

## The complaint

Mr E complains about Watkin Davies Insurance Consultants Limited's advice to switch his pension from Aviva to a self-invested personal pension (SIPP) with LV=. He says that his fund with Aviva was a top ten fund already. If he had been correctly advised to do nothing, it would have performed substantially better given the added impact of fees he paid to LV=, Brewin Dolphin & Watkin Davies.

## What happened

Watkin Davies issued a suitability report to Mr E on 5 April 2017, stating that his main objective was to benefit from *'the new flexible pension rules'*. It later explained this was in order to take ad hoc payments from his pension in future and have death benefit options.

It summarised his circumstances as:

- 57 years old, in good health and single
- Employed as a Company Director but considering retiring in the near future.
- Total income of £50,200pa including £22,200 from investments, and expenditure of approximately £30,000pa
- Mortgages totalling £140,242 but no other liabilities
- Assets of £25,000 in shares, investment property of £212,000 and his own home worth £350,000

Mr E was a member of his company's occupational pension with Friends Life (now Aviva), into which he was paying in £85pm by salary sacrifice. This would be left in place. He held a number of other Friends Life personal pensions alongside this. There were no transfer penalties or guaranteed annuity rates on the personal pensions – but some showed a significant final bonus on transfer. They had a range of retirement dates from 2025 to 2034.

In relation to Mr E's risk profile, Watkin Davies recorded that any loss of capital would not impact on his standard of living, so he had a 'medium to high' capacity for loss. It also said that Mr E had been comfortable with fluctuations in the value of his investments in the past, but was a cautious investor overall – said to be *'sensitive to short-term losses...usually willing to accept somewhat lower returns in order to assure greater safety of his..investment'*.

Watkin Davies recommended that Mr E switch his existing personal pensions to a LV= SIPP, but it noted *'...in undertaking a consolidation of your existing pensions to allow for simplified administration in future, the overall cost is higher. The nature of the charging structure is outlined in the illustration and in the charges section of this report.'* However, it said the LV= contract better met Mr E's need for investment and income flexibility.

Within the SIPP, it also recommended Mr E invest £3,000 in LV='s balanced index fund and the remainder anticipated to be some £100,000 with a discretionary fund manager (DFM), Brewin Dolphin. This was to *'...allow[...] you to benefit from the DFM's investment expertise and resources and will allow you to hand over day to day investment decisions to experienced professionals and these decisions can be acted upon without delay'*.

The balanced index fund had a total expense ratio of 0.13%pa, and Brewin Dolphin's funds

0.64%pa - which Watkin Davies described as 'competitively charged' with historically good performance (although past performance wasn't available for the bespoke portfolio Mr E would go into). In addition to this Brewin Dolphin would charge 0.96%pa as a management fee.

The LV= policy itself didn't have set up costs, but charged 0.55% on the first £75,000 and 0.35% thereafter to run. Watkin Davies would itself take 2% of the transferred sum and 0.5%pa thereafter *'to provide you with our on-going servicing and support'*. It 'strongly recommended' that they met at least annually to review the plan.

Watkin Davies said this was suitable for Mr E because he didn't want to be involved in the ongoing management of his portfolio. However it said Mr E would receive regular investment commentary, including a review of investment strategy and anticipated trends; transaction statements on a six-monthly basis with an overall valuation; and access to view his portfolio on Brewin Dolphin's website. It referred him to a separate report Brewin Dolphin had prepared for him.

About 33% of Mr E's Aviva funds had been invested in with-profits. Watkin Davies said that transferring *'...secures your terminal bonus which can be increased, decreased or taken away at any time. In addition to this there is always the possibility in poor stock market conditions that the company could apply a Market Value Reduction...'* The other existing sums had been invested in a managed fund with charges of 0.8%pa.

Details of the greater death benefit options were given in an appendix.

The transfer proceeds of £107,211 were received on 25 April 2017, from which a £2,144 fee was paid to Watkin Davies and £105,066 was invested with Brewin Dolphin. From 9 July 2017 onwards, Mr E started paying £187.50pm (gross of tax relief) into the plan.

Additionally, on 20 November 2020 Mr E added £1,875 (gross) and on 30 November 2020 £1,250 (gross). This was followed by another £1,875 (gross) on 23 December 2020. These contributions were also invested into Brewin Dolphin over time.

On 16 June 2021 £111,869 proceeds were withdrawn from Brewin Dolphin, but this transaction was reversed on 13 July. Mr E's monthly contributions continued, but he dispensed with Watkin Davies' services as his adviser.

Watkin Davies issued a rather brief response to Mr E's complaint, saying it was unable to access LV='s records. It referred back to the suitability report it had issued and said this demonstrated its advice met his objectives with the relevant risks being disclosed.

Our investigator then considered the complaint should be upheld. The main points were:

- The SIPP wasn't suited to Mr E's needs given he was a cautious investor. The initial and ongoing costs of the recommendation made it more expensive than his current arrangements, or a stakeholder pension as an alternative.
- As Mr E was single, more flexible death benefit options shouldn't have been an overriding priority. And he was eight years from his normal retirement age at which drawdown options might then have been considered (if suitable).
- Even if Mr E was attracted to the features of the new plan when he was told about them, that doesn't mean he needed them or should've been recommended it.

Watkin Davies didn't agree with the investigator, as it remained of the view that Mr E had a

demonstrated need for flexible benefits that Aviva couldn't provide. And it considered its suitability report adequately compared the charges between the old and new plans. It referred the investigator to Brewin Dolphin's own report (which it hadn't sent previously) setting out how it would invest according to Mr E's attitude to risk.

Watkin Davies also included a previously unseen attendance note made by its adviser on 15 March 2017. This included reasoning that Mr E's existing £35,000 in managed funds didn't meet with his cautious risk profile, because within that fund 65% was invested in shares. They'd also discussed '*...the new Flexi Access Drawdown whereupon the beneficiaries would have their own personal drawdown contract with no tax liabilities either on any income withdrawals or lump sum payments.*'

As agreement couldn't be reached, the matter was referred to me.

### **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.

As the investigator mentioned, the former regulator (FSA) had carried out thematic reviews into pension switching going back as far as 2008. It found many cases where the advice to switch involved extra costs without good reason. And I agree with the investigator that Mr E's is one such case. Superior performance in a newly proposed arrangement can never be guaranteed. The one thing that can be is that charges which are stated to be higher in the literature, will have more of a detrimental impact on like for like performance.

One of the documents Watkin Davies has now provided is the illustration of future growth from the LV= plan. It shows a reduction in yield due to charges of 1.84%, but I note this does not include Brewin Dolphin's fund charges (as opposed to its management fee). Nor does it include VAT on that management fee.

I accept that the suitability report itself did correctly state all the charges. And it also said they would be more expensive than Mr E's existing plans. But merely warning Mr E about this doesn't turn unsuitable advice into suitable advice. Mr E had a cautious attitude to risk. So in my view, making enough superior growth in the new arrangement compared with his previous arrangement to overcome the higher charges was going to be difficult as the margins were relatively small.

Watkin Davies didn't actually quantify the differential in charges or explain why the benefits of the new plan were worth paying for. Adding the charges omitted from the LV= reduction in yield brings this to 2.64% in total. Even this figure averages the initial costs Mr E would incur over the whole term to age 75, rather than at any earlier age at which he might draw benefits. But it compares with 0.8%pa for Mr E's existing managed funds, and an implicit charge to meet the guarantees in his with-profits funds.

In its advice Watkin Davies appears to have viewed the implicit nature of the with-profits charges (and the possibility of a market value reduction in future) as a negative. But in fact, these funds already brought a valuable element of diversification to a portfolio which it had already concluded would need to be cautious in nature. The with-profits guarantees played off well against the greater risks in the managed funds Mr E had also invested in.

Watkin Davies recorded that the 'series 1' with-profits fund was paying annual bonuses of 4%. This was impressive for with-profits funds at the time and five of Mr E's eight personal pensions had an element in this fund. It suggests either that there was a guaranteed

minimum, or the fund manager had retained significant investment freedom to use higher risk assets to achieve this sort of return despite the smoothing process.

The other 'series 21' with-profits fund was also paying annual bonuses of 1.75%. The fact that the funds were also able to support a final bonus at the time suggested that annual returns were likely to be maintained at around these levels. And indeed that Mr E could expect there to be a continuing element of final bonus in future (albeit higher or lower), barring any unforeseen economic events.

These returns were after the implicit charges had been taken into account, so in my view it was more suitable for Mr E to retain the with-profits funds to actually give him the capacity to take greater risks with the other 66% of his Aviva plans invested in managed funds. And overall, I think this likely came at less than a third of the overall cost of the new LV= plan Watkin Davies was recommending, and in all likelihood cheaper than a stakeholder pension – with commensurate prospects for better growth.

I've considered the potential benefit of including a DFM. I accept that Mr E had a decent-sized fund and the greater diversification and regular attention a DFM could pay to managing it might bring benefits. But, as I've said, those benefits were only marginal when the growth would already be fairly low at Mr E's attitude to risk. And Brewin Dolphin's report shows that it would have to incorporate more costly strategies, such as absolute return funds, to build in the safety net that Mr E's with-profits funds already provided at relatively low cost.

I would also expect DFM to be more suitable where the investor was capable of understanding the benefits of the fund manager's strategy and the regular reporting they would be given. Mr E doesn't strike me as a sophisticated investor that would readily be able to engage with what Brewin Dolphin was telling him. Overall, I think that the most important thing to him would have been keeping his costs low – and Watkin Davies should have appreciated this at the time. Whilst I appreciate that any DFM would require some monitoring by the adviser, I think it's also questionable whether the 0.5%pa Mr E was paying to Watkin Davies *in addition to* Brewin Dolphin's 0.96%pa represented good value for money for someone with his attitude to risk.

Finally, I agree with the investigator that there was no need for Mr E to have flexibility of income options on his plan until he *needed* an income. Watkin Davies recorded that Mr E was considering retiring, but I note it informed Brewin Dolphin that Mr E had no plans to take an income and had an investment horizon of 10+ years. As a single person, I'm satisfied that the option for Mr E to nominate a beneficiary under the discretionary trust arrangements of his existing plans for lump sum death benefits should have been sufficient. Death benefits should not have dictated him having a more expensive arrangement that was more likely to be to the detriment of his own pension income.

### **Putting things right**

In assessing what would be fair compensation, my aim is to put Mr E as close as possible to the position he would probably now be in if he had been given suitable advice. I think Mr E would have remained in his plans with Aviva. I'm satisfied that what I've set out below is fair and reasonable in this situation:

- To compensate Mr E fairly Watkin Davies Insurance Consultants Limited must compare the actual value of his SIPP with the combined notional values of the Aviva plans if they had remained with Aviva up to the date of this final decision.
- If the actual value is greater than the combined notional values, no compensation is payable. If the combined notional values are greater than the actual value, there is a

loss and compensation is payable.

- If there is a loss, Watkin Davies should pay into Mr E's SIPP, to increase its value by the amount of the compensation and any interest. Its payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the SIPP if this would conflict with any existing protection or allowance.
- If Watkin Davies is unable to pay the compensation into Mr E's SIPP, it should pay that amount direct to him. But had it been possible to pay into the SIPP, the resulting funds 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.
- This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr E won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr E's expected marginal rate of tax in retirement, and I consider it's reasonable to assume that will be the basic rate. As Mr E would be able to take a tax-free cash sum, this means a 20% reduction being applied to 75% of the compensation – that is, an overall reduction of 15%.
- In addition, Watkin Davies Insurance Consultants Limited must pay Mr E £250 in respect of the distress and inconvenience caused by its poor advice disrupting his retirement planning.
- It should provide the details of its calculation to Mr E in a clear, simple format.

**Actual value:** This means the actual amount payable from the SIPP at the date of this final decision.

**Notional Value:** This is the value of Mr E's pensions had they remained with Aviva (Friends Life) until the date of this final decision. Watkin Davies should request that Aviva recalculate this value, as it has done once already for Mr E at an earlier date.

Additional contributions made into the LV= plan should be added to the notional value calculation from the point in time when they were actually paid in. I've listed the contributions I'm aware of above, but I would expect Mr E to provide his authority for Watkin Davies to check the up to date position. Aviva should be asked to incorporate these contributions in the notional value. *Only if it cannot, and as an alternative*, I think the following benchmark provides a reasonable basis to determine the additional component of the notional value created by Mr E's further contributions. I say this bearing in mind the investment split of his Aviva plans, and his cautious attitude to risk as determined by Watkin Davies:

*50% at the total return of the FTSE UK Private Investors Income **Total Return Index**  
50% at the average return on fixed rate bonds*

For the 50% fixed rate bonds part of the benchmark, Watkin Davies should use the monthly average rate for one-year fixed-rate bonds as published on the Bank of England's website. The rate for each month is that shown as at the end of the previous month, and the rates should be applied on an annually compounded basis.

## **My final decision**

I uphold Mr E's complaint and require Watkin Davies Insurance Consultants Limited to pay him redress as set out in the 'Putting things right' section above.

In the event that redress is not paid within 28 days of Watkin Davies' receipt of Mr E's acceptance of this decision, interest must be added at the rate of 8%pa simple from the date

of this decision to the date of payment.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 27 January 2023.

Gideon Moore  
**Ombudsman**