

## The complaint

Mr F complains that Periscope Wealth Limited gave him unsuitable advice to transfer his existing personal pension to a SIPP (self invested personal pension) and invest via a DFM (Discretionary Fund Manager).

At the time Periscope Wealth Limited was an appointed representative of Sterling Wealth Limited. Sterling Wealth Limited is responsible for the advice Periscope Wealth Limited gave.

## What happened

I understand that Periscope Wealth Limited contacted Mr F about a pension review. The result was that Periscope Wealth Limited advised Mr F to transfer his existing personal pension, held with Aviva, to a SIPP. The transfer was on 26 September 2017 and the transfer value paid was £26,080. The money was then invested in one of the DFM's portfolios which included a corporate finance bond.

On 10 August 2021 Mr F complained via his representative to Periscope Wealth Limited that the advice to transfer had been negligent. The letter of complaint said that a SIPP wasn't suitable for Mr F, who was an inexperienced investor. Adequate risk profiling hadn't been undertaken and Mr F's capacity for loss hadn't been considered. The higher costs involved hadn't been explained and all the relevant risks hadn't been highlighted, including that the initial investment and returns weren't guaranteed.

Sterling Wealth Limited didn't uphold the complaint. The main points were:

- Periscope Wealth Limited had made it clear – at the outset, in the terms of business and at a face to face appointment – that it was a restricted adviser, choosing only from the risk rated portfolios managed by the DFM who was regulated by the FCA (Financial Conduct Authority).
- The DFM had been introduced to Periscope Wealth Limited by the SIPP and platform provider. Periscope Wealth Limited were advised by the DFM and SIPP provider that the corporate finance bond element of the portfolio meant clients were able to benefit from strong fixed rate returns with solid asset backing. The bond was listed on the Irish Stock Exchange and the SIPP provider had carried out the necessary due diligence to allow the product on to its panel. Periscope Wealth Limited were also assured as to the liquidity of the bond.
- In July 2018 Periscope Wealth Limited compared the DFM's portfolios with Sterling Wealth Limited's portfolios and found the latter were performing marginally better at lower cost. Periscope Wealth Limited decided to move all their clients invested with the DFM into Sterling Wealth Limited's portfolios.
- Periscope Wealth Limited doesn't have discretionary permissions and reached out to all clients invested via the DFM, including Mr F. He was contacted in July 2018 and made aware of the investment change and asked to complete and return an adviser changes form so his investment could be moved. Sterling Wealth Limited said several documented requests were made but it wasn't until December 2018 (five months later) that the signed and completed form was received.

- The SIPP provider was then asked to sell down Mr F's portfolio but it wouldn't accept the instruction as the portfolio was managed by the DFM. It said the corporate finance bond was now illiquid a buyer for the bond needed to be found. Unfortunately, that didn't happen and the bond collapsed in June 2019.
- Every effort was made to move Mr F's investment. The corporate bond accounted for 30% of his overall pot. If the documentation had been received earlier, all of his investment could've been moved, which was achieved for many clients.
- The advice was correct and in keeping with Mr F's attitude to risk. He was fully informed of the investment he was making and as detailed in the pension switching report and suitability report. Periscope Wealth Limited did everything they could when they were made aware of the issues with the bond but they couldn't foresee what would happen to the bond.

Sterling Wealth Limited later added that the decision to move all clients out of the bond was prompted by poor performance. Sterling Wealth Limited's own portfolios were performing better and at a lower cost. And 79 clients were moved as they responded to the change of adviser request in a timely manner. Unfortunately Mr F was unable to respond and the situation with the bond deteriorated quickly, despite assurances from the DFM and the SIPP provider.

The complaint was referred to us. One of our investigators considered it. After obtaining further information from Sterling Wealth Limited and Mr F she issued her view on 27 July 2022. She upheld the complaint. I'm not going to repeat here all the investigator said. But in summary:

- Mr F's complaint was about the advice to transfer, not just that the corporate bond had become illiquid.
- Mr F's personal pension was performing well and (although not an indication of future performance) better than the recommended portfolio. At age 65, assuming growth of 4.1% Mr F's personal pension was projected to be worth £64,800. Assuming the same performance for the new arrangement gave a lower fund value of £64,400. The suitability report noted that was due to the higher charging structure with the new arrangement. It was confirmed the new arrangement would need to provide higher returns (0.05% pa more) to provide the same fund at retirement.
- The investigator calculated that, during the first year of transferring to the SIPP and investing via the DFM, £1,397.95 would be deducted from Mr F's pension fund. His existing personal pension had an annual management charge of 0.95%. Which equated to £247.76 pa. During the following years Mr F would pay £485.13 pa – the two annual fees charged by the SIPP provider and the DFM and Periscope Wealth Limited's ongoing adviser charge.
- The suitability report dated 5 September 2017 said three options had been considered: leaving Mr F's pension with the existing provider; leaving it there but switching funds; or setting up a new pension plan and moving his existing pension into that. The first two options were rejected on the basis that it wouldn't be possible to access the recommended DFM's investment strategy and provide total flexibility when taking benefits.
- The investigator didn't think Mr F would've transferred his only pension provision if he'd fully understood it wasn't projected to improve on the benefits his existing personal pension would provide and would cost him more.

The investigator set out what Sterling Wealth Limited needed to do to compensate Mr F fairly and on the basis he'd have kept his existing personal pension. She said the previous

provider should be asked to calculate a notional value but if that wasn't possible a benchmark could be used.

Mr F's representative accepted the investigator's findings. We emailed Sterling Wealth Limited on 22 December 2022 to say we were checking the file to make sure it was ready to be reviewed by an ombudsman so that a final decision could be issued. We noted we hadn't had any response to the investigator's view and we enclosed a further copy. We asked for any further comments or evidence for consideration by the ombudsman. We said, if we didn't hear further, the ombudsman would make a final decision based on the evidence we'd received to date. We told Sterling Wealth Limited that Mr F had accepted the investigator's view. We haven't heard back from Sterling Wealth Limited.

### **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.

I think the advice to switch to a SIPP was clearly unsuitable for Mr F. He was an inexperienced investor who didn't want to take too much risk. His fund was modest - £26,080.49. The investigator said it was his only pension provision at the time although Mr F had since joined an employer's scheme. I think Mr F may already have been a member of a workplace pension scheme when the advice was given. But even if he was, he'd only been a member for a year so the benefits he'd accrued would've been very limited. Mr F didn't have any savings or other financial assets generally. I don't think he had any real capacity for loss. His first objective was to build up a retirement fund. So preserving what he had, even though that was modest, should've been a priority.

The suitability report said remaining in his existing personal pension wasn't suitable as Mr F wouldn't be able to use the services of a DFM. Mr F may have said he 'liked the idea' of using a DFM. But I don't see that a DFM was appropriate for an investor such as Mr F. He had no need for a DFM and the extra charges that would be incurred.

Another reason given for switching was that Mr F wanted to access his pension benefits flexibly. But at the time of the advice he was 35 and he'd said he planned to fully retire by age 67. So accessing his benefits was a long way off and that could've been addressed closer to the time Mr F was looking to retire. I don't see it was suitable advice for him to incur, in the interim, the higher charges the new arrangement presented. And the higher charges of the new arrangement meant that Mr F's fund would need to generate higher returns if his fund at retirement wasn't going to be lower than if he'd left it where it was.

I don't see the reasons given for the switch were justified. Mr F was switched to a more complex and more expensive arrangement without good reason. I think suitable advice would've been for him to maintain his existing personal pension. And if his income permitted, make further pension contributions to build up his retirement provision.

Sterling Wealth Limited has said Mr F's losses could've been avoided or reduced if he'd responded when Periscope Wealth Limited got in contact about changing advisers. Sterling Wealth Limited says Mr F was contacted in July 2018. But no activity is shown on the spreadsheet which Sterling Wealth Limited has supplied, setting out the actions it took, including contact with Mr F. From that it seems Mr F's annual review was posted to him in 4 September 2018, which appears to have been the first contact with Mr F in 2018. The spreadsheet records the change of adviser form was posted to Mr F on 26 September 2018. It seems issues then arose – the form was resent several times and Mr F said he'd posted it back but for some reason it wasn't received until 7 December 2018.

Sterling Wealth Limited has said that other clients' portfolios with the DFM were disinvested earlier and before the bond became illiquid. Sterling Wealth Limited's point is that Mr F's losses would be reduced if he'd returned the form sooner.

We'd generally expect a consumer to take reasonable steps to mitigate any losses. But from what I've seen the new adviser form wasn't sent to Mr F until towards the end of September 2018. So it didn't take him five months to send it back. And it seems he did return the form promptly even if, for whatever reason, it didn't reach Periscope Wealth Limited/Sterling Wealth Limited. So I don't think it would be fair to say Mr F failed to take steps to mitigate his losses. Mr F was only invested in the portfolio/bond because that's what Periscope Wealth Limited had advised. That advice was unsuitable. So Sterling Wealth Limited, as principal, is responsible for the losses Mr F has suffered in consequence of Periscope Wealth Limited's unsuitable advice.

### **Putting things right**

In assessing what would be fair compensation, my aim is to put Mr F as close as possible to the position he'd probably now be in if he had been given suitable advice. I think Mr F would've remained with his previous provider. However I can't be certain that a value will be obtainable for what the previous policy would have been worth. I'm satisfied what I've set out below is fair and reasonable taking this into account and Mr F's circumstances and objectives when he invested. I agree with the redress suggested by the investigator. It's aimed at putting Mr F back in the position he would be in, had he retained his existing personal pension. I've set it out again here.

### **What should Sterling Wealth Limited do?**

To compensate Mr F fairly Sterling Wealth Limited should:

- Compare the performance of Mr F's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- Pay any interest set out below.
- If there's a loss Sterling Wealth Limited should pay into Mr F's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Sterling Wealth Limited is unable to pay the compensation into Mr F's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've 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 F won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr F 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 Mr F £250 for the distress caused by the total loss of one of the investments and the disruption to his retirement plans.

- Repay the adviser’s fees together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the actual value and the notional value can be offset against the fees with interest.
- Provide details of the calculation to Mr F in a clear, simple format.
- Income tax may be payable on any interest paid. If Sterling Wealth Limited considers that it’s required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr F how much has been taken off and give him 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.

Portfolio name	Status	Benchmark	From (“start date”)	To (“end date”)	Additional interest
Ascentric SIPP	Some liquid/some illiquid	Notional value from previous provider or 50/50 benchmark set out below	Date of investment	Date of settlement	Not applicable

### **actual value**

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

If, at the end date, the portfolio (or any of the investments) is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, the actual value should be assumed to be nil to arrive at fair compensation. Sterling Wealth Limited should take ownership of the illiquid portfolio by paying a commercial value acceptable to the pension provider. This amount paid should be included in the actual value before compensation is calculated.

If Sterling Wealth Limited is unable to purchase the portfolio the actual value should be assumed to be nil for the purpose of calculation. Sterling Wealth Limited may wish to require that Mr F provides an undertaking to pay Sterling Wealth Limited any amount he may receive from the portfolio in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Sterling Wealth Limited will need to meet any costs in drawing up the undertaking.

### **notional value**

This is the value of Mr F's investment had it remained with the previous provider until the end date. Sterling Wealth Limited should request that the previous provider calculates this value.

Any additional sum paid into the Ascentric SIPP should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal from the Ascentric SIPP 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 all those payments are totalled and that figure deducted at the end to determine the notional value instead of deducting periodically.

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

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr F wanted capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the benchmark I've set out 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 F'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 F into that position. It doesn't mean that Mr F 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 F could've obtained from investments suited to his objectives and risk attitude.

### **My final decision**

I uphold the complaint. Sterling Wealth Limited must redress Mr F as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 22 March 2023.

Lesley Stead  
**Ombudsman**