DRN-3842146

The complaint

Mr L complains that Neovision Wealth Management Limited (NWM) provided unsuitable advice when their advisor recommended he transfer two personal pensions into a SIPP, causing him a financial loss.

Mr L has been represented by a claims management company throughout, but for ease of reference, I'll refer only to Mr L in this decision.

What happened

Mr L had two private pensions with 'A' and 'F'. In December 2016, he sought advice from Harrison Charles Wealth Management, (the trading name of NWM) and was advised to transfer these pensions to a SIPP operated by Intelligent Money (IM), and then invest into the Reyker Securities Balanced Portfolio (RSB). The transfers took place between 31 March and 10 April 2017, with a total transfer value of £28,490.

At the time of the advice, Mr L's circumstances were as follows:

- He was 65 years old and had recently retired.
- He was in receipt of a work pension of about £18,600 pa, and had total income of £22,740 pa.
- He owned his marital home with his wife, with a mortgage, in which his share of the equity (25%, his wife having the larger share) amounted to about £54,000.
- He and his wife also owned two buy-to-let properties, with his share of the combined equity amounting to about £72,500.
- He owned shares valued at about £14,000.

IM made investments into the RSB Fund in June 2017. However, one month later, Mr L's investment in the RSB fund was sold, and some months later reinvested in a new fund, the Saxo Capital Markets SCM Fund. Mr L approached NWM in February 2019 to discuss accessing his pension. By this time, the value of his fund had reduced to £23,029.50, which he then withdrew.

Unhappy with how he'd been treated, and the fund loss he'd experienced, he complained to NWM. He believed their advisor hadn't acted in his best interests, and the investments made didn't reflect his attitude to risk. He felt NWM didn't carry out appropriate due diligence on the investments they'd recommended, had failed to investigate and advise on the benefits of Mr L's existing 'A' and 'F' pensions, and had provided misleading information on charges. He also questioned whether a discretionary fund manager (DFM) was necessary.

NWM didn't uphold the complaint. They felt their advisor had undertaken a thorough fact find and provided a detailed suitability letter which highlighted the risks involved. NWM pointed to the fact Mr (and Mrs) L had experience of managing a buy-to-let portfolio, and Mr L said he was more comfortable with a property related investment, which the RSB and SCM funds were. NWM also said that any complaints about the performance of the funds should be addressed to the relevant firms.

Unhappy with this, Mr L brought his complaint to this Service. One of our Investigators considered his complaint. He agreed that NWN hadn't provided suitable advice to Mr L. He didn't feel NWM had properly considered whether Mr L's existing plans were a better option, given their lower costs. He also felt the RSB fund didn't meet with Mr L's 'balanced' risk approach. He also felt Mr L hadn't been properly advised about the RSB Fund charges. So, our investigator upheld Mr L's complaint, and set out a methodology for NWM to pay appropriate compensation to Mr L to put him back into the position he would have been in had Mr L remained in his A and F funds.

NWM didn't respond to the Investigator's view, and so the complaint has been passed to me to consider Mr L's complaint further and issue a 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.

Mr L made various complaint points to NWM, and subsequently to us. However, I'll be only be addressing what I consider to be the key issues here, which are essentially whether NWM's advice to switch away from his existing pensions was suitable.

And having very carefully done so, I agree with the outcome reached by our Investigator, and for essentially the same reasons. I'll explain.

When assessing a complaint such as this, it's important to begin by considering the Rules in existence at the time NWM advised Mr L. NWM was providing Mr L with regulated advice, and it had to ensure its advice was suitable for Mr L's needs. These requirements are set out in the FCA's Code of Business Sourcebook (COBS), particularly COBS 9.2 - assessing suitability. In summary, this required NWM to have done the following:

- Take reasonable steps to ensure their recommendation was suitable for Mr L.
- Obtain an understanding of Mr L's general investment knowledge and experience relevant to the type of investment it was recommending.
- Obtain information from Mr L to satisfy itself the recommended investment met Mr L's investment needs, and he had the necessary experience and knowledge to understand the risks involved in the recommended investment.
- And obtain information about his personal financial situation at the time.

COBS 9.4 required NWM to provide Mr L with a suitability report, setting out his demands and needs, and an explanation why they'd recommended the RSB fund and why it was suitable for Mr L. The report also needed to explain possible disadvantages of the recommended investment.

Further, in 2009 the FCA's predecessor published a report and checklist that firms needed to consider when a client was thinking about switching their pensions from one provider to another. This identified main areas of concern which could lead to a consumer losing out, the relevant ones here being:

- The consumer had been switched to a pension which was more expensive than their existing arrangements – caused by higher initial and ongoing management costs,
- The new pension didn't match the consumer's attitude to risk (ATR).

With the above in mind, I need to look at what NWM's advisor did when he met with Mr L, and what he then recommended based on the information Mr L provided him with.

The ‘fact-find’

The advisor met with Mr L in December 2016, during which he carried out a ‘fact find’, to understand more about Mr L’s circumstances, and what his investment objectives were. The key information contained within the fact-find document was:

- Mr L advised he wished to consolidate his A and F pensions, to protect their asset value.
- He was interested in real property funds, as “*he has a good knowledge of investments and the associated volatility”.*
- He said he’s like to retire at 70, which he said was *“very important”.*
- His investment objective was ‘*Growth*’.
- He intended to withdraw funds from the investment within two to five years, via a one-off withdrawal.
- He was willing to accept moderate risk in order to achieve higher returns. Minimising risk and maximising returns were of equal importance.

NWM’s recommendation report

Armed with this information, the advisor prepared a recommendation report in March 2017. The report discussed the transfer options under consideration – transfer to a new personal pension plan (PPP) or to invest in a SIPP. It listed the generic advantages and disadvantages of these options. It acknowledged that SIPPs are typically more expensive than a PPP or a stakeholder pension as charges tend to be greater. The report explained, when deciding on what to recommend, the advisor would be considering whether:

> “*the new scheme is more expensive than your old scheme and the reasons for this*…[and]…*the new plan offer[s] extra flexibility that the old one does not, which may be of value in the future*…[and]…*Our role in providing this advice and recommendations to you is limited to providing you with a product that meets your needs over and above your current product…”*

The report addressed Mr L’s ATR, and said as follows:

> “*Based on my assessment…and the fact you have no professional qualifications or experience in financial areas, we agreed you should be classified as an experienced investor [*presumably a typo, and should read inexperienced*]…based on you not having personal experience of [fluctuations in stock market values]…You are therefore deemed vulnerable in relation to financial and investment products”*

The report considered Mr L’s ‘capacity for loss’, described as:

> “*the degree to which you can tolerate the financial and/or emotional impact of any loss in relation to any investment contracts held”.*
>
> concluding by saying:
>
> *“you do not have the ability to absorb any negative financial outcome that may arise from making an investment”*

The report concluded (based on Mr L’s responses to a risk profile questionnaire and following the discussions between Mr L and the advisor), that Mr L was a ‘Balanced Investor’. The advisor described a balanced investor as someone who was :

> *“…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…the portfolio should have at least an approximately 80% chance of achieving a non-negative return over a five-year holding period”*

The report then provided the advisor's recommendation – the IM SIPP, with investment in the RSB fund. It acknowledged the SIPP had higher annual charges than Mr L's combined existing PPPs - £399.56 (no mention of the DFM cost, which was subsequently recommended) as opposed to £229.82 – but the "*choice and flexibility*" offered by the SIPP was more important. The report confirmed that RSB, as the fund manager, would hand over complete control of the investment to a "professional", including key asset allocation decisions. The report said Mr L wanted/agreed to an investment manager creating a bespoke portfolio, who'd take full responsibility for Mr L's investment decisions.

> "*This appeals to you as you do not have the time, knowledge or patience to run your own portfolio and are unsure how to create a balanced spread of asset[s]"*

The report listed the benefits of this approach as being an access to a wide range of funds, spreading the opportunity for returns across asset classes, minimising the risk of the overall portfolio suffering a downturn, and increased potential for stable returns through economic cycles, and active portfolio monitoring. This plan was being recommended because:

> "*It places the investment under the supervision of a Discretionary Portfolio Service as your preference is for a discretionary fund manager (DFM) to look after and manage your investments…*[and it]
>
> *Improve[s] the diversification of…funds held within the retirement plan*…[and it]
>
> *Gives…access to a wide range of funds and fund managers that you can switch between for no extra cost* [and it]
>
> *Gives access to E-services to improve the level of service that you receive* [and it]
>
> *Provides for superior long-term performance…"*

The report also explained how equities tend to outperform other investments over the long term, but "…*as values fluctuate over the shorter term, equities are only suitable where the time horizon is five years or more"*. The report confirmed the advisor would continue to retain contact with Mr L, and have "*responsibility for [his] holistic financial planning needs*". It then set out the advantages of a DFM involvement, which included - an investment portfolio tailored to Mr L's needs, it would allow an agreed benchmark to be set, face to face meetings with the DFM were available, Mr L would have online access to his portfolio, and the DFM would closely monitor performance.

The report also listed the disadvantages of a DFM - past performance not being a guarantee of future performance, possible investment delay, possible extra initial charges, and there was no charging cap so charges will likely be higher.

The report then commented on charges associated with the plan. These were:

- Annual product charge - £150
- DFM fee – 0.9% of fund value, per annum
- NWM Advisor fee - 1% of fund value per annum
- £995 initial advice fee paid to NWM

Whilst the report didn't specifically set out what those charges would amount to, based on a fund value of £27,495 (28,490 less £995 fee), the 'IM/DFM arrangement' would result in annual costs of about £672.41, against Mr L's existing A and F plan costs of £229.82 – an increase of about £442.59. The report said the target SIPP annual return was 5 - 5.5% with an investment horizon of "*5 years or longer*". The target volatility of the portfolio was 5%.

NWM's Pension Switching Report

A Pension Switching Report was prepared by NWM's advisor on 20 April 2017, repeating the generic advantages and disadvantages of the existing PPP and SIPP arrangement. It set out various financial projections. Of importance here is a comparison table setting out the projected fund values when Mr L reached his 70th birthday. It used three assumed growth rates (-2.37%, 0.56% and 3.49%), and showed the IM SIPP would – just based on charges, with no account taken of potential fund growth – negatively impact Mr L's fund value by between 8.7% and 10.9% over that relatively short period.

This report also explained about the 'critical yield' – the annual rate of growth before charges required to provide an identical fund to Mr L's consolidated A and F funds, stating:

> "*The [IM SIPP] critical yields are higher than the assumed growth rates. This indicates that switching all your current pension plan funds to an [IM SIPP] you would need to achieve additional annual investment growth…to match the total fund values projected for your current pension plans"*

The report confirmed additional annual growth of between 2.1% and 2.7% would be needed to match the performance of Mr L's existing combined funds.

Why I don't think NWM's advice was suitable

Having looked at the documents provided by NWM I think there's no doubt their advisor provided a very detailed recommendation report to Mr L. But having considered the contents of this, coupled with Mr L's circumstances, I'm not persuaded the advice to switch was suitable. I say this for various reasons.

Cost -v- benefits

I acknowledge NWM did eventually set out the charging structure of the SIPP, including the extra DFM charge. However, the costs associated with the DFM are only first mentioned in the recommendation report on page 13, and even here only as a 'percentage' cost. This should be compared with the first mention of NWM's fees, clearly set out (in numerical terms) on page eight – where it provides the £399.56 -v- £229.82 comparison.

The report doesn't quantify the total charges with the DFM charge included, which if it did would highlight the actual cost of the recommended option of around £672.41 per year. I think this had the capacity to mislead Mr L, as whilst I acknowledge the report does mention a few times that the SIPP will be more expensive than Mr L's existing PPPs, I don't think the report is sufficiently clear regarding what Mr L's fund is actually going to be charged. The SIPP associated costs were about £440 more per annum, a sizeable extra burden given the relatively modest size of Mr L's fund.

I'm also not persuaded the 'benefits' associated with the DFM, or at least as they were recommended, were necessary for Mr L. Repeating what I've said above, this was a modest value fund, and I haven't seen anything that shows what benefit Mr L could have obtained by having a DFM involvement that *couldn't* have been obtained by NWM giving him extra advice when required.

I think the DFM arrangement added an unnecessary layer of complexity and cost that wasn't needed, given the size of Mr L's fund, and the amount of time he wished to have it invested for. I also can't see that cheaper or simpler options that *didn't* involve the DFM were explored either.

Attitude to Risk

I think there is some inconsistency regarding how the advisor identified what Mr L's ATR was. The advisor records Mr L was an inexperienced investor, who was deemed *"vulnerable"* in relation to financial investments. The advisor also concluded Mr L did not have the "*ability to absorb any negative financial outcome*". And that one of the drivers behind the switch away from A and F was to protect the asset value of his funds. These point towards Mr L being considered more of a cautious investor, rather than a balanced one. And they appear at odds with other Advisor comments – that Mr L was only *somewhat concerned* with short term losses and was considering a portfolio that had an 80% chance only of breaking even over a five-year period.

The SIPP investment period

By the time Mr L's funds from the A and F PPPs had been transferred, Mr L was nearly 66 years old. He'd been clear he wanted to retire at 70 (or more precisely, as he'd already retired, access these funds). This meant there was only just over four years to this date.

However, NWM acknowledged on various occasions funds of this type "*are only suitable where the time horizon is over five years or more…".* That was not the case here and I think would have been clear to the advisor at the time of the advice. Mr L had indicated in the 'fact find' it was 'very important' he retired at 70 – suggesting it was unlikely he was looking to leave the funds invested beyond his 70th birthday (or put another way, it was likely he'd be looking to access the full sum, via single drawdown, after about only four years).

Investment objectives

I note too one of Mr L's stated objectives in the fact-find was to protect the value of the funds. I haven't seen anything here that persuades me investing via the SIPP provided any greater 'protection' of the fund value. If anything the extra costs associated with the SIPP had the potential to erode the value of funds rather than protect them.

Summary

NWM's advisor was required to provide suitable advice. And given Mr L was considering switching his funds, the advisor needed to consider, and be satisfied, there was a good reason to switch away to offset the higher charges associated with the SIPP. As the recommendation letter confirms:

> *"Our role in providing this advice and recommendations to you is limited to providing you with a product that meets your needs over and above your current product…"*

For all the reasons I've outlined, I'm not satisfied NWM's advice for Mr L to switch his PPPs to a SIPP with DFM involvement was in his best interests. I don't think the SIPP placed Mr L in a better position, or was reasonably likely to, than his existing PPPs provided.

Mr L's funds had a modest value. He had little experience of investments and wasn't a particularly knowledgeable or sophisticated investor. I don't think C had the necessary knowledge or experience to understand the risks involved in the transaction or make an informed decision.

I'm satisfied Mr L's losses flow from the unsuitable advice provided by NWM's advisor. Had it not been for this advice, I don't think Mr L would have switched his two pensions. The losses he appears to have experienced wouldn't have occurred. Given all I've said above, I don't think there was a good reason to switch, and I'm satisfied it's fair and reasonable for NWM to compensate Mr L in full for the losses he appears to have experienced.

Putting things right

To compensate Mr L fairly, NWM must take steps to put Mr L back into the position he would have been in, as much as possible, had he been given suitable advice by NWM. I think with suitable advice Mr L would most likely have remained with his previous pension providers. Accordingly, I think NWM must do the following:

- Compare the performance of Mr L's SIPP investment with the notional value if it had remained with the previous providers ('A' and 'F') until the date the SIPP funds were withdrawn. If the actual value was greater than the notional value, no compensation is payable. If the notional value was greater than the actual value, there is a loss and compensation is payable.

- If there is a loss, NWM should pay into Mr L's new pension plan (if there is one), to increase its value by the amount of compensation and any interest. NWM's payment should allow for the effect of charges and any available tax relief. NWM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If NWM is unable to pay the compensation into Mr L'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. The notional allowance should be calculated using Mr L's expected marginal rate of tax at retirement. I think it's reasonable to assume that Mr L is likely to be a basic rate taxpayer at retirement, so the reduction would equal 20%. However, as Mr L would have been able to take a 25% tax free lump sum, the 'tax' reduction should only be applied to 75% of the compensation, resulting in a fair overall 'tax' reduction of 15%.

- NWM should add interest to any such loss, at 8% simple per year, calculated from the date Mr L withdrew the funds from his SIPP until the date redress is paid.

- Provide the details of the calculation to Mr L in a clear, simple format.

- Income tax may be payable on any interest paid. If NWM considers it's required by HMRC to deduct income tax from that interest, it should tell Mr L how much it's taken off. It should also give Mr L a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

- The compensation amounts must be paid to Mr L within 30 days of NWM being informed of his acceptance of this decision. If it isn't paid by this date, interest must be added to this award at a rate of 8% simple per annum, calculated from that date until the date the award is paid.

My final decision

I uphold Mr L's complaint and require Neovision Wealth Management Ltd to settle this complaint as outlined in the 'Putting things right' section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 18 April 2023.

Mark Evans
Ombudsman