

complaint

Mr F has complained about the advice that he received from Hart Brown about his Self Invested Personal Pension (SIPP) in 2010 and 2013.

background

Hart Brown provided financial advice to Mr F between 2007 and 2013. He wished to adopt a low risk, low cost investment strategy for his SIPP and was advised on an 'advisory' basis which was fee based.

In 2010, Mr F wished to expose some money in his SIPP to the stock market using 'absolute return' funds. As part of this strategy he was advised to invest in the Newton Real Return fund. However, the incorrect type of units was purchased, which had a higher annual management charge than Mr F was led to believe.

In 2013, Mr F was introduced to the idea of discretionary fund management (DFM) with Standard Life Wealth. He considered that both Hart Brown and Standard Life had provided incorrect information regarding the charges associated with the Standard Life proposition. However, by the time he decided not to proceed, his SIPP fund had been transferred to cash, which he considered caused him to suffer a loss compared with following his previous investment strategy.

One of our adjudicators investigated the complaint and concluded that the complaint should be upheld in part because:

- Hart Brown acknowledged that it had made a mistake in purchasing the wrong units in the Newton Real Return fund. It had purchased units with an annual management charge of 1.5% as opposed to 1%. Due to this Hart Brown has offered compensation based on the time the units were held. Mr F declined this compensation while his other concerns were addressed. However, the adjudicator concluded Mr F should consider accepting the compensation and did not uphold this part of the complaint.
- In July 2013, Mr F gave instructions for all his SIPP funds, apart from £5,000 to be held in cash, to be invested in the Standard Life Global Absolute Return Strategies fund. Hart Brown had told Mr F this fund had performed better than the Newton Real Return fund. Mr F was also introduced to the idea of investing his SIPP funds on a discretionary management basis, using Standard Life Wealth.
- Using discretionary management was not inappropriate, as Mr F being advised on an 'advisory' basis had been found to cause delays when investments were made. It would also mean his funds were pro-actively managed when he was travelling overseas on business.
- A meeting was arranged with Mr F, Hart Brown and Standard Life. At this meeting Standard Life indicated that the charge for using its services was 0.975% per annum of the funds invested. What was not discussed were the additional charges for the funds selected in the discretionary portfolio. It was later established that a Standard Life Wealth portfolio that was suitable for Mr F's attitude to investment risk, had an annual management charge of 1.705%.

- This was unacceptable to Mr F. The adjudicator concluded that if Mr F had been aware of the charges prior to the meeting he would not have considered the idea of discretionary fund management with Standard Life Wealth.
- After considering a timeline of events that occurred, it was established that by the time Mr F was fully aware of the Standard Life Wealth charges, he had transferred his existing SIPP to a Standard Life SIPP and his pension funds were held in cash. In September 2013, Mr F agreed to Hart Brown investing his SIPP fund in a deposit account then paying 1% per annum interest.
- Mr F had started on a course of action without being made aware of the full facts, and this part of the complaint was upheld.

Hart Brown told the Financial Ombudsman Service that it would accept that adjudicator's proposed redress if Mr F accepted it. However, Mr F, whilst satisfied that this part of his complaint had been up-held, considered the redress inappropriate. Hart Brown also submitted its reasons for disagreeing with the adjudicator's opinion. In summary, it said:

- It accepted the adjudicator's conclusion regarding the incorrect charges that had been applied when purchasing the Newton Real Return fund.
- The meeting arranged with Standard Life Wealth was arranged to give an understanding of the Standard Life Wealth proposition. It was not possible to give actual details of the charges that Mr F would incur as a portfolio had not been suggested for his risk profile at that time.
- Mr F had been given a letter dated 26 July 2013 regarding the transfer of his existing SIPP to Standard Life. Within this letter, Hart Brown had pointed out that at that time, Mr F had not been given a specific proposal by Standard Life Wealth. This would be provided when Mr F completed a Standard Life Wealth risk profile. The letter further included that Mr F may wish to delay the wind-up/ transfer of his existing SIPP until he had all the cost information and that he was happy to proceed. Mr F did proceed with the SIPP transfer knowing that he did not have the full details of using the Standard Life Wealth service at that time.

As agreement has not been reached the complaint has been referred to an ombudsman for a decision.

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 agree with the adjudicator's conclusions for much the same reasons.

Mr F has made a claim for the significant costs incurred in pursuing his complaint. I should explain that this is a free service to the consumer and we would not request a business to cover the cost where a consumer has chosen to be represented by a solicitor.

With regards to the incorrect Newton Real Return units being purchased, Hart Brown has acknowledged its error and wishes to correct this. Therefore I am not upholding this part of Mr F's complaint, and would suggest Mr F contacts Hart Brown to arrange compensation.

With regards to the events surrounding the Standard Life Wealth proposition, I do consider that Hart Brown could have given more information to Mr F prior to the initial meeting. Hart Brown would, or should have been aware of the charge of 0.975% per annum of the fund invested and the overall charge for using the discretionary service would have depended upon the funds selected for his portfolio.

Whilst it was not possible to state a specific charge for a suitable portfolio for Mr F before the Standard Life meeting, Hart Brown did provide details of the Standard Life Wealth charges in September 2013. If these had been provided to Mr F prior to the initial meeting with Standard Life Wealth, Mr F could have considered whether he wished to proceed with the discretionary investment approach, based on the charges. It would have also helped to prevent the misunderstandings that occurred during the initial meeting with Standard Life Wealth.

Mr F was concerned about the charges applied to his investments and the effect that these had on his investment returns. I am sure this was appreciated by Hart Brown. What Mr F considers to be an act of mis-selling could have been prevented if Hart Brown had provided comparisons of the advantages and disadvantages, including costs, of the instructions he gave Hart Brown in July compared with using Standard Life Wealth.

Hart Brown has explained that in its letter of 26 June 2013, regarding the transfer of Mr F's existing SIPP to a Standard Life SIPP, it gave Mr F the opportunity of not proceeding with the transfer until the Standard Life Wealth charges were known for a portfolio that matched his risk profile. Mr F has disputed receiving this letter. However, I note that the letter was correctly addressed and I have to assume that on the balance of probabilities that it was delivered.

The email exchanges between Hart Brown and Mr F of 19 July 2013, indicate that the business promoted the transfer if Mr F wished to use Standard Life Wealth Investment Services. Mr F having benefited from the presentation provided by Standard Life was keen to proceed, but raised concerns about the charges related to moving his existing pensions.

It is my view that Hart Brown should have been aware that Mr F considered charges to be a key consideration of any proposal and it was in a position to provide greater clarity of those charges than it did in its letter of 26 July. Had it explained that the total charge would comprise of the 0.975% plus the annual management charge for the underlying funds, in my opinion Mr F would not have proceeded, which is evident from his correspondence after receiving the client proposal.

By the time Mr F became aware of the charges for a Standard Life Wealth portfolio that matched his attitude towards investment risk, he had transferred to a Standard Life SIPP and his funds were held in cash. Having been informed of the charges after the effective transfer, Mr F has pursued his complaint in respect of the misrepresentation of these charges.

I am of the view that the misunderstandings that have arisen and the consequences of the transfer to the Standard Life SIPP may have caused Mr F to suffer a loss. However, Mr F has been aware of the charges and that his funds were invested in an account then receiving 1% per annum interest.

I therefore uphold this complaint in part and I direct that Hart Brown must:

1. Obtain the notional transfer value of Mr F's SIPP when he placed his SIPP funds on deposit earning 1% gross interest, in September 2013 if the original SIPP had been invested in line with Mr F's instructions to invest in the Standard Life Global Absolute Return Strategies on 4 July 2013.
2. The actual transfer value at the date funds were placed on deposit in September 2013.
3. Determine the loss as at September 2013 as (1)-(2)
4. Since September 2013, while I accept Mr F would not have transferred had he been aware of the charges, I also believe he was in a position to mitigate his losses. If he was unhappy to remain in the deposit fund he could have arranged to invest elsewhere.

If (3) is negative there is no loss. If (3) is positive, a loss has occurred and this should be increased to the settlement date in line with the performance of the deposit account he invested in.

Any loss should be paid to Mr F's SIPP account. However if it is not possible to do this, Hart Brown should pay that amount direct to Mr F. But had it been possible to pay into the plan, it would have provided 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 F's marginal rate of tax.

5. Mr F should also receive the costs he incurred when transferring from his original SIPP to the Standard Life SIPP.
6. In addition Mr F should receive £250 for the trouble and inconvenience this matter has caused.

Details of the calculations should be provided to Mr F in a clear, simple format.

my final decision

I uphold this complaint in part and direct Hart Brown to pay redress to Mr F as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 April 2016.

Adrian Hudson
ombudsman