DRN-3814898

The complaint

Mr T has complained that Neovision Wealth Management Limited advised him to invest in unsuitable investments within his self invested personal pension (SIPP).

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

By the time of the disputed advice in December 2016, Mr T had already transferred pension funds to his SIPP and taken £20,000 tax free cash when his details were passed to Neovision Wealth Management Limited to discuss his investment needs.

Following an initial "fact finding" exercise, Neovision confirmed its recommendations to Mr T on 22 February 2017.

His personal situation was recorded as follows:

- He was 55 and single.
- He was employed, earning £1,200 net a month.
- He was in good health.

His primary objective was "planning a secure retirement".

Mr T's "key drivers" for the review of his pension were recorded as follows:

- Mr T wanted investment advice on his existing SIPP as it was invested in cash.
- He wanted a fund with a property bias and invested in line with his risk profile.

Mr T's pension had a value of around £110,700.

Mr T's risk profile was agreed as him being a "capital growth investor", and this was described as follows:

"The capital growth Investor is willing to accept high risk and chance of loss in order to achieve higher returns on his or her investment. Significant losses over an extended period may prompt the capital growth Investor to shift to a less risky investment."

Mr T's recorded investment experience extended to his SIPP, and it was also confirmed on a review form that he had *"about as much understanding/ knowledge as the next person"*.

Neovision recommended that Mr T invest with Reyker Securities Plc discretionary fund manager (DFM), and that he invest in the Real Assets Balanced Portfolio which held investments in the following sectors and percentages:

- Property Related - 42.8%
- Fixed Income - 11.9%
- Alternative Income - 9.5%
- Alternative Growth - 11.9%
- Other Real Asset - 7.1%
- Equity Related - 11.9%
- Cash - 5.0%

No information with regard to the specific holdings, or funds used, within each investment sector was recorded on the fund factsheet or in the suitability report.

Fund charges were disclosed to Mr T. The advising firm would be taking an initial (contingent) fee of £1,106.28 and 0.75% pa for on-going servicing. Fund charges were disclosed as an annual management charge levied by the DFM of 0.9% (or around £1,000 pa) and the existing SIPP charge of £150 pa.

Mr T then complained to Neovision in February 2022, saying that the investment advice was unsuitable.

Neovision responded in June 2022, stating its view that the advice to invest had been suitable. It said that Mr T had been unhappy with the performance of his SIPP funds, as they'd been invested in cash. He was keen, it said, to invest in a pension fund with a property bias.

Mr T's pension funds had been invested in line with his risk tolerance and he was provided with a very comprehensive suitability report which detailed his circumstances and objectives, the costs, the risks involved, the advantages and disadvantages of the switch from cash, and information on how his funds would be invested with Reyker Securities, it added.

Reyker Securities then entered special administration, it said, but at the time of the investment advice, it was held in high regard and had all the necessary authorisations with the regulator and HMRC. As such, the problems encountered couldn't have been foreseen and Neovision couldn't be held responsible for Mr T's losses. Any complaint about investment losses should be directed at Reyker Securities, it concluded, and it encouraged Mr T to engage with the special administration process to try to recover his pension funds.

Dissatisfied with the response, Mr T referred his complaint to this service.

The investigator who assessed the matter considered that it should be upheld, saying the following in summary:

- He agreed that, as Mr T's pension funds were held in cash, and as he had another ten years until his retirement, he needed investment advice so that his pension funds didn't lose money in real terms against inflation.

- Mr T was recorded as wanting capital growth, but although it was also recorded that he sought a bias towards property investment, Mr T had said that this wasn't the case and this was what Neovision had said he should invest in.

- Given the tension between these accounts, the investigator considered the evidence on balance, and noted that Mr T hadn't invested in property before, nor was he an experienced investor. There was no evidential rationale which supported Mr T's apparent desire to invest in property, and the investigator didn't think it was likely that this was an investment route which Mr T had considered before speaking with Neovision.

- He also noted that Mr T's primary objective was to plan a secure retirement, and he therefore had concerns over Mr T's recorded risk profile, the recommended DFM and the ultimate investment recommendation.

- In support of this, he said Mr T had three sources of pension provision – his SIPP, a pension already in payment, providing around £1,200 pa, and a separate employer based scheme (the value of which hadn't been recorded, but was presumed to be fairly insignificant given the small amount of time he'd been with the employer and his salary).

- His SIPP would therefore have formed a significant part of his pension provision, with ten years left until his retirement, and without making further contributions to it.

- But as the answers provided in the risk profiling exercise were inconsistent with someone who was planning for security in retirement, he would have expected there to be detailed notes to demonstrate that such issues were discussed and that Mr T understood them.

- Although Neovision had noted that the effect of any loss in the value of his SIPP wouldn't have impacted his standard of living or objectives, the investigator disagreed, as the SIPP was a substantial element of Mr T's pension provision and he didn't have the time or resources to make up losses. As such, his view was that Mr T's capacity for loss was low.

- DFM wasn't suitable for everyone, the investigator added. The FCA has been clear that businesses such as Neovision should carefully consider when it was appropriate to recommend one, including the associated costs and the size of funds under management, as well as the investor's knowledge and experience. It was also important that the client be provided with a clear explanation regarding the benefits and costs of that type of arrangement.

- But there was no detail or notes as to why DFM was suitable for Mr T, and Mr T hadn't engaged the services of a DFM before.

- Further, the recommended type of investment had only existed for a short time, and so had an untested history. It had since entered special administration, with Mr T's investments now being illiquid.

- The investigator's view was that Mr T's capacity for loss had been incorrectly recorded, and that he could only afford to take a small level of risk with his pension funds.

- Mr T neither wanted, nor needed, the DFM, and the suitability report didn't explain why it might have been suitable for him.

- Mr T also wasn't provided with an illustration which showed the charges associated with the recommended investment strategy and how they might affect his pension. The only ones which existed related to the existing cash investment.

- As a retail investor with limited experience, the Reyker Securities DFM arrangement, and the associated portfolio, was unsuitable for Mr T.

- Although Neovision had said that the reason Mr T had lost money was due to Reyker Securities' investment decisions, the investigator disagreed, saying that the reason Mr T had invested in the DFM was the advice given by Neovision.

The investigator recommended that Neovision undertake a comparison between the actual value of Mr T's pension funds which had been invested in the DFM with a notional value on the basis that Mr T had instead been invested according to one of our benchmark indices – the FTSE WMA Stock Market Income Total Return index - which reflected Mr T's desire to plan for a secure retirement and the associated suitable lower risk rating.

If this demonstrated a loss, this should in the first instance be paid into Mr T's SIPP, but if this wasn't possible, it should be paid to Mr T directly with a 15% notional deduction for the likely basic rate income tax which Mr T would pay on the benefits in retirement (after taking 25% tax free cash).

The investigator further said that Neovision should pay Mr T £200 in respect of the inconvenience and stress of thinking that his pension fund had been lost.

Neither party has made any further submissions in response to the investigator's view on the matter.

However, as agreement hasn't been reached on the outcome, the complaint has been referred to me to 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.

I've set out above a detailed summary of the investigator's findings, predominantly because, having reviewed the available evidence, I've reached many of the same conclusions and for similar reasons.

Having reviewed the fact find and the suitability report, I think it's fair to say that Mr T exhibited the kind of characteristics, attributes and investment views (as expressed within the risk profiling exercise) which might typically be associated with a "balanced" investor and I don't think that a balanced, medium risk investment strategy would necessarily have been unsuitable for him.

I note that Mr T was receiving a fairly modest income, albeit one which seemed to amply meet his expenditure, leaving some disposable income each month. Mr T also said that he had some savings, although it's unclear as to whether this was derived of him already having accessed tax free cash from his pension. And whilst I agree with the investigator that the available evidence doesn't seem to support the position that Mr T had much experience or knowledge of investing, I don't think this would necessarily rule out, or be inconsistent with, a balanced, medium risk investment where the prospective timeframe is ten years or more.

As set out by the investigator, it's difficult to know the origin of the recorded keenness for a property bias in the pension funds, and I don't think it's beyond the realm of possibility that Mr T may have had some knowledge of the property market and so perhaps had an interest in this.

Nevertheless, it was of course for Neovision to determine what would constitute a suitable recommendation for Mr T, taking into account his circumstances and objectives.

Mr T's primary objective was for security in retirement, and again I don't think this is a particularly unusual aim, especially for someone of Mr T's age and assets/means. Nor do I think this would necessarily dictate the need for a very low risk profile – rather, my view is that it's possible for someone to plan for security in retirement by taking some investment risk in the run up to that retirement.

I think the investigator was right to conclude that Mr T had limited capacity for loss in his pension funds, and his response to questions around this in the risk profiling exercise – along the lines of it not having too great an impact - seemed to relate to his current position, rather than how this might affect him in the future.

But Mr T did indicate that he was prepared to take some financial risk for the sake of greater rewards, and I don't think the risk profiling questions were worded in a away which might have been misleading, or would otherwise have been unclear to Mr T.

So, as I've said above, I don't think a balanced, medium risk profile would, on the face of it, have been unsuitable for Mr T, or would have been unsuited to his overall financial position or primary objective of financial security in retirement. Given Mr T's overall financial position and limited capacity for financial loss, I think that suitable advice would have been to moderate the risk so that the investment strategy represented perhaps a more cautious-medium approach. And on that particular point, I don't think the record of Mr T being willing to accept high risks and losses for the sake of higher returns would comfortably co-exist with his actual financial position – and if this was what had been conveyed by Mr T himself, I think it was up to Neovision to challenge this and record, if necessary, why Mr T remained of that view.

But overall, I do think it's more likely than not that Mr T was accepting of some financial risk to maximise his pension savings.

I've then thought carefully about the way in which Neovision recommended that Mr T implement that kind of balanced, medium risk investment strategy.

And this is where I think the advice was lacking. As with the investigator, it's unclear to me as to why Mr T either needed, or Neovision concluded, that he was a suitable candidate for DFM, with the additional costs that this would incur. Mr T's SIPP fund was fairly modest, and although he had (largely unspecified) access to other pension arrangements, which would include the state pension by age 66, I think a fair and reasonable conclusion here would be that he would have benefited most from a low charging structure and relatively straightforward investment strategy – and it isn't particularly difficult to source or establish a balanced, medium risk fund on a low cost basis for someone seeking that kind of investment approach.

That's not to say that my view is that individuals with modest pension funds shouldn't benefit from the more active management which might be associated with DFM, but I think the cost of that needs to be weighed against the potential benefit, along with what the individual really understood about the type of managed investment strategy into which they were being placed.

I don't think that, other than saying that the costs would be higher under DFM, the evidence supports the position that a proper cost/benefit analysis of entering DFM, was presented to Mr T, or that he was made sufficiently aware of the lower cost option, and the effect that this might have on his pension fund accrual over time, of not investing via DFM.

And I do think it's fair to say that, in general terms, and subject to individual circumstances, higher costing DFM would tend to be more suitably applied to individuals with more significant pension funds – again for the simple reason that when the pension fund is relatively modest, the priority would reasonably in my view be to provide the best potential for growth, whilst adhering to the stated risk strategy. And for Mr T, this could have been achieved by investment in more mainstream, lower cost funds.

Further, as with the investigator, I do also have concerns about the relatively untested nature of the portfolio in which Mr T was advised to invest. I take Neovision's point about Reyker Securities' standing at the time of the advice, but even if it could said that it had a longstanding pedigree, the same couldn't be said of the portfolio recommended to Mr T, having only been established, according to the fact sheet, very recently.

But moreover, as I've said above, Mr T simply didn't need to pay the additional costs of investing through the DFM into that portfolio, and would more likely than not have been better off redirecting those additional costs into accruing funds for his retirement. Put simply, I don't think such unnecessary costs were consistent with his objective of planning for a secure retirement – rather, my view is that, amounting as they would to some £1,000 pa at the time of the advice, they would have been something of an hindrance.

I've further noted what Neovision has said about the unforeseeability of Reyker Securities entering special administration, and I agree that there may have been no indication of this at the time of the advice, but it I think I can fairly and reasonably conclude that it did nevertheless put Mr T "in harm's way" by recommending an unsuitable investment strategy.

And so, whilst I acknowledge what essentially amounts to an argument of a break in the chain of causation put forward by Neovision here, my view is that, but for its unsuitable recommendation to invest with a DFM and into the particular balanced portfolio, Mr T would instead have been invested in something more mainstream – a widely available, and subscribed to, balanced managed fund of sorts - and without the associated costs of DFM. And so he wouldn't then have been exposed to the events which then transpired with Reyker Securities.

Lastly, I've noted what Neovision has said about Mr T's option of pursing recovery of his pension assets through the measures provided for by the special administration. But Mr T is entitled to claim either by that route, or as he has done here, against the business which he considers gave him unsuitable advice.

Putting things right

For all the reasons given above, therefore, on a fair and reasonable assessment of the complaint, my view is that it should be upheld.

My aim is to place Mr T as closely as possible into the position he would now be in, but for Neovision's advice.

Neovision Wealth Management Limited should therefore compare, as at the date of this decision, the actual value of the investment into the DFM portfolio, with the notional value of the same sum, had it been invested in the FTSE WMA Stock Market Income Total Return index. As set out by the investigator, this reflects an individual who was prepared to take some risk with his pension funds, which I think is consistent with what I've said above about Mr T's quite plausible "medium" attitude to risk, but might also reasonably be representative of Mr T's quite limited capacity for loss and suitably advised mitigation of risk in that regard.

If, as at the date of this decision, the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So, the actual value should be assumed to be nil to arrive at fair compensation. Neovision Wealth

Management Limited should take ownership of the illiquid portfolio by paying a commercial value acceptable to the pension provider.

If Neovision Wealth Management Limited is unable to purchase the portfolio, the actual value should be assumed to be nil for the purpose of calculation. Neovision Wealth Management Limited may wish to require that Mr T provides an undertaking to pay it any amount he may receive from the portfolio in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Neovision Wealth Management Limited will need to meet any costs in drawing up the undertaking.

If there is a loss to Mr T (i.e. the notional value is higher than the actual value), Neovision Wealth Management Limited should in the first instance pay into Mr T's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Neovision is unable to pay the compensation into Mr T'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 compensation 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 T won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr T's actual or expected marginal rate of tax at his selected retirement age. As with the investigator, I think it's reasonable to assume that Mr T is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr T 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%.

Neovision Wealth Management Limited should pay any compensation within 28 days of it being notified of Mr T's acceptance of this decision. If it doesn't, simple interest at 8% pa should be added to the compensation amount from the date of this decision to the date of settlement.

As noted above, the investigator also recommended that Neovision Wealth Management Limited pay Mr T an additional £200 in respect of the inconvenience and stress caused by him thinking that much of his pension provision had been lost. I'm inclined to agree – I think that this will have caused Mr T no insignificant amount of concern and distress. Again, it's important to note that I recognise that the difficulties faced by Reyker Securities are separate from Neovision – but as I've said above, my view is that Mr T wouldn't have been exposed to the position he then found himself in, had he been suitably advised.

As such, I agree that the further payment of £200 is warranted here.

My final decision

My final decision is that I uphold the complaint and direct Neovision Wealth Management Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 June 2023.

Philip Miller
Ombudsman