DRN-3386057

The complaint

Mr A complained that he was given unsuitable advice by Neovision Wealth Management Limited trading as Harrison Charles Wealth Management (for ease I'll simply refer to "HCWM") to switch his personal pension to a self-invested personal pension ("SIPP") and invest his funds through a Discretionary Fund Manager ("DFM").

What happened

In 2016 HCWM completed a fact find document which recorded Mr A's financial position and objectives. This said, amongst other things, that Mr A wanted:

- advice on investments outside his pension
- to maximise growth over the next five years
- to improve performance and management as he'd been dissatisfied with the service and returns from his current pension
- a diversified pension using more than just one fund
- flexibility in how he took future pension benefits (but had no interest in taking an annuity)
- to keep life cover going.

On 15 November 2016 HCWM sent Mr A a suitability report outlining its recommendation. Of note, the report said:

- Mr A's primary objective was to review his personal pension to see if it was appropriate to switch the benefits – to provide greater
    - flexibility and options
    - fund/investment choices to meet his circumstances, and
    - fund management and performance
- Mr A's attitude to risk was 'balanced'
- Mr A wanted improved management [of his pension/investments] and that active (rather than passive) management would be his preference even if it cost more than the existing scheme
- if Mr A switched pensions there was no guarantee that his benefits would be any better than had he not switched
- the cost of the new scheme was around £60 cheaper.

The advisor recommended that Mr A consider switching his existing pension to a SIPP. The appendix to the suitability report said the advisor had selected the Strand Balanced Portfolio as being suitable for Mr A's attitude to risk, and went on to provide details of Strand and the investment strategy of the Balanced Portfolio.

Mr A switched his pension to the SIPP and the funds were invested with Strand.

About six months later Strand went into administration. Mr A says that throughout 2017, 2018 and 2019 he was in contact with HCWM about when his pension funds would be returned to him. He was also in contact with the SIPP provider as he was wanted to switch the pension again. The SIPP provider told him:

- his funds were invested in Newscape funds and not the Strand Balanced Portfolio
- his funds had been invested with Newscape "the whole time"
- the Newscape funds have an exit fee.

In December 2019 Mr A complained to HCWM about how his new pension had been set up. In essence, he was unhappy with the lack of communication about the pension following Strand going into administration, that his funds hadn't been invested in the Strand Balanced Portfolio, and that he hadn't been told about the exit fee.

In February 2020 Mr A switched his pension to a new provider.

HCWM looked into the matter but didn't think it had done anything wrong. It said it arranged the switch to the SIPP and for the funds to be invested in the Strand Balanced Portfolio. It said that any subsequent reinvestment by Strand was at Strand's discretion. HCWM also felt Mr A hadn't suffered any loss as his investment had grown from around £108,000 to around £113,000 by the time he switched the pension again.

What I provisionally decided – and why

I issued a provisional decision which explained why I felt the complaint should be upheld. The relevant parts of my provisional decision are detailed below, and form part of my final decision.

What happened

- The arrangement HCWM recommended Mr A enter into is what's known as DFM. In essence, the consumer delegates authority to a portfolio manager, or discretionary investment manager, to make decisions on their behalf about what investments to make.

- Mr A said he wasn't aware of this arrangement; he was under the impression his funds would be invested in the Strand Balanced Portfolio and that HCWM would manage the investment decisions and consult him before making any new ones. Irrespective of any information HCWM gave Mr A about the DFM arrangement, it didn't strike me as an unreasonable impression for Mr A to form given that HCWM was charging him an ongoing management charge.

HCWM's points

- HCWM said it was common practice for advisors to recommend a SIPP with DFM, and if fund managers referred to clients before investment changes were made the system would break down. I accepted it wasn't practical for fund managers to refer to clients every time an investment change was made. However, the issue in dispute here was whether the recommendation for Mr A to invest with a DFM arrangement was suitable, and whether HCWM gave Mr A sufficient information so that he could make an informed choice.

- HCWM said it was outside its control if Strand inappropriately invested Mr A's funds – it felt that was a matter between Mr A and Strand and/or the SIPP provider. It's not necessarily the case that we won't hold HCWM responsible for decisions the SIPP provider or Strand made once Mr A had switched. This was because HCWM had responsibilities such as doing due diligence into the DFM and giving a clear mandate to the DFM about Mr A's attitude to risk. In any event, HCWM was responsible for the recommendation it gave Mr A to switch the pension – including the recommendation to invest the funds with Strand. And in that regard, it had an overall responsibility to treat Mr A fairly. In the context of this complaint, I thought that meant it had to ensure:

  - its recommendations were suitable for Mr A
  - it carried out sufficient due diligence
  - it provided Strand with a clear mandate as to Mr A's risk attitude, and
  - it provided Mr A with clear information to enable him to make an informed decision.

- Although Strand and the SIPP provider were regulated and had their own responsibilities to Mr A (and they might separately have been responsible for some of Mr A's losses – for which he might have some sort of recourse by pursuing a complaint against either Strand or the SIPP provider), Mr A had complained about the recommendation he received from HCWM, and that was the complaint I was tasked with deciding.

- HCWM reiterated that the initial recommended investment portfolio was suitable for Mr A's risk profile, and there was nothing to indicate that Strand would go into administration. These points were either not in dispute or were accepted by our investigator.

Was the recommendation suitable?

- HCWM had a duty to ensure that the DFM arrangement was suitable for Mr A, that the recommended DFM was appropriate, and to do its due diligence on Strand.

- In respect of the DFM arrangement, although the illustrative comparison showed the new arrangement was around £60 a year cheaper once HCWM's additional ongoing charge was taken into account the new arrangement was more expensive overall. The cost of Mr A's original pension was 1% annually. The cost of the new arrangement was the SIPP provider's annual charges of £114 and 0.84%, plus HCWM's annual ongoing management charge of 1%. I suspected there was also the DFM's annual charge. This meant that even without the DFM's charges the cost of the new arrangement was almost double the cost of the existing one.

- HCWM said all costs were fully disclosed to Mr A and that the advisor charge didn't need to be included in the direct comparison. It also said Mr A wasn't charged its ongoing management charge. I hadn't seen anything which showed what the DFM's charge was or that HCWM explained it to Mr A. And, irrespective of what charges needed to be included in any comparison, I thought the overall cost should have been one of the advisor's considerations when making a recommendation – and should have been clearly explained to Mr A. Based on what I'd seen, I couldn't conclude that it was.

- I thought "cost versus benefit" was also an important consideration for the advisor, and something that should have been explained to Mr A. The size of Mr A's pension fund was important because it was relatively modest which meant he was more likely to have benefited from a basic arrangement or one with access to a range of mixed asset funds which HCWM reviewed occasionally. This was because the cost of a DFM arrangement became disproportionately high.

- Another consideration for the advisor in this respect was how much better off Mr A would have been by switching. It was clear the new arrangement gave him a far wider choice of funds to invest in. But Mr A wasn't given any information on how much the new pension would need to grow in order for it to outperform the original one. So it wasn't clear to me that this was considered.

- I didn't think it had been shown what benefit Mr A could have obtained from a DFM arrangement, over and above what he could have obtained by HCWM giving him ongoing advice on the underlying investments, for the extra costs he was incurring. The DFM arrangement added an unnecessary layer of complexity to the arrangement that, in my view, Mr A didn't need. He essentially wanted to diversify and improve the performance of his investments, and I didn't think he had the necessary experience and knowledge to understand the bespoke investment propositions a DFM arrangement would give to him. I couldn't see that a wider range of funds or a bespoke investment portfolio was necessary to meet Mr A's objectives. There was no reason why he couldn't have invested in a more standard portfolio which could have been reviewed by HCWM during its ongoing service to make sure it was still in line with his attitude to risk and meet his requirements. I couldn't see that simpler and cheaper investment options without a DFM were explored.

- Given the above, I didn't think a DFM arrangement was suitable for Mr A or in his best interests. And I didn't think it was made clear to Mr A that he was paying for a DFM arrangement that wasn't a necessity.

- In addition, The Financial Services Authority issued guidance in July 2012 about the recommendation of DFMs ('Assessing suitability: Replacement business and centralised investment propositions'). And the Personal Finance Society built on this in February 2015 with a good practice guide for advisors to help them develop their approach on due diligence into DFM firms. Both regulatory and industry guidance made it clear that advisors needed to do some due diligence on a DFM before recommending their services. Examples of the due diligence included research into the DFM's reputation and financial standing as well as the types of underlying assets the DFM would invest in and their approach to investing. The good practice guide said advisors needed to 'get under the bonnet' of a DFM's 'marketing blurb' and were required to question and challenge information that was provided to them.

- I hadn't seen anything showing what due diligence HCWM did into Strand. So I couldn't conclude that it adhered to the guidance in this respect.

Did HCWM give Mr A sufficient clear information in order to make an informed choice?

- I didn't think it was necessary to consider or comment on this issue as I felt the argument was largely redundant given my conclusion that the DFM arrangement was unsuitable and not in Mr A's best interests.

Causation

- HCWM argued that Mr A's funds were placed in the Strand Balanced Portfolio as it had advised him to do and, therefore, that the SIPP provider or Strand were to blame if the funds were invested elsewhere. I hadn't seen anything to show that the funds were placed in the Strand Balanced Portfolio eg HCWM's instruction to the SIPP provider/Strand, or the mandate HCWM gave the SIPP provider/Strand in respect of Mr A's attitude to risk. But I'd seen an email from the SIPP provider to Mr A which said the funds had been invested with Newscape the whole time.

- HCWM also argued that Mr A didn't suffer a loss by investing with Strand. I didn't think the fact that Mr A transferred more out of the pension in 2020 than he transferred into it in 2016 automatically meant that he didn't suffer a loss. Looking at the bare figures it could be argued that the investment grew by around £5,000 while it was invested with

Strand. However, it might be the case that the investment would have grown by £10,000 had Mr A not switched, or if he was invested in the Balanced Portfolio all along.

- Another of HCWM's arguments was that Mr A should have chosen a plan more in line with his goals and he wasn't forced to take the advice he was given. HCWM's responsibility was to give Mr A suitable advice. And this argument, in my opinion, effectively deflected blame away from HCWM on to what Mr A should or shouldn't have done.

- I did nevertheless need to consider what Mr A would most likely have done because in assessing what would be fair compensation my aim was to put him as close as possible to the position he would probably now be in if he'd been given suitable advice. I thought he would have made a different investment decision had he known the potential repercussions of investing with Strand. That was because if suitable advice had been given I thought Mr A would most likely have switched to a SIPP – because his objectives were to get flexibility, more options and a better choice of investment. But the underlying investments would not have been via a DFM arrangement.

Distress and inconvenience

- I thought Mr A had suffered unnecessary distress and inconvenience. For example, he had to chase various parties to get updates on his pension following Strand going into administration, and discovering that his pension funds were potentially at risk would have been particularly stressful.

- It wasn't HCWM's fault that Strand went into administration. But it did go into administration, and were it not for HCWM's unsuitable advice Mr A wouldn't have been in the DFM arrangement so he wouldn't have had to deal with that fallout.

- I felt £300 compensation was fair in this respect.

Responses to my provisional decision

While HCWM was formulating its response it offered to pay Mr A £4,617 in an effort to resolve the matter. This was calculated as £300 compensation as per my provisional decision; £2,317 for the exit fee on the Newscape funds; and £2,000 being equivalent to the cost of advice it offered to provide Mr A when the complaint initially arose.

Mr A rejected HCWM's offer as he wanted the matter settled as per my provisional decision.

HCWM initially made reference to where Mr A's funds were invested and felt I'd made a "serious inaccurate comment" in this respect. In summary, it didn't believe that he'd invested with Newscape *the whole time*. HCWM also said it was checking the performance of the legacy funds. It later provider information it had gathered since my provisional decision. This consisted of the documents it had on Strand before the advice was given to Mr A, and information/documents it had received from the SIPP provider to the extent that.

HCWM also made various points (which I comment on below as necessary) in its formal response to my provisional 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 don't think the information HWCM has provided in respect of the due diligence adds to its case. I say this because the essence of my provisional decision was:

- that the recommendation for Mr A to enter into a DFM arrangement was unsuitable and not in his best interests; and
- it wasn't made clear to Mr A that he was paying for a DFM arrangement that wasn't a necessity.

I also said, more as an additional comment, that I hadn't seen anything showing that HCWM had adhered to the guidance in respect of due diligence into Strand. So HCWM now providing information in respect of due diligence it and the SIPP provider carried out doesn't change my opinion that the recommendation was unsuitable/not in Mr A's best interests; nor that it wasn't made clear to Mr A that the DFM arrangement wasn't a necessity.

I also don't think the information HWCM has now provided from the SIPP provider in respect of Mr A's investment and transactions adds to its case. I say this because the SIPP provider simply said that Mr A's funds were invested in Strand and were later moved – which was already known. And the transactions detail the money going into and out of the SIPP. No further clarity was given as to whether the funds were initially invested in the Balanced Portfolio and then moved to Newscape, or whether they were invested in Newscape all along.

While on this point, I disagree with HCWM that I made an inaccurate comment in respect of where Mr A's funds were invested. I don't know where they were initially invested and I didn't reach a formal conclusion on this in my provisional decision. I simply said that I hadn't seen anything to show that the funds were placed in the Strand Balanced Portfolio; and I'd seen an email from the SIPP provider to Mr A which said the funds had been invested with Newscape the whole time. Both of these statements were, and remain, accurate.

But similar to the due diligence issue, I think this is a bit of a "red herring" in any event because even if HCWM can show that the funds were 'correctly' placed into the Balanced Portfolio and were then moved into Newscape via the DFM arrangement, it remains my view that the DFM arrangement was unsuitable for Mr A and not his best interests.

I understand that HCWM is trying to show that it isn't 100% to blame for any losses Mr A might have suffered, which in turn might lead me to conclude that it isn't liable for all of the compensation. I discussed in my provisional decision that both Strand and the SIPP provider were regulated and might separately have been responsible for some of Mr A's losses. I remain of the view this doesn't make a difference to the outcome of the complaint. This is because while Strand was responsible for managing Mr A's pension fund following the transfer, this arrangement only existed by virtue of HCWM's recommendation. It also remains that Mr A hasn't complained to us about Strand or the SIPP provider – so it's not for me to judge any liability they might have. Anything that Strand might have done wrong doesn't make it reasonable in the circumstances of this case for HCWM to avoid compensating Mr A for losses they may have gone on to cause. So I think holding HCWM wholly responsible for any losses Mr A suffered represents fair compensation in this case.

HCWM said Mr A can't make a claim for poor performance [of the investment] and that he didn't actually make a loss. Mr A isn't complaining about poor performance – the complaint concerns the overall advice he was given. HCWM's comment about Mr A not suffering any loss is a repeat of a previous argument it made, which I addressed in my provisional decision.

HCWM also made reference to the fact that Strand's administration couldn't have been foreseen at the time of the advice; and that had it not gone into administration I might have reached a different conclusion as Mr A wouldn't have suffered a loss. I can only decide a case base on what *did* happen, not what *might have* happened had the circumstances been different. I accept HCWM couldn't have known about or predicted Strand's administration. However, whether Strand entered administration or not it remains that the DFM arrangement was unsuitable for Mr A. So my conclusion on that would have been the same regardless. The losses Mr A suffered might have been different, but the core issue about the suitability of the recommendation remains.

On the issue of losses, HCWM said that following the transfer away from the SIPP provider Mr A is likely to have gained by being in cash as the markets fell in the aftermath of the Covid pandemic. I don't think any gains or losses Mr A had after he switched his pension to the new provider have any relevance here. That's because the initial advice was still unsuitable.

HCWM also referred to it wanting to check the performance of the legacy funds. I don't think any information will change my mind in respect of the unsuitability of the DFM arrangement or Mr A making a different investment decision (because the reasons I've given for my conclusions in this respect aren't dependent on the performance of the legacy funds). The performance of Mr A's original pension is also irrelevant to the compensation payable (see below).

In closing, HCWM remains of the view that the advisor acted in accordance with the regulator's guidelines and that it hasn't been established that bad/unsuitable/poor advice was given. I'm mindful of HCWM's opinion however I disagree with it. I've explained why I've concluded that HCWM treated Mr A unfairly with the recommendation it made. My conclusions remain the same as outlined in my provisional decision, for the reasons outlined above.

Putting things right

To compensate Mr A fairly HCWM should:

- Compare the performance of Mr A's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

  If there is a loss, HCWM should also compensate Mr A for lost investment growth on this loss using the benchmark below, from when he switched in February 2020 to the date of the settlement calculation.

  If there is a loss, HCWM should pay into Mr A's pension plan, to increase its value by the amount of the compensation and any interest. HCWM's payment should allow for the effect of charges and any available tax relief. HCWM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

  If HCWM is unable to pay the compensation into Mr A'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 compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mr A's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr A is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Mr A in a clear, simple format.

Income tax may be payable on any interest paid. If HCWM considers it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr A how much it's taken off. It should also give Mr A a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Investment name	Status	Benchmark	From ("start date)	To ("end date")
SIPP portfolio switched from the original pension in November 2016	Now switched to new provider	FTSE UK Private Investors Total Return Index	Date of switch in	Date of switch out to new provider

The 'actual value' is the actual amount paid from the investment at the end date. The 'fair value' is what the investment would have been worth at the end date had it produced a return using the benchmark.

I've chosen this method of compensation because:

- Mr A wanted capital growth and was willing to accept some investment risk
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it's called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr A's circumstances and risk attitude.

I don't think a comparison with how Mr A's original pension would have performed is appropriate because I don't think Mr A would have remained with the original pension if suitable advice had been given.

The Financial Services Compensation Scheme ("FSCS") is working with the administrators of a number of collapsed DFMs to return to investors the remaining value of their investments. It's not clear to me whether Mr A has, or will have, a valid claim to the FSCS for any losses caused by Strand. However, it's becoming common for the FSCS to decline to make any award until we've completed our work on the advisor complaint. In any event, what the FSCS might do isn't relevant to whether or not I think it's fair and reasonable to require HCWM to pay full compensation. However, there is an issue over Mr A potentially getting double recovery of the same losses.

My understanding is that if the FSCS was to make an award to Mr A it would seek to reclaim any compensation he'd received from third parties that were related to that claim. So I don't think Mr A would benefit from double recovery. However I think it's reasonable that if he did receive compensation from the FSCS, in addition to any compensation paid by HCWM, and the FSCS didn't seek to recover other compensation he'd been paid, Mr A should provide an undertaking to repay HCWM any compensation that he's received (in combination from both) over and above his total losses as calculated by the method I've outlined.

HCWM should also pay Mr A £300 compensation for the stress and anxiety caused him.

The compensation amounts must be paid to Mr A within 30 days of the date HCWM receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 30 days, that it takes HCWM to pay Mr A.

My final decision

I uphold this complaint. I require Neovision Wealth Management Limited trading as Harrison Charles Wealth Management to settle this matter as outlined under the 'Putting things right' heading above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 May 2022.
Paul Daniel
Ombudsman