

The complaint

Ms M says MacArthur Denton Asset Management Limited ('MDAML') gave her unsuitable advice to move her Aviva personal pension (and Individual Savings Account ('ISA')) to Transact in 2019.

What happened

Three of our investigators issued views in this complaint, following reconsiderations after the first and second views. The first two views rejected the complaint, but the last upheld it.

The first investigator mainly found as follows:

- The capital in Ms M's pension came from an inheritance. Between 2018 and 2019 the MDAML adviser conducted initial and updated fact-findings on her profile and objective, and issued a suitability report.
- At the time, the report says Ms M's goal was to increase her wealth and income at retirement in the most tax efficient way possible; her target retirement age was around seven years away; she wanted returns greater than that provided by deposit accounts over the medium to long term; she wanted to utilise her ISA allowance for the 2018/19 tax year; and she was prepared to invest for a minimum of five years.
- The main issue in the complaint is the allegation that the level of risk the Transact pension was exposed to was too high and was unsuitable. MDAML assessed Ms M as having an adventurous risk profile at the time and the suitability report said she agreed with the assessment. The pension's investments were recommended on this basis and the report confirmed that her standard of living would not be affected by such risk exposure because she was to maintain a contingency fund of £18,000 and she also had her income to rely upon. Overall, the pension's portfolio was not unsuitable for her and its risks and terms were discussed and agreed with her.
- MDAML reviewed Ms M's portfolio in May, July and October 2019. She then asked for an internal change of advisers and a new adviser (within MDAML) advised her from March 2020. The number of reviews given to the portfolio was more than would be expected.
- Around the time of the change of advisers she was concerned about her investments and she had conversations about the options put to her. There was nothing wrong or confusing about the information she was given, her options were explained to her and MDAML's advice was for her to remain invested and to focus on her long-term objectives. Instead, she went against this advice and instructed liquidation of her investments. She then tried to withdraw the instruction after it was too late to do so, and thereafter refused to reinvest.

Ms M disagreed with this outcome and asked for a review. In the main, she said she questioned the report's reference to risks and loss of capital at the outset, but her queries were ignored; that she proceeded with the recommendation only because the adviser

persuaded her to (by telling her that she (the adviser) too was invested in the same portfolio and there was little difference between medium and high risk exposure); that she had no personal or professional interest in finance and/or investments, her interests in both respects were elsewhere and that contributed to the fact that she sought and relied upon professional advice for her finances; in 2020 her concerns were about safeguarding profits already made in the portfolio, avoiding loss and about exposure to the risk of losses; no options were given to her and her concerns were ignored by the first adviser; she was told to remain invested; and she was not told about the option to move to cash (within the portfolio) until later, at which point her portfolio's value had dropped from £59,000 (when she first raised her concerns) to £45,000 (when she was eventually told she could move to cash).

The second investigator reviewed the case and endorsed the first view. He mainly concluded as follows:

- Ms M wanted the potential for higher growth and higher returns in the pension, so that correlated to exposure to higher risks of loss.
- £20,000 was invested in the Transact ISA in April 2019, £16,726 and then £14,000 were both invested in the Transact pension in May 2019, and the fund selections were based on the agreed adventurous risk profile, aims and objectives. Overall, and in this context, the recommendation was not unsuitable for Ms M.
- Her concerns about short term losses in 2020 had to be considered in the bigger picture of her long-term objectives for the portfolio. For this reason – and given her agreed risk profile and capacity for loss at the time – MDAML's advice to her to remain invested for the long-term purpose was not unsuitable.
- Ms M presently disputes her risk profile at the time, but MDAML could only advise on the circumstances it was presented with, and if it had wrongly assessed her profile she would have been expected to raise this before proceeding with investments. Even though she raised questions about risk exposure at the outset, she did not have to proceed with the recommendation. The report was clear on the level of risk exposure, so when she proceeded with the recommendation MDAML had the responsibility to execute it as set out in the report, which is what it did.
- The high level of risk exposure does not appear to have been unsuitable for her. She had a contingency fund, she did not invest money she relied upon in the short term and she was in a position to bear short term fluctuations in the portfolio. The last review before her concerns was in October 2019 and evidence of its contents shows that she did not present any change in her circumstances. That meant there was no cause to change the initial investment advice, so the advice in 2020 to remain invested was not unsuitable.

Ms M disagreed with this outcome too, and asked for an ombudsman's decision. She maintained and repeated her core arguments, and she stressed her claims that the initial advice in 2019 was unsuitable, that the advice to remain invested in 2020 was unsuitable and that she was misinformed about her options (until it was too late) in 2020.

The third investigator subsequently undertook the case and had an introductory telephone conversation with Ms M. The call notes say, during this call, she confirmed, amongst other things, that she had since changed her adviser firm and had moved her pension and ISA to 'Elevate', with investments based on a low risk profile; and that the inheritance in the pension was aimed at helping her with an early retirement so she would never have taken high risks with it. The third investigator thereafter made further enquiries into the case, and

sought additional information from Aviva, Transact and from Ms M (about the Elevate pension). He also put further enquiries to MDAML.

In his view, the third investigator noted that his enquiries to MDAML had not been answered. However, he concluded that he had enough evidence to determine the complaint and that it should be upheld. He set out the following main reasons:

- In early 2018, based on fact-find evidence, Ms M was – in her 50s without dependents; she was in good health and in employment; she earned around £26,000 per year (with around £1,000 in monthly spare income) and was a member of her employer's Defined Benefits ('DB') pension scheme; she also had the Aviva pension (valued at £16,268); she had around £55,000 cash on deposit and £18,000 in her cash ISA; she owned her home without liabilities; she was assessed as having '*a fair degree of understanding/knowledge*' of investments; and she wanted to invest £50,000 from her cash holding for the potential of higher returns and to build up as much money as possible for retirement.
- The next meeting between the parties was in March 2019. The notes for this meeting say there were no changes in Ms M's circumstances, but she wanted to invest £20,000 into her ISA for the 2018/19 tax year, to invest another £20,000 at a later date and to review her Aviva pension in order to take advantage of growth potential in the following six to seven years. Another meeting happened in April 2019 and it was followed by the suitability report dated 24 April 2019.
- MDAML recommended the Transact pension and investment, within it, in the 'Macarthur Denton Adventurous Portfolio' (the 'MDAP'). An initial advice fee of 2.5% (of the transferred funds) applied, as did an ongoing advice fee of 0.75% per year.
- On 28 February 2020 she sent a text message to the adviser expressing her concerns about market conditions in the context of the impending pandemic, about the risk of loss of value in her investments and about withdrawing from the investments. The adviser recommended that she remain invested. She repeated her concerns in texts to the adviser in early March, including reference to concerns that her portfolio's risk profile was too high and the idea of moving it into a low or medium risk profile. Again, the adviser recommended that she retain the existing investments. On 12 March, she instructed the adviser to move her portfolio into a low risk profile as soon as possible. On 13 March she was told her portfolio could be moved into cash and that it would be done the following day. On 17 March she instructed the new adviser to execute this. That was done and the ISA and pension remained in cash until April 2022 when they were transferred from Transact to Elevate.
- The recommendation put Ms M into a more complex arrangement than had previously existed with her Aviva pension, and there is no evidence that she sought such an arrangement, or that it matched her investment objectives and experience. She did not need to access the pension for around seven to eight years, so the flexibility mentioned in the report was not needed until then. The Aviva pension made available 17 funds to select from and a total maximum of six funds were allowed in the pension at a time. There is evidence that the funds within the Aviva pension had the following past performance records – 44.8% and 27.6% over five years. This was not an unreasonable rate of return. There is a lack of evidence that there was a clear need to transfer Ms M's pension.
- There is no evidence of a full risk profile report for Ms M at the time, and she disputes the high-risk profile that MDAML has attached to her. Given her relatively limited

previous investment experience and the modest value of her pension, it is unlikely she was a self-investor seeking a wider fund selection and adventurous portfolio in the Self-Invested Personal Pension ('SIPP') that was recommended to her. Furthermore, the recommendation resulted in an additional 2.1% per year in scheme costs to her, the suitability report confirmed this and said it was not regarded as particularly onerous because it was up to MDAML to invest the portfolio as proactively as possible on her behalf. However, just because the report was transparent about this does not mean the extra cost was suitable

- The fact that she had been a member of her employer's DB scheme for around nine years at the time does not mean she had the capacity to take risks with her pension arrangements, especially given her evidence on the purpose of the inheritance capital in the pension. She was not a sophisticated investor and there is a lack of evidence that she needed a pension arrangement over and above what she had with the Aviva pension. Overall, it is likely that Ms M simply wanted to know the best option for her, evidence shows that retaining the Aviva pension would have been that, and she would have made the additional £14,000 contribution into it instead.
- In terms of the events in 2020, and given that the portfolio was already invested at the time, the advice to remain invested was not inappropriate. Liquidation of the investments would have crystallised the losses within them at the time. However, MDAML should have informed her about the option to move to cash earlier than it did. It should have done so within two working days of her initial enquiry on 28 February 2020. That would have been on 3 March. However, evidence suggests that her concerns about the markets at the time would have prevailed over any advice to remain invested, so she probably would have instructed liquidation in any case. She would probably have done so on 3 March and that would have been actioned on 4 March, so the notion of liquidation on 4 March 2020 should be reflected in the calculation of redress for the unsuitable pension advice. Redress to Mr M should also apply for the unsuitable ISA transfer advice, and £350 should be paid to her for the trouble and upset caused to her in the overall matter.

Ms M accepted this outcome, but MDAML disputed it and asked for an Ombudsman's decision. It questioned why a third view, which upheld the complaint, had been produced, despite the first and second views rejecting the complaint; and why that happened instead of the case being referred to an Ombudsman for a decision after Ms M disagreed with the previous view. It also said that the third view's conclusions were not balanced and that its findings on facts were flawed – for example, it said, no SIPP ever applied, Ms M never self-invested her funds, and she was previously invested in global equity funds. In response, the third investigator reminded MDAML of the additional enquiries he sent that it did not reply to, and he referred to notice he sent prior to that confirming the previous views were to be reviewed because they had not addressed all relevant aspects of the case. He also confirmed that the case had been referred to an Ombudsman for 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.

Having done so, I agree with and endorse the third investigator's view on the complaint. I uphold the complaint. I will address Ms M's pension first, and then address her ISA.

The Pension

Regulatory Context

- Principle 2 of the regulator's Principles for Businesses requires a firm to conduct its business with due skill, care and diligence. Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly.
- The regulator's Conduct of Business ('COBS') rules, under COBS 2.1.1R, requires a firm to act honestly, fairly and professionally in accordance with the *best interests* of its clients. COBS 9.2.1R sets out a firm's obligation to assess the suitability of investments recommended to its clients.
- In 2009 the regulator published a checklist for pension switching. It highlighted four key issues firms had to address in such pursuits – Charges (is the consumer being switched to a pension that is more expensive than the existing one(s) or than a stakeholder pension, without good reason?); Existing benefits (is the consumer losing benefits in the switch without good reason?); Risk (is the consumer switching into a pension that matches his/her appetite for risk and personal circumstances?); Ongoing fund management (is the consumer switching into a pension with a need for ongoing investment reviews that has not been explained, offered or put in place?).
- In 2013 the regulator issued a pension related industry alert to firms which included the following – *"It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages or disadvantages of investments proposed to be held within the new pension."*

MDAML was, or ought reasonably to have been, aware and mindful of all the above, amongst other requirements, during its engagements with Ms M in 2018 and 2019. Primarily, it was necessary that the switch from the Aviva pension to the Transact pension was in her best interests, in the regulatory context set out above and as a matter of fact. In other words, there had to be grounds which made it worthwhile for her to move from one to the other, and the Transact pension should essentially have had meaningful prospects of being better for her, overall, than the Aviva pension. If not, there would have been no point in switching and no justification in Ms M incurring the costs associated with the switch.

Therefore, the approach that reasonably and sensibly applies to this case is to first consider whether (or not) MDAML's recommendation of the pension switch was suitable for Ms M. If not, it ought not to have been recommended and her case is essentially established, because everything else that followed was from an unsuitable pension switch that should never have happened. However, if the switch was suitable for Ms M, my consideration will move to assessing whether (or not) the investments recommended for (and executed in) the Transact pension were suitable for her.

Was the switch suitable for Ms M?

On balance, I am not persuaded that it was.

The first point to note is that Ms M did not initially seek pension advice. The January 2018 fact find document presents evidence to support this finding. The document confirms that she wanted, only, advice on 'savings and investments'. As the third investigator said and as the document confirms, she was considering investing part of her cash holding. In response to questions in the document about whether (or not) 'retirement planning' advice was sought, the answers were 'no', and the document's summary repeated what was stated at its outset – that Ms M wanted only savings and investments advice.

The same document appears to have been used, and added to (in handwriting), to record updates following the 2019 meetings. Two handwritten update notes are dated 25 March 2019. The first is titled "*Second Meeting*" and undersigned by Ms M, but the second is not undersigned by her. The first mentions the intended double £20,000 investments that the third investigator referred to. The second note says Ms M asked for a pension review because no such review had happened for years. However, the note also says she had "... NO IDEA AS TO THE PERFORMANCE, COSTS ETC." [my emphasis] of her pension at the time.

This conflicts with what MDAML's suitability report said in the following month. The report said she wanted a pension review because, with regards to her "*existing arrangements*", she was "... *concerned that performance [had] been poor, fund choice limited and there [was] a lack of flexibility*" [my emphasis].

No such concerns were stated in the March fact find updates. Indeed, it was recorded that she was unaware of the pension's performance and nothing was recorded about fund choice and flexibility. It is plausible that MDAML considered these aspects of her Aviva pension, took negative views about them and shared those views with Ms M. However, that is not the same as presenting a scenario in which she – not MDAML – held such views and wanted to switch pensions because of them. Overall, on balance and given this evidence, I do not consider that she held such views and/or wanted to switch pensions because of them. It appears more likely (than not) that MDAML formed the views that have been credited to her, and then proceeded to use them as a basis to recommend the switch.

Based on the above, and on balance, I do not find that Ms M had any interest to review the Aviva pension with an aim to switch it. I consider that she simply wanted the pension checked and, given her reference to having no idea about its components, to be better informed about it. I do not say or suggest she did not want advice on whether (or not) it was good for her, or could be better. She probably did. However, the point to note is that there is a difference between seeking advice, with an open mind, on a pension arrangement and seeking advice specifically to pursue a pension switch because of concerns about an existing pension. MDAML says Ms M did the latter, evidence does not support that, instead it shows that she did the former.

The above analysis shows that, at the outset, there was no *best interest*, for Ms M, in the idea of a pension switch, because she had no such interest to begin with. Nevertheless, I acknowledge she was seeking and receiving advice, so it is arguable that, based on suitable advice, a switch could have been in her interest. As such, I have applied the regulator's checklist to her case.

There is no dispute over the fact that the switch was more expensive for Ms M, so in terms of costs/charges alone it was not in her best interest. There was a 2.5% fee to MDAML for arranging the switch and a 0.75% ongoing fee for its servicing of the Transact pension. Beyond these costs, the suitability report confirmed that the Transact pension would create an additional 2.1% per year in scheme costs to Ms M, so it was 2.1% per year more expensive than the Aviva pension (which had a total of 1% annual management charge for its funds).

The above additional costs to Ms M confirm that the switch was a notably expensive endeavour.

In terms of risks, MDAML says she had an adventurous risk profile. The suitability report confirms this and the fact find document confirms this was the highest/riskiest profile in the range (the first and lowest being 'risk averse' and the sixth and highest being 'adventurous'). The document's definition of this profile included references to – people seeking "*very high*

rates of return on their capital/investments”; people aware that in doing so they were exposing their capital to very high risks of substantial losses; people with a “high level of awareness of the factors affecting values and performance, and can bear the consequence of considerable loss in the pursuit of substantial gains”.

Beneath the printed definition in the document is a handwritten note from MDAML summarising that Ms M regularly read and listened to news on investments and markets (amongst other areas); that she had a good understanding of investments, long term investing, and volatility of markets; and that the adviser discussed with her asset classes, asset and regional allocations and valuations/devaluations.

However, Ms M disputes the above description of her and confirms that she had no personal or professional interest or knowledge in investments or in the markets. I have not seen evidence to contradict this. Her financial arrangements, as summarised across the three investigators’ views, were relatively modest and unsophisticated – and, it could be said, featured relatively modest amounts.

The Aviva pension was invested, roughly in around an equal split, in the Aviva Mixed Invest (40-85% shares) (CU) Pension Standard Series 01 fund and in the Aviva International Equity (CU) Pension Standard Series 01 fund. Aviva’s factsheets for these funds say the former had a broadly balanced risk profile and the latter had a balanced/high risk profile. Neither had the extreme/adventurous profile that MDAML credited to Ms M or that the recommended MDAP had.

Furthermore, there appears to be no evidence of a risk profile assessment exercise conducted for Ms M at the time of the recommendation – that is, one in which her knowledge, experience and approach towards investments (and risks) were properly questioned and determined. The fact find document includes a section titled “SUPPLEMENTARY ATTITUDE TO RISK QUESTIONS”, but I am not persuaded this was enough to conclude the Adventurous profile credited to her. Six questions were presented, the response to the first says Ms M had a ‘fair degree of understanding/knowledge’ of investing; the second response says it was ‘very important’ to her to have her investments covered by the Financial Services Compensation Scheme; the third says it was very important to her to have accessible investments; the fourth says it was not important to her to have guarantees against loss in her investments; the fifth says socially responsible investments were not important to her; and the sixth says the ability to vary the risk profile of her investments was very important to her.

I am not persuaded that these six answers established that Ms M was one of the type of *people* described in the definition for the Adventurous profile.

Overall, on balance and for the above reasons, I consider that Ms M had a broadly balanced risk approach for her pension; but she does not appear to have had any more than basic, or a layperson’s, knowledge and experience of investments; I have not seen evidence to the contrary; and on this basis the switch to the higher risks in the Transact pension (given the associated recommendation of the Adventurous profiled MDAP within that pension) exposed her to more risk than she previously had and more than she had a profile for.

MDAML would argue that the Transact pension offered better facilities in comparison to the Aviva pension, and that the MDAP had better prospects compared to the Aviva funds. With regards to the latter, I acknowledge that the factsheet for the MDAP at the time confirmed a five years performance record of 70.91%, which was considerably more than the records of 44.8% and 27.6% for the Aviva funds over the same time period. However, the Aviva funds’ performances were not unreasonable and the MDAP’s future performance could not be guaranteed. As such, I do not consider that the argument outweighs these points or the

following –

- Ms M did not seek a pension switch at the outset, so it was not an interest she pursued. She also did not hold the alleged concerns that have been credited to her, so she also did not pursue an interest to address those concerns.
- The recommended switch was significantly more expensive for her and exposed her to a greater and unsuitable level of risk, neither of which was justified or mitigated in any way within the recommendation or in practice.

Even if funds with better performances were to be considered, the Aviva pension had access to a range of 17 funds to select from and capacity for investment in six funds at a time. I am not persuaded that this was insufficient for Ms M and for the profile she had at the time. Fund switches within the Aviva pension could and should have been explored and/or undertaken, as opposed to the pension switch.

For all the above reasons, I find that the pension switch recommended to Ms M, by MDAML, was unsuitable and unnecessary. It ought not to have been recommended. Available evidence is that Ms M sought advice at the time and would followed the advice given to her, so if she was advised to retain the Aviva pension she probably would have done so.

Given the above conclusion (and findings), I do not consider it necessary to address whether (or not) the MDAP was a suitable portfolio for the Transact pension. As I said earlier (above) if, as I have concluded, the pension switch should not have been recommended to Ms M her case is essentially upheld “... *because everything else that followed was from an unsuitable pension switch that should never have happened.*”

The ISA

Before MDAML’s recommendation of the Transact Stocks and Shares ISA (and the MDAP investment within it), Ms M held a Cash ISA (with £18,000 in it) and a cash holding on deposit valued at around £55,000. These cash based holdings, in both respects, immediately present a somewhat risk averse approach, which is the approach I consider she had for her ISA at the outset. It is not uncommon for people to adopt different approaches towards risk for different aspects of their financial arrangements so, for the sake of clarity, I do not consider that this finding conflicts with my finding above (in the previous section) about Ms M taking a broadly balanced risk approach with her pension arrangement.

Having said the above, it is also clear from evidence that Ms M sought a bit more from her ISA arrangement at the time. The fact find document and suitability report (for the Transact ISA recommendation) both confirm this, but they do so in quite precise terms. They say she wanted to use her ISA contribution allowance for the tax year (using part of her inheritance capital) and that she wanted to invest for “... *the potential of higher returns than deposit based savings*”. In other words, deposit-based savings was the benchmark she wanted her ISA to perform against.

In the above context, MDAML’s recommendation of the MDAP was starkly unsuitable. It essentially took Ms M’s ISA related approach from one extreme to another – from cash to adventurous – and there is no available evidence to justify this. In this respect, I incorporate relevant elements from my findings in the previous section about the flaws in MDAML’s classification of Ms M as an adventurous risk taker.

On balance, I consider that, at most, Ms M’s instruction to MDAML meant her approach towards risk for the ISA had moved from a cash/risk averse basis to a cautious basis. Reference to deposit-based savings as the benchmark to perform against is insightful. If she

wanted something different (and more exposed to risks), a different form of benchmark – such as a stock market index – would have been referenced. Instead, what she instructed, and what MDAML recorded in its fact find and suitability report, shows that she simply wanted more than she could earn in cash holdings.

That was not an invitation to place her ISA in a high-risk portfolio like the MDAP. Given the ISA's starting point, the stated benchmark, the inheritance basis for the capital to be used, her relatively modest financial arrangements (including her relatively modest financial capacity) as a whole and the fact that she did not present herself with a high-risk taking objective or background, such a placement was inherently unsuitable.

For the above reasons, I find that MDAML's recommendation for Ms M's ISA was unsuitable.

Ms M's agreement with the recommendations

There appears to be a part of MDAML's argument that relies on Ms M's agreement with the suitability reports, the recommended pension switch and the pension and ISA investments. Her explanation is that she was always concerned about the recommendations and exposure to risk, but was persuaded by the adviser to proceed with them. On balance, this is plausible.

I understand the argument that she could have objected if the recommendations and/or exposure to risk were not what she was looking for or what she was comfortable with. However, I have considered evidence of her personal background, which I will not set out beyond what I reflected in the background (above), in order to avoid breaching her anonymity. On balance, I consider that she was initially disposed towards relying on the advice she received and viewing such advice as being in her best interest – as many clients who receive advice do – and, in her case, she appears to have maintained that reliance despite her reservations about the recommendations in 2019.

The manner in which she seems to have panicked less than a year after implementation of the recommendations is notable. It could be said that a natural high-risk taker would have, more likely than not, agreed with MDAML's advice to remain invested in 2020 and to *ride out* any volatility or uncertainty in the markets at the time. She did not have the personality to do so, she was no longer comfortable with compromising her reservations and, despite being told (more than once) to remain invested, she instructed liquidations of the pension and ISA. On balance, I consider that she reacted in this way because she had never been comfortable with the level of risk she was exposed to in 2019, so at the first (or early) indication of those risks turning against her investments in 2020 she sought to withdraw her position.

The above is not a one-sided finding. As I set out in the next section, Ms M's actions in 2020 are also reflected in my orders for redress – in the same fashion as the third investigator did in his redress conclusion.

Furthermore, or perhaps primarily, the fact of the matter is that MDAML had a strict obligation to give Ms M suitable advice. Unsuitable advice does not automatically become suitable simply and only because a client agrees with it. If MDAML gave suitable advice to Ms M to retain her Aviva pension (and perhaps conduct fund switches within it) and to invest her ISA cautiously, neither of which it did, if she rejected such advice and insisted on something else, and if the pension switch and MDAP investment recommendations were the result of such *insistence*, my considerations could have been different. However, none of these happened, so MDAML's duty to give suitable advice remains the key consideration.

Putting things right

Fair compensation

My aim is to put Ms M as close as possible to the position she would now be in if she had been given suitable advice with regards to her pension and ISA.

For the pension, and for the reasons, given above, I consider that she would have retained the Aviva pension. It is possible that she could have conducted fund switches within it, upon advice to do so, but I consider that even if such switches happened the pension portfolio's overall profile would have remained broadly as it was.

For the ISA, and for the reasons given above, I consider that it would have been invested in a cautious manner.

These findings will define the benchmarks to be used in calculating redress for Ms M in both respects.

In addition, her move to cash in March 2020 will also define part of the calculations. This applies only in calculating redress for the pension, because there is a distinct difference between the Aviva pension's majority balanced risk profile and the notion of a cautious move to cash. Even if she had been suitably advised to retain the Aviva pension in 2019, given that the Aviva pension portfolio was exposed to the stock market it is more likely (than not) that Ms M's concerns about the markets in 2020 would have led her to alter the portfolio and move it into cautious profile. Like the investigator, and for the same reasons he gave, I consider that this would probably have happened by 4 March 2020. I will order below that an Aviva pension cash holding be used as the benchmark from this date onwards or, in the alternative, the Bank of England average return from fixed rate bonds (as a cautious profile benchmark).

In contrast, the ISA should have been invested cautiously in 2019, the benchmark I use in the orders below reflects this and I consider that if the ISA was already cautiously invested, it is unlikely that Ms M's concerns about the markets in 2020 would have led her to change it.

Ms M is ordered to engage meaningfully and co-operatively with MDAML to provide it with all information and documentation, relevant to its calculation of redress, which it does not already have.

The Pension

What must MDAML do?

To compensate Ms M fairly, MDAML must do the following:

- Compare the performance of Ms M's Transact pension between the start and end dates shown in the table below with that of the benchmark. The benchmark to be used is the notional performance/value of her Aviva Pension, had it been retained between the start and end dates and had it been treated (in terms of contributions and/or withdrawals) in the same way as the Transact Pension was treated between both dates. MDAML will need to liaise with Aviva, with any reasonable cooperation needed from Ms M, in order to achieve calculation of this benchmark. If, for any reasonable and practical reason, that benchmark cannot be used, the alternative that should be used is the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) because it is made up of a range of indices with different asset classes (mainly UK equities and

government bonds) and it is a fair measure for someone who was prepared to take some risk to get a higher return. This was the approach Ms M had for the pension and this alternative benchmark also broadly matches the majority balanced risk profile of the Aviva pension.

- If the *fair value* is greater than the *actual value* the difference is due to her in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.
- If compensation (up to the end date) is due, calculate and pay any additional amount to the compensation that results from applying the performance of Ms M's Elevate pension (from the end date to the settlement date) to the compensation.
- Pay the total compensation into Ms M's pension plan, to increase its value by the amount of the total compensation. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into her pension plan if it would conflict with any existing protection or allowance. If the total compensation cannot be paid into her pension plan, pay it directly to her. Had it been possible to pay it into the plan, it would have provided a taxable income, so 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 her actual or expected marginal rate of tax at her selected retirement age. For example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide the calculation of the compensation to Ms M in a clear and simple format.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional payment
Ms M's Transact Pension	No longer exists	Up to 4 March 2020 – Notional performance/value of Ms M's previous Aviva Pension or, in the alternative, FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index); from 4 March 2020 – Notional performance/value of a cash holding in the Aviva pension or, in the alternative, the Bank of England	Date of switch to the Transact Pension	Date Transact Pension ceased to be held	If compensation (up to the end date) is due, calculate and pay any additional amount to the compensation that results from applying the performance of Ms M's Elevate pension (from the end date to the settlement date) to the compensation.

		average return from fixed rate bonds			
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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.

The ISA

What must MDAML do?

To compensate Ms M fairly, MDAML must do the following:

- Compare the performance of Ms M's Transact ISA with that of the benchmark shown below. If the *fair value* is greater than the *actual value* the difference is due to her in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.
- If compensation (up to the end date) is due, calculate and pay any additional amount to the compensation that results from applying the performance of Ms M's Elevate ISA (from the end date to the settlement date) to the compensation.
- Provide the calculation of the compensation to Ms M in a clear and simple format.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional payment
Ms M's Transact ISA	No longer exists	The Bank of England average return from fixed rate bonds	Date of investment in the Transact ISA	Date Transact ISA ceased to be held	If compensation (up to the end date) is due, calculate and pay any additional amount to the compensation that results from applying the performance of Ms M's Elevate ISA (from the end date to the settlement date) to the compensation.

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, MDAML should use the monthly average rate for fixed rate bonds with 12 to 17 months maturity 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, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if MDAML totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

Ms M had a cautious approach towards her ISA, the average rate for fixed rate bonds broadly matches that and would be a fair measure for someone who wanted to achieve a reasonable return without risk to capital.

Trouble and Upset

I endorse the third investigator's finding that Ms M should be paid £350 for the trouble and upset the complaint matters have caused her. I order MDAML to make this payment to her. It is a reasonable sum to reflect the trouble she has faced, separate from any financial loss, in being placed into an unsuitable pension (and pension portfolio) and ISA by its advice, and then having to resolve both thereafter.

Compensation Limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000 or £375,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Ms M's case, the complaint events (the recommendations and their execution) occurred in and after April 2019 and the complaint was referred to us after April 2020 (it was referred to us in 2021), so the applicable compensation limit would be £355,000.

My final decision

For the reasons given above, I uphold Ms M's complaint and I order MacArthur Denton Asset Management Limited to calculate, carry out and pay redress to her, and compensation for trouble and upset, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or

reject my decision before 7 April 2023.

Roy Kuku
Ombudsman