DRN-3638073

The complaint

Mr D complains that Sterling Wealth Ltd (SWL) gave him unsuitable advice to transfer his three personal pensions into a Self-Invested Personal Pension (SIPP). He's also unhappy with the underlying investments selected by the discretionary fund manager (DFM).

Mr D is represented in his complaint. But I'll only refer to him in my decision.

What happened

Mr D said he was contacted by an Independent Financial Adviser (IFA) regarding a pension review. The IFA was from an appointed representative of SWL.

Mr D said that at the time of the advice, he was employed and was 48 years old. He is now 52 years old. He said he had limited investment experience and knowledge of the financial or pension markets. And a low capacity for loss and a low attitude to risk (ATR).

Mr D said he was advised to transfer his three personal pensions, held with three separate providers (providers A1, A2 and A3), into a SIPP with a provider I'll refer to as provider B. And then invest through a DFM I'll refer to as manager C. I understand that the total pensions Mr D was advised to transfer were valued at £28,762.34. Mr D said he was told he would get higher returns than if he left his money where it was. I understand that all three transfers took place in October 2017.

Mr D said he found out that he'd lost approximately 30% of his pension value due to the collapse of one of the holdings in his new arrangement. He felt that the advice had been unsuitable for him. And that it had caused him a financial loss. He felt the IFA had been negligent in the advice he'd given him as he had limited investment experience. And wanted to be put back into the position he would've been in but for the unsuitable advice. On 20 September 2021 he complained to SWL through his representative.

Mr D said that the IFA hadn't ensured that the recommendations were suitable for his ATR, needs and objectives and his overall personal and financial circumstances. And that the IFA had failed to consider his capacity for loss. He didn't think the SIPP was a suitable product. And felt that the high costs of the SIPP, compared to the fees in his original pension plans, hadn't been explained to him. He also felt that the overall portfolio chosen was unsuitable.

SWL issued its final response to the complaint on 17 December 2021. It didn't think it'd done anything wrong. It said that the IFA had been a restricted adviser at the time, so he could only choose from risk-rated portfolios managed by manager C. It said this had been disclosed to Mr D. It said manager C was enjoying excellent performance at the time.

SWL also said that its IFA had been told by manager C and provider B that as there was a Corporate Bond Fund element in the portfolio, clients could benefit from strong fixed rate returns with solid asset backing. It said it had been told that provider B had carried out the necessary due diligence to allow the product on the panel. It said that manager C had selected this bond for 30% of Mr D's overall fund. And that its IFA had been assured of the liquidity of the bond by both provider B and manager C.

Then in July 2018, SWL said that it was identified that its portfolios were performing better and at a lower cost than those of manager C. So it was decided to move all clients currently invested with manager C into SWL portfolios. It said that as SWL's appointed representative didn't have discretionary permissions, they first had to advise all clients individually again. SWL said that it sent Mr D the relevant paperwork in August 2018. But that, although it said it chased him for the paperwork, he didn't return the signed and completed form until November 2018.

SWL said it then asked provider B to sell down Mr D's investment, but it wouldn't accept the instruction as the portfolios were managed by manager C. SWL said that at this point, manager C said the bond element of the portfolio was illiquid. And that the bond then collapsed in June 2019.

SWL said it made every effort to move the bond. And that if it had received the documentation earlier, it could've moved Mr D's investment out of the bond before it became illiquid. SWL also said that it felt the advice it had given Mr D was correct and in line with his ATR.

Mr D was unhappy with SWL's response. So he brought his complaint to this service. He felt he'd been told that the returns he'd get in the SIPP would be higher than if he stayed in his existing arrangements. And that the risks of transferring his existing pensions into the SIPP hadn't been fully explained to him. Mr D also felt that the recommended investments didn't meet his ATR. He said that the loss of approximately 30% of his total pension fund had severely affected his retirement plans.

Our investigator requested SWL's file on several occasions. But SWL has had limited engagement with this service regarding this complaint. And despite several requests and chasers, it hasn't submitted its file or any further information for this service to consider. So, as our investigator has previously outlined to SWL, she had to base her view on this complaint on the only information available to her. She issued her view on 28 July 2022.

Our investigator felt that the complaint should be upheld. She felt that SWL had focused its final response to the complaint on the DFM and the illiquidity of the bond. And that it hadn't addressed the crux of this complaint, which she felt was whether the advice to transfer Mr D's pension into a SIPP with a DFM service was suitable. Based on the limited information available to her, she didn't consider that the advice to transfer his pension into the SIPP was suitable. This was because she wasn't clear why Mr D specifically needed a SIPP. Our investigator recommended that SWL put Mr D back into the position he would've been in but for the unsuitable advice. And that it paid him £300 for the distress and inconvenience caused and the disruption to his retirement planning.

Mr D accepted our investigator's view.

SWL wrote to our investigator on 9 August 2022. It said it hadn't seen the chaser emails she'd sent. Our investigator couldn't find anything wrong with the method she'd used to send the chasers, but re-sent all of the information that had been sent to SWL. She also asked it to provide its file and further comments if it wanted to. But SWL didn't send any further information.

This service also called SWL on 5 January 2023 as we still hadn't received any response to the view. We wanted to ensure that SWL had received the emails we'd been sending. We sent copies of all the emails we'd sent again at this time. And asked SWL to review them and let us know if it wanted to provide any additional information or comments over the following week. But we've had no further information or comments on this complaint from SWL.

On 10 January 2023 SWL told this service that it was being put into administration. This service requested further information about the liquidator. But SWL didn't respond.

The complaint has come to me for a review.

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.

Having done so, I'm going to uphold it. I'll explain the reasons for my decision.

There doesn't appear to be any dispute that SWL is responsible for the initial advice to transfer into the SIPP with provider B. And then to invest through a DFM. I say this because in its final response letter, SWL said that it felt this advice was appropriate advice and in line with Mr D's ATR.

I agree with our investigator that SWL's final response letter didn't fully cover Mr D's complaint about the suitability of the advice he was given to transfer his three personal pensions with providers A1, A2 and A3, to a SIPP with provider B. Instead, the final response letter focussed on the DFM and the illiquidity of the bond.

I've been provided with very little information on this complaint. I haven't seen the fact find or the suitability report that I would've expected to have been produced. I've had to base my decision on this complaint on the final response letter and on what Mr D has told this service about his circumstances and objectives at the time.

Mr D told us that he didn't seek advice about his pensions. So I conclude that he was comfortable with his existing pension arrangements with providers A1, A2 and A3. He also told us that he had limited investment experience and knowledge of the financial or pension markets. And a low capacity for loss and a low ATR.

I've no reason to believe that Mr D's existing pension arrangements couldn't and didn't provide him with the type of investments that would meet his low ATR and capacity for loss. And even if Mr D wasn't currently invested with providers A1, A2 and A3 in line with his ATR and capacity for loss, I've no evidence that he couldn't have carried out an internal fund switch with those providers to achieve his investment aims.

I've not seen any evidence that staying with Mr D's current providers was considered, regardless of whether or not Mr D was deemed to have been happy with his investments at the time. As I've been provided with very little information, I don't know why the IFA felt that the SIPP with provider B was needed so that Mr D could meet his objective of low risk investments. And I don't know which – if any – of Mr D's other objectives couldn't have been met by staying with his existing providers.

I don't have any information about Mr D's existing plans with providers A1, A2 and A3, but it's possible that by transferring out, he would've lost some guaranteed benefits. I consider that this in itself would be a reason to conclude that the transfer out was unsuitable. And as Mr D told this service he wasn't actively looking for pensions advice, I'm satisfied that his existing pension arrangements still provided him with what he needed.

As our investigator noted, IFAs are required to consider the benefits offered by existing pension arrangements before advising a consumer to switch to another arrangement. I've seen no evidence that this was considered. And I've also seen no evidence that switching out of the pension plans with providers A1, A2 and A3 was suitable. Nor have I been given

any reason for the SIPP with provider B being recommended instead of a cheaper alternative, like a stakeholder plan.

I acknowledge that SWL said that its IFA could only recommend a DFM. But this wasn't the only option available. Having reviewed Mr D's circumstances and objectives, including his limited knowledge and experience of investments, his age, and the size of his pension pot, the IFA could, and should, in my view, have recommended that Mr D remain in his existing pension arrangement.

Given I have so little information to work with, I'm not sure whether or not the recommended SIPP was more expensive than the three existing pension plans. But I'm satisfied that the recommended SIPP did have a number of fees and ongoing adviser charges. And the DFM service also had charges. I also note that SWL didn't state in its final response letter that the charges connected to the SIPP it had recommended were lower than those in the three existing pension plans. I would've expected it to do so if this were the case.

I've also considered Mr D's age at the time of the advice. He was 48, and wouldn't be able to access his pension funds until he reached age 55. Given his age at the time of the advice, I'm not persuaded that there was any pressing need to transfer away from his three existing arrangements. I consider that the IFA could've told Mr D that he could review his pensions when he was closer to retirement and had a better idea of what he would need then. Without a positive reason and need to move away from his existing arrangements, I'm not persuaded that the transfer to the SIPP with provider B was needed at the time of the advice. SWL didn't give any explanation of this in their final response letter.

I've also considered SWL's recommendation to use a DFM. Mr D complained that the underlying investments selected by the DFM didn't meet his ATR.

DFM is where the consumer delegates authority to a portfolio manager to make decisions on their behalf about what investments to make. As our investigator noted, DFMs are typically used by individuals who have an established history of investing, wish to further diversify into potentially atypical or alternative investments, and require constant management of their funds without their personal oversight. Based on what he told this service, Mr D, with his low risk ATR, didn't match this investor type.

Mr D had a total fund value of under £30,000 with providers A1, A2 and A3. He also had a low ATR and a low capacity for loss. I consider this to be a relatively modest total fund size, which means that Mr D was more likely to have benefited from a basic arrangement or one with access to a range of relatively mainstream, low risk funds. Such funds would be unlikely to be highly volatile, and so wouldn't need continuous management. So I can't see why Mr D needed to pay additional fees for a DFM service. I also consider it more likely than not that the SIPP/DFM combination would've cost more overall than Mr D's existing arrangements.

Additionally, I've seen no information about whether the adviser ensured that the way it had measured Mr D's ATR mapped across to the DFM's risk scale. Or if the adviser agreed appropriate restrictions on what the DFM could invest in on Mr D's behalf, given his ATR and capacity for loss.

I've not seen anything which suggests why Mr D would've needed to use a DFM. I can't see that he specifically asked for one. And I've seen no reason that he needed to use one to meet his objectives. Without those reasons, I can't say it would be fair to consider that the use of a DFM was suitable for Mr D.

I acknowledge that SWL said that the investment strategy could've worked, had it not been for what it considered were the wrongdoings of the DFM. But I consider that without the

unnecessary and unsuitable recommendation given to Mr D to switch into the SIPP and invest through the DFM, he wouldn't have been exposed to the possibility of financial losses beyond those he might've incurred through the day-to-day market movements within the fairly mainstream existing pension funds in three existing arrangements.

And I don't think the resulting financial losses from the switch are so far removed from the initial advice as to consider any actions of the DFM to be sufficiently "intervening". I think losses within the SIPP, and through the actions of an additional third party which didn't previously exist - the DFM - beyond those which might've been incurred in the three existing arrangements would fall within a range of reasonably foreseeable outcomes when the advice was given. That these may've been in large part a result of, according to SWL, inappropriate investment activity on behalf of the DFM, wouldn't in my view mean that SWL wasn't primarily responsible for Mr D's losses by effectively placing him in harm's way in the first place.

Therefore I'm satisfied that the losses Mr D faced because he used the DFM could've been entirely avoided if the adviser hadn't recommended the transfer from the three existing plans with providers A1, A2 and A3 to the SIPP with provider B.

Overall, I've not seen any evidence that Mr D needed to replace his three existing arrangements with a SIPP in order to meet his objectives. From the information I've seen, I've no reason to consider that Mr D couldn't achieve his retirement objectives within his existing arrangements. I've also seen no evidence that Mr D was the type of investor who would likely benefit from using a DFM service. Therefore I'm satisfied that if the adviser had recommended that Mr D kept his existing arrangement, he would've done so.

As I've concluded that the advice to transfer into the SIPP was unsuitable, I don't need to consider what happened within the DFM. I say this because if SWL hadn't given Mr D the unsuitable advice, he wouldn't have been in the SIPP, or used the DFM service. So although Mr D has complained that the underlying investments selected by the DFM didn't meet his ATR, I don't have enough evidence to investigate that complaint fully. But in any event, I've already decided that the advice to transfer was unsuitable, and I'm satisfied that Mr D has lost out financially due to SWL's unsuitable advice.

I uphold the complaint. I also agree with our investigator that £300 compensation should be paid to Mr D for the distress and inconvenience, and the disruption to his retirement planning, the unsuitable advice caused.

Putting things right

Fair compensation

My aim is that Mr D 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 D would've remained with his previous providers, however I cannot be certain that values will be obtainable for what the previous policies would've been worth. I'm satisfied what I've set out below is fair and reasonable, taking this into account and given Mr D's circumstances and objectives when he invested.

What must Sterling Wealth Ltd do?

To compensate Mr D fairly, Sterling Wealth Ltd must:

- Compare the performance of Mr D's investment with the notional value if it had

remained with the three previous providers. 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.

- SWL should also add any interest set out below to the compensation payable.

- SWL should pay into Mr D'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 SWL is unable to pay the total amount into Mr D'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 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 D won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D would've 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 to Mr D £300 for the distress and inconvenience caused and the disruption to his retirement planning.

Income tax may be payable on any interest paid. If SWL deducts income tax from the interest it should tell Mr D how much has been taken off. SWL should give Mr D a tax deduction certificate in respect of interest if Mr D 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
SIPP with provider B	Some liquid/some illiquid	Notional value from three previous providers	Date of transfer	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.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. SWL should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount SWL pays should be included in the actual value before compensation is calculated.

If SWL is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. SWL may require that Mr D provides an undertaking to pay SWL any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. SWL will need to meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr D's investment had it remained with the three previous providers until the end date. SWL should request that the three previous providers calculate this value.

Any withdrawal from the SIPP with provider B 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 SWL totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the three previous providers are unable to calculate a notional value, SWL will need to determine a fair value for Mr D'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.

The SIPP with provider B only exists because of illiquid assets. In order for the SIPP with provider B to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by SWL taking over the illiquid assets, or this is something that Mr D can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If SWL is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr D an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP with provider B to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr D wanted Capital growth with a small risk to his capital.
- If the three previous providers are 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 D'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 D into that position. It does not mean that Mr D 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 D could have obtained from investments suited to his objective and risk attitude.

My final decision

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

Sterling Wealth Ltd should provide details of its calculation to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 March 2023.

Jo Occleshaw
Ombudsman