

The complaint

Mr V says deVere and Partners (UK) Limited (DPUK) mis-informed him about the value of his Qualifying Recognised Overseas Pension Scheme (QROPS), when it recommended that he transfer his funds into a Self-invested Personal Pension (SIPP).

What happened

Mr V says he'd been a client of the deVere group of companies since 2010. At that point he was given a recommendation by an overseas adviser to set-up a QROPS. I assume that at the time of this initial advice and in subsequent years, the same adviser was also responsible for recommending his portfolio of investments. I don't have much information about these earlier matters.

The focus of Mr V's complaint concerns the value of his pension transferred in 2020 when he received advice from DPUK to move his QROPS funds into a SIPP and recommended investments.

Mr V held a QROPS as he was working overseas. The plan was a Sovereign Trust (Guernsey) scheme which was placed in a Providence Offshore Investment Bond. The bond held several investments, including three structured notes.

Mr V had been made redundant and had returned to the UK, where he intended to stay. On his return, he was put in touch with DPUK. In February 2020 his adviser completed a fact find, establishing matters such as his objectives, circumstances and attitude to risk. It also requested information from the Trustees of his QROPS.

Mr V's objectives were captured by DPUK in the following terms:

- *You would like to consider switching Sovereign Trust (Guernsey) / Providence QROPS to a UK pension as you wish to increase your wealth by reducing ongoing product charges and for ease of servicing.*
- *You will require access to the capital when the funds have been transferred back to the UK and would like the greater flexibility of a UK pension withdrawal options to fund your property purchase.*
- *You would like the benefit of more flexible retirement options available in the UK.*
- *You are planning to remain in the UK for the foreseeable future.*

At the time of the advice Mr V was 61. He had a partner who was partially financially dependent on him. After returning to the UK he's sold his property overseas for around £350,000 and was looking to purchase a new family home. It's recorded he expected to pay around £550,000 for this. He was planning to meet the shortfall with tax-free cash (TFC) from his new SIPP and a mortgage of around £100,000.

At the time Mr V was unemployed but was considering whether to return to work either part-time or full-time. He was in receipt of around £400 a month from another pension scheme. But his outgoings were around £2,500 a month. He was eating into his capital.

DPUK prepared a suitability report for Mr V dated 26 February 2020. This recommended that he transfer his QROPS into a SIPP with Aegon and investments that were consistent with his assessed attitude to risk. That was indicated as level five, the low end of moderate. Mr V signed the suitability report on 9 March 2020 to proceed with DPUK's recommendations. However, he made clear capital protection was a priority – so it was agreed his attitude to risk would be reduced to level four, cautious to moderate.

The transfer value of Mr V's QROPS quoted by DPUK in the reports it gave him in February and March 2020 was around £740,000. On 1 June 2020 Sovereign Trust received Mr V's encashed funds monies from Providence Life. The sum received was only around £657,000.

When Mr V realised what had happened he complained to DPUK. He was unhappy that the transfer value was substantially less than indicated in the advice he received. DPUK said that valuation of his investment was the responsibility of the Providence as the product provider. The Investigator didn't uphold Mr V's complaint. She didn't think DPUK had done anything wrong.

Mr V disagreed he said:

"...as my financial advisors for the 10 years that I held the QROPS, DeVere have misled me in terms of overstating the pension value. Surely they have a duty of care to ensure my funds are placed with safe providers and that the values they quote to me are correct? Over the last 10 years DeVere have been proudly telling me how my plan has grown and yet in reality no due diligence has been carried out to ascertain if this was the case...it is only upon surrender that it has come to light that the funds have been overstated by Providence and subsequently by DeVere...I understand DeVere are in the process of changing the values they show to clients to reflect the market values of structured notes rather than original investment values. Surely this is in itself an admission of an error on their part."

As both parties didn't agree with the Investigator's findings and conclusions, Mr V's case has been passed to me to review. I issued my provisional decision last month.

Mr V was disappointed that what I was proposing in no way compensated him for the perceived loss in value of his pension fund. I've thought carefully about what he told me but it hasn't caused me to depart from my initial findings and conclusions. I do however suggest a course of action open to him regarding a new point he's raised in relation to fees and charges.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

A few of the points Mr V has raised in response to the Investigator's view appear to relate to the services and advice he received in relation to his QROPS, which he told us were provided by an overseas adviser.

To be clear, the rules governing our jurisdiction (the complaints we can consider) cover cases about the activities of a firm carried out from an establishment in the United Kingdom. That excludes the Channel Islands and Isle of Man.

So, I won't be dealing with the wider matters Mr V has now raised. I can only look at the complaint he brought against DPUK in relation to any acts and omissions it was responsible for.

On these wider matters DPUK said the following:

"I would suggest that [Mr V's] complaint about the valuation should be addressed either to the Trustees, Sovereign, or the Bond Provider, Providence Life who caused the problem by providing an incorrect valuation. Or, if he is not happy about the fall in value itself, then he would need to complain to the firm who arranged the QROPS originally and recommended he invest in the Structured Note."

I find it helpful when considering complaints to keep in mind the Financial Conduct Authority's (FCA) eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.
- Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework. They must always be complied with by regulated firms like DPUK. As such, I need to have regard to them in deciding Mr V's case.

DPUK's role was to provide Mr V with advice about his pension arrangements and options. It seems to me an important facet of such advice was to understand the consequences of the transfer it recommended – downsides as well as advantages.

I think the suitability report it delivered to Mr V was reasonably detailed and clear in most respects. For example, I can see it detailed how the complex investment he'd made in three separate structured notes worked (this accounted for around 45% of his fund).

DPUK set out how quarterly returns to this investment relied on the performance of multiple indexes. It noted the thresholds of performance for the indexes above which his capital was protected and income generated. And what returns could be made. It identified the notes matured in August 2024. And that if he retained his holdings the capital returned at that point could realise a profit or loss, based on the worst performing index within each structured note.

However, it seems to me there was an important deficiency in the advice DPUK gave Mr V in relation to the structured notes. As it explained to him in its final response, cashing in his structured notes early had implications. But it failed to point this out in its advice. So it didn't act with due care, skill and diligence here.

I've not seen a copy of the terms and conditions associated with the financial instruments Mr V held, but we know from what Providence reported to DPUK the reason for the reduced value of the structured notes was because they had to be sold on a secondary market.

Presumably offloading the structured notes through a secondary market could've been positive or negative for the value of Mr V's capital depending on factors such as demand.

And perhaps a valuation would've been tricky because it took several months from agreement of the transfer of his QROPS into a SIPP, until execution.

While I can see DPUK did explain the volatility of the various indexes, which were so important to how Mr V's structured notes performed. And how significant falls could be experienced in a short period. I can't see it informed him about the potential consequences of the early redemption of his structured notes.

I then need to consider what the impact of this failure had on Mr V. DPUK said:

"I appreciate that [Mr V] would have been distressed and disappointed by the reduction in value of his plan. However, the reduced value is a matter of fact – had the correct valuation been provided originally, he would still have suffered that disappointment with the returns."

"However, in view of his objectives, I can't see that with the new valuation our recommendation would have been any different – to meet his objectives he would still have needed to transfer to the UK and surrender his plan for the lower amount so I don't think he would have made a different decision. Therefore, there is no causation between our advice and the matter he is complaining about."

In thinking about DPUK's failing, I am mindful of what Mr V has told this Service. He said he was content with the advice he received to transfer his QROPS to a SIPP with Aegon. I can see the transaction met his objectives, which were driven by his circumstances.

Mr V told us that he'd been planning to use the value from the transfer of his QROPS, to maximise the TFC he could take and put this towards the purchase of his new family home. Happily, he was still able to proceed with this because around the same time the Chancellor had extended certain stamp duty concessions.

In responding to my provisional decision Mr V confirmed:

"It is the case that the transfer value was important to me as I used the 25% drawdown towards the purchase of my home. However of more concern is the 'perceived' fall in value which represented 10% of the total fund value. This has a longer term effect in that my lifestyle has to change to suit the reduced income I receive from the SIPP."

I think even if DPUK had given Mr V better advice about the implications of 'cashing-in' his structured notes early, based on what he's told this Service, I think it's more likely than not he'd have still gone ahead with the transfer of his pension arrangements.

I recognise Mr V suffered a loss of expectation – he thought he would have a better income from his pension. But I don't think that equates to a consequential financial impact. That's to say I can't see he acted on what he thought he might receive in the future by incurring liabilities now. One of the reasons he didn't was because, as he's acknowledged, until matters were finalised, the value of his pension pot was somewhat uncertain.

Mr V has also now raised the matter of charges. His essential point is that since his advisers' fees were based on his fund value, it has benefitted from what he regards as an inflated assessment of his fund over the years.

There's an argument that the value of his fund was affected by the decision to cash-in Mr V's structured notes early. The notes were designed to run to a fixed term. So the value he received was what could be achieved in the secondary market.

Leaving these matters to one side, as I've already mentioned this Service can only consider the acts and omissions of DPUK. I note that in its suitability report from February 2020 it said the following about its charges:

"I confirm that I have offered advice in terms of switching the monies back from the Sovereign Trust (Guernsey) / Providence back to a UK SIPP. Initial charge for advice payable to deVere is as follows:

- *£14,758.19 / 2% based on the value of £737,909.31 (subject to fluctuations), payable should the QROPs to SIPP transfer go ahead. This fee can be taken from the receiving scheme, once the transfer to the UK has concluded.*

** Usually deVere United Kingdom's initial charge is 3%, however we have reduced this to 2%."*

I note that DPUK would also charge Mr V an annual fee of 1% of the value of his fund for ongoing advice.

I've not seen a transaction report setting out what fees and charges Mr V actually paid to DPUK. But if after reviewing the position he has any concerns that these were not consistent with what had been agreed, in the first instance he should address these to DPUK so it has an opportunity to respond.

Putting things right

When I'm considering a complaint like Mr V's, I think about whether it's fair to award compensation for distress and inconvenience. This isn't intended to fine or punish a business – which is the job of the regulator. But when something's gone wrong, recognition of the emotional and practical impact can make a real difference.

We're all inconvenienced at times in our day-to-day lives – and in our dealings with other people, businesses and organisations. When thinking about compensation, I need to decide that the impact of DPUK's actions was greater than just a minor inconvenience or upset. It's clear to me that this was the case here.

I'm mindful that other parties, prior to DPUK's involvement with Mr V, would've been responsible for him understanding initially how the structured notes worked and what their value was at any given time. And these matters would also have influenced his expectations.

While Mr V may not have suffered financial detriment as a result of DPUK's advice, there seems to me no doubt that he did experience a loss of expectation in part because of the incomplete information it gave him about the implications of surrendering his structured note investments early.

So, I require deVere and Partners (UK) Limited to pay Mr V £300 for the trouble and upset it has caused him because of its failings.

My final decision

For the reasons I've already set out, I'm partially upholding Mr V's complaint. As such, I require deVere and Partners (UK) Limited to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 23 March 2022.

Kevin Williamson

Ombudsman