a drawdown arrangement. He did so for two plans.

Mr P says that, on the advice of Bluefin in 2011, he increased the amount he was taking from his pension funds by way of the drawdown.

Mr P complained to Bluefin in January 2014. He said he had become aware that the rules around annuities had changed in 2011 and he wasn't required to buy an annuity at the age of 75. Mr P felt that Bluefin had failed to tell him about this. Had they done so, Mr P says he would have altered his drawdown strategy.

Bluefin didn't uphold Mr P's complaint. They said the advice given to Mr P in 2007 was suitable based on his needs at the time. Mr P hadn't contacted them to request any further advice and because of this Bluefin was unaware that his priorities may have changed.

Mr P's complaint was then investigated by one of our adjudicators. He thought that the complaint should only be partially upheld for the following reasons:

- Bluefin weren't obliged to provide Mr P with ongoing advice.

- The change in legislation in 2011 had only deferred the age at which an annuity needed to be bought from 75 to 77. It didn't remove the need to buy the annuity entirely.

- It appeared that ongoing commission had been paid from Mr P's pension fund to Bluefin, albeit initially this had been paid to a third party in error. As Bluefin were unable to provide a copy of the original terms of business, the adjudicator couldn't be sure that Mr P had been made aware that deductions were being taken.

As a result, the adjudicator felt that Bluefin should refund any ongoing commission taken from Mr P's fund between 2008 and 2013. But, neither party agreed with the adjudicator's findings.

I then looked at the complaint and issued a provisional decision that the commission paid to Bluefin should be refunded to Mr P. However, my reasons were slightly different from those of the adjudicator. In short, I thought that Bluefin did have a duty to provide ongoing advice to Mr P, but had failed to do so. I also said that it was likely that Bluefin provided advice to Mr P in 2011 when he increased his drawdown income and that they should have told him that the rules relating to compulsory annuity purchases had changed. But, I thought that even if Mr P had received such advice, he would have continued to have taken the maximum drawdown from his pension funds.

I invited both parties to provide any further evidence and arguments that they wanted to be considered before I made my final decision.

Bluefin said that:

- A copy of the terms of business that would have been offered to Mr P in 2007 showed that their commission was for the initial advice and not for an ongoing service. They would only provide advice if they were asked to do so.

- No new terms of business were entered into between Bluefin and Mr P. To do so would have required a change in the payment structure. As no such change occurred, Bluefin were only required to provide a reactive service, not an ongoing service.

- The actual Bluefin entity that had provided the advice to Mr P in 2007 had moved between different arms of Bluefin's business. This meant that the commission for the initial advice had been paid to the wrong part of the Bluefin group for a long period of time.

- The fact that Bluefin could find no record of having given Mr P advice in 2011 was evidence that no advice had in fact been given. There may have been a call between Mr P and an advisor at Bluefin at the time, but there was no reason why the advisor would have known about Mr P's objective to drain his pension fund to avoid taking an annuity. So there would have been no reason for the advisor to tell Mr P about the change in law relating to compulsory annuity purchases.

- Mr P would have been aware of the fact that he had been paying commission to Bluefin from the information sent to him by the product provider.

Mr P said that had he known in 2011 that he wasn't required to buy an annuity at the age of 75, he would certainly have stopped drawing income from his fund. He also said that each time he was contacted by individuals at Bluefin after 2007, they introduced themselves as his "new financial advisor".

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 haven't considered the suitability of the initial advice in 2007 as part of this decision. I've only looked at whether Mr P should have been told about the change in law relating to annuities and the commission paid to Bluefin.

advice about annuity law changes

It's unfortunate that there doesn't appear to be a lot of evidence of the correspondence between Mr P and Bluefin in the years that followed the initial advice in 2007. Bluefin say that there are no records that they provided Mr P with advice in 2011 when he increased his drawdown income. They say that this shows that they had no involvement in Mr P's decision to increase his drawdown income.

However, Bluefin have said that their advisor may have contacted Mr P at the time. Given Mr P's submissions to us, I think this is very likely. I also think it's likely that Mr P would have increased his drawdown income based on the advice from the advisor. Put another way, I don't think Mr P would have taken the decision to increase his drawdown income without having taken advice.

I think that at the time of the advice in 2011, Bluefin should have told Mr P that the law on buying an annuity at age 75 had changed. The advisor would have known that this was a factor in Mr P's decision to take income drawdown. Although the annuity law was only changed to age 77 in 2011, this was done on the basis that the requirement to buy an annuity would be stopped altogether a short time later. Bluefin must have known this and should have made Mr P aware of the change.

Having said that, I don't think there's enough evidence that Mr P would have altered his strategy even if he had been told about this. Ultimately, he still had the benefit of the money from the drawdown whilst not tying himself to an annuity. Mr P also doesn't appear to have been a higher rate tax payer in 2011. So, drawing down on his pension fund is likely to have been a tax efficient way of using his funds and providing for his beneficiaries on death. I'm aware that Mr P has now stopped drawing down on his pension fund. However, I don't know whether this is because he now knows he doesn't need to buy an annuity. For example, it could also be because the inheritance tax laws relating to pension funds have also recently been relaxed.

For the reason set out above, I don't think he's suffered a financial loss and so I can't make an award for this. However, I think that Mr P has suffered some trouble and upset from the lack of information provided by Bluefin in 2011. He's clearly been concerned about whether he's been disadvantaged by not knowing about the changes in law. So, I think Bluefin should pay Mr P £200 for this.

commission

There's limited evidence about the basis upon which Bluefin were paid commission from Mr P's funds. It's unclear whether the commission paid to Bluefin after the initial advice was for them to carry out regular reviews or simply limited to a trail commission for their initial advice.

Bluefin say that the terms of business that Mr P is likely to have signed in 2007 made clear that the commission was only for the initial advice. But, I've taken into account that the advice was for a drawdown pension. The Financial Services Authority, the industry regulator at the time, had expressed concern that advisors should conduct regular reviews with customers who were in drawdown. As such, I think it would have been clear to the advisor that in order to provide a good level of customer service to Mr P, regular reviews of the strategy were necessary.

I also note that Mr P says that Bluefin did often contact him at various times after 2007. The terms of business with Mr P were renewed in 2012 and Bluefin confirmed to Mr P that one of the things they would provide was an "ongoing service". This included an "annual planning meeting". Despite Bluefin's submissions since my provisional decision, I don't think there's anything to suggest that this was a new service only being provided from that date onwards. I think that the fact that no new payment structure was agreed with Bluefin is further evidence of this. So, I think that Bluefin did have a duty to provide ongoing advice to Mr P in return for their commission.

However, I've not seen any evidence that the ongoing review service provided by Bluefin was carried out adequately. Instead, throughout this complaint, Bluefin have said that they had no duty at all to provide an ongoing service to Mr P. For the reasons set out above, I disagree with this. Aside from what appear to be infrequent phone calls from new advisors, there's no evidence that Mr P was contacted for an annual planning meeting. I've no reason to believe that he would have declined such a meeting if it had been offered. As set out above, I also think the advice given in 2011 wasn't as thorough as it should have been. I think this is all evidence that the commission taken from Mr P's fund wasn't justified. As such, I think it's fair that Bluefin should refund the commission taken from Mr P's pension fund from 2008 to 2013.

my final decision

I partially uphold this complaint. My decision is that Bluefin Personal Consulting Limited should refund Mr P's pension funds the commission taken between 2008 and 2013 from his two income drawdown plans. An additional sum should be paid into the pension funds to reflect the growth that the funds would have achieved had the commission payments not been deducted on the dates they were.

If the payment can't be made to the pension funds, Bluefin should make the payment directly to Mr P making a reduction to notionally allow for any income tax that would otherwise have been paid.

In calculating the sums to be repaid, regard should be had to whether any tax free cash has been taken from the funds and the dates of those payments.

Bluefin should provide details of its calculation to Mr P in a clear, simple format.

Bluefin should also pay the £200 for trouble and upset directly to Mr P.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 2 November 2015.

Abdul Hafez
ombudsman