Financial Ombudsman Service

## complaint

Mr C complains about the advice he received from PFP WEALTH PLANNING LLP (PFP) in relation to his pension funds. He believes PFP made risky investments when he was a cautious investor. Also, PFP convinced him to move his pension fund despite his reservations.

## background

The adjudicator thought the complaint should be upheld. In summary, she said:

- Mr C transferred his funds from a stakeholder pension to a self-invested personal pension (SIPP) in order to use the discretionary management service from PFP and to have access to a larger range of funds.
- This was a reasonable objective. Although the charges were higher in the SIPP, this information was clearly stated in the documentation from the time.
- The suitability letters sent to Mr C indicated his attitude to risk to be balanced.
- But the adjudicator did not think the SIPP had been managed in line with this risk profile.
- The details of the holdings within the SIPP did not represent a portfolio which would have been suitable for a balanced investor.

PFP did not agree with the adjudicator's view. It said the risk allocation figures from September 2013 the adjudicator had used in her assessment included investments outside the portfolio, which were of a higher risk. PFP provided updated amounts which excluded the other investments. It also noted that Mr C had issued instructions to liquidate the holdings and transferred the cash to a new provider in November 2013.

The adjudicator was not persuaded to change her opinion. She did not think the new information showed that the SIPP was compatible with Mr C's attitude to risk.

As the matter remains unresolved, it has been passed to me for consideration.

## my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr C held a substantial pension fund within a stakeholder pension. In 2012, Mr C was advised to move his pension to a SIPP. Like the adjudicator, I do not find this unreasonable, as there were advantages to Mr C in doing this.

It appears Mr C was advised to invest his SIPP as part of an overall portfolio of investments, including his individual savings account and a joint investment portfolio with his wife. The level of risk agreed between Mr C and PFP was 'balanced'. However, I consider it is also important to note that Mr C described himself as an overall cautious investor. It seems the majority of his assets were held in deposit type funds. Mr C was interested in investing some of this money. But it was noted he did not want to dramatically increase the risk.

I think Mr C would have expected his SIPP to have been invested in funds which would have provided him with a balanced level of risk, at the most. But the funds recommended by PFP contained a considerable degree of risk. They included direct investments in equities, as well as hedge funds and investments in natural resources and futures.

Having reviewed the individual holdings within the SIPP, I do not think the mix of funds and asset allocation was in line with a balanced level of risk.

As noted above, Mr C was also being advised on other areas. As such, the SIPP represented part of Mr C's overall portfolio. But I do not think the other investments mitigated the risk posed by the funds in the SIPP. The ISA and joint investment with his wife also contained significant risk.

I have noted the points made by PFP about other investments held by Mr C. It has provided evidence he invested in higher risk areas, such as enterprise investment schemes (EIS). Although I appreciate this, I do not think these investments justify the risk posed by Mr C's SIPP. This should have been invested in line with the risk profile agreed for this part of his capital. The fact he may have been prepared to take more risk elsewhere does not alter this.

I understand Mr C elected to move the SIPP to another provider in November 2013. So I have adjusted the compensation to reflect this change.

**fair compensation**

In assessing what would be fair compensation, I consider that my aim should be to put Mr C as close to the position he would probably now be in if he had not been given unsuitable advice.

I take the view that Mr C would have invested differently. It is not possible to say *precisely* what he would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

**what should PFP do?**

To compensate Mr C fairly, PFP must:

- Compare the performance of Mr C's investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investment. If the *actual value* is greater than the *fair value*, no compensation is payable.

  PFP should also pay interest as set out below.

  If there is a loss, PFP should pay such amount as may be required into Mr 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 PFP is unable to pay the total amount into Mr C's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a 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 C's marginal rate of tax at retirement.

For example, if Mr C 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 Mr C would have been able to take a tax free lump sum, the *notional* allowance should be applied to 75% of the total amount.

- In addition, PFP should pay Mr C £200 for the uncertainty he has suffered while the value of his pension has fallen.

Income tax may be payable on any interest awarded.

| investment name | status | benchmark | from ("start date") | to ("end date") | additional interest |
|---|---|---|---|---|---|
| SIPP | transferred | for half the investment: FTSE WMA Stock Market Income Total Return Index; for the other half: average rate from fixed rate bonds | date of investment | date transferred | 8% simple per year on any loss from the end date to the date of settlement |

***actual value***

This means the actual amount paid from the investment at the end date.

***fair value***

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, PFP should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if PFP totals all those payments and deducts that figure at the end instead of deducting periodically.

**how to pay compensation?**

If there is a loss, PFP should pay such amount as may be required into Mr 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 PFP is unable to pay the total amount into Mr C's pension plan, it should pay that amount direct to him. The amount should be reduced to *notionally* allow for the income tax that would otherwise have been paid on the funds when they are withdrawn. 25% of the funds would be tax free but the remaining 75% would have been subject to income tax at Mr C's marginal rate of tax. So the *notional* allowance for tax would equate to a 15% reduction in the total amount (20% on 75%).

**why is this remedy suitable?**

I have decided on this method of compensation because:

- Mr C wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The WMA index is a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr C's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr C into that position. It does not mean that Mr C would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr C could have obtained from investments suited to his objective and risk attitude.
- Mr C has not yet used his pension plan to purchase an annuity.
- The additional interest is for being deprived of the use of any compensation money since the end date.

**my final decision**

I uphold the complaint. My decision is that PFP WEALTH PLANNING LLP should pay the amount calculated as set out above.

PFP WEALTH PLANNING LLP should provide details of its calculation to Mr C in a clear, simple format.

In addition, PFP WEALTH PLANNING LLP should pay Mr C £200 for the uncertainty he has suffered whilst the value of his pension has fallen.

Doug Mansell
**Ombudsman**