

The complaint

Mrs M complains, through her representative, that Neovision Wealth Management Limited gave her unsuitable advice to transfer three personal pension plans (PPP) to a Self-Invested Personal Pension (SIPP), and invest the funds using a discretionary fund manager (DFM).

What happened

Mrs M's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties in June 2022. The background and circumstances to the complaint and the reasons why he thought it should be upheld were set out in that assessment.

But in summary, it was recorded at the time of the advice that Mrs M was in her early forties; was employed; had an annual salary of around £22,000; jointly owned her property which was mortgaged; and had a dependent relative's property valued at £90,000 which had an outstanding mortgage of £45,000. No other assets were listed.

Mrs M's objectives were noted as:

- consolidating her three PPP's together to achieve better and more stable growth
- flexible drawdown as she didn't like the idea of an annuity
- to ensure 100% of her fund was payable as death benefits rather than 50% she believed was the case on her current PPPs.

An attitude to risk questionnaire was completed which confirmed Mrs M was comfortable with the fourth most volatile fund out of five. In answering a series of questions she also confirmed she would not change her portfolio even if its value fell by 20% in a year, as she understood that *"...investments can have occasional negative annual returns"* and she had a *"higher chance of reaching my investment goals if I stick with my portfolio over the long term"*. She was comfortable that *"...investments frequently experience large losses in value if there is a potential for higher returns"*.

Neovision's adviser contacted the three pension providers to obtain the plan's details. The values were recorded as approximately £43,000, £11,000 and £1,900. There were no penalties or exit fees.

The adviser completed his research and presented it to Mrs M by phone on 11 April 2017. The adviser recommended Mrs M transfer all three PPP's to a Self-Invested Personal Pension (SIPP), and have the money invested through a discretionary fund manager.

On the call the adviser said the proposition was designed to *"...shield you away from that (volatility)...and give you a nice steady growth on your money..."*.

The adviser went on to say the charges were fairly similar on each existing plan, but they would have "undisclosed" charges on them which they would never know. He said under a single new arrangement there would be one charging structure which was easier to

understand than three plans.

The adviser went on to ask Mrs M if she was a “*more adventurous investor*” to which she said “*Yes, I think so, ultimately I just want what’s best for the future*”.

Mrs M signed the transfer paperwork on 19 April 2017.

A Financial Planning Report sent under cover of a letter dated 26 April 2017 said, amongst other things, that Mrs M:

- was unhappy with the poor investment returns on her existing plans and lack of advice given
- received very little paperwork from the existing providers so had “*...little idea of what the performance of the funds has been*”
- wanted to look at consolidating her plans into one scheme offering flexibility, with the ability to deduct an ongoing advice charge direct from the plan.

The report said that although Mrs M had no professional qualifications or experience in financial areas, given she’d previously held assets (which the investigator presumed as the existing pensions), the adviser categorised her as someone with a reasonable knowledge of investments. The adviser also confirmed “*This opinion is based on you not having any personal experience of the unpredictable fluctuations in capital value because of sustained exposure to a stock market-linked investment*”.

The adviser went on to state: “*The impact of a potential loss to capital in a falling stock market is therefore not known to you. You are therefore deemed vulnerable in relation to financial products and investment products*”. It was also recorded that Mrs M didn’t have any capacity for loss – “*...you do not have the ability to absorb any negative financial outcome that may arise from making an investment*”. But it stated she was willing to accept the risks in exchange for achieving flexibility and superior death benefits.

Mrs M’s attitude to risk was documented as “Capital Growth”. A Capital Growth profile was described as:

The Capital Growth investor is willing to accept high risk and chance of loss to achieve higher returns on his or her investment. Significant losses over an extended period may prompt the Capital Growth Investor to shift to a less risky investment.

The adviser recommended Mrs M transfer all three PPP’s to a SIPP in order to:

- place your investment under the supervision of a Discretionary Portfolio Service as your preference is for a discretionary fund manager (DFM) to look after and manage your investments
- improve the diversification of the pension funds held within the retirement plan
- give you access to a wide range of funds and fund managers that you can switch between for no extra cost
- give access to E-services to improve the level of service that you receive
- provide the potential for superior long-term performance. Albeit, you fully understand

that future returns will not necessarily conform to those of the past

- offer potentially superior death benefits and maximum succession planning.

The alternative options of transferring to another PPP or a new Stakeholder pension plan were discounted due to the lack of investment opportunity and wanting to appoint an authorised investment manager.

The charges were disclosed as an initial advice fee of 3% (£1,683), Annual Product Charge of £150, Ongoing advice fee of 0.75%, and a DFM fee of 0.9%.

The transfer took place as recommended. However, due to the sharp fall in its value Mrs M sought advice from another financial adviser which resulted in a transfer to another provider about 12 months later.

Our investigator thought that the complaint should be upheld. He said he hadn't seen any evidence that persuaded him Mrs M was actively seeking advice to consolidate her existing plans. He said she was first contacted via a cold call (by an introducer) which subsequently led to a discussion with the adviser at Neovision. The investigator said during his recommendation phone call, the adviser asked Mrs M about consolidating her plans to which she replied – *"Well whatever's easier to be honest, I mean, I don't really understand it...if it's beneficial having three, or two, or even one"*. He said these weren't the words of someone who had decided they wanted to consolidate their pension plans. The investigator said he thought the adviser used "consolidation" as a reason to support his recommendation.

The investigator referred to the regulator's "Quality of advice on pension switching" report published in 2008. He said the report provided some examples of poor advice including:

- A pension that is more expensive than a stakeholder pension, but a stakeholder pension would have fulfilled the customer's needs
- A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option, but there was no evidence this option was needed).

The investigator said the report clearly outlined what should be considered, and cost was a factor, as well as suitable reasons for transfer.

The investigator said the transfer to the SIPP resulted in higher costs. Mrs M's existing plans were recorded as having combined charges of £352 a year. This compared to the total annual charge on the SIPP (including the DFM fee) of £1,060, being £708 a year more expensive. But it was only disclosed as £302.58 more expensive in the suitability report, as the adviser didn't include the ongoing adviser fee at 0.75%. So the true cost wouldn't have been immediately clear to Mrs M.

The investigator said the new plan would have to perform better than Mrs M's existing plans just to cover the initial and ongoing costs. He said Mrs M wasn't a particularly experienced investor. She'd said in her own words *"I don't really understand it"*. The investigator wasn't persuaded Mrs M was seeking, or needed, the range of investment options available through a more expensive SIPP, for what was a total transfer value in the region of £56,000. Nor was he persuaded that the additional costs associated with a DFM arrangement were warranted

for a fund value of this size. Mrs M's existing providers offered sufficient investment flexibility and for the level of risk appropriate to Mrs M. He said there was no urgent requirement to switch to a plan that offered flexi-access drawdown as Mrs M was only in her very early forties at the time of advice.

The investigator said in any event, one of her existing plans offered the flexibility of income drawdown as well as the ability to hold up to 50 investments at the same time. He said whilst adviser charging wasn't available on that particular plan, it was available on other plans offered by that provider. And if flexibility was required nearer to retirement, Mrs M could've looked into that option at the time.

The investigator said it was recorded that Mrs M thought only 50% of the existing plan values would be paid as death benefits. The investigator said the adviser should've explained the position to Mrs M, and put her mind at rest that her existing PPPs all offered 100% return of fund on her death. And there was no need to transfer to achieve this.

The adviser recorded that Mrs M was unhappy with the poor investment returns on her existing plans and lack of advice given. But then said Mrs M had received very little paperwork from the existing providers so had "*...little idea of what the performance of the funds has been*".

The investigator said in his opinion the recommended investment strategy was also unsuitable. He said some of the answers to the attitude to risk questions, which Mrs M had no recollection of answering, suggested she wasn't that concerned about volatility. However he noted the suitability letter contradicted this. It said Mrs M wanted to move to a less volatile fund, and didn't want to be so heavily invested into equities as she was aware how the value could be affected by swings in share values.

The adviser determined Mrs M to have a "Capital Growth" attitude to risk. This was described as suitable for an investor willing to accept high risk. Yet Mrs M had little previous investment knowledge or experience. She had little to do with the existing plans, and had, according to the adviser, received very little information about them in the past. Mrs M also had no capacity for loss and wasn't in a position to take a higher level of risk. No other cash, investment or pension assets were recorded on file. So the advice exposed 100% of Mrs M's retirement benefits to a level of risk that wasn't suitable for her circumstances and experience.

The investigator said Mrs M's existing PPPs were all invested in what he considered were more suitable funds.

The adviser had recommended that Mrs M invest in the Growth Investment Portfolio which was targeted at investors with a risk profile of at least 4.5, as calculated with reference to the SRRI (Synthetic Risk and Reward Indicator) which is a rising scale of risk from one to seven. It was also aimed at those with a medium capacity for loss.

The investigator said the recommended portfolio's documentation referred to it containing certain investments that might have liquidity restraints, might be difficult to value objectively and might be incorrectly priced. The recommendation also effectively placed all of Mrs M's pension in one basket. The investigator said he thought Mrs M didn't have the knowledge, experience, ability, or capacity to accept the associated level of risk and potential loss associated with the portfolio. So he thought the recommendation was unsuitable.

Overall, the investigator wasn't persuaded that there was sufficiently good reason to transfer to a plan with substantially higher charges. He noted that the transfer options in the suitability letter made no mention of Mrs M staying where she was and investigating options

with her existing providers. The investigator had said he was satisfied that Mrs M would've remained invested in her three existing plans if she'd been advised to do so.

The investigator went on to set out how he thought Neovision should calculate and pay fair compensation to Mrs M.

Neovision didn't agree with the investigator's assessment. It said, in summary, that it was clear that Mrs M wished to consolidate her three pensions and have the flexibility of drawing her benefits in the future by way of flexi-access drawdown. She wanted to benefit from the superior death benefits from drawdown. It thought the investigator had missed and inaccurately represented this in his summary.

It said the original pension plans didn't offer drawdown options so regulated advice had to be given. If the advice hadn't been given, Mrs M would still be in pension policies not meeting her requirements, and it thought appropriate advice had been given.

Neovision said Mrs M was placed in the correct risk category following completion of the risk profile questionnaire. It said the new portfolio was in line with her existing portfolio. It said Mrs M didn't like the fact that her pension fell in value over a short period of time, and took the unusual step of transferring it a few months later. The losses she incurred were in line with the potential losses highlighted in the risk profile questionnaire, and something that she said she would be willing accept. Therefore it said Neovision wasn't at fault. The FCA had clearly said that investment performance wasn't grounds for a complaint. Neovision said it was strongly of the view that the advice was suitable and Mrs M's complaint was invalid.

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've come to the same conclusion as the investigator that the complaint should be upheld, and largely for the same reasons.

Neovision was providing regulated investment advice to Mrs M. It was required to provide suitable advice, which is reflected in the Regulator's rules on providing such advice. These rules were set out in COBS (Conduct of Business Sourcebook), and in particular in COBS 9.2 - assessing suitability.

For the reasons set out by the investigator, I'm not persuaded that the advice to transfer the pensions (technically known as a switch here) was suitable in the circumstances. As the investigator explained, the new plan had higher charges than Mrs M's existing plans. Therefore there needed to be good reasons to switch away from those plans to offset the higher charges associated with the new pension arrangement. As the investigator explained, this is reflected in the regulator's "Quality of advice on pension switching" report published in 2008.

The reasons provided to switch included to improve diversification, give access to a greater range of funds, and offer potentially superior death benefits. However, for the reasons set out by the investigator, in my view the new plan didn't provide any material improvement on the existing plans in these respects in the period up to taking benefits. And given the additional costs incurred, Mrs M could have waited until she approached retirement date to decide if she wanted to switch plans to access flexible benefits.

One of the other main reasons to switch was to place Mrs M's investment with a DFM. However Mrs M had a modest fund value; had little experience of investments and wasn't a

particularly sophisticated or knowledgeable investor. I don't think she had the necessary experience or knowledge in order to understand the risks involved in the transaction and make an informed decision.

It was also recorded that Mrs M had little capacity for loss. And this was consistent with her circumstances at the time. In my view exposing Mrs M's pension to the significant risks presented by the DFM portfolio wasn't suitable in itself – Mrs M wasn't in a position to be able to financially bear the investment risks presented by the recommended DFM portfolio.

Accordingly, for the reasons set out by the investigator and as I have set out above, I'm not persuaded that the advice to switch pensions and invest through the DFM was suitable in the particular circumstances.

I'm satisfied Mrs M's losses flow from the unsuitable advice given by Neovision Wealth Management Limited. But for the unsuitable advice to switch her pensions to the SIPP, Mrs M's losses wouldn't have happened. I don't think there was a good reason to switch, and I'm satisfied that it's fair and reasonable for Neovision Wealth Management Limited to compensate Mrs M in full for those losses.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mrs M as close as possible to the position she would probably now be in if she had been given suitable advice. I think with suitable advice Mrs M would have remained with her previous providers. I'm satisfied what I have set out below is fair and reasonable in all the circumstances.

What should Neovision Wealth Management Limited do?

To compensate Mrs M fairly Neovision Wealth Management Limited should:

- Compare the performance of Mrs M's investment with the notional value if it had remained with the previous providers until the date the SIPP was transferred. If the actual value was greater than the notional value, no compensation is payable. If the notional value was greater than the actual value, there is a loss and compensation is payable. If there is a loss, the amount of the loss should be adjusted from the end date (when the SIPP was transferred) up to the date of settlement by reference to the performance of the new SIPP.
- If there is a loss, Neovision Wealth Management Limited should pay into Mrs M'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. Neovision Wealth Management Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Neovision Wealth Management Limited is unable to pay the compensation into Mrs M's pension plan, Neovision Wealth Management Limited should pay that amount direct to her. 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 on its receipt.
- The notional allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the

reduction should equal 20%. However, if Mrs M 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 Mrs M £300 for the distress and inconvenience she experienced following the unsuitable advice to transfer, and the further concern and inconvenience of having to seek advice to correct the situation.
- Provide details of the calculation to Mrs M in a clear, simple format..

investment name	status	benchmark	from ("start date")	to ("end date")	additional return on loss from 'end date'
SIPP	transferred	Notional value from previous providers	Original date of switch in 2017	Date of switch to new SIPP	The return achieved on the new SIPP from the date switched to it to the date of settlement

Actual value

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

Notional Value

This is the value of Mrs M's investment had it remained with the previous providers until the end date. Neovision should request the previous providers calculate this value.

Any additional sum paid into the SIPP should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal from the 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 are a large number of regular payments, to keep calculations simpler, I'll accept if Neovision total all those payments and deduct that figure at the end to determine the notional value instead of deducting periodically.

If a previous provider is unable to calculate a notional value, Neovision will need to determine a fair value for Mrs M's investment. In those circumstances it should use the following benchmark: FTSE UK Private Investors Income Total Return Index.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I think Mrs M would have remained with her original pensions if she'd been given suitable advice to do so.

- If a previous provider is unable to calculate a notional value, then I consider the FTSE UK Private Investors Income Total Return Index is a reasonable proxy for those returns.
- 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. Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs M's circumstances and risk attitude.

My final decision

My final decision is that I uphold Mrs M's complaint. I order Neovision Wealth Management Limited calculates and pays any compensation due to Mrs M on the basis I have outlined above under "Putting things right".

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 6 January 2023.

David Ashley
Ombudsman