DRN-3725615

The complaint

Mr S complains about the advice he received from Sterling Wealth Ltd to transfer his personal pension to a Self-invested Personal Pension ("SIPP"). He says the advice was not in line with his attitude to risk.

What happened

In 2017, Mr S was advised to transfer the benefits worth around £33,000 from his existing personal pension with Legal & General to a SIPP. The advice was given by an appointed representative acting on behalf of Sterling Wealth but for ease I will refer to Sterling Wealth throughout.

At the time Mr S was aged 61 and married. He earned £14,000 per year and planned to retire when he reached 65.

Sterling Wealth asked Mr S to complete some answers to a risk questionnaire but didn't carry out a full fact-find of all his financial circumstances. Based on the answers Mr S gave, Sterling Wealth assessed him to be a "balanced investor" and recommended that he move his pension, on the basis that he required:

- maximum growth potential within the agreed risk profile;
- total flexibility when he chose to take benefits;
- 100% of his pension fund to be passed to beneficiaries in the event of his death; and
- he "liked the idea" of discretionary fund management.

Mr S' personal pension didn't allow flexi-access drawdown. It had a 0.5% annual management charge, with no exit penalties. It allowed Mr S to take 25% of the fund as tax-free cash. Sterling Wealth said the transfer would give Mr S access to a discretionary fund management (DFM) arrangement.

The charges associated with the switch were:

- SIPP annual charge – 0.30%
- DFM portfolio – 0.42%
- Overall charge (fund dependent) – between 0.25% and 0.28%

It was thought the new arrangement would be cheaper than the existing pension and, based on the past year's historical performance (11.55%), should provide a better return than the existing pension.

The asset allocation in the SIPP was:

- "Anchor" - 45% (of which 15% held in cash)
- "Diversifier" - 20% (invested in gold)
- "Growth" - 35% (equities)

The transfer took place in September 2017.

In July 2018, Sterling Wealth's representative decided to move clients who were invested with the discretionary fund manager into Sterling Wealth portfolios and sent documents to clients to complete for this. But by the time Mr S replied, a Corporate Finance Bond had become illiquid and could not be moved This bond accounted for 30% of Mr S' funds.

Mr S complained that he should not have been advised to move his pension funds into the SIPP and said he had lost out as a result of this. Sterling Wealth didn't uphold the complaint and has said any loss was caused by Mr S' failure to reply promptly to the documents relating to moving the bond.

When Mr S referred his complaint to this service, our investigator thought it should be upheld. He didn't think Mr S should have been advised to transfer his pension funds to the SIPP. He asked Sterling Wealth to compare the value of Mr S' SIPP with the value his pension would have had if he hadn't transferred and, if there was a loss, to compensate Mr S for this.

The investigator also asked Sterling Wealth to pay compensation of £250 for the distress and inconvenience Mr S had suffered as a result of being advised to transfer his pension.

Mr S has accepted the investigator's recommendation but Sterling Wealth doesn't agree and has requested an ombudsman's decision. It says:

- Mr S didn't want to stay with his existing pension and take an annuity;
- if it hadn't been for one fund closing the advice was fair and correct and although the lack of a full fact-find doesn't help, all the other documents support this view;
- the complaint only happened because a particular fund had failed.

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.

In order to advise Mr S on his pension, Sterling Wealth needed to obtain all the relevant information about his circumstances and ensure its advice was suitable for him.

Sterling Wealth didn't carry out a full fact-find, so it's difficult to say all of Mr S' circumstances were taken into account. What we do know is that at the time of the advice he was 61 and planning to retire at 65, so only had a few years until retirement. In those circumstances, the aim would usually be to avoid risk and protect the assets he had. On the information available, Mr S was an inexperienced investor with relatively modest pension funds of around £33,000 – and which were his main (perhaps only) source of retirement income other than the state pension.

Even if Mr S might have wanted to maximise his investment return in the run up to retirement, the priority would have been to protect the assets he already had. If there was a detailed fact-find that showed he had other sources of retirement income or other significant assets, there might have been a stronger case for switching his pension. In the absence of that, and since investment returns could not be guaranteed any more than those under the existing plan, I don't think the potential for future growth outweighed the risks involved.

Sterling Wealth said the SIPP with its DFM arrangement would lead to lower charges than the existing pension but from the information provided, I'm not persuaded that's the case. The only charge mentioned for the existing pension was a 0.5% management charge. The combined SIPP and DFM costs appear higher. I also note that 20% of the portfolio was held in gold, which can fluctuate in value. I don't think such a holding was suitable for a person less than five years from retirement, or that any wish to have more flexibility in accessing benefits (or passing them to his beneficiary) outweighed the need to safeguard the value of his pension funds in the run up to his retirement.

Mr S' pension fund was modest. In my view the SIPP and DFM arrangement added a level of complexity and cost that wasn't needed for someone in his circumstances. Given how close he was to retirement, there's no reason why he needed to invest in a wider range of funds; he could have remained invested with his existing pension provider. I haven't seen that this option was explored properly.

Mr S wasn't drawing his benefits, so it wasn't yet necessary for him to access funds through flexible drawdown. His retirement needs could have been assessed accurately once he got close to crystallising his benefits a few years later.

Sterling Wealth has referred to the fact Mr S didn't reply in time once there was a recommendation to move his funds from the bond. But what happened at that point isn't relevant to whether the advice to switch his pension was suitable in the first place.

Overall, I don't think the SIPP was in Mr S' best interests or was suitable, and he ended up in investments which were higher risk than was suitable for him given his circumstances. Without the advice to switch his pension to a SIPP, I think it's likely he would have remained with his existing personal pension.

Finally, I agree with our investigator that it would have been distressing for Mr S to find that, having followed the advice to switch his pension, he had suffered a loss in value. So it's fair that compensation should be paid to reflect this.

Putting things right

My aim is to place Mr S in the position he'd likely be in now, had it not been for the advice. I think this would have meant he remained invested in the existing Legal & General personal pension.

Any loss Mr S has suffered should be determined by obtaining the notional value of the pension on the basis that it had remained in the existing personal pension, and subtracting the current value of the pension from this notional value. If the answer is negative, there's a gain and no redress is payable.

If there's a loss, the compensation amount should if possible be paid into Mr S' pension plan. 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 a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Mr S hasn't yet taken any tax-free cash from their plan, 25% of the loss would be tax-free and 75% would have been taxed according to the likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

The elements of the SIPP portfolio that are illiquid should be treated as having nil value for the calculation.

Mr S should be allowed to wind up the SIPP and move his pension fund to a provider of his choice, if this is what he wants to do. If Mr S cannot wind up the SIPP because of the illiquid assets and is therefore prevented from moving his funds elsewhere, Sterling Wealth should agree to pay five years' worth of the SIPP fees and charges.

Sterling Wealth should also pay Mr S compensation of £250 to recognise the distress and inconvenience caused to him.

My final decision

I uphold the complaint and direct Sterling Wealth Ltd to pay the compensation set out above.

If payment of compensation is not made within 28 days of Sterling Wealth Ltd receiving Mr S' acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Sterling Wealth Ltd deducts income tax from the interest, it should tell Mr S how much has been taken off. Sterling Wealth Ltd should give Mr S a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 February 2023.

Peter Whiteley
Ombudsman