

complaint

Mrs C's complaint is about the advice she received from Lexington Wealth Management Ltd to transfer her personal pension into a SIPP. She says she was subject to 'churning'.

background

I issued my provisional decision on this complaint on 28 August 2015. The background and circumstances to the complaint, and the reasons for my provisional finding which was to uphold the complaint in part were set out in that decision. A copy is attached and forms part of this decision.

I invited both parties to provide any further evidence or arguments that they wanted me to consider before I made my final decision.

The business did not agree with my provisional findings. It made the following, summarised, points:

- There were time gaps between the meetings held so Mrs C had the opportunity to reflect on what was discussed.
- The fees/charges were similar on the two arrangements once the charge for ongoing advice was taken into account.
- The existing cash funds were performing poorly when compared to the portfolio arranged. The funds available from the existing provider were researched but the range of fixed interest funds weren't considered appropriate.
- Mrs C had been looking at buying a property but it would not have advised her to do so in her circumstances.
- Mrs C was aware of the difference in charges. The regulator hasn't said that a client shouldn't move to a more expensive contract as long as it was the most suitable for the client.
- Mrs C got unsettled by the fund value dropping not long after she invested. She unnecessarily panicked into transferring out of the plan early.
- It didn't agree with the method of calculating redress that I said I intended to use in my provisional decision.
- The business acknowledged it made an oversight in its initial calculation of the new plan requiring a return of 1.2% per annum to match the existing scheme. Having recalculated this, taking into account the previously omitted 'protected rights' element of the transfer, the required yield increased to 1.23% - which was reasonable based on Mrs C's circumstances and the relatively poor performance of the existing funds/plan.
- Had an alternative plan been recommended with the existing provider, the 3% initial fee would have applied. The recommended plan and provider was recommended after considering the "*whole market*".

- Mrs C had the option of paying fees up front or from her pension and the details were sent to her in advance of her decision. She chose the latter which was more tax efficient. The fact that she visited the business on three occasions clearly demonstrated that she wanted advice and ongoing service. And Mrs C was informed that she could “switch off” the ongoing ‘service’ fees at any time.
- A fair ‘fee’ comparison would be based on the 0.92% fees of the new plan (with ongoing advice) versus the 0.70% - 0.77% fees of the existing plan where no ongoing advice was provided. The advice she received (and paid for) extended further than her pension planning and included a number of her wider circumstances and needs. She therefore avoided additional advice fees with the existing provider.
- Lexington’s advice provided Mrs C with the flexibility she required and was aimed at the longer term (25-30 years). Mrs C’s priority was providing for her family. She didn’t have a pre-determined retirement age and, in the light of the recent ‘pension freedom’ changes, she’ll most likely remain in drawdown and not take an annuity.
- The recommended funds offered diversification and improved returns without the increased risk of the options with the existing provider.
- The complaint arose due to a “*modest*” fall in the value of Mrs C’s plan, fortunately ‘limited’ due the business recommending an “*appropriate portfolio*” and not one based on the (risk assessment) responses she provided.

Mrs C did not make any additional comments.

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 illustrations from the SIPP provider show that the reduction in yield (including *all* the charges) following the transfer would be 3.03%. This was significantly higher than the 0.7/0.8% charge on the existing personal pension arrangement. Mrs C was already invested in cash funds. And on transfer she was invested in a combination of fixed interest and cash type funds.

I accept that the differences in charges reflect, in part, that Mrs C had to pay for advice in some form. And the ongoing charges might not have been significantly higher than for the previous plan. But taking into account *all* the initial and ongoing charges meant that the SIPP had to outperform the existing scheme by a material amount just to provide the same benefits, and in funds presenting lower risk where smaller differentials in charges were likely to be harder to recover.

I accept that the firm recommended a different combination of fixed interest/cash funds which it considered were better quality and more appropriate for Mrs C. But it was the firm who was the expert in the matter and it was obliged to assess all the advantages and disadvantages of a transfer (including costs) and provide suitable advice. If Mrs C wanted advice or additional flexibility in the future she could have paid a fee for it at that time rather than incur the (relatively) high costs associated with the transaction.

In my view the existing scheme had an appropriate range of funds that could be switched into had there been a need to do so. Overall, I'm not satisfied that the benefits of transferring outweighed the material costs associated with it, especially when invested in cash/fixed interest type funds. So I'm not persuaded that the advice was suitable in the particular circumstances of the case.

my final decision

Accordingly, my final decision is that I uphold Mrs C's complaint against Lexington Wealth Management Limited.

My aim in awarding redress is to try and put Mrs C back into the position that she would likely have been in but for the firm's unsuitable advice.

I therefore order Lexington Wealth Management Limited to calculate if a loss has been incurred and pay any compensation due on the following basis.

A - the firm obtains a notional transfer value from the original pension provider, assuming that Mrs C had remained with it, and in the same fund, as at the date it was transferred to another provider – in October 2013.

B - It should then obtain a transfer value for Mrs C's SIPP as at the same date.

If A is greater than B there is a loss. If B is greater than A then there is no loss arising from the transfer. Any loss at this date should be revalued in line with the average return from fixed rate bonds with 12 to 17 months maturity (also called one year fixed rate bonds) as published by the Bank of England, to the date of payment.

If there is a loss, Lexington Wealth Management Ltd should pay such amount as may be required into Mrs C's pension plan, allowing for any available tax relief and/or costs, to increase the pension plan value by the total amount of the loss plus revaluation.

If Lexington Wealth Management Ltd is unable to pay the total amount into Mrs C's pension plan, it should pay that amount direct to her. But it would have to be used to provide 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 Mrs C's marginal rate of tax at retirement. For example, if Mrs C would be a basic rate taxpayer at retirement and that rate would 20%, the *notional* allowance for tax would equate to a 20% reduction in the total amount. Allowance should also be made for any tax free cash that could be taken (where appropriate).

I also order Lexington Wealth Management Ltd to pay Mrs C a sum of £200 for the distress and inconvenience I consider the matter has caused her.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 8 February 2016.

David Ashley
ombudsman

Copy of provisional decision

complaint

Mrs C's complaint is about the advice she received from Lexington Wealth Management Ltd (Lexington) to transfer her personal pension into a SIPP. She says she was subject to 'churning'.

background

Mrs C's complaint was investigated by one of our adjudicators. In the letter setting out her opinion about the merits of the case she detailed Mrs C's circumstances at the time of advice and the adviser's recommendations. These were as follows:

- She was in her early sixties, had no dependants and had an annual income of around £39,600. Her intended retirement age was 68.
- She was self-employed and was paying £375 gross each month into her personal pension plan. It was invested wholly in cash. She also owned a business property and a rental property - both had mortgages.
- Illustrations, key features documents, brochures and charging schedules were issued at the time of advice.

The recommendation report and minutes of the meeting provided the following information:

- Mrs C had a tolerance for loss of up to 33%. It was agreed she would invest in fixed interest and cash and her overall attitude to risk was medium.
- She wanted to have flexibility by investing into a SIPP. And this option was not available to her under her existing pension.
- The charges and risk factors were outlined and the potential growth rates required were explained.

The adjudicator noted that after initial meetings and recommendations Mrs C emailed her adviser to ask if the pension would be tied up in bonds as she was considering using her pension pot in a SIPP to buy a property. She said that she had been looking for the previous five years but had not yet found one.

The adjudicator felt that the email sent to the adviser after the initial meeting confirmed Mrs C's intention to buy a property. She also noted an email sent in July 2013 said that Mrs C didn't want to pay fees when she could do it online herself. The adjudicator felt that Mrs C had a basic understanding of how the SIPP operated.

Shortly after transfer Mrs C became concerned when the fund value fell. She contacted her adviser and said she may not have been the risk taker she thought she was. The risks and the investments were agreed with the adviser and the adviser tried to assist Mrs C and told her there were other options. The adjudicator however noted that Mrs C did not take the adviser up on the offers to review her pension.

Based on the information provided and her view of Mrs C's understanding, the adjudicator didn't uphold the complaint.

Mrs C didn't agree with the adjudicator's findings. She said, in summary:

- She went to Lexington to speak about self-investment and she wanted her pension fund to buy a commercial property, wanting to know her options and as such she believed she was sold to when she was only looking for advice.
- Her existing pension provider could have offered a SIPP yet the adviser never discussed this. She was also recommended to invest in gilts as they would never fall in value and she was never advised to have a diverse portfolio.
- She did not understand what a wrap was or what was involved in a SIPP. There were plenty of investment opportunities within the existing pension provider. But these were never discussed and her view was that the adviser's aim was to charge fees.

my provisional findings

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

Mrs C had an existing pension arrangement with another provider and at the time it was invested in cash. On transfer to the SIPP the funds recommended were a combination of fixed interest and cash.

A 3% initial charge was incurred and my understanding is that – inclusive of this charge – the SIPP had to grow at an additional 1.2% per year in order to match the former scheme. I note that the suitability letter projected that the existing arrangement would grow to £104,000 at 2% a year and £107,000 at 3% per year to when Mrs C reached age 65. And it was projected to grow to £100,000 and £103,000 at the same respective rates in the proposed SIPP.

The suitability letter said that the transfer was recommended because the existing plan didn't provide the necessary flexibility to allow Mrs C to tailor the benefits around her needs and circumstances. It said the plan offered a seamless transition to drawdown pension. It also said the SIPP provided greater control over the management of the assets. And the fund performance and range of funds on the existing arrangement were restrictive.

In terms of the funds selected, it said the objective of the portfolio was to invest in a low risk portfolio of cash and fixed interest bonds only. It said this was recommended because it reflected Mrs C's attitude to risk (which was recorded as medium). The portfolio provided expert research and fund selection and was proactively reviewed and rebalanced on a regular basis.

Whilst I accept that the SIPP may have had some advantages to it these had to be seen in the context of the circumstances as whole. Mrs C had been invested in cash and on transfer she invested in cash and fixed interest funds.

But the existing arrangement had a range of fixed interest and cash like funds available. And at lower cost. And in my view in a cash/fixed interest environment the difference in charges of 1.2% was material – given that returns in general are likely to be lower from these asset classes.

Mrs C may have suggested that she was interested in investing in commercial property. She had also said that she had been looking – without success – for over 5 years. And given the size of her fund (and potential borrowing) she would have been limited in the properties that she could buy. It would also likely involve the majority of the fund (leading to a lack of diversification). So it wouldn't have been aligned to Mrs C's medium attitude to risk.

Although my understanding is that the SIPP provided a transition to drawdown Mrs C could have transferred to such an arrangement when she required it. And stayed in the lower charging arrangement until the drawdown (and the extra costs associated with it) was definitely required.

I accept that the firm alerted Mrs C to the additional charges of the new SIPP in its suitability letter. But it was the firm that was the expert in the matter and was obliged to assess all the advantages and disadvantages of the transaction and provide suitable advice.

Overall, I'm not persuaded that there was any material benefit in Mrs C transferring. I don't think the advice was suitable as Mrs C could have remained in the original pension and switched into similar type funds as she was invested into in the SIPP - but at lower cost. In my view the perceived benefits of the transfer to Mrs C in the particular circumstances here were limited, and didn't outweigh the extra costs associated with the transfer.

my provisional decision

Accordingly, my provisional decision is to uphold the complaint.

My aim in awarding redress is to try and put Mrs C back into the position that she would likely have been in but for the firm's unsuitable advice.

A - I am minded to order that the firm obtains a notional transfer value from the original pension provider, assuming that Mrs C had remained with it, and in the same fund, as at the date of a final decision.

B - It should then obtain a transfer value for Mrs C's SIPP as at the same date.

If A is greater than B there is a loss. If B is greater than A then there is no loss arising from the transfer.

If there is a loss, Lexington Wealth Management Ltd should pay such amount as may be required into Mrs C'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 Lexington Wealth Management Ltd is unable to pay the total amount into Mrs C's pension plan, it should pay that amount direct to her. But it would have to be used to provide 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 Mrs C's marginal rate of tax at retirement. For example, if Mrs C would be a basic rate taxpayer at retirement and that rate would 20%, the *notional* allowance for tax would equate to a 20% reduction in the total amount. Allowance should also be made for any tax free cash that could be taken (where appropriate).

Note. If Mrs C has transferred to a different pension arrangement or switched funds on the advice of a different adviser, the calculation of loss will need to be amended. In that case Mrs C/the firm should let us know to re-consider the position.

Irrespective of actual loss, I also intend to award Mrs C a sum of £200 for the distress and inconvenience I consider the matter has caused her.

David Ashley
ombudsman