DRN-3437650

The complaint

Mr H complains that Manor Wealth Management Ltd gave him unsuitable advice regarding his personal pension.

What happened

In 2016 Mr H made some enquiries about a pension he thought he had, and the pension provider traced his pension and sent him some details about it.

In 2018, he was advised by Manor Wealth to transfer the personal pension to a different pension provider (Royal London). Mr H says he wasn't seeking out advice but was contacted 'out of the blue' by Manor Wealth.

At the time, Mr H was 52 and divorced. He was a self-employed music teacher earning around £35,000 per year. The existing pension was his only retirement provision.

Manor Wealth has provided details of its records which note Mr H as having a 'cautious to moderate' attitude to risk; he wanted to make contributions of around £50 per month gross, but had been told he couldn't do this with his existing pension plan; and he did not see that pension as being income because he always considered that he would be teaching (and therefore earning income from this) for the rest of his life.

Mr H accepted the advice and transferred £32,720.13 into a personal pension with Royal London in November 2018.

Manor Wealth's initial charge was 5% of the pension value (£1,633.70) with a 1% ongoing service charge. Royal London charged a 0.9% fee for the particular fund recommended.

Mr H says Manor Wealth contacted him again in 2020 to discuss transferring his pension again and this prompted him to review the sale. He was unhappy because he didn't think his pension growth would cover the initial advice fee, and he thought the costs of the previous transfer hadn't been explained properly. He complained to Manor Wealth but didn't receive a reply, so he referred his complaint to this service.

Our investigator thought the complaint should be upheld. She said:

- she couldn't see that the benefits of Mr H's existing pension had been explained to him;
- the existing pension was more restrictive and Mr H wasn't able to draw down funds from that pension, but he wouldn't have been able to access funds for another three years (until he reached the age of 55) and there was no particular need to transfer at that point;
- the adviser should have considered the possibility of Mr H moving his pension to different funds with the same provider, which Mr H would not have been charged for;
- the new pension was more expensive and the only justification for moving was that the investment strategy recommended wasn't available in the existing plan, but that wasn't a valid reason given that a similar fund would likely have been available with the existing provider;

- if Mr H had been advised to stay with the existing provider, potentially with a fund switch, or to wait and then move at age 55 into a drawdown facility, he would have followed that advice.

As she didn't think the advice was suitable, the investigator asked Manor Wealth to carry out a calculation comparing the performance of his pension with what would have happened if he'd stayed with his existing provider and, if that showed he had suffered a loss as a result of transferring, to compensate him for that loss.

The investigator also asked Manor Wealth to pay Mr H £300 compensation for the distress and inconvenience caused by the unsuitable advice given to him.

Manor Wealth didn't agree with the recommendations and raised a number of objections. The investigator considered the various points raised and explained why they didn't lead her to change her view. So Manor Wealth has requested an ombudsman's decision.

I won't set out in full all the points Manor Wealth has made, but the key points include:

- Mr H's existing pension was invested in 'With Profits' funds. These didn't meet his 'attitude to risk', there were no fund alternatives so a switch wasn't possible, and he wasn't able to make further payments into the pension – something he wanted to do.
- Mr H was looking for better growth, wanted to rebalance his investments, and wanted to have flexible access to drawdown funds.
- For all these reasons, staying with the existing provider wouldn't have been suitable and the advice to move his pension was appropriate.

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.

To decide whether the advice given to Mr H was suitable, I've considered how Manor Wealth assessed his needs and whether the advice to transfer his pension was suitable on the basis of those needs.

Manor Wealth has provided documents where it recorded Mr H's circumstances, his attitude to risk and the suitability of the proposal. Mr H says he can't recall receiving those documents, but even if so, they show the basis on which Manor Wealth gave its advice.

The suitability report Manor Wealth prepared notes that what it was recommending was more expensive for Mr H than leaving his pension where it was. But it justifies the advice on the basis that the investment strategy it wanted to recommend wasn't available with Mr H's existing pension. The adviser gives this as the reason why it didn't recommend that he stay in his current plan or simply switch funds within that plan.

Manor Wealth also says Mr H wanted to start making regular contributions to his pension and he wasn't able to do that with his existing plan. I understand Mr H's existing pension had been made 'paid up' in 1995 and he wasn't able to start regular payments into that plan.

With-Profits funds are generally more restrictive in terms of how a consumer can access benefits – for example, Mr H wasn't able to access drawdown in that plan. However, at the time of the advice he was 52 years old. The earliest age he could have accessed the funds from his pension was at 55, which wasn't for another three years. He couldn't access his funds at that point in any event, so I'm not sure why he needed to transfer at that point in time purely for that reason.

Manor Wealth says the existing provider didn't offer alternatives that Mr H could have switched to. But it did offer a range of funds and has confirmed that Mr H could potentially have transferred to a different pension (referred to as a 'Retirement Account'), which would have allowed him to make regular contributions and access income drawdown once he reached the age where he could do that. If Mr H's fund no longer matched his attitude to risk or he wasn't able to contribute into it when he wanted to, I'd expect the adviser to consider the possibility of moving to different funds at the same pension provider. The pension provider wouldn't generally charge for this and it would have avoided unnecessary costs. It doesn't appear this was considered.

Looking at Mr H's objectives, he didn't have a particular need for this fund. It doesn't seem he had any particular objectives, beyond wanting to make payments into his pension and access some of the funds flexibly at the age of 55. Both of those objectives could potentially have been achieved with his existing provider, without incurring the same charges. As a result of moving his pension Mr H incurred a charge of 5% of the value of his pension, thus reducing the value of his pension.

Looking at all the circumstances, I don't consider the advice to move was suitable. And I'm satisfied that if Mr H had been advised to stay with the existing provider, potentially with a fund switch, or to wait and then move at age 55 into a drawdown facility, he would have followed that advice. If there's a loss, he should be compensated for that.

When Mr H reviewed the advice given he was unhappy to find the growth in his new pension might not cover the fees he'd incurred, and thought the costs hadn't been explained to him properly. And when he complained to Manor Wealth about this he didn't receive a reply. In the circumstances I agree that a payment of £300 would be fair to acknowledge the distress and inconvenience caused to him.

Putting things right

My aim is that Mr H should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr H would have remained with his previous provider. However I can't be certain that a value will be obtainable for what the previous policy would have been worth. I'm satisfied what I have set out below is fair and reasonable, taking this into account and given Mr H's circumstances and objectives when he invested.

What must Manor Wealth do?

To compensate Mr H fairly, Manor Wealth must:

- Compare the performance of Mr H's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Manor Wealth should add interest as set out below.

- Manor Wealth should pay into Mr H's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Manor Wealth is unable to pay the total amount into Mr H's pension plan, it should pay that amount directly 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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.

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

- Pay to Mr H £300 for distress caused by the loss.

Income tax may be payable on any interest paid. If Manor Wealth deducts income tax from the interest it should tell Mr H how much has been taken off. Manor Wealth should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Royal London personal pension	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mr H's investment had it remained with the previous provider until the end date. Manor Wealth should request that the previous provider calculate this value.

Any withdrawal from the Royal London personal pension should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Manor Wealth totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Manor Wealth will need to determine a fair value for Mr H's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I’ve decided on this method of compensation because:

- Mr H wanted capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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 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.
- I consider that Mr H'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 H into that position. It does not mean that Mr H 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 H could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Manor Wealth Management Ltd should pay the amount calculated as set out above.

Manor Wealth Management Ltd should provide details of its calculation to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 14 October 2022.

Peter Whiteley
Ombudsman