DRN-3766691

Financial Ombudsman Service

The complaint

Mrs E complains that FACET INVESTMENT MANAGEMENT LTD (FACET), in its role as her discretionary fund manager (DFM), invested the funds within her personal pension inappropriately.

In this complaint Mrs E is represented by a professional third-party, but for clarity I'll refer to all communications as being made by Mrs E herself.

What happened

Mrs E was a longstanding client of FACET who managed her pension funds. On 18 August 2013 Mrs E signed up to FACET's DFM service and her attitude to investment risk (ATR) was assessed and found to be Cautious/Moderate. Her pension funds were invested in a portfolio held by a third-party business.

In 2016 FACET wrote to Mrs E informing her that it had opened investment portfolios of its own and intended to move her pension funds into these portfolios, invested in funds suitable for her ATR. FACET advised Mrs E that if she didn't wish to have her investments moved in this way, or had any questions she should contact it. She made no contact, so her funds were invested in the FACET Cautious and Balanced Discretionary Portfolios. These Portfolios were classed as Non-UCITS Retail Schemes (NURS). The funds within these portfolios were managed by a third-party Fund Manager, who I'll refer to in this decision as W.

In September 2019 one of the underlying investments in the portfolio was re-valued by the Fund Manager W, and due to funding issues, the funds were suspended, meaning no changes to the investment could be made.

On 23 September 2021 Mrs E complained to FACET. She said, in summary:

- She was not adequately informed of the intentions regarding the move to the FACET Balanced and Cautious funds;
- She wasn't adequately informed of the type of investment her funds were being placed into;
- She questioned the ongoing suitability of the portfolio;
- The value of her pension had suffered a loss as a result of errors made by FACET, and she should be compensated for this loss by making a comparison to the growth of a benchmark (IA Mixed Investment 20-60% shares).

FACET didn't uphold her complaint. It said it believed it acted responsibly and fairly towards Mrs E as her DFM and the funds selected were appropriate for her and in line with her ATR.

Mrs E wasn't happy with this response so complained to our service. She thought FACET should compensate her for the capital lost from her pension plan, lost investment growth and for the distress the matter has caused her.

But having considered everything, our Investigator didn't think Mrs E's complaint should be upheld. He thought, in summary, that the investments selected by FACET when the portfolio was moved in 2016 were suitable for her and matched her ATR. And while he empathised that Mrs E had received most, but not all of her money back, this asset sale was being managed by W, and FACET had no control over this.

Mrs E didn't agree with the Investigators view. She said that the FE Risk Score chart relating to her funds showed a spike from about 35 (Cautious/Moderate) to over 70 (High) in 2019. This, Mrs E asserted, showed her portfolio was not being managed within her risk profile.

She went on to say, in summary:

- Constructing a portfolio which requires daily liquidity with NURS rather than UCITS was unsuitable;
- When the portfolio was changed in 2016, it moved from retail UCITS to NURS and unregulated investments, so she was not placed into a fully informed position to understand the consequences of the move;
- Had she been invested in underlying retail investments suitable for her ATR, her fund wouldn't have had liquidity problems.

But having considered what Mrs E had said, and having received further information from FACET regarding the assets held within the two funds, our Investigator didn't change his mind. He thought that the balanced and cautious FACET funds matched Mrs E's ATR, despite the spike in the FE Risk Score chart in 2019. He could see this had been caused by W's re-valuation of one of the underlying investments and the fund's suspension, and this had been out of FACET's control. Our Investigator also thought, in summary:

- the NURS was a collective investment scheme and risk rated in the same way UCITS is;
- no derivatives or borrowing was used;
- the underlying investment holdings within the NURS between 2016 and 2020, all of which were regulated, were suitable and matched her ATR.

No agreement could be reached, so the matter has come to me for a final decision.

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 agree with the view of the Investigator that Mrs E's complaint shouldn't be upheld, for broadly the same reasons. I'll explain.

I think it would be helpful to explain some of the investment products mentioned above.

UCITS – undertakings for collective investments in transferable securities. This is a European Union (EU) regulatory framework that allows collective investment schemes to be marketed and sold to investors throughout the world. Funds regulated under UCITS carry particular regulatory and investor protection requirements, which can make them attractive to investors.

NURS – Non-UCITS Retail Schemes. Considered more complex than UCITS as the assets allowed to be held within the fund may be harder to price and may be more illiquid.

DFM – Discretionary Fund Manager. This is where the consumer gives the business the power to make investment decisions without having to ask the consumer's permission.

It is important to note that this was a DFM agreement. FACET was under no obligation to ask for Mrs E's approval or permission when it came to her investments. So the change made in 2016, if it didn't mean a change in the overall risk her investments were exposed to, did not require Mrs E's agreement. However, FACET was required to ensure it complied with the Financial Conduct Authority (FCA) handbook, COBS 2.1.1R, part of the Conduct of Business rules, which required a regulated business such as FACET to "*act honestly, fairly and professionally in accordance with the best interests of its client*".

The crux of Mrs E's complaint is that the FACET portfolios into which her pension funds were placed in 2016 were inappropriate, and she has stressed that she should have been in UCITS and not NURS, given the increased risks of illiquidity associated with the latter. Mrs E maintains that had they been placed in a more appropriate portfolio her pension funds would have grown in value.

So I need to decide whether the portfolios selected by FACET into which it invested Mrs E's pension fund were suitable.

Whether a UCITS or NURS, the investment portfolio needs to be risk-rated, and this risk rating should match the ATR of the consumer. In Mrs E's case, in 2013 when her ATR was assessed, it showed she was Cautious/Moderate. She was 48 when she signed the DFM agreement and 51 when her funds were transferred into the FACET portfolios, so as she was some way from her normal retirement date the investment horizon needed to be relatively long.

I've looked at the fund fact sheets for both the Cautious and Balanced Discretionary Portfolios which Mrs E's pension funds were invested in from 2016 onwards. These are produced by the fund managers and give an indication of the level of risk the fund represents to the consumer. These have been rated 3/7 and 4/7 respectively. Both portfolios were also regarded as long-term, which was upwards of three to five years. So, when taken together I'm satisfied that they broadly match Mrs E's ATR and investment objective.

It would be helpful here to add some commentary to the cautious/Moderate ATR that Mrs E was recorded as having in 2013. This was described by FACET in a risk document dated 18 August 2013. Although I've not seen Mrs E's signature on this document, it has not been disputed that this is an accurate record of her ATR at the time:

> *You are looking for an investment where the return over the long term is expected to be an improvement on that available from high street deposit accounts.*
>
> *You are willing to take some risk in order to seek some growth potential. You understand that this will increase the amount by which your investment will fall and rise in value. However, under normal circumstances, you would feel uncomfortable if your investments fell and rose sharply in value. You could get back less than you invest.*
>
> *Typically, your portfolio would be primarily invested in Cash and Fixed Interest, some in Property and a lower amount in Equities.*

It described the benchmark allocations for **Cautious Managed** as follows:

> *Investing in a range of assets with the maximum equity exposure restricted to 60% and with at least 30% invested in fixed interest and cash. There is no specific requirement to hold a minimum % of non UK equity within the equity limits. Assets must be at least 50% in Sterling/Euro.*

So for me to accept that the portfolios selected by FACET matched Mrs E's ATR I'd expect them to follow the above. And having reviewed the information supplied about the portfolios, I'm satisfied that they do. There is a range of investments between equities (and this is within the necessary proportion) income investments and cash investments.

Whilst accepting that both were NURS, I'm satisfied that the FACET Cautious, and FACET Balanced discretionary portfolios were suitable for Mrs E when her funds were transferred in 2016.

But FACET, as Mrs E's advisors and DFM had to ensure that the portfolios remained within her risk tolerance. And Mrs E has shown that the risk ratings rose sharply in 2019 to well in excess of her ATR. FACET has explained that the spike was caused by the Fund Manager W re-valuing one of the underlying investments, and the funds being suspended. Having looked at the timeline of events and reviewed FACET's explanation of this I find it persuasive. I can't see that the risk rating of either fund had changed significantly up until that point so remained within her risk tolerance. And on balance I'm satisfied neither the problems with the valuation of one of the assets nor the funds' suspension, was reasonably foreseeable by FACET. And as this was under the control of W, it wouldn't be fair or reasonable to hold FACET responsible for this.

It's important to note that I consider that there's sometimes more than one product or approach that might meet the consumer's circumstances and objectives. Another adviser might take a different approach, but that doesn't mean the portfolios selected in 2016 by FACET were unsuitable.

Taking everything into account, I think the switch to the FACET Cautious and FACET Balanced Discretionary portfolios was broadly suitable for Mrs E. I appreciate she now has concerns with the illiquidity of many of the assets within the portfolios, and the resulting difficulty she's had in recovering all of her initial investment, but I cannot use the benefit of hindsight in coming to my decision. The issues she's experienced with the investments subsequently doesn't mean the switch in 2016 was unsuitable.

For all of the reasons above I'm satisfied that it would not be fair or reasonable to hold FACET responsible for the lack of investment growth within Mrs E's pension fund, so I do not uphold her complaint.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 23 February 2023.

Chris Riggs
Ombudsman