DRN-3744424

Financial Ombudsman Service

The complaint

Mrs C complains that Facet Investment Management Ltd changed the way her pension was invested, meaning she was exposed to a higher level of risk than was suitable for her circumstances.

What happened

Mrs C has been a client of Facet since 2010. Her husband has a similar relationship, and receives the same services from the firm. Mrs C's husband has also made a complaint about the way Facet managed his pension investments that I am dealing with separately. Given that the advice they received was the same, I make no apologies for the similarity in my two decisions.

When Mrs C was initially advised by Facet she held pension savings in two pension plans that were administered by separate providers. Facet provided Mrs C with a discretionary fund management ("DFM") service across her pension savings. In November 2015 Facet advised Mrs C that she should consolidate her pension savings into a new self-invested personal pension ("SIPP"). Mrs C accepted that advice, and hasn't made any complaint about the recommendation she received. At that time the information given to Mrs C indicated that she would pay a platform charge of up to 0.35% of her invested funds, average fund charges of 0.49%, and an advice charge to Facet of 0.94%.

In November 2016, Facet wrote to Mrs C explaining that it had launched its own funds, and that it proposed her pension investments would be transferred to these. The letter stated that, "very little will change other than access to institutional, rather than retail, class investments and the mechanics in which we update our investment models". It stated that in future Facet wouldn't be charging its DFM fee for any holdings within the funds as the fund itself would pay those charges. Facet told Mrs C that the change would be more cost efficient in terms of overall charges, with better potential returns and easier access to performance statistics and comparisons. It stated that if Mrs C did not wish the fund to be moved that she should make contact with the firm. This letter did not outline the cost of the proposed new investment nor give an indication of the fund Mrs C would be invested in or the types of holdings within the fund.

Mrs C's pension investments were transferred into what are now called the EF Facet Cautious Discretionary Portfolio Fund and the EF Facet Balanced Discretionary Portfolio Fund.

In October 2019, an investment held in each of the portfolios was suspended and ultimately defaulted, resulting in a significant reduction in the value of Mrs C's funds. Mrs C complained to Facet about the level of risk associated with the recommendation. Facet told Mrs C that the investments into which it had placed her pension savings were in line with the level of risk she had always been willing to take and that she had always been invested under a discretionary mandate. Unhappy with that response, Mrs C referred her complaint to us.

Mrs C's complaint has been assessed by one of our investigators. He thought that Facet didn't hold Mrs C's authority to make investment decisions on her SIPP via its DFM service. And he thought that the investments held within the chosen funds were unsuitable for the risk profile that applied to Mrs C. Later the investigator also noted that the charges Mrs C needed to pay following the transfer were much higher than she had been paying before. So he didn't think Facet had treated Mrs C fairly and asked the firm to pay Mrs C some compensation.

Facet didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs C accepts my decision it is legally binding on both parties.

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 deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs C and by Facet. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority ("FCA"). Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

Our investigator looked at whether Facet held the appropriate authority from Mrs C to provide its DFM service on her SIPP. I share the investigator's view that it appears the required authority is missing. But I think it was clear to Mrs C that this was the service that Facet was offering to her and she was content to both receive it, and pay the appropriate charges. I accept Facet's conclusion that the missing paperwork was merely an administrative oversight. And on balance I think that, had Facet asked Mrs C to complete the normal authority documents for its DFM service in relation to her SIPP, she would have done so. I don't therefore intend to make any further findings in relation to that part of the complaint.

I am not satisfied that Facet made Mrs C sufficiently aware of the changes that were made to her SIPP investments in November 2016. The letter she was sent informing her about the launch of the new funds failed to outline the impact of the changes either from a risk or charges perspective. I think that both those matters, had they been more clearly explained, would have led Mrs C to make a different decision. But at that time, Mrs C appears to have relied on the trust she had developed from her past relationship with the firm to accept Facet's recommendation, and the change of her investments via its DFM service.

Prior to the change, Mrs C's SIPP monies had been held in mainstream regulated investments. The new funds, in part, made use of investments of a non-standard nature, including those that might have less liquidity than would be appropriate for someone in Mrs C's position – a consumer who was already making use of her pension savings to support her day to day living costs. Whilst it is true that there is nothing preventing a DFM portfolio or fund using investments such as these, I think Mrs C's circumstances suggest they should only form a very small part of the portfolio due to the level of risk involved, particularly as they also included overseas investments and therefore included an element of currency risk.

Generally the FCA would consider that unregulated or high-risk investments, should only form extremely small proportions of a client's investments. I agree with this statement. And given that Mrs C was categorised as a cautious to moderate investor I don't think the levels of the investments of this nature found within the Facet funds would reasonably be thought appropriate for her particularly in view of the liquidity risks and the fact she was already making use of her retirement savings.

In the letter Facet sent to Mrs C about the change in investment approach in November 2016, it stated that one of the advantages to Mrs C would be lower charges, although it did not provide an indication of what the investment charges would be, or how they compared to the existing funds.

The fund fact sheets, from December 2016, for what are now called the EF Facet Cautious Discretionary Portfolio Fund and the EF Facet Balanced Discretionary Portfolio Fund that have been provided to us show the Total Expense Ratios (TER) to be 2.05% and 2.19% respectively. This is noted to include a 0.75% Annual Management Charge ("AMC"), that includes a 0.75% rebate. These charges are significantly higher than the charges noted for the investments recommended in November 2015.

I have considered whether it was beneficial to Mrs C to incur these additional costs and am not persuaded that it was. There is nothing to indicate that her circumstances had changed since November 2015, or that she was unhappy with the investments she held. Facet has not provided any real advantages to the additional cost, and in fact it misrepresented the position in relation to the charges by suggesting that the change would reduce Mrs C's charges. The information sent to Mrs C in 2016 when the funds were changed did not outline the charges, the fact the charges were higher than the existing investments, or provide any sort of comparison. And I believe that if Mrs C had been aware of the increase in charges, she would not have agreed to go ahead with the switch to the new investments.

So I don't think the switch to Facet's own investment funds was suitable for Mrs C. I'm therefore upholding her complaint and will direct Facet to put things right.

There is no doubt that the failure of some of the underlying investments, and the resulting suspension of the investment funds, has caused a great deal of inconvenience to Mrs C. For an extended period of time she was unable to access the normal income that she took from her pension savings. And she will have been distressed at the performance of the unsuitable investments. So I am directing Facet to additionally pay Mrs C £600 for her distress and inconvenience.

Putting things right

My aim is that Mrs C should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs C would have invested differently. It's not possible to say precisely what she would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mrs C's circumstances and objectives when she invested.

What must Facet do?

To compensate Mrs C fairly, Facet must:

- Compare the performance of Mrs C'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.

- Facet should add interest as set out below:

- Facet should pay into Mrs C'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 Facet is unable to pay the total amount into Mrs C's pension plan, it 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 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 Mrs C won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mrs C's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Mrs C is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs C 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 C £600 for the considerable distress, upset and worry caused to her by the significant fall in value of her investment over a sustained period of time, and the changes she needed to make to her income sources during the fund suspension.

Income tax may be payable on any interest paid. If Facet deducts income tax from the interest it should tell Mrs C how much has been taken off. Facet should give Mrs C a tax deduction certificate in respect of interest if Mrs C asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	**Status**	**Benchmark**	**From ("start date")**	**To ("end date")**	**Additional interest**
SIPP	Some liquid/some illiquid	FTSE UK Private Investors Income Total Return Index	Date of transfer to Facet investment funds	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Mrs C's acceptance)

Actual value

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

It may be difficult to find the actual value of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Facet should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Facet pays should be included in the actual value before compensation is calculated.

If Facet is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the actual value. Facet may require that Mrs C provides an undertaking to pay Facet any amount she may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Facet will need to meet any costs in drawing up the undertaking.

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 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 Facet 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:

- Mrs C 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's 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 Mrs C's circumstances and risk attitude

My final decision

I uphold the complaint. Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Facet Investment Management Ltd should provide details of its calculation to Mrs C in a clear, simple format.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Facet Investment Management Ltd should pay Mrs C the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Facet Investment Management Ltd pays Mrs C the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Facet Investment Management Ltd. It is unlikely that Mrs C can accept my decision and go to court to ask for the balance. Mrs C may want to consider getting independent legal advice before deciding whether to accept this decision.

If Facet Investment Management Ltd does not pay the recommended amount, then any portfolio currently illiquid should be retained by Mrs C. This is until any future benefit that she may receive from the portfolio together with the compensation paid by Facet Investment Management Ltd (excluding any interest) equates to the full fair compensation as set out above.

Facet Investment Management Ltd may request an undertaking from Mrs C that either she repays to Facet Investment Management Ltd any amount Mrs C may receive from the portfolio thereafter or if possible, transfers the portfolio to Facet at that point.

Mrs C should be aware that any such amount would be paid into her pension plan so she may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 5 April 2023.

Paul Reilly
Ombudsman