DRN-3731283

The complaint

Mr M's representative has complained, on his behalf, that Periscope Wealth Ltd (PWL), an appointed representative of Sterling Wealth Ltd (SWL) unsuitably advised him to transfer his existing personal pension policy (PPP) to a self invested personal pension (SIPP).

The representative has said that, during a review of his pension arrangements, Mr M had made it clear that he didn't wish to take unnecessary risk with his pension funds, but he now considered this to be the case – and that he has lost out financially.

What happened

The investigator who considered the complaint set out the background in her assessment dated 30 August 2022. Neither party appears to disagree with that background, and so I've broadly set it out below, with some amendments for the purposes of this decision.

PWL completed a fact find in January 2017 to determine Mr M's personal and financial circumstances. Following this, it produced a recommendation letter on 15 February 2017.

These documents confirmed the following about Mr M:

- He was 53 and married
- He had two children, both of whom were financially independent
- The income from his business was in excess of monthly expenditure
- He owned his home which was mortgage free
- He had an emergency fund to take care of unforeseen expenses
- He was a basic rate taxpayer
- He was seeking to save for a retirement fund
- He had no plans to retire but might reduce his working hours at 67
- He wanted to review his existing pension arrangements as he was concerned that the performance was poor, that there was a lack of fund choice, and that there could be a lack of flexibility when deciding to take benefits
- He hadn't considered the level of income he would need in retirement.

The adviser also carried out a pension switching report and a full review of the existing PPP which was held with Abbey Life, and had a fund value of just under £44,000. They considered the following options:

1. Leave the existing scheme untouched
2. Leave the existing schemes but switch investment funds
3. Set up a new pension plan into which he could move his existing arrangements

The adviser noted the outcome of the review of Mr M's existing arrangements was as follows:

- Poor overall performance
- Lack of flexibility
- Abbey Life didn't offer any income drawdown facility

- Limited access to alternative Abbey Life funds and no access to other companies' funds
- Open market option to buy an annuity from any other provider
- No guarantees linked to current pension

The adviser said that, after carrying out a full review, their advice was to switch the Abbey Life PPP into a SIPP with Novia. The adviser said this was because Novia offered an investment platform which allowed users to hold one or a number of different investment vehicles in once place and that it had access to a significant number of investment funds from different fund managers to allow a diversified portfolio. It also allowed the ability to switch funds at any time.

Mr M's attitude towards investment risk was also detailed in the letter. It was confirmed following completion of a risk profiling questionnaire that his risk profile was agreed as "5" on a scale of "1 to 10" (where 1 was the lowest risk and 10 the highest) – meaning he was recorded as a balanced investor.

Mr M scored a total of 26 based on his answers to the questions. A score of 26-29 equated to a risk level of "5", so it confirmed that he would be classed as a balanced investor - and Mr M agreed with this.

The adviser recommended that Mr M's investment be managed by Organic Investment Management (OIM), as a discretionary fund manager (DFM). The letter explained that the DFM would manage the investment portfolio based on the level of risk Mr M was prepared to take and, as such, the investments would be directly managed by OIM within their Balanced Model Portfolio.

The adviser said that they'd recommended the services of a DFM as it would ensure Mr M had a team of investment professionals constantly monitoring the underlying portfolio on an active basis.

The letter confirmed that, although Mr M hadn't selected a particular retirement age, he could take benefits at any time from age 55 without penalty.

The adviser also gave consideration to stakeholder suitability. It was noted that stakeholder pensions had been designed to offer low charges. They also had a low minimum contribution level and didn't penalise policyholders if they needed to stop contributions or move funds to another provider. The adviser said they weren't recommending a stakeholder plan as the SIPP offered greater flexibility when Mr M would be thinking about taking the benefits from his pension fund.

The letter confirmed that Mr M would pay PWL a fee of £1,539.80, which was 3.5% of the amount invested for recommending and arranging the pension. They stated Mr M should also take advantage of the ongoing advisory service offered which would cost 0.75% per annum.

The annual cost for using Novia as the SIPP provider was detailed as 0.38%. The charges for using OIM as a DFM were recorded as 1.06% of the investment per annum.

The letter said that, although the overall costs and charges associated with the recommended plan would be higher than the existing Abbey Life plan, the returns from the new investments only needed to improve on the performance of the Abbey Life pension by 1.5% per annum to increase the value of the pension fund at retirement.

Mr M's representative complained to SWL in July 2021, but dissatisfied with the response, it then referred the matter to this service.

In her assessment of the complaint, the investigator set out her reasons as to why she considered it should be upheld, summarised as follows:

- The recommendation letter confirmed that the charges for the new plan would be higher, due to those levied by the platform provider, the DFM and the adviser fees.

- The available evidence didn't support the position that Mr M wished to switch his pension. PWL had contacted Mr M and he'd followed the advice it had given him.

- But it didn't appear as if Mr M had wanted or needed to switch his pension arrangements.

- Although one of the main stated reasons for the switch was that the existing PPP offered a limited range of investment funds, there was nothing to suggest that Mr M had an interest in being able to access a range of different funds.

- Mr M hadn't made any fund switches in the time that he'd held his PPP, or queried what funds were available.

- Mr M had no particular investment experience, holding only cash ISAs in addition to his pension arrangements. He confirmed this limited knowledge/experience in the fact find.

- Mr M held his funds in his existing PPP as follows: Abbey European Pension Fund (5%); Abbey International Pension Fund (40%); and Abbey Security Pension Fund (55%).

- The first two of those funds appeared to suit a balanced investor, the third – in which the majority of the pension funds were invested – was a lower risk fund.

- There seemed to be no need for Mr M to use a DFM – he hadn't previously been regularly switching funds or wanting access to a variety of investments. It seemed to be something he accepted because it had been recommended as the best way for him to achieve a better return on his pension.

- Mr M had to pay additional charges for the DFM service, but his pension fund was quite modest, at just under £44,000. Consideration should have been given to a more basic arrangement, or one with access to a range of funds which were reviewed periodically.

- Whilst Mr M didn't have a retirement age in mind, he was approaching 55, at which point his pension benefits would have been available to him if he wished to access them. And so the projected growth might not have been able to offset the impact of the additional costs incurred through the transfer.

- At that age, it might also have been reasonable for Mr M to gradually begin reducing his exposure to investment risk, but the switch did the opposite – along with incurring higher charges which could potentially erode capital.

- A further reason given for Mr M to transfer was that the existing PPP didn't offer an income drawdown facility. But there didn't appear to be any indication that this was what Mr M wanted to do. Consideration could in any case have been given to the manner of Mr M accessing his pension benefits when he came to retire.

The investigator recommended that SWL compare the value of Mr M's current pension arrangements with the notional value of his PPP, had it remained in place. The latter value should also take account of any additional pension contributions Mr M may have made since the switch, the investigator said.

If any of the investments were illiquid, or could not be attributed a value, then their value should be assumed to be nil, but SWL could arrange for Mr M to pay any distributions he received from them in the future.

Any loss should in the first instance be paid into Mr M's SIPP, but if this wasn't possible or would conflict with his annual allowance or any lifetime allowance protections in place, then the loss amount should be paid directly to him, with a notional deduction for the basic rate tax the investigator assumed Mr M would pay on his pension benefits in retirement.

SWL disagreed with the investigator's conclusions, however, saying the following in summary:

- PWL provided full details of the switch to Mr M, which included the charges, through the suitability reports, client meetings and the Pension Switch report.
- PWL could only recommend a DFM as it was a restricted adviser. It could only choose from the risk rated portfolios managed by the DFM and this was clearly disclosed and discussed with Mr M.
- The advice to switch was good, and it was only the wrongdoing at the DFM - which was beyond its control – which had meant that the investment hadn't worked.
- It couldn't have predicted this, and it tried to do the best for Mr M, such as ceasing ongoing management charges whilst continuing to assist him.

As agreement couldn't be reached on the matter, it was referred to me for 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've reached broadly the same conclusions as the investigator and for similar reasons. For ease of reference, I'll call the business complained of "SWL" in this section.

I think there would need to be a compelling rationale for someone in Mr M's position, with a pension pot of just under £44,000, approaching his mid-fifties, and who had little investment knowledge or experience, to be moved to a higher risk plan which was subject to higher overall charges.

And I can't see that such a rationale existed here. Mr M may have been keen to secure better returns on his pension funds, which is perfectly understandable, but I don't think a suitable way of doing so was to subject his funds to an overall higher charging structure, with a limited number of years to recoup such additional costs.

And this is quite amply demonstrated by the comparisons in the switching report between the existing plan and the Novia SIPP, which indicated the additional rates of growth required to age 65 by the Novia SIPP (at around 1.5% pa for all three “bands” of projected growth) to match the benefits which would be produced by the existing plan, and the effect on the overall fund value if the switch occurred and the anticipated levels of growth remained the same – which was estimated to be at around 15% less.

If Mr M was seeking better returns, then I think the range of funds – as indicated by the current offering from Phoenix Life, which took over Abbey Life - offered within his existing plan ought to have been sufficient for his purposes. Again, I don’t think the size of Mr M’s pension fund warranted access to a wider array of pension funds than would already have been available to him, or that, as noted by the investigator, he had in any case demonstrated any particular desire to be invested in a more diverse fashion.

And I also agree with the investigator that Mr M would have been receptive to the information and recommendation provided by SWL, and that, if he was being told that he could obtain better returns through implementing the advice, it’s likely that he would trust the professional party and accept the recommendation.

It was of course up to SWL, as the professional party, to provide suitable advice, irrespective of the amount of information it may have provided to Mr M, or the risk warnings it provided. And as with the investigator, I don’t think it did so in this instance. I note that SWL has said that its appointed representative could only recommend a DFM. This wasn’t, however, the only option available. Having reviewed Mr M’s circumstances and objectives, including his limited knowledge and experience of investments, his age, and the size of his pension pot, the appointed representative could, of course, and should, in my view, have recommended that Mr M remain in his existing pension arrangement.

As I’ve said above, Mr M may have quite understandably wanted to maximise the returns om his pension funds, but I don’t think that placing him into a higher charging arrangement, at his time of life, was the suitable course of action here. If anything, given the size of his pension funds, and that he would be unlikely to need the kind of (more expensive) active management associated with DFM, keeping costs to a minimum would in my view have been the suitable course of action. And if Mr M had wanted to explore higher risk options within the existing arrangement, he could have considered an internal fund switch.

I’ve further noted SWL’s comment that the investment strategy could have worked, had it not been for what it’s described as the wrongdoings of the DFM. And I understand the point being made. However, but for what I consider to have been the unnecessary and unsuitable recommendation given to Mr M to switch into the SIPP and invest via the DFM, Mr M would not have been exposed to the possibility of financial losses beyond those which might have been incurred through the day to day market movements within the fairly mainstream existing pension funds in his PPP.

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 have been incurred in the PPP would fall within a range of reasonably foreseeable outcomes when the advice was given. That these may have 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 M’s losses by effectively placing him in harm’s way in the first place.

And so it follows, for the reasons given, that I think the complaint should be upheld.

Putting things right

My aim is to put Mr M as closely into the position he would have been but for the unsuitable advice.

As with the investigator, my view is that Sterling Wealth Ltd should undertake a comparison, as at the date of this final decision, between the notional value of the existing PPP (taking into account any additional contributions or withdrawals which Mr M has made since the switch) and the actual value of the SIPP.

If any of the SIPP funds are illiquid, cannot be bought by Sterling Wealth Ltd, or cannot otherwise be attributed a value, then they should be judged to have nil value. Sterling Wealth Ltd may wish to enter it an agreement (at its own cost) with Mr M to pay it any future distributions he may receive from such investments.

If the notional value of the PPP would have been higher, then there is a loss. Sterling Wealth Ltd should in the first instance pay this to Mr M's SIPP, taking account of any charges and unused tax relief, but if this isn't possible or there are annual allowance or lifetime allowance protection issues, then the loss should be paid directly to Mr M, with the notional deduction outlined by the investigator to account for Mr M taking tax free cash at retirement, but being a basic rate taxpayer on his pension benefits – so an overall notional deduction of 15%.

If any of the investments are illiquid, Mr M may not be able to wind up the SIPP, which only exists due to the unsuitable advice. As such, Sterling Wealth Ltd should also pay Mr M five years' SIPP fees (using those which were charged for the last year) to allow enough time for the SIPP to be wound up.

Payment of any loss should be made within 28 days of Sterling Wealth Ltd being notified of Mr M's acceptance of this decision. If it isn't, interest at 8% simple pa should be added to the loss from the date of this decision to the date of settlement.

My final decision

For the reasons given, my final decision is that I uphold the complaint and direct Sterling Wealth Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 March 2023.

Philip Miller
Ombudsman