DRN-3545543

The complaint

Mr J complains that Sovereign Money Matters Ltd ("SMM") has failed to invest his pension contributions in line with his instructions.

What happened

I issued a provisional decision on this complaint in May 2022. In that decision I explained why I thought the complaint should be upheld and what SMM needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

> *Mr J holds pension savings with SMM. The investment of those pension savings was managed under an investment mandate provided to a third party. That firm provided a series of model portfolios which would be used by clients to invest their monies appropriate to their chosen risk profiles. Mr J had agreed for his pension savings to be invested in line with a cautious portfolio.*
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> *In 2017 Mr J agreed to increase his monthly pension contributions to £250 per month. But for reasons that have not been entirely established SMM failed to apply the correct investment mandate to those contributions. So, until SMM identified the problem in 2020, Mr J's pension contributions remained held in cash.*
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> *In April 2020, after the issue had been identified, SMM discussed the investment of Mr J's future pension contributions. At that time Mr J asked that the future contributions remained held in cash pending the outcome of his complaint. And he repeated that instruction in a further conversation in July 2020. Mr J accepts that, with the benefit of hindsight, he should have given investment instructions for his more recent contributions. So in this decision I will only be considering those contributions that he made before April 2020.*
>
> *SMM accepts that it was responsible for the failure to invest Mr J's pension contributions between August 2017 and April 2020. But its calculations (completed as at 28 April 2020) suggested that, had the contributions been invested as per Mr J's instructions, they would be worth less than the cash that Mr J held. So it didn't think he had suffered any loss. Mr J was unhappy with that outcome so brought his complaint to this Service.*
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> *There seems little dispute that Mr J had given SMM a valid instruction for the investment of his pension contributions from August 2017 onwards. And I also think it is reasonable for me to conclude that his investment instruction, for new contributions, changed in April 2020 when Mr J asked SMM to continue to hold them in cash. So for this decision I only need to consider the contributions that SMM failed to invest for Mr J between August 2017 and April 2020.*
>
> *SMM, when calculating whether Mr J has lost out, appears to have taken the view that its liability ended when it pointed out the mistake to Mr J in April 2020. Whilst*

I accept that is the case for new contributions, I don't think that approach should also apply to the previously uninvested contributions.

As I said earlier, my aim when looking at what SMM needs to do to put things right, is to put Mr J back into the position he would have been had nothing gone wrong. Had his pension contributions been correctly invested, he would now hold a range of investments in line with the model portfolio provided by the investment manager. I can see that, in addition to the uninvested cash, Mr J does hold approximately 50% of his pension savings invested in that way. So I have no reason to doubt that, had Mr J's pension contributions been invested, they would still be invested and not held in cash.

So I don't think it right that SMM should have expected Mr J to take action himself to correct the errors it had made in the preceding three years. But for its errors Mr J's pension contributions would be invested in line with the model portfolio. And I think those investments would continue today. So I think it right that SMM calculates what the expected value of those investments would have been, at the date of any final decision, and provides compensation for Mr J if that value is greater than the contributions he has made.

I accept that calculating that compensation will be complex. The model portfolio will have changed over time to reflect different constituent investment funds. So I think it reasonable that SMM should use the overall published performance of the model portfolio to derive what Mr J's pension contributions should now be worth. That is largely the approach it took when looking at the redress in 2020 – but those calculations should now be updated to reflect any investment performance in the intervening period.

Mr J gave a valid instruction to SMM for the investment of his pension contributions. I don't think he bears any responsibility for not identifying the problem sooner. I have no doubts that this problem will have caused him a degree of distress and inconvenience. So in addition I currently intend to direct that SMM pays Mr J a further £250.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Both SMM and Mr J have confirmed they have nothing further to add.

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.

Given that neither party has provided me with any new evidence or further comments I see no reason to alter the conclusions I reached in my provisional decision. It follows that I think SMM needs to put things right for Mr J as I set out in my provisional decision and I repeat below.

Putting things right

My aim is that Mr J should be put as closely as possible into the position he would probably now be in if the pension contributions he made between August 2017 and April 2020 been correctly invested.

What must SMM do?

To compensate Mr J fairly, I intend to direct that SMM must:

- Compare the cash value of Mr J's contributions made between August 2017 and April 2020 (including any tax relief) with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- SMM should add interest if necessary as set out below.

- If there is a loss, SMM should pay into Mr J's pension plan to increase its value by the 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 SMM is unable to pay the compensation into Mr J'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. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr J won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr J is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr J would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay Mr J £250 for the distress and inconvenience this error has caused to him.

Income tax may be payable on any interest paid. If SMM deducts income tax from the interest, it should tell Mr J how much has been taken off. SMM should give Mr J a tax deduction certificate in respect of interest if Mr J 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
Pension Contributions	Still exists and liquid	Published or calculated performance of chosen model portfolio	Date of each contribution	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 cash value of Mr J's uninvested contributions.

Fair value

This is what the contributions would have been worth at the end date had they produced a return using the benchmark.

Each additional contribution that Mr J paid into the pension should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal from the portfolio should be deducted from the fair 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 are a large number of regular payments, to keep calculations simpler, I'll accept if SMM totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

My final decision

My final decision is that I uphold Mr J's complaint and direct Sovereign Money Matters Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 13 July 2022.

Paul Reilly
Ombudsman