DRN-3673382

The complaint

Mr M complains that The Tavistock Partnership Limited ('TPL') advised him to invest his pensions in unsuitable, high risk investments which subsequently lost value.

What happened

In 2016, Mr and Mrs M approached a representative of TPL for advice about their respective pensions. Although Mr and Mrs M held separate pensions, the advice was given to them together, considering their overall financial position.

In the fact-find TPL noted Mr M had a group personal pension ('GPP') which was split into two parts and had an overall value of around £139,000 at the time. Mrs M had a personal pension ('PP'), also split into two parts, with a total value of around £196,400 at the time. TPL noted Mr and Mrs M were 46 and 53 years old respectively and intended to retire at age 65. It recorded that their overall objective was to ensure their pensions continued to grow, giving them a secure retirement. TPL also noted that Mr and Mrs M were keen to move away from their current pension provider ('L') because they didn't like the service it provided and found their online facility to be lacking.

TPL carried out an assessment of Mr and Mrs M's attitude to risk ('ATR'). While it noted neither of them had much investment experience, Mr M's ATR was recorded as '5 out of 7' and Mrs M's ATR was recorded as '4 out of 7'.

In January 2017 TPL recommended that Mr M transfer his GPP to a Novia self-invested personal pension ('SIPP'). It advised him to use the services of a discretionary fund manager ('DFM') called Organic, and invest his funds in its Progressive portfolio. It also recommended that Mrs M transfer her PP to a Novia SIPP. She was also advised to use Organic and invest her funds in its Defensive portfolio. TPL also recommended that Mr and Mrs M use their ongoing advice service.

Mr and Mrs M accepted the advice, paying a 2% initial advice fee and agreeing to pay 0.65% per year for the ongoing advice.

On 16 February 2017 Novia confirmed that the transfers had completed with £146,674.39 transferred to Mr M's SIPP and £203,557.45 transferred to Mrs M's SIPP. TPL said it received notification from Novia in May 2017 that Mr and Mrs M had stopped the ongoing advice fees.

In November 2018 the funds managed by Organic were suspended and because the model portfolios invested in these funds, this had an impact on Mr and Mrs M's pensions. In December 2018 the Financial Conduct Authority ('FCA') published its Supervisory Notice regarding Organic requiring it to cease regulated activities.

Mr and Mrs M complained to TPL in December 2020. They were unhappy that TPL had recommended they invest through Organic. Mr M said they had been advised to invest thousands in Organic bonds which were suspended in November 2018 and had lost value. Mr and Mrs M questioned why TPL hadn't told them about this at the time.

TPL didn't uphold neither Mr M nor Mrs M's complaint. It said the recommendations were suitable as they met with Mr and Mrs M's ATR and objectives. TPL added that by the time the bonds had been suspended the representative Mr and Mrs M had dealt with was a representative of another regulated business. And so TPL was not responsible for any of their losses.

Mr and Mrs M remained unhappy so they each referred a complaint to our Service.

Mr M clarified that he was not unhappy with the transfer of his pension to the Novia SIPP. However, he did not think that certain assets which formed part of Organic's Progressive portfolio were suitable for his ATR. So, he didn't think the recommendation to invest in this portfolio was suitable for him.

Our Investigator upheld the complaint. He didn't think the recommendation that Mr M invest through Organic was suitable as it was a new DFM which had only been authorised for around a year, so there was very little track record. He also didn't think a DFM was suitable for someone of Mr M's experience. And overall, he didn't think the recommended portfolio was suitable for Mr M's medium ATR as it contained a high proportion of junk and unrated bonds, which carried a high risk. He also thought the recommended arrangement was expensive and TPL didn't adequately highlight the costs associated with Organic to Mr M.

The Investigator recommended Mr M should be compensated by comparing the value of his pension up to 10 December 2020 (when he engaged a new financial adviser to rebalance it) with a benchmark in line with his medium ATR. He also recommended TPL should pay Mr M £300 for the distress caused by the unsuitable advice.

Mr M accepted this. TPL didn't provide any comments in response to the Investigator's view but it ultimately made an offer to settle Mr M's complaint. However, this differed from the method of compensation recommended by the Investigator. TPL said its method of compensation was more realistic as it used the LF Mixed Investment 40-85% unit prices to determine the hypothetical investment value.

Mr M didn't accept this and asked for a final decision on the matter. So, the complaint has been passed to me to decide.

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 upholding it for largely the same reasons given by the Investigator.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of TPL's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must 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.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

In 2009 the Financial Services Authority, the predecessor of the FCA, published a checklist for pension switching that I think is still of relevance 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 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?

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."

In addition, when considering the use of a DFM, 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:* the FCA has said the adviser needed a reasonable belief that the investor could understand the nature of the risks associated with any underlying investment decisions the DFM might make.
- *Level of disclosure:* whether the benefits vs cost of the arrangement were actually explained to the investor in terms they were likely to (or appeared to) understand.

It's also relevant to consider whether a particular DFM was appropriate. The approach each firm takes to managing funds and interacting with the adviser and investor is different. So different DFMs might be suitable for clients in different situations. Two factors are particularly relevant in this case.

Firstly, the conduct of proper due diligence. If an adviser relied only on prepared literature, weaknesses in the DFM's operations may have been overlooked. Features that an adviser should consider in their due diligence include:

- Variation in cost structures between DFMs - some charge per transaction they make, in addition to an annual charge.
- What was the DFM's typical investment philosophy (in terms of assets they preferred), whether this was a model portfolio or not? Would those assets be appropriate?
- Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries the adviser should have made.

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 the DFM as a solution to their client's needs and that meant 'looking under the bonnet'.

Was the advice TPL provided suitable?

I should first say that Mr M has not complained about the switch of his GPP with L to the Novia SIPP – he maintains he is happy with this aspect of the advice as he specifically wanted to move away from L and have the flexibility a SIPP provided him with. Instead, it is the investment recommendations TPL made which Mr M does not think were suitable for him. He questions whether the use of a DFM and the investments in Organic bonds were right for him.

Based on the information gathered by TPL, it appears that Mr M's main motivation for seeking the advice was to move away from L and to ensure his pension continued to grow. However, it seems that Mr M's pension was already performing well – he was invested entirely in the UK Index fund, which had achieved returns of 68.8% over the last five years. Nevertheless, I accept that Mr M is happy that his pension was moved away from L. And I also note that being invested wholly in the UK Index fund probably exposed Mr M to a higher level of risk than was suitable for him. So, despite the high performance, on balance, I think it was reasonable for TPL to recommend Mr M move his pension funds away from L.

COBS 9.2 required TPL to take reasonable steps to make sure its recommendation was suitable for Mr M. To achieve this, COBS 9.2.2R said TPL had to obtain enough information from Mr M to ensure its recommendation met his objectives, that he could bear the related investment risks consistent with these objectives and that he had the necessary experience and knowledge to understand the risks involved in the transaction. So, in my view, a key part of making a suitable recommendation is the ATR assessment.

I've considered the assessment TPL undertook to determine Mr M's ATR. It appears the primary tool used to determine Mr M's ATR was a risk tolerance profile questionnaire. Mr M was recorded as having a score of 58 out of 100, which placed him in risk group 5 out of 7. In my view this would equal a high-medium or moderately aggressive ATR. But I don't think that is a fair representation of Mr M's ATR, particularly when taking into account his investment experience and capacity for loss.

Despite what ATR assessment the tool arrived at for Mr M, TPL had a duty to investigate any inconsistencies with the risk profile chosen through the fact-finding process. To my mind, an investor with a genuine medium-high ATR would be an experienced investor with a moderate capacity for loss. But according to the fact-find completed by TPL this was Mr M's only pension. And he had not invested money either through his bank or financial adviser before. While I note Mr M had an investment property, it doesn't appear he had any other savings or investments. And between Mr and Mrs M, they had considerable liabilities, including mortgages of around £280,000 and credit card debt of £14,000. So, although Mr M was still working and building up pension funds with his employer, I consider his capacity for loss overall was fairly low.

With this in mind, I think a reasonable assessment of Mr M's ATR, taking account of his individual circumstances and experience, was probably medium, or '4 out of 7' on TPL's scale.

TPL recommended that Mr M use a DFM to manage his funds and it chose Organic to do so. It also recommended that Mr M should invest in Organic's Progressive portfolio. TPL's fact-find notes the following discussion in relation to Mr and Mrs M's preference in using a DFM:

"We discussed bespoke versus model portfolios they liked the idea of being able to have a more personalised service, active management, managers working closer to the market. They understand that bespoke portfolios would be more costly and would prefer to look at an actively managed model portfolio they would prefer a smaller firm looking after their money as opposed to being a fish in a giant pond. They would prefer a human looking after the money not an algorithm based management. We discussed the fact that my recommendation may be more expensive than their current holdings and they had no problem with this because they appreciate that active management would come at a cost. They also understand 'people have to get paid for the work they do, nobody does anything for nothing'."

While I appreciate the notes TPL made here, it seems unlikely to me that using a DFM was something Mr M had in mind when he approached TPL. He was an inexperienced investor and so it's unlikely he had a good understanding of the role a DFM played compared with investing in regular managed funds through an adviser. The notes reference the increased costs such an arrangement would entail, compared with Mr M's GPP. But I don't think that necessarily means Mr M understood how much more the arrangement recommended by TPL would cost him overall. Mr M's GPP was very low cost, and by taking TPL's advice he was essentially going to be paying for two firms' expertise to manage his pension, at a significantly increased cost. And I don't think that was clearly explained in TPL's recommendation letter.

It's evident that following TPL's recommendation would mean Mr M would be paying more for his pension. Mr M had previously been paying a 0.5% annual management charge and an annual fee of £18. But in addition to the initial advice fee of 2% and ongoing advice fee of 0.65%, Novia would charge a 0.29% wrapper fee and Organic would apply an investment charge of 0.375%. This was what was disclosed to Mr M in the recommendation letter and these charges alone meant Mr M would be paying more for his new arrangement.

However, while I think Mr M likely understood he would be paying more overall, there were extra charges that applied which were not disclosed to Mr M. The SIPP application shows that as a result of investing in Organic's Progressive portfolio, 40% of his funds were placed in the Organic Bond Fund, which had ongoing charges of 2.67%. A further 13% of his funds would be invested in the Organic Long/Short Alpha Fund, which had ongoing charges of 3.86%. So, over half of his funds were to be invested in funds with significant costs that were hidden from Mr M. And this would mean that Mr M's pension would have to achieve significant growth above the charges applied to provide him with a reasonable return. Indeed, the pension switching report projected that Mr M's pension would be worth less overall under the new scheme compared with his GPP based on the regulator's assumed projected returns.

So, from a costs perspective alone, I don't think the DFM was a suitable arrangement for Mr M. But in addition to this I also don't think he had the investment experience or knowledge to be able to understand the investment decisions that would be made on his behalf. So overall, I don't think using a DFM was a suitable recommendation for Mr M. And I think he could've achieved his objective of ensuring his pension continued to grow by investing in a regular managed fund, which would cost significantly less overall. I don't think he had any need for the extra expertise a DFM would provide, particularly in view of the extra cost he would incur to achieve this.

While I think the costs of the DFM arrangement were prohibitively high, for completeness, I also think the choice of Organic as the DFM was unsuitable.

In the recommendation letter, TPL said it had chosen Organic because it was, *"a small boutique investment house who are not restricted in the same ways that larger investment houses are, in that the investment manager is not limited to a number of approved funds/investments to include in their portfolios. Due to the fact they are a boutique firm they are not constrained in their investment selection, they aim to provide appropriate asset allocation that fits with the market dynamic at any given time."*

TPL also said:

"At a time when many managers are increasingly using standardised solutions to meet clients' needs, [Organic] construct portfolios which include alternative asset classes which pass rigorous due diligence assessment offering. [Organic] are a new and exciting investment house and as such we have carried out full, extensive due diligence on them that they have passed and exceeded expectations. The investment managers have many years of successful experience within the investment management industry. We speak with the business owner frequently and as such, this gives you the client, a level of personal service that is not normally available on model portfolios such as the one recommended to you."

It's difficult to understand how TPL could recommend Organic based on its use of investments not correlated to the market, which were said to be less volatile than equities and providing a stable return. I say this because not only was Organic only registered with the FCA in July 2015, as it acknowledged, the portfolio recommended was only a year old at the time. A key element of TPL's recommendation for Mr M to switch his GPP into the SIPP appears to have been the expectation the DFM investment portfolio would perform in line with the IA Mixed Investment 40-85% benchmark, despite a lower exposure to equities. But it's unclear what that expectation could've been based on beyond the performance over the last year. While I accept past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future through an established track record. In the absence of this, I think advising Mr M to invest his entire pension through a new, untested DFM wasn't suitable for him.

I'm also mindful that within the Progressive portfolio, 23% of the assets had a credit rating of BBB, which is the lowest rating for investment grade bonds. A further 15% of the assets were 'junk' bonds and around 34% of the assets in the portfolio were unrated. This meant that almost half of Mr M's pension funds would be invested in unrated or junk bonds – and I think a customer would need to have a high-risk tolerance to consider investing in such assets. As I think Mr M had a medium ATR and a low capacity for loss, I don't think the recommendation to invest in Organic's Progressive portfolio was suitable for him.

In summary, I don't think TPL's investment recommendation was suitable for Mr M. While Mr M may have quite understandably wanted to maximise the returns on his pension funds, I don't think that placing him into a higher charging arrangement was a suitable recommendation. Given that Mr M was a medium-risk, inexperienced investor, he would be unlikely to need the more expensive active management associated with a DFM. In my view, keeping costs to a minimum would have been the suitable course of action here. Overall, I think Mr M should've been advised to invest in regular investment funds in line with his medium ATR.

If Mr M had been advised to invest his pension funds in this way, I'm satisfied he would've accepted the recommendation. I've seen nothing to persuade me that Mr M would've insisted on using a DFM, and I'm mindful that since changing advisers in 2020, he has not used a DFM arrangement. So, I think Mr M should be compensated for the unsuitable advice he received by comparing the value of his SIPP with the fair value of his SIPP had it produced a return in line with the FTSE UK Private Investors Income Total Return Index.

Mr M changed his adviser in December 2020, so I think it would be fair to cap the potential loss at this date. However, I think any loss should brought up to date in line with the same benchmark to the date of my final decision.

The Investigator recommended that Mr M should also receive compensation of £300 for the distress and inconvenience caused by the unsuitable advice. Overall, I think this amount is fair in the circumstances. That's because I think finding out that the DFM in charge of his pension had been deauthorised, and the subsequent loss of value to his pension, would've caused Mr M considerable upset.

Although TPL didn't expressly accept the Investigator's view of the complaint, it made an offer to Mr M to settle the complaint. TPL's offer was broadly in line with the Investigator's recommendation. However, it said it had used a more realistic benchmark – the LF Mixed Investment 40-85% – as it didn't consider the benchmark the Investigator recommended to represent a real fund. This resulted in an offer of £10,156.68 after the notional tax deduction. Mr M rejected this offer.

I've considered whether this is a fair benchmark to use to compensate Mr M for his loss. But overall, I'm satisfied that the benchmark recommended by the Investigator is fair in the circumstances. That's because it doesn't seek to identify exactly how Mr M would've invested but for the unsuitable advice, which can be influenced by the benefit of hindsight. Instead, it represents the returns a medium-risk investor could expect to achieve by using benchmark which is diverse, transparent, industry used and adjusted quarterly. While this may result in a lower amount than the sum offered by TPL to settle the matter, ultimately I think it represents fair compensation in the circumstances of this complaint.

Putting things right

Fair compensation

My aim is that Mr M 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 M would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr M's circumstances and objectives when he invested.

What must TPL do?

To compensate Mr M fairly, TPL must:

- Compare the performance of Mr M's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable. The compensation should be brought up to date in line with the benchmark shown below until the date of my final decision.

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

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

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

- Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal the current basic rate of tax. However, if Mr M would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr M £300 for the distress caused by the unsuitable investment advice.

Income tax may be payable on any interest paid. If TPL deducts income tax from the interest it should tell Mr M how much has been taken off. TPL should give Mr M a tax deduction certificate in respect of interest if Mr M 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
Novia SIPP	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	Date of investment	10 December 2020	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Mr M's acceptance)

Actual value

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

Fair value

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

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Novia SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if TPL totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr M wanted Capital growth and was willing to accept some investment risk.
- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.
- 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 Mr M's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that The Tavistock Partnership Limited should pay Mr M the amount calculated as set out above.

The Tavistock Partnership Limited should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 June 2023.

Hannah Wise
Ombudsman