DRN-1733680

The complaint

Mr L has complained about pension advice he received from Copia Wealth Management Ltd (CWML) in 2014. He says the advice was unsuitable.

Mr L is represented in this complaint.

What happened

L took advice from CWM in 2014. He was referred to them by a third party after he responded to an advertisement. The third party collected information which was passed on to CWM.

CWM prepared a suitability report and recommended that Mr L transfer benefits he held in a former employer's defined benefits scheme into a self investment personal pension (SIPP). The transfer value was just under £44,000. This transfer allowed him to take tax free cash of over £10,000. The balance was invested with Mr L making a further withdrawal in 2016.

Mr L complained to this service in 2019. CWM hasn't responded to the complaint.

The complaint was considered by an investigator, and she decided that it should be upheld. She didn't think the transfer should have been recommended. She set out how redress should be calculated. CWM didn't respond to that view. Mr L's representatives agreed.

As there has been no response from CWM the case has been referred to me for a final decision.

What I've decided – and why

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

I agree with the investigator. I uphold this complaint.

The suitability report recorded that Mr L was 55 years old and lived with his partner. He had skilled work and earned around £19,000 per year. It was noted that he held benefits in a former employer's pension worth around £36,000. His attitude to risk was assessed as 'Capital Growth' which was defined as meaning he was prepared to take a high level of risk.

It was also recorded that Mr L wanted to take tax-free cash to help his family.

CWM recommended that he transfer his OPS benefits to a SIPP and drawdown on his pension. This allowed him to take tax-free cash, and provided the flexibility he required.

CWM's fees were 3 per cent for the initial fee and then 0.5 per cent as an annual ongoing adviser charge. The SIPP illustration confirmed the charges applicable as an initial charge of £260, an annual charge of £210 and an annual fund manager's charge of 1.50 per cent.

The illustration also showed that an investment growth rate of 3.6 per cent per annum was needed in order to replace the benefits that the OPS would have provided Mr L at age 65.

The transfer went ahead in February 2015. The transfer value had increased to just under £44,000. Mr L took tax-free cash. £30,000 of the remainder was invested via a discretionary fund manager but then Mr L withdrew over £25,000 in 2016.

By leaving the OPS, Mr L was giving up future benefits which came with a high level of certainty. He exchanged this for investing his funds and placing them at risk. I think this was a relatively high risk strategy.

The industry regulator, the FCA, has issued guidance for transfers in circumstances like this one. It said;

"*When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."* (COBS 19.1.6)

I'm not satisfied that the transfer was in Mr L's best interests.

The report suggests Mr L was a high risk investor. It's not clear how that assessment was reached or how it could be justified. Mr L didn't have any significant investment experience. His earnings were below the national average, and he had little by way of savings. There was little, if any, capacity for loss. I agree with the investigator that Mr L's circumstances don't present a picture of a typical high risk investor.

In the suitability report, CWM recommended investment in a portfolio which meant that a discretionary fund manager would decide where to invest the funds. The portfolio would typically invest 75 per cent of its allocation in property. I think this was quite a narrow investment strategy with a lack of diversity, and I think this presented a higher degree of risk than Mr L ought to have been advised to take.

The SIPP was more expensive than the OPS. Mr L paid initial charges and then ongoing fees for the SIPP itself and to CWM. The critical yield required to match Mr L's OPS benefits at his normal retirement was recorded as 3.6 per cent. CWM's report said that this would have to be 2.5 to 3.5 per cent higher to cover the charges.

This advice was given during the period when our service was publishing 'discount rates' on our website for use in loss assessments in pension transfer cases. Businesses weren't required to refer to these rates when giving advice on pension transfers, but I think they provide a useful indication of what growth rates would have been considered reasonably achievable at the time the advice was given. In October 2014 the investment return (critical yield) required to match Mr L's OPS pension at retirement, taking into account the fees, was possibly as high as 7.1 per cent per year. This compares with the discount rate of 5 per cent per year for the ten years to retirement in this case.

This means that a higher investment growth was needed to match the OPS benefits Mr L was giving up, perhaps 40 per cent higher. And that is only to match those benefits, not to do better. This means that Mr L would have needed to take a high degree of risk with his investments and probably invest largely in equities. And, as I've said, I don't think he ought to have been classed as a high risk investor.

The suitability report recorded that Mr L wanted to access his benefits and his tax-free cash to assist his family. The regulator has commented on this also:

"*A request or preference by the client for a particular solution – for example accessing cash from a pension – is not an objective. You must ascertain the client's actual investment objectives so that you can advise on a suitable course of action to meet them*".

I agree with the investigator. I don't think the advice given to Mr L was suitable or in his best interest. With suitable advice, I don't think Mr L would have transferred these benefits and so he wouldn't have made the investments that he did.

Putting things right

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Mr L, as far as possible, into the position he would now be in but for the unsuitable advice.

CWM must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be made as at the date of my final decision, and using the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L's acceptance of the decision.

CWM may wish to contact the Department for Work and Pensions (DWP) to obtain Mr L's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr L's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr L's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr L as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Mr L has already taken tax-free cash so the payment may be subject to a notional deduction of 20 per cent.

The compensation resulting from the loss assessment must, where possible be paid to Mr L within 90 days of the date CWM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8 per cent per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes CWM to pay Mr L this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

My final decision

I uphold this complaint. Copia Wealth Management Ltd must calculate redress as set out above. It should provide details of the calculation to Mr L in a clear accessible format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 June 2020.

Keith Taylor
Ombudsman