

## **complaint**

Mrs H has complained about advice from Chadkirk Wealth Management Ltd ('Chadkirk') to transfer her pension provisions into a self invested personal pension ('SIPP') and then to invest into a bond with a discretionary fund manager. Mrs H says the advice was unsuitable.

## **background**

Chadkirk has not provided any submissions on the complaint, or a copy of the business file. Inevitably, my decision here is heavily influenced by that. I have reached my conclusions on the basis of the evidence which *has* been made available, the adjudicator's analysis of that evidence and my own review of the evidence and his conclusions.

In his assessment, the adjudicator set out in detail the background to this complaint. As neither party has made further submissions in response, I do not think any useful purpose would be served by repeating that background here.

Our adjudicator concluded that the advice to transfer Mrs H's existing pension arrangements into the SIPP, to access alternative investments, was unsuitable. He also concluded that the advice complained about was not likely to leave Mrs H better off in retirement and involved risks which were not appropriate for her.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete or not available, I base my decision on the balance of probability. In other words, what I consider is most likely to have happened in the circumstances.

Having reviewed the evidence I have reached the same conclusions as the adjudicator and for the same reasons.

Mrs H was a retail client. She was not an experienced investor. She relied on Chadkirk to assess her circumstances and give suitable advice. She evidenced that reliance by acting on Chadkirk's recommendations

In my view, a reasonably competent adviser would not have advised Mrs H to incur higher charges on her pension provisions. There were suitable funds in her existing arrangements. She could have switched to these at no cost.

The funds in question represented the bulk of Mrs H's pension provisions. They had been earmarked to provide a retirement income for Mrs H. These were not funds suitable to be exposed to unnecessary investment risk.

I do not consider that the proportion of Mrs H's "liquid portfolio" which Chadkirk advised would be suitable to invest in unregulated holdings was appropriate.

The risks associated with unregulated holdings can be considerable. They tend to be unusual holdings, operating in a very specific way and without a track record. They might reasonably be described as sophisticated and/or complex investments. They could suffer significant losses, the nature of which would be difficult to predict or estimate at the outset.

Such investments might expose investors to significant risks such as gearing, opaque corporate structures, illiquidity and the risks inherent in non-regulated investments. It ought to have been evident that such holdings were not going to be suitable investments for a large portion of the total pension provisions of an unsophisticated retail client such as Mrs H, especially in light of the lack of any consumer protection.

Chadkirk ought to have been aware that investing Mrs H's pension provisions into unregulated holdings was unlikely to be suitable. Indeed, I have real doubts whether the investment approach recommended by Chadkirk would have been suitable for anyone other than the most experienced of investors. It was certainly unsuitable for Mrs H.

In my view, a reasonably competent adviser would have advised Mrs H not to transfer into a SIPP and not to invest any of her pension funds into unregulated holdings. Suitable advice would have been to recommend that Mrs H keep her existing pension plans but make some changes to their underlying asset allocation. I consider it more likely than not that had Mrs H received such advice then she would have acted on it.

### **my final decision**

I uphold this complaint.

Chadkirk Wealth Management Ltd must redress Mrs H as set out below.

My aim is to put Mrs H in the position she would now be in if she had received suitable advice to have kept her existing pension plans but with changes to the asset allocation. Chadkirk should calculate fair compensation by comparing the notional value of those plans, if they had not been transferred, with the current value of the SIPP.

It must:

1. Calculate the notional transfer value of Mrs H's previous pension plans if they had not been transferred to the SIPP. That should be the value at the date of calculation.

To get a notional valuation the FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) should be used as a proxy for the return the monies in question would have enjoyed to date. I say this because I think changes would have been made to the underlying asset allocation of the existing policies had they not been transferred.

But I cannot determine definitively what funds and in what proportions monies would have been invested had suitable advice been given. So I conclude the FTSE UK Private Investors Income total return index should be used to arrive at fair notional valuations for the policies had they not been transferred. It is a reasonable proxy for the returns that could have been achieved with a degree of risk appropriate for Mrs H if suitable funds had been chosen.

It is to be assumed that any contributions or withdrawals that have been made since the SIPP was established would still have occurred and on the same date.

2. Obtain the current transfer value of Mrs H's SIPP, including any outstanding charges. That should be the value at the date of calculation.
3. Pay a commercial value to buy any illiquid investments in the SIPP.

The SIPP only exists because the business recommended Mrs H transfer monies into it. So any residual unregulated holdings could be removed from the SIPP. Removing such holdings from the SIPP would then enable Mrs H to close it. That would then allow her to stop paying the fees for the SIPP.

The valuation of any residual unregulated holdings may be difficult. There is unlikely to be a market for them. For calculating compensation, Chadkirk should agree with the SIPP provider, a commercial value, to buy any unregulated holdings in the SIPP. It should then pay this sum, plus any costs, and take ownership of those holdings.

If Chadkirk is unable to buy any illiquid unregulated holdings which are in the SIPP then it should give such holdings a nil value for the purposes of calculating compensation. If there are residual illiquid unregulated holdings in the SIPP which Chadkirk is unable to purchase then it will need to pay future fees for the SIPP until the SIPP can be cancelled. In this eventuality, Chadkirk may ask Mrs H to provide an undertaking to account to it for the net amount of any payment she may receive from her investment in any residual illiquid unregulated holdings in the SIPP which it is unable to purchase. That undertaking should only be up to the amount of compensation paid. That undertaking should allow for the effect of any tax and charges on the payment.

- 4.** Pay an amount into Ms H's SIPP so that the transfer value is increased to equal the value calculated in (1). This payment should take account of any available tax relief and the effect of charges.

If not possible to pay the compensation into the SIPP, Chadkirk should pay it as a cash sum to Mrs H. But had it been possible to pay into the plan, it would have provided a taxable income. So the total amount should be reduced to notionally allow for any income tax that would otherwise have been due.

The notional allowance should be calculated using Mrs H's marginal rate of tax in retirement. For example, if Mrs H is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mrs H would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

- 5.** Pay five years' worth of future fees owed by Mrs H to the SIPP. This only applies if there are residual illiquid unregulated holdings in the SIPP which prevent it from being closed. In my view had the firm given suitable advice, there would not be a SIPP. As such, it is not fair that Mrs H should have to continue to pay SIPP fees if it cannot be closed.

Chadkirk should buy any residual illiquid holdings in the SIPP if possible, to allow the SIPP to be closed. This is the fairest way of putting Mrs H back in the position she would have been in. But third parties would be involved. We do not have the power to tell them what to do.

So to give certainty to all parties, it is fair that Chadkirk pay Mrs H an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the previous year's fees). This gives a reasonable period for the parties to arrange for the SIPP to be closed. There are a number of ways they may want to achieve that. It will also give Mrs H some confidence she will not be subject to further fees.

In my view, awarding a lump sum for an amount equivalent to five years' fees strikes a fair balance. It is possible that any residual illiquid unregulated holdings in the SIPP could be removed from the SIPP in fewer than five years. But overall, five years' worth of fees is a fair way to resolve the issue now.

**6. Pay Mrs H £250 for distress and inconvenience.**

Mrs H has been caused distress by the loss of her pension benefits. A payment of £250 is appropriate to compensate for that distress.

If Mrs H accepts my decision and payment as set out above is not made within 28 days of Chadkirk being notified of her acceptance, then interest at 8% simple per annum should be added to the outstanding redress. Income tax may be payable on this interest.

Under the rules of the Financial Ombudsman Service, I am required to ask Mrs H to accept or reject my decision before 3 April 2017.

Terry Connor  
**ombudsman**