DRN-3837578

The complaint

I set out the background to this complaint in my earlier provisional decision, for clarity, I repeat it here.

Miss A complains that she was given advice by Abbey Financial Services (NI) Ltd (Abbey) to switch her personal pension (PP) plans with Aviva and Royal London, to a Self-Invested Personal Pension (SIPP) with Intelligent Money (IM). She states she was then subsequently advised to move the monies again to another SIPP with YorSipp Ltd.

Miss A believes the advice was unsuitable and she's lost out financially because of Abbey and, would like to be put back in the same position as if the transfers had not taken place.

Miss A is being represented by a third party, but for ease, I'll refer to all representations as being made by Miss A.

What happened

In October 2017, Miss A met with an Adviser from Abbey to review her retirement planning needs.

At the time, she held PPs with Friends Provident (Aviva) and Royal London totalling £247,000. Abbey subsequently advised she move those funds into a SIPP with IM. The Adviser recommended a discretionary fund management (DFM) portfolio that would be separately managed by a firm called Horizon. At the same time, Abbey would then provide an ongoing advice service to her.

After the monies had been transferred to IM, Abbey decided against using Horizon to manage Miss A's funds. They said their due diligence at the time highlighted some changes to key personnel which they felt, impacted their confidence in using them.

So, in January 2018, Abbey wrote to Miss A explaining why they didn't think it was a good idea to proceed with Horizon anymore and put forward a new, alternative solution. Abbey recommended Miss A move her consolidated funds to a new provider, YorSipp. This time, they decided against using an external discretionary fund manager and recommended she invest in a portfolio constructed by themselves.

Miss A agreed to the revisions on 7 January 2018. The transfer took place shortly thereafter and, on 24 April 2018, the Adviser contacted Miss A to let her know her funds had been successfully moved across to YorSipp. Until this point, Miss A's monies had been sat in cash. Abbey said they'd held off investing the monies because of the market volatility.

Abbey then asked Miss A for approval to move her monies into the portfolio they'd constructed. They said by this stage, the markets, in their view, had settled to the point where it appeared to be appropriate to invest.

Miss A explained to Abbey that she was happy for them to proceed with the investment. She told them however, that her health had since deteriorated. She went on to say that she'd applied to access her pension early and take the 25% tax free lump sum. She said she needed the funds to make adaptations to her home.

In October 2020, Miss A's representative complained to Abbey on her behalf. They said they didn't believe transferring her two PPs was in her best interest. They also said, in summary:

- They didn't believe Abbey had taken full account of Miss A's wider circumstances and were negligent in the advice they'd provided. They felt the plan arranged was high risk and not suitable for her. They went on to say that, given she wasn't working and had limited finances, she didn't have the ability to take risks at the level Abbey had proposed.

- They didn't believe it was appropriate to include non-standard, high risk investments.

Abbey issued its final response letter on 22 March 2021, declining her complaint. They stated they were satisfied the recommendations they made were suitable for her. They also went on to say, in summary:

- They didn't agree with Miss A's assertion that her attitude to risk, capacity for loss and wider financial circumstances hadn't been thoroughly explored before making the recommendation.

- They said they took her health in to account when formulating their solution. Abbey said it was themselves who actually helped organize her access to the pension lump sum she needed, to make alterations to her home.

- They didn't agree her ATR should've been categorised as 'low'. They felt their 'balanced' assessment was accurate. They went on to say the risks in the new plan were lower than those of her existing plans.

- They didn't believe she'd been financially disadvantaged as the charges on the SIPPs she'd moved to, were low in comparison to where she'd previously invested.

- Abbey said moving Miss A to the second SIPP was done so purely with her best interests in mind. It was done to lower chargers further. They explained that Miss A had actually made a profit as a consequence of their advice.

Dissatisfied, Miss A brought her complaint to this service on 23 April 2021.

Abbey told this service they believed Miss A's case was without merit and reiterated the points they made in their complaint resolution letter. They also said, in summary:

- Miss A's health was 'front and center' in their advice to her. By undertaking the switch, it enabled her to access her pension monies early and ensure any remaining monies were left to her sister on her death.

- They believe Miss A was better off by around £6,200 as a consequence of the actions they took for her.

- They also made the point that despite what Miss A's representatives had suggested, they had not made any recommendation to invest in any non-standard or unregulated investments.

The complaint was considered by one of our investigators. She concluded that Abbey hadn't treated Miss A fairly. She wasn't satisfied the two transfers were in Miss A's best interests. She also said, in summary:

- She wasn't convinced the replacement plans were cheaper as the information within the suitability report wasn't clear. She felt that once the dealing charges were combined with the wrapper charges and initial cost of advice fee, Miss A would be worse off.

- There appeared to be no comparison of the previous plan's performance against the new, proposed investment and what the new funds would need to achieve to match or better her existing plans.

- There didn't appear to be any evidence Miss A's circumstances warranted having her monies managed on an individual, bespoke basis, along with the extra cost that entailed.

- There was limited evidence she had the capacity to accept risk given the fact she was on a low income derided purely from benefits.

Abbey however, disagreed with our investigator's findings. They said they stood by their original advice. They also said, in summary, the following:

- They didn't believe Miss A's representatives had raised the use of a DFM as a concern and as such, didn't believe this service should've focused on that as a reason to uphold her complaint.

- They explained Horizon, the original DFM provider they were planning to use, had since gone out of business so it validated their due diligence. They explained the switch from IM to YorSipp, that was done at no expense to Miss A, wasn't given enough focus by the investigator.

- They didn't agree with the investigator's findings on fees. They said it actually saved her £189 per annum. They felt our investigator had only focused on the costs of a strategy that was never implemented rather than the specifics of her complaint.

Our investigator was not persuaded to change her view. She felt she'd already addressed the points Abbey had raised. She also explained to Abbey that this service, when considering consumer complaints will assess the crux of what the customer's concerns are and then, look at their full circumstances rather than focusing purely on the way the complaint has been framed with us. That means consumers don't miss out on a fair outcome because of the way their complaint has been explained to us.

Abbey asked the investigator to pass the case to an Ombudsman to review that outcome.

I then issued a provisional decision to both parties explaining that I planned to uphold the complaint and invited any further comments. After receiving my provisional decision, Miss A contacted this service to confirm she accepted the decision and had no further comment to make.

Abbey responded and explained they always had Miss A's best interests at heart. They said they'd provided "*Miss A great support, especially during the period of uncertainty due to Covid*".

They also said that as Miss A had since moved to a different adviser, they requested the redress methodology that I'd originally set out be amended to take account of the fact the pension wasn't under their control after that date.

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 my provisional decision, I explained that when I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch? Each case is different, but I’d expect the switch to be in Miss A’s best interests to make the advice suitable. And in this regard, I’d expect to see a comparison was made between her former pensions and the recommended new arrangement. In summary, what’s at the heart of this complaint is, whether it was right for Abbey to move Miss A from her existing PPs, into a new SIPP with a DFM. I don’t think it was, and I’ll explain why below.

Miss A was 52 years old and single when she initially discussed her retirement planning needs with Abbey. The fact-find (FF) they completed at the time, indicated she wasn’t working due to suffering from Multiple Sclerosis (MS) and her health was recorded as ‘*fair to poor’*. It also stated she was reliant on benefit income of £1,268 per month and had outgoings of £600 per month. Aside from her pension savings and home, she had no other assets or debts. Her desired retirement age was noted as 60.

Abbey provided Miss A with a suitability report (SR) that set out the main themes of their discussions along with their recommendation. Her main objectives were noted in the SR as:

- *You have stated you haven’t been happy with the performance of your Friends Life and Royal London pensions and would like to consolidate these in to one.*
- *I note that a major factor in reviewing your pension was to obtain greater flexibility and growth. You also wanted to ensure you family inherits your pension upon death.*
- *You stated you would like to take your tax-free cash as soon as you are 55 and intend to use this to cover household costs for the immediate future.*

Abbey said Miss A wanted to switch away from her existing providers because she was concerned about the performance of the plans. Within the FF Abbey completed, when asked ‘*How have they performed*?’, the Adviser noted the following comment ‘*unsure really but generally believe not great’*. The two SRs issued to Miss A are both silent on how those plans have actually performed compared to either their respective benchmark or, how the Adviser envisages them performing against the new proposed solution. It also appears to be silent around what they’re currently invested in or, the underlying benefits they provide. When Advisers are undertaking replacement business and poor past performance is a key driver in the decision-making process, I’d expect to see comparisons of what they’ve actually delivered so consumers are presented with clear objective facts and any potential misunderstandings are clarified. In this instance, it’s clear Miss A didn’t know how her policies had performed. Had she known, whilst we can’t say for certain, this may have impacted her decision making.

In respect of her secondary objective, that of greater flexibility; the SR isn’t particularly clear what’s meant by ‘flexibility’ nor, what the new SIPP would deliver over the existing PPs other than greater investment choice and the ability to utilise the services of a DFM. In addition her PPs would allow her access to the tax free cash at age 55 too.

I said in my provisional decision that I didn't believe any of the objectives provided a compelling enough catalyst when considering Miss A's wider financial circumstances to switch her existing pension to a new SIPP with a DFM arrangement. Whilst Miss A, when educated about the differences between DFM and a passive or managed fund, may have been attracted to the potential benefits of having her money managed in a bespoke style, that doesn't necessarily mean it was the right thing for her. Just because a client is keen and wishes to act, doesn't necessarily mean it's in their best interest to do so and in such circumstances, it's incumbent on the adviser to help guide the consumer down the route that's right for them.

The file appears to be silent on Miss A's level of experience. Outside of the two PPs, the FF suggests she holds nothing else, so what knowledge she has of the market appears to have been gained from holding her former pension plans. The FF is also silent on whether Miss A has previously held or made any other active decisions to buy and sell equity-based investments of her own accord. I think if most inexperienced customers were asked if they'd like better returns on their investment, most would likely say yes.

Abbey have explained they used generic industry software to help determine Miss A's ATR. They've determined she's a '*6 on a scale of 1-10 – Balanced'*. They define a Balanced investor as follows:

The Balanced Investor is somewhat concerned with short-term losses and may shift to a more stable option in the event of significant losses. The safeties of investment and return are typically of equal importance to the Balanced Investor. The following criteria may help to ensure that such investors have the best chance of achieving these goals: The portfolio should have at least an approximately 80 percent chance of achieving a non-negative return over a five-year holding period.

When discussing her pension objectives and capturing those within the FF, when asked by Abbey, *'How important is security of capital*?', Miss A stated, '*yes very important'*. Without any additional context added to the file, the proposed solution is at odds with the Balanced ATR statement.

In my provisional decision, I went on to say that whilst I had no reason to doubt the accuracy of the ATR output that's noted, it's incumbent on advisers to ensure that information is considered in light of other facts they know about the consumers wider personal circumstances. So, whilst it's important Abbey establish the level of risk Miss A wanted to take, I don't believe they've considered that robustly enough against the risk she is *able* to take in light of her wider financial circumstances. That's why the capacity for loss (CFL) assessment is so important.

The overriding aim of the CFL discussion is to understand what impact, if any, a fall in the value of the investments would have on the customer's standard of living. In the SR that Abbey sent to Miss A, they determined she was able to bear a loss of around 15%. Their CFL assessment within the SR stated:

You confirmed that you could afford to lose around 15% of your capital, which could result in your income could shrinking by 15% and this would not affect your lifestyle, however if your investment was to fall by more than this level then it's likely you would need to revaluate your financial situation. Your capacity for loss is determined by the resources available, the consequences of a loss of capital or income, and the ability to replace any losses.

Based on a balance of probabilities, aside from waiting for any losses to recover, you do have the ability to absorb a negative financial outcome that may arise from making an investment. This could lead to decreased expectations of the levels of income and/or capital *available to you in retirement and is common when someone is drawing an income from their portfolio however you do not envisage this will affect your lifestyle.*

It is important that critical trade-offs such as these be weighed up against other subjective factors. You confirmed that whilst the reality of losses being crystallised is an obvious concern, it is factor you are willing to accept in exchange for achieving your state objectives i.e. additional flexibility and potentially superior death benefits

The FF completed in October 2017, stated that apart from the two PPs, Miss A had no savings or any other assets she could rely on to fund her retirement. Despite the fact the FF suggested she had disposable income of around £8,000 per annum, she held no emergency fund or other investments.

I should acknowledge Miss A's health position at this point, she told both Abbey and this service she suffers from MS which means she can't work, and importantly, her health is deteriorating. Put simply, that means it's very unlikely she'll be in a position to add further funds to the existing pension pot. So, whilst she may have around eight years on her side to invest and ride out the ups and downs of the market before entering drawdown, I remain unconvinced Abbey's CFL assessment is a fair conclusion of her financial circumstances given her very limited wider wealth. It's not clear that Abbey have tied their ATR and CFL assessments together in their risk categorisation process, I think had they done, they would've dialled Miss A's ATR downwards.

Abbey have said they believed Miss A's Aviva and Royal London pensions were invested in funds that were too high for her existing ATR. The SR also states that because she's unhappy with the performance, it makes sense to move the funds to a new provider. The SR however, fails to explore whether the adviser investigated the merits and discounted undertaking a fund switch to a lower risk and better performing alternative fund.

In addition, Abbey appear to have failed to establish a clear picture of the customer's state pension entitlement and as such, with no other savings or investments, the two schemes made up the vast majority of Miss A's retirement fund. This is particularly relevant in this instance because we know Miss A's current income is composed purely of benefits that will cease when she reaches state retirement age. Therefore, should that fund fall in value, even to a limited extent, given its modest value, I'm very much of the view it's likely to have a significant impact on her longer-term plans. I'm therefore not persuaded that Miss A has the capacity to take risks at the level Abbey claim.

In my provisional decision, I also explained that in their interactions with Miss A, Abbey don't appear to have established what level of income she'd need at retirement. I think that's important because without that knowledge, they can't say with any certainty, whether she even needed to take the level of risk being proposed. I also think it's important to acknowledge Miss A's original plan at the time was to retire at age 60 but to fully crystalise her fund as soon as she was able to do so in three years' time and therefore, I'm not convinced committing all of the funds to risk based investments was the most appropriate course of action. It transpires she needed to crystalise sooner because of her health and it's at that point, when Abbey presented their supplementary recommendation to invest with YorSIPP that I think Abbey missed an opportunity to revisit their original recommendation and change course.

Moving to a bespoke managed solution will always cost customers more. Put simply, that's because there's more work involved in running those types of arrangement. Whilst they cost more than a typical 'off the shelf' managed or packaged fund, they still have a very important role to play in the financial advice market. More often than not, they're well suited to consumers who are experienced and have large funds to invest. With a more tailored investment service, comes increased costs. Therefore, a larger fund is more readily able to absorb those charges limiting the overall impact of the fees on the end fund. Whilst I should acknowledge Abbey provided a cost disclosure to Miss A ahead of her investing, just because she was advised about the charges, doesn't necessarily make the decision to proceed the right one. I can think of no plausible reason why Miss A would benefit from having her monies managed on a bespoke basis when, considering the size of fund and, her plans to extract the maximum tax-free lump sum she could when available combined with the increased drag the higher charges would have on it.

Any additional charge to a consumer would provide a strong reason not to proceed with a course of action. So, the benefits of switching would need to outweigh the cost to Miss A's pension, as she was unlikely to be able to recoup these charges through improved fund performance over the short to medium term. Whilst I have looked at the cost comparisons Abbey have provided that suggest the YorSIPP solution is around £190 p.a. cheaper than her existing arrangements, it ignores the fact that she was charged an initial fee of £7,000 which, taking the annual saving into account, would take many years to make good and, given her failing poor health, it's not evident it's time she has.

I've seen nothing to persuade me that Miss A was seeking a sophisticated investment proposition that would give her the chance to invest outside conventional funds that the SIPP would provide. Instead I think greater investment fund choice was of limited benefit when Miss A had little experience of investing in stocks and shares and was in poor health and in all likelihood, would be extracting her benefits in the very near term. There wasn't any explanation as to why she wanted a greater fund choice, or what investments she wanted to make that were not already available within her existing plans, which the SR fails to acknowledge if this was a route the adviser had explored. And I don't think the adviser could reasonably conclude that Miss A wanted or needed access to non-standard investments, which the new SIPP could provide.

I've also reflected on whether the DFM solution may have been suitable at that point because the Adviser was aware of other factors about the customer that may, for example, have justified investing in a bespoke portfolio. The file is silent on whether Miss A was potentially coming into further monies in the near future such as a large inheritance that may have warranted a DFM over a packaged product. I therefore don't believe it was either suitable for her current or future needs.

Abbey have made much of the fact they only moved Miss A to an alternate SIPP as a consequence of their due diligence that highlighted some misgivings they had about remaining with Horizon following some key personnel changes. Whilst I fully accept unexpected changes happen that necessitate the need for alterations to be made, I think it's at this point Abbey missed an opportunity. When they contacted her in the January to explain the need to make amendments to their original plan, she explained her health had deteriorated that resulted in her needing to access her pension monies ahead of her 55th birthday. At that stage, Abbey should've realised her short to medium-term plans had changed and should've reassessed the original recommendation. I'm of the view that it's at this point, they should've given serious reconsideration to the structure of what had been originally recommended.

I have again, carefully considered all the information in respect of this complaint and I have reached the same conclusion as I did in my provisional decision. I appreciate Abbey may disagree but, they haven't provided any new or additional information to that which has already been provided to this service. So, as there is no new information to consider it follows that I have reached the same conclusions for the same reasons as I did in my provisional decision, the details of which I have set out above. I have made a small alteration to the redress approach I set out in my provisional decision. That's to take account of the fact Miss A moved away from Abbey to a new provider in 2020. Miss A and Abbey have both accepted this alteration to the 'end date' to which the redress should be calculated to as set out below.

Putting things right

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

I think Miss A would have invested differently. It's not possible to say *precisely* what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Miss A's circumstances and objectives when she invested.

What must Abbey do?

To compensate Miss A fairly, Abbey must:

- Compare the performance of Miss A'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.

- Abbey should add interest as set out below.

- If there is a loss, Abbey should pay into Miss A's pension plan to increase its value by the 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 Abbey is unable to pay the compensation into Miss A'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 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 Miss A won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Miss A is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Miss A 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 Miss A £200 for distress and disruption to her retirement plans.

Income tax may be payable on any interest paid. If Abbey deducts income tax from the interest, it should tell Miss A how much has been taken off. Abbey should give Miss A a tax deduction certificate in respect of interest if Miss A 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
YorSIPP	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of Aviva and Royal London transfer	14 August 2020	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant' s acceptance)

Actual value

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

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Abbey should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the portfolio 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 Abbey 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 chosen this method of compensation because:

- Miss A wanted Income with some growth with a small risk to her capital.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.

- 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.

- I consider that Miss A's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Miss A into that position. It does not mean that Miss A would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Miss A could have obtained from investments suited to her objective and risk attitude.

There is guidance on how to carry out calculations available on our website, which can be found by following this link:

- https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understandingcompensation/compensation-investment-complaints.

- Alternatively, just type ‘compensation for investment complaints’ into the search bar on our website: www.financial-ombudsman.org.uk. Abbey should provide details of its calculation to Miss A in a clear, simple format.

My final decision

I uphold the complaint. My decision is that Abbey Financial Services (NI) Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss A to accept or reject my decision before 5 January 2023.

Simon Fox
Ombudsman