

The complaint

Mr D says the advice given and the arrangements made by Wealthmasters Financial Management Ltd, to switch his money purchase (defined contribution) pension and three personal pensions into a Greyfriars Self-invested Personal Pension (SIPP), to be invested through three discretionary fund manager (DFM) firms, and recommending that he also used some money from his pot to take an interest in an unregulated collective investment scheme (UCIS), was unsuitable.

Mr D is represented by Smooth Commercial Law (SCL).

What happened

Mr D had a long career in banking. He was made redundant in 2012 and had been largely living off his severance pay. He'd tried to establish a company, but that hadn't proved sustainable. While he was able to do some consultancy work, he and his wife recognised they had to review how they were living.

Mr D had several pension pots that he'd accumulated over the years. He thought it would be useful to consolidate what he had to make things easier to manage. He thought he would probably need to start drawing on his funds in the next 5 years. He was worried about how his funds were being managed, he said that the approach on one in particular was passive. He felt his interests were small in comparison to the overall pots being managed by his providers. He wanted more control.

In 2014 Mr D researched the market to find a firm to give him advice about his retirement arrangements and options. He selected Wealthmasters on the basis of the reviews he found. Between October and November 2014, it gathered information about his objectives, circumstances and attitude to risk.

Mr D's objective was captured in broad terms – to review his existing pension arrangements with various providers to prepare for his impending retirement.

A fact-find was completed in November 2014, this recorded the following about Mr D's circumstances:

- He was 61 years old, married and in good health. He had children, but they were not financially dependent on him.
- He was self-employed as a consultant, but his income was shown as zero.
- The family home was worth around £900,000. The outstanding mortgage of £100,000 was said to be his only liability. Other assets and savings, excluding pensions, were recorded as a £25,000 Individual Savings Account (ISA), £5,000 in shares and £400 in national savings bonds.

The adviser ticked boxes on the fact-find to say that Mr D was a retail client. And that he was of high net worth.

A supplementary fact-find was focussed on pension planning. It recorded the following about Mr D:

- He was looking to retire at 65.
- He wanted an annual income in retirement of £45,000. And the minimum he thought he would need in 2014 terms was £36,000.
- He wanted an annual pension review with Wealthmasters. He didn't want to manage the pensions himself – he wanted his adviser to do that. And he thought it was essential that his portfolio was rebalanced regularly so that it remained aligned with his risk profile.
- He didn't have a strong opinion on reviewing his attitude to risk (ATR) on a regular basis. Nor that he should be able to see all his investments on one statement.
- Access to a large and unrestricted number of funds wasn't a priority, nor was the automatic adjustment of his investments according to market conditions.
- He was said to want to exercise a large choice over his investment strategy. And he didn't anticipate the need for specialist investments.

Wealthmasters produced a suitability report for Mr D dated 22 December 2014. It provides a few more bits of information about his circumstances and how they were fluid in certain respects. It said:

"In summary, you are currently tendering for three [consultancy] contracts, this will impact on your future income requirements. You may also delay selling your home and down scaling, which would mean you would need to begin drawing benefits from your pension sooner.

Therefore flexibility is paramount for you. You will be making further decisions in January 2015. As you do not currently require income, my recommendations have been produced on a growth basis, however should your circumstances change, and you require income, I have made recommendations that allow for flexibility to adapt to your changing needs."

Five of Mr D's pensions were in the scope of Wealthmasters advice. Information about these is limited because it's failed to share the detailed information it would've required at the time it gave advice to him in order to understand the different terms, guarantees, protections, penalties and investment funds and strategies associated with each plan.

From the suitability report it produced for Mr D, I can see one of the plans was a money purchase, defined contribution (DC) occupational pension scheme. It was said to have a transfer value in December 2014 of around £381,000. There were three personal pension plans – these had a total transfer value at the same date of around £392,000.

The fifth pension under consideration by Wealthmasters was a Section 32 buy-out bond, which would've had certain protections and guarantees – at the time this had a transfer value of about £103,000. However, it recommended this pension wasn't switched because the fund was insufficient to meet the guaranteed minimum pension the provider was required to pay.

So, Wealthmasters ended up recommending that Mr D should switch four of his pensions with a transfer value at the time (before fees) of around £773,000. It said he should place the funds into a Greyfriars SIPP. This would have a retirement horizon of 65 and would provide him with a drawdown facility.

Wealthmasters also recommended that he invest £690,000 of his pot with three separate DFMs, into portfolios aligned with his assessed ATR, which was said to be moderately cautious. It said he should also invest £50,000 into a non-correlated asset backed investment. With the balance of his funds being held on deposit in his SIPP to cover fees and running costs.

Mr D accepted Wealthmasters' recommendations and the switch of his pensions went ahead. On 3 March 2015 it confirmed its recommendations had been implemented.

On 7 July 2020, SCL raised several concerns with Wealthmasters about the switch of Mr D's pensions. It wasn't satisfied that it had adhered to the appropriate regulations in providing him with advice. And it considered its recommendations to invest in the Dolphin Trust were inappropriate. It thought he should be returned to the position he'd have been in had he remained with his former pension plans.

I can't see that Wealthmasters provided Mr D or his representative with a final response to his complaint. It's told this Service it considered him to be a high net worth individual and a sophisticated investor. It's highlighted Mr D's professional background. It said its investment recommendations were in line with what was agreed with him about his ATR, which was dynamic over the period it was advising him.

The Investigator reviewed Mr D's complaint and upheld it. She didn't think there were sufficiently strong grounds for recommending the switch of his pensions. She noted the significantly higher costs associated with the SIPP and DFM arrangements. And that given his attitude to risk, it was never likely he'd achieve the sort of growth he noted that he wanted.

Wealthmasters said it fundamentally disagreed with the Investigator. It reiterated that Mr D was a high net worth client and that his investments were consistent with his ATR.

As both parties didn't agree with the Investigator's view, Mr D's complaint has been passed to me to review afresh. I issued my provisional decision earlier this month. As neither party has provided any new evidence or arguments, I see no reason to depart from my initial findings and conclusions.

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.

I note this Service hasn't been provided with a copy of a final response from Wealthmasters to Mr D's complaint. It hasn't provided any information about the four pensions it recommended he should switch in 2014, despite repeated requests. And although it said it fundamentally disagreed with the Investigator's view and would provide further information for us to consider, nothing has been forthcoming. So, it's failed to engage effectively with certain aspects of this case.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I should also make clear the scope of this decision. The complaint SCL brought on Mr D's behalf focussed on the switch of four of his pensions effected in 2015 into a Greyfriars SIPP, as well as certain investments he was advised to make into the Dolphin Trust with a portion of those proceeds. I've taken all these matters together.

I've not considered later advice Wealthmasters provided to Mr D, for example in 2018 about transferring a defined benefit pension he held into a Royal London personal pension.

I'm upholding Mr D's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr D's case?

The first thing I've considered is the extensive regulation around transactions like those performed by Wealthmasters for Mr D. The FCA Handbook contains 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 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- 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 that existed at the relevant time. They must always be complied with by regulated firms like Wealthmasters. As such, I need to have regard to them in deciding Mr D's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch? Each case is different, but I'd expect the switch to be in Mr D's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his former pensions and the recommended new arrangement.

In 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

In July 2010 the FCA issued guidance about unregulated investments in a 'Good and Poor Practice report'. This contained examples of good practice in relation to unregulated investments, for example where a firm had robust controls in place and limited client exposure to 3% to 5% of their portfolios, where those clients had been assessed as being suitable for unregulated investments. An example of bad practice given by the FCA was where up to 100% of a client's holdings were invested in a single UCIS.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in April 2014 it issued an industry alert which said:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable."

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole."

Further, when considering the use of a discretionary fund management (DFM) arrangement, the regulator has made clear that amongst other matters, firms need to take into account issues such as:

- Likely cost: do the overall costs justify the potential for improved performance?
- Size of funds under management: once a consumer has a moderately-sized fund, they may benefit from a model portfolio which is rebalanced automatically by a DFM ranging all the way up to bespoke arrangements for clients with larger funds.
- Investor's knowledge and experience: FCA has said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments the DFM might make.
- Level of disclosure: whether the benefits vs costs of the arrangement were explained to the investor in terms they were likely to (or appeared to) understand.

The regulator was clear there was a positive obligation on the adviser to carry out this research, rather than supplying the DFM with a risk rating and hoping 'all will be right in the end'. They were recommending DFM as a solution to their client's needs and that meant 'looking under the bonnet'.

How would the DFM invest this investor's funds. Did the adviser obtain a current breakdown of assets in any proposed model portfolio, and the DFM's guidelines as to how it manages those assets? How did the adviser ensure that its attitude to risk scale mapped appropriately

across to the DFM's? And if the DFM's mandate wasn't sufficiently limited, did it agree appropriate restrictions on what it was and wasn't allowed to invest in?

If there was no specific agreement between the adviser and the DFM, how could it be sure that the DFM had accepted responsibility for risk-mapping the adviser's score to its portfolios?

What instructions did the adviser give the DFM on the attitude to risk or model portfolio to use? Did the adviser effectively give the fund manager freedom to do as it thought appropriate? If this has happened the adviser will have a responsibility for what subsequently happened – particularly given their obligations to act in the client's best interests.

Was the DFM's initial asset selection broadly consistent with its mandate? What due diligence did the adviser carry out at the beginning? Did the DFM fail to get the asset allocation right from the outset, or did things gradually wander off course?

Did Wealthmasters meet the regulatory obligations it was bound by when advising Mr D?

There are several documents relating to Wealthmasters' transaction with Mr D that are important to my consideration, these include the fact-finds, risk appetite assessments, the investment proposals and the suitability report.

I don't think Wealthmasters met the requirements placed on it in this case. I'll explain why. I've already set out what we know about Mr D's objectives, circumstances and ATR in some detail. With this in mind, I think there are a number of problems with the advice Wealthmasters gave Mr D.

At a basic level, I can't see Wealthmasters delivered a clear comparison of his previous arrangements with those being recommended. I can't see evidence of modelling carried out by it which shows how the recommendations it made in 2014, came together to deliver his income requirements in retirement. I think this analysis would've been important to Mr D being able to take an informed decision about what to do with his DC and personal pensions.

Wealthmasters was in a good position to have analysed, tested, challenged and advised Mr D about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for a retirement income.

Wealthmasters recommended Mr D switch four of his pensions into a Greyfriars SIPP, with three DFM firms overseeing the bulk of his funds, and to take an interest in Dolphin Trust. There are a number of problems with its advice.

Charges

Wealthmasters charged Mr D 2% of the transfer value of his funds for its initial advice. That was estimated in the suitability report as over £15,000.

Wealthmasters noted that the charges under the arrangements it had recommended would be higher, but there was a lack of clarity about this. We do know it thought the impact of the SIPP and DFM portfolio would require Mr D's funds to grow by an additional 1.71% a year simply to break even with his former arrangements.

But it's not clear whether Wealthmasters figures included all the DFM charges (from each of the three firms plus what were called 'underlying costs'). And it excluded its own ongoing

service charges. So the rate of return his portfolios needed to generate to stand still was even higher.

Wealthmasters didn't set out in its suitability report any analysis showing the performance of Mr D's existing personal pensions. It also failed to provide any commentary about the portfolios it was recommending for him. I think this is a weakness. Although past performance doesn't provide any guarantee it would've helped to have contextualised what was being recommended.

What was the prospect of meeting or exceeding the performance of his existing plans? After all, one of his priorities was said to be capital growth. It wasn't for Mr D to be the judge of the prospects for investment returns under Wealthmasters management – it needed to provide its analysis.

Wealthmasters hasn't done enough to satisfy me there was a clear potential for Mr D to be better off as a result of its recommendations, given the fees and charges he was incurring and the nature of the investment strategy it was recommending, which I will turn to.

Existing benefits

I think Wealthmasters implied in its suitability report that Mr D didn't lose any important benefits in the switch without good reason. That would include the loss of any guaranteed annuity rate, protected tax-free lump sum provisions or the right to take benefits early.

It appears such research was undertaken. I say this because Wealthmasters file does refer to a pension report from September 2014. It also makes reference in the suitability report to certain matters changing since its initial work, for example the subsequent imposition by one of his pension providers of a market value reduction of £1,000 on his transfer value.

Wealthmasters hasn't provided the information it would've been given by his former pension providers to analyse his then existing terms, benefits, guarantees and protections. It needed to understand this information prior to making its recommendations. It's puzzling why it has failed to share the details with this Service. And so, I don't have full assurance on this matter.

Risk

An ATR questionnaire was completed on 25 November 2014. It suggested Mr D had a moderately cautious attitude to risk. This was defined in the following terms:

"The Moderately Cautious investor is sensitive to short-term losses. A Moderately Cautious investor's aversion to losses could compel them to shift into a more stable investment if significant short-term losses occur. Analysing the risk-return choices available, a Moderately Cautious investor is usually willing to accept somewhat lower returns in order to assure greater safety of his or her investment."

I'd start by noting that because of the absence of information about the holdings in Mr D's former plans, I don't know whether his then existing investments were a good match for his risk appetite in 2014/15 or not. So, I can't say whether action was required, and if it was what possibilities existed with his former providers.

I think the assessment Wealthmasters conducted of Mr D's risk appetite was a reasonable starting point. Mr D wasn't a novice in investment matters and he knew that to gain better returns he would have to take risk. On the other hand, there's nothing to suggest he was

particularly knowledgeable about investment and pension matters. Of course, that's why he sought professional advice.

Nevertheless, from his responses to the questionnaire, it seems clear his assessed ATR was about right. Wealthmasters recorded that Mr D wanted to spread his pension investments in the following way:

- Low risk investments: 30%
- Below average risk investments: 30%
- Average risk investments: 30%
- Above average risk investments: 10%

I can see Wealthmasters said the following in its suitability report:

"With reference to your attitude to risk, you understand in order to produce a Moderately Cautious risk portfolio, this involves recommending investments across the whole spectrum of risk from low to high, you have confirmed that you are happy for me to make recommendations that may be of higher risk. My recommendation includes £50,000 (6.5%) into an asset backed investment which you understand carries an adventurous attitude to risk profile."

And Mr D indicated he was prepared to allocate 5% of his pension to an asset-backed investment. He noted the following about his investment objective:

"I intend to retire during the next 3/5 years and therefore am averse to too much risk. However, I appreciate that to grow my funds I need to take some risk. Target return of 5-10% (excluding inflation)."

I would've expected Wealthmasters to have tackled head on any inconsistencies and tensions in the ATR assessment. These often arise, and the value of the tools used to derive scores is that they provide a framework for teasing out these conflicts to understand what clients really want most.

For example, it was unlikely Mr D would be able to achieve the returns he wanted to target with a moderately cautious outlook. This was especially the case given the additional charges of the new arrangement which acted as a drag on his funds. I've not seen any evidence that Wealthmasters effectively gripped these issues with him and helped to establish realistic expectations.

Turning to how the DFM's interpreted the mandate they received from Wealthmasters. I've reviewed the proposals from Brooks MacDonald (BM), Brewin Dolphin (BD) and Sanlam (S) about how each would invest the £230,000 that it would be allocated from Mr D's funds.

BM identified a strategy based around capital growth; and investment horizon of seven years and a low to medium risk appetite. It gave a breakdown of how Mr D's funds would be invested across different asset classes – this included 49% in equities; 23% in fixed interest; 12% in structured returns; 9% in alternatives (including hedge funds); and 6% in property. It provided an analysis of how the assets it was selecting broke down in terms of risk exposure as follows: low risk 25%; 18% low to medium; 45% medium and 12% medium to high.

BD's proposal said it would follow a 'cautious with risk' strategy over a ten year investment horizon. But it was investing around 60% of Mr D's funds in equities, 9% in property and 14% in alternatives. Around 27% was invested in fixed income funds.

S's proposal was to adopt a moderate risk profile over five-seven years. It would place his pension funds in the following manner: 48% global equities; 9% property; 14% alternatives; and 27% global fixed income.

I'm also mindful Mr D had accepted a recommendation to invest £60,000 into the Dolphin Trust (around 8% of his pension funds), which was classified as being an adventurous risk exposure.

Taken together I think the investments being proposed were in excess of Mr D's ATR. Wealthmasters provided the mandate to the DFMs, it had a responsibility to have oversight and ensure they were delivering appropriate proposals. It was the only expert party with a view across his whole pension portfolio. And it was being paid to deliver such an ongoing service.

Another important aspect of assessing a client's risk outlook is to consider their capacity for loss. Wealthmasters did so for Mr D and concluded in the following terms:

"Your overall wealth is such that losing some of this investment will not affect your standard of living and therefore I am comfortable that your agreed risk profile and my recommendation is aligned with your circumstances and indeed capacity for loss."

I find this statement too general, ambiguous and unhelpful. What is the scale of loss that Mr D and his wife could afford to take without any impact on their standard of living in retirement? While he had a good level of pension provision, he was investing the bulk of this through Wealthmasters proposal.

Mr D had significant equity in his home, but his plans for downsizing were far from certain, both in terms of timing and what such a move might yield. And although he had other savings these were not substantial.

I do think Mr D and his wife had some capacity for loss, but I find Wealthmasters failed to effectively quantify this to help guide his decision making.

I don't find it surprising that customers ATR evolves over time. This will usually relate to their circumstances, including their life stages. Wealthmasters conducted regular ATR assessments with Mr D and these suggested he was becoming less cautious with his pension funds:

- November 2014 – moderately cautious.
- February 2017 – an analysis of how he would like his funds balanced indicated 10% cautious, 5% moderately cautious, 70% moderate and 10% adventurous. He was also said to be happy with 15% of his funds being asset backed.
- February 2018 – moderately adventurous.
- February 2019 – moderate.

I'd observe Mr D's assessed ATR appears to have been on an upward drift. But there's little information about what drove this. And given this was a period when he was approaching and then entering retirement, its arguable this was a time when he should be reducing his exposure, or at least maintaining his initial stance.

There's little by way of explanation for this evolution of Mr D's ATR on file. Nor the volatility of the assessments over a short period of time. I find the commentary he provided alongside the February 2017 assessment to be instructive. He said his investment objective was:

“To have a relatively safe and sustainable portfolio that provides a level of pension income commensurate with our lifestyle £40,000 per annum.”

There's a dissonance between the later assessments of Mr D's ATR and his recorded sentiment. I also find it odd there's no analysis by Wealthmasters of the cashflow he could've generated from his pension assets over time. This was a weakness from its initial advice in 2014. I'm unsighted, as Mr D appears to have been, about what if any additional risk he needed to take on to deliver his retirement objectives.

Turning to Wealthmasters advice to Mr D for him to invest in Dolphin Trust. It will be aware that in June 2013 the FCA published an alert notifying firms it was to ban the promotion of UCIS to the vast majority of retail investors in the UK. The alert stated that the promotion of these riskier and complex fund structures would generally be restricted to sophisticated investors and high net worth individuals, for whom those products were more likely to be suitable.

And on 28 April 2014 the FCA published another alert which stated it believed:

‘...pension transfers or switches to SIPPs intended to hold non-mainstream propositions are unlikely to be suitable options for the vast majority of retail customers. Firms operating in this market need to be particularly careful to ensure their advice is suitable.’

“In the cases we have seen, customers’ existing arrangements were invariably traditional pension plans invested in mainstream funds or final salary schemes, with the customer generally having no experience of non-mainstream propositions and many having very limited experience of standard investments.”

“The new arrangements firms proposed were to transfer or switch the customers’ pension funds to a SIPP, with a view to investment in non-mainstream propositions, which were typically unregulated, high risk and highly illiquid investments. Some examples of these investments are overseas property developments, store pods and forestry. Such transfers or switches are unlikely to be suitable for the vast majority of retail customers.”

Wealthmasters arranged two investments in Dolphin Trust for Mr D. I can see he signed papers on 14 April 2015 for a loan note worth £60,000. And on 16 June 2016 he agreed to inject a further £100,000 into what it refers to as a corporate bond. These investments alone, which were high risk, accounted for over 20% of his pension funds.

Leaving aside that Wealthmasters recommendation on Dolphin weren't in accordance with Mr D's ATR, it has argued separately that he was high net worth client and a sophisticated client. Presumably it does so because this would've allowed the Dolphin Trust proposal to have been promoted to him within the rules.

But there are problems for Wealthmasters here. Although Mr D was given a certificate to sign that he was a high net worth individual, it should've known from the fact-find it had completed that this was not the case.

COBS 4.12.6R, defines a high net worth investor as having during the 12 months immediately preceding the certificate an annual income of £100,000. Mr D's income was recorded as zero. And while it seems infact he was a self-employed consultant; his earnings were nowhere near this figure. Alternatively he could have net assets of £250,000 (excluding the domestic home, pensions and life assurance policies). Again this wasn't the case.

Mr D wasn't a high net worth individual as defined by regulations at the relevant time. And neither was he a self-certified sophisticated investor as set out in COBS 4.12.8. There's no signed certificate from him. And there's no evidence he would've met the criteria for being

classified as such. While he'd had a career in the banking sector there's no evidence to show he was an investment or pensions specialist.

Ongoing fund management

My understanding is that Mr D hadn't used a DFM arrangement previously. The concept was introduced by Wealthmasters. There was a duty of care on it to make sure what it was recommending was appropriate for him.

Mr D had limited investment experience, but he wasn't a sophisticated investor. He had a good personal pension pot which he'd built up over several years. Wealthmasters hasn't done enough to demonstrate that the recommendations it made to Mr D to take on three DFMs, was suitable.

Rather the arrangement it put in place was over-engineered, complicated, relatively expensive and it wasn't clear it was likely to be able to produce a better return than his previous pensions.

Overall, Wealthmasters hasn't done enough to demonstrate that the switch of Mr D's four pensions into a Greyfriars SIPP, using three separate DFM firms and taking a significant exposure to UCIS vehicles was clearly in his best interests.

Putting things right

I'm upholding Mr D's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Wealthmasters Financial Management Ltd responsible for.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Wealthmasters Financial Management Ltd should pay Mr D the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Wealthmasters Financial Management Ltd pays Mr D the balance.

This recommendation is not part of my determination or award. Wealthmasters Financial Management Ltd doesn't have to do what I recommend. It's unlikely that Mr D can accept my decision and go to court to ask for the balance. He may want to get independent legal advice before deciding whether to accept this decision.

If Wealthmasters had provided suitable advice, based on the information available to me, I don't think Mr D would've switched his pensions into a Greyfriars SIPP, nor taken on the three DFM facilities which invested his funds outside of his assessed ATR. And I don't think he'd have invested in the Dolphin Trust proposal. I think it's more likely than not his plans would've remained invested with the same providers and asset mix.

So, subject to Mr D cooperating with Wealthmasters Financial Management Ltd to provide any information it requires to assess his loss fairly, it needs to provide redress to him using the following framework.

1. Calculate a notional loss Mr D has suffered as a result of making the switch of his four pensions

Wealthmasters should obtain the notional value of Mr D's previous pensions, as at the date of calculation. So, as if they hadn't been switched in the first place. It will need to obtain the value of the plans as previously invested.

If a previous provider is unable to calculate a notional value, Wealthmasters will need to determine a fair value for Mr D's investment instead, using a benchmark. For half the investment the FTSE UK Private Investors Income Total Return Index; for the other half the average rate from fixed rate bonds.

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 D's risk profile was in between these measures, 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 him into that position. It doesn't mean he would've 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 D could have obtained from investments suited to his objective and risk attitude.

Wealthmasters should then find the current value of his SIPP, including investments and any cash held. Concerning the valuation here – the approach to be taken is set out in step 2.

My understanding is that Mr D remains with the same provider. And that the Dolphin Trust investments have been written down and are illiquid. He started to take benefits from his SIPP around 2017. I'm not aware if he made further contributions to it. After confirming the detailed position, then the value Wealthmasters obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mr D's former pensions and the current value of his SIPP will be his basic financial loss that Wealthmasters needs to redress.

2. Pay a commercial value to buy any investments which cannot currently be redeemed

To close Mr D's SIPP and avoid ongoing fees, the investments need to be crystallised. If, at the date of settlement, some investments are illiquid (meaning they can't be readily sold on the open market), it may be difficult to find the *actual value* of the investment.

So, the *actual value* should be assumed to be nil to arrive at fair compensation.

Wealthmasters should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If Wealthmasters is unable to purchase the residual investment the *actual value* should be assumed to be nil for the purpose of calculation. It may wish to require that Mr D provides an undertaking to pay it any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the

receipt from the pension plan. Wealthmasters will need to meet any costs in drawing up the undertaking.

3. Pay an amount into Mr D's pension pot so the value is increased by the loss calculated (resulting from 1 and 2) or pay him an equivalent cash sum notionally adjusted for tax.

If compensation is paid into Mr D's SIPP, payment should allow for the effect of charges and any available tax relief, so that he is in the same position as if he'd stayed in his original personal pension schemes.

If paying compensation into Mr D's SIPP would conflict with any existing protection or allowance and / or the plan is closed and Wealthmasters takes on his investments, then it should pay him compensation as a cash sum. In doing so it should make a notional deduction to allow for income tax that would otherwise have been paid.

If Mr D hasn't yet taken any tax-free cash from his plan, 25% of the loss would be tax-free and 75% would've been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this. If Mr D is a higher rate taxpayer, the notional allowance would reduce the amount payable accordingly.

Provision for an award of interest

Wealthmasters Financial Management Ltd must pay the compensation within 28 days of the date on which this Service informs it that Mr D accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

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

Award for distress and inconvenience

In addition, Wealthmasters Financial Management Ltd should pay Mr D £300 to recognise the inconvenience its failings have caused him.

Further information

There is guidance on how to carry out calculations available on our website, which can be found by typing 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've already set out, I'm upholding Mr D's complaint, and I require Wealthmasters Financial Management Ltd to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 August 2022.

Kevin Williamson

Ombudsman