DRN-4084637

The complaint

Mr B is represented.

He says Kingswood Law IFA Limited ('Kingswood') is responsible for an unsuitable transfer of his pensions in 2013 and for unsuitable pension investments thereafter.

Kingswood disputes the allegation. It says it did not recommend the transfer or the subsequent investments; and that its role was limited to the execution-only task of arranging the transfer to a Self-Invested Personal Pension ('SIPP'), recommending the SIPP provider (Westerby Trustee Services Ltd ('Westerby')) and arranging his Tax-Free Cash ('TFC') withdrawal.

What happened

One of our investigators looked into the complaint and concluded that it should not be upheld. He mainly found as follows:

- In 2012 Mr B sought to transfer his pensions into a SIPP through a different adviser and a broker, and through a different SIPP provider (Berkeley Burke ('BB')). In December that year his pursuit failed because the adviser advised against the transfer and, for that reason, BB rejected his SIPP application.

- Despite the adviser's advice and despite the SIPP application rejection, he continued the pursuit and in 2013 Kingswood helped him to transfer three pensions into the Westerby SIPP. However, there is no evidence that it advised him to invest the SIPP into the specific funds that he has complained about.

- Kingswood's role facilitated his access to the TFC, in order to fund property development plans he had at the time. He was under time pressure to complete an ongoing property purchase and under financial pressure to address an associated loan he described as 'crippling' at the time. Access to the TFC appears to have been urgently needed for these reasons.

- It is not reasonable to say Kingswood had no responsibility in the matter. It had regulatory duties, including that to pay due regard to Mr B's interests. In this respect, it should have refused to carry out his request. However, the facts surrounding his actions in 2012 and the purposes for which he continued to chase the transfer show that he was determined to achieve that outcome, despite advice (from the previous adviser) against it and despite his awareness (through that advice) that it was highly risky. For these reasons, he would probably have gone ahead with the transfer even if Kingswood advised against it.

Mr B and his representative disagreed with this outcome. The investigator made further enquiries in order to reconsider his view, but he was not persuaded to change it. The matter was referred to an Ombudsman.

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.

Having done so, I too conclude that the complaint is not upheld; that, on balance, Mr B was insistent upon, and determined to achieve, the transfer regardless of advice; that he would have pursued and achieved it even if Kingswood advised against it; that, evidence shows the specific investments he has complained about were not recommended by Kingswood; and that, for these reasons, even though Kingswood did wrong by failing to assess and advise on suitability of the transfer (and investment of the SIPP thereafter) it cannot fairly be held responsible for the outcome that Mr B has complained about.

In the course of their responses to the investigator's enquiries, Mr B and his representative notably confirmed the following:

- He conducted the transfer because it created access to money he needed for the property purchase and development. However, he also discussed other investments (and pension wrap) with Kingswood.
- He used the TFC for the property development and the associated loan.
- But for the transfer he could not have afforded the property purchase and it would have fallen through.
- The underlying investments he has complained about were made from 2014 onwards.

In addition, I have verified the investigator's findings about the events in 2012 (including available information about the advice from Mr B's previous adviser in that year and the unsuccessful transfer related steps taken in that year).

There is a sum of evidence, as summarised above, supporting the conclusions that Mr B was predetermined to conduct the transfer, that his reasons were specific, that he had attempted to do so before Kingswood's service, that he was under pressure (for the property purchase and development reasons) to promptly complete the transfer and gain access to the TFC, and that he used Kingswood's service for these purposes.

Mr B had received previous advice against the transfer (or at least a part of it). Documentation about Kingswood's service shows it did not recommend the transfer, and that it gave general information to him about the sort of investments he could consider for the SIPP in the future, but not to the extent of recommending specific investments to make. There is evidence that the relevant investments were made from 2014 onwards, but no evidence that Kingswood recommended them.

However, it recommended the Westerby SIPP and arranged the transfer (and TFC withdrawal).

The regulator's Principles for Businesses require a firm to conduct its business with due skill, care and diligence; to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems; and to pay due regard to the interests of its customers and treat them fairly.

Its Conduct of Business ('COBS') rules – at COBS 2.1.1R – requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. COBS 9.2.1R sets out a firm's obligation to assess the suitability of investments recommended to its clients.

Its 2009 checklist for pension switching highlighted four key areas that firms were/are expected to address – Charges (is the consumer switching to a pension that is more expensive than his/her existing one(s) or a stakeholder pension, without good reason?); Existing benefits (is the consumer losing benefits in the switch without good reason?); Risk – (is the consumer switching into a pension that does not match his/her recorded ATR and personal circumstances?); Ongoing fund management (will the switched pension need ongoing investment reviews that have not been explained, offered or put in place?).

In 2013 the regulator issued an alert which included, and essentially warned against, the following:

"*It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages or disadvantages of investments proposed to be held within the new pension*."

The effect of all the above meant Kingswood was obliged to assess (and advise on) the suitability of the transfer in Mr B's case and of the potential investments to be held within the SIPP. It could not reasonably adopt an isolated and/or execution only approach towards the transfer and towards selection of the SIPP provider. Unfortunately, it did precisely that. Kingswood has confirmed that it did not advise on suitability. It should have done so.

This creates a basis to consider upholding Mr B's complaint. However, my task is not to punish Kingswood for the above failure. It is to determine whether (or not) to uphold the complaint that it is responsible for an unsuitable transfer and unsuitable SIPP investments.

The evidence I addressed earlier shows that responsibility for the transfer was defined before Kingswood's service. That responsibility was Mr B's and it arguably became crystalised when he continued to pursue the transfer even after he had received previous advice against it (and a previous rejected SIPP application because of that advice). Kingswood should have provided its own advice on the matter and it was wrong not to have done that, but I do not consider that its advice would have made a difference.

Mr B needed the transfer urgently and he has been transparent about the reasons why. Those reasons were serious for him. They made it likely that, in 2013, he would have continued with the transfer even if he was advised against it for a second time. Such advice from Kingswood would have been unlikely to stop him from doing so. He had already essentially ignored the first advice against the transfer and the first unsuccessful SIPP application, so it is more likely (than not) that he would have done the same if Kingswood's advice did not support his pursuit.

Available evidence is that the subsequent pension investments were remote to Kingswood's service and that Mr B held his own ideas about the sort of investments he wanted to make. There is no evidence that it advised the relevant SIPP investments from 2014 onwards, and it gave no specific investment advice in 2013. But for the transfer to the SIPP the specific investments might not have been possible. However, as I have explained above and based on the particular facts of the case, it is not reasonable to hold Kingswood responsible for the transfer.

My final decision

For the reasons given above, I do not uphold Mr B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 13 September 2023.

Roy Kuku
Ombudsman