DRN-3896740

The complaint

Mr W has complained that abrdn Client Management Limited, formerly known as Standard Life Aberdeen Plc, didn't provide him with financial advice in the period from May 2015 to November 2018, during which time there was poor performance of the fund in which he was invested through his self invested personal pension (SIPP).

This, Mr W has said, has caused him financial loss, for which he considers he should be compensated. Mr W has also requested a return of the advice fees he paid during that period.

What happened

Mr W has held his SIPP with abrdn for many years, and it offered a service known as Private Client Management (PCM), which later changed to 1825 Financial Planning in 2018, to its SIPP holders. abrdn proposed a Private Client Manager for Mr W, which he accepted.

Mr W has said that, prior to 2013, he made personal decisions to invest in several different cash accounts and that he took no advice from abrdn's in house advisers regarding those decisions.

This then changed, as set out in a letter from abrdn in August 2012, in which it said the following:

"I agree that it is reasonable to assume that during periods of market volatility, your new PCM (financial adviser) should be readily available to discuss your concerns and to help you take any appropriate action to preserve the value of your fund".

It further said:

"[The abrdn adviser] is an extremely experienced PCM and customer focussed. He will help you determine an investment strategy, appropriate to you".

According to abrdn's contact history, on 28 February 20123, Mr W had a financial review with his abrdn adviser. Records of the meeting indicate that Mr W was considering using the discretionary fund management (DFM) service available to him through Standard Life Wealth (SLW).

A meeting was then held between Mr W and his SLW adviser on 19 April 2013, in which it was explained by the SLW adviser that he wouldn't be providing financial advice – this was the responsibility of the abrdn adviser.

Following this, £174,000 of his SIPP holdings was transferred to SLW at the beginning of May 2013. A further £80,000 was transferred to SLW in September 2013.

The SLW adviser introduced Mr W to the Target Return Fund (TRF), which was designed to return a specific percentage (3%) above LIBOR, through DFM, and Mr W invested into that fund.

A further review was then conducted on 12 February 2014, in which it was recorded that Mr W would be releasing additional tax free cash and income over the next few months.

At the next review on 26 February 2015, it was recorded that Mr W would let the abrdn adviser the level of income he'd require for the next year.

Mr W has said that, following a review with the SLW adviser, rather than the abrdn adviser, his risk profile was agreed as being "low-medium" rather than "medium" as agreed in 2013. But, he added, this was simply reaffirmation of the same risk category as set out in the original investment proposal dated 4 April 2013.

The next review occurred with Mr W's abrdn adviser on 19 February 2016. In March 2018, following a query from Mr W relating to an income payment, the abrdn adviser replied to say that they were *"due a catch-up"*, which didn't then happen, but the adviser did reference the performance of the TRF and noted that it was behind target. But this was placed into the context of underperformance of financial markets generally at the time.

A new abrdn adviser contacted Mr W at the end of 2018, and explained that the TRF no longer formed part of its investment proposition for abrdn customers. He recommended a switch from this to the Pension Portfolio 2, in line with Mr W's low-medium attitude to risk. But where it was determined that the TRF still met client objectives, other clients were advised to retain that investment.

Mr W complained to abrdn on the above basis in March 2020, but abrdn declined to uphold the complaint, saying in summary that it was satisfied that reviews had been undertaken during the period in question and that fund performance wasn't guaranteed.

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

One of our investigators assessed the matter, but didn't think it should be upheld, saying the following in summary:

- He noted that abrdn had been unable to access the records of review meetings or phone calls due to their migration to a new system, and so he would need to determine whether contact did occur between the abrdn adviser and Mr W in the relevant period on the basis of the available evidence.

- He'd seen email communication between Mr W and the abrdn adviser between March and April 2018, however, and there was nothing in this which suggested that Mr W was unhappy with the level of contact between them up to that point.

- Specifically, the adviser answered Mr W's query about fund performance, saying that it was behind target but that assets such as bonds were also underperforming at the time.

- The role of the abrdn adviser was to be available for Mr W if he had queries or further instructions. And the investigator was satisfied that he was.

- In exchange for the ongoing adviser fee, abrdn agreed to contact Mr W on an annual basis to determine whether there had been any changes in his circumstances or attitude towards risk, and to update him on investment performance.

- Email communication suggested that there was contact on an ongoing basis and this, combined with the regular reviews with SLW, meant that Mr W was aware of how his investment was performing.

- It wouldn't have been suitable advice for Mr W to switch out of the TRF on the basis of poor fund performance as this would have resulted in Mr W selling at a loss without the possibility of recovery in the fund.

- The TRF remained in line with Mr W's risk profile and so remained a suitable investment.

- Although the abrdn adviser would assess whether there had been any changes in Mr W's circumstances or attitude to risk, and pass this on to the SLW adviser, if there was no change then no reassessment would be necessary.

- Mr W could have contacted abrdn at any time if he wished to review his risk profile.

- In terms of the responsibilities of the respective advisers, up until September 2018 the abrdn adviser's responsibility was to introduce a client to SLW if it was believed they would benefit from the service.

- SLW would then assess investment suitability, covering "know your client", attitude to risk, goals and objectives and making a proposal on an appropriate investment portfolio. SLW would then have the ongoing responsibility to reaffirm investment suitability on an annual basis.

- The TRF information confirmed that that it was only available to clients who were using the SLW service. The investigator was satisfied that, over the period complained of, SLW was responsible for providing ongoing suitability advice.

- Although it couldn't be proved that there was any contact between Mr W and the abrdn adviser between 2015 and 2018, it also couldn't be disproved. But abrdn had provided evidence of email communication, which suggested that Mr W was comfortable asking the abrdn adviser for advice - and that the adviser provided this on a regular basis.

- As such, there should be no refund of the advice fees.

- Even if there was less proactive contact than Mr W would have liked, he wouldn't have recommended a change in the investment portfolio as there was no change in Mr W's circumstances since the last risk review in 2015.

- abrdn didn't issue its notification to its advisers about the suspension of the TRF until September 2018.

- abrdn acted appropriately in assigning a new adviser to Mr W, and that adviser then suggested an alternative investment.

- Fund performance wasn't an aspect that this service could consider – and the position here was that the TRF aimed to meet a target and there was no guaranteed return.

- There had been no reason for the abrdn adviser to recommend a change prior to notification of the TRF's suspension to clients, as there had been no change in Mr W's circumstances.

Mr W disagreed, however, saying the following in response:

- He had no record of a fact find from a review in February 2013, and he requested sight of any such document. His recollection was that a meeting was arranged with the SLW adviser as there weren't any suitable cash funds at the time. That adviser's file note clearly explained the position, in that he didn't provide advice and that this would be the responsibility of the abrdn adviser.

- The absence of records of the meetings held between 2015 and 2018 should count against abrdn. There were no records because meetings to discuss poor fund performance didn't take place between May 2015 and May 2018.

- He paid an additional management charge to cover the meetings with SLW and the SLW portfolio manager repeatedly informed him that he wasn't Mr W's financial adviser.

- His risk profile had never changed – it was reaffirmed as being low-medium in the review held with the SLW adviser (not the abrdn adviser) in 2015.

- But this in any case missed the point, which was that the TRF performed nowhere near expectations and a 20% drop from its target return wasn't within his risk profile tolerance. He wasn't advised to change his investment between 2015 and 2018 despite there being an alternative suitable fund – the 1825 Portfolio 2. This outperformed the TRF significantly.

- Although the letter from August 2012 set out that the abrdn adviser would be readily available for him and to take appropriate action to preserve the value of his fund, this didn't happen between 2015 and 2018. The performance of the two funds must have been known to abrdn and the adviser should have provided him with the comparative information so that he could consider an investment change.

- The March 2018 email from the abrdn adviser said that the return was flat but hadn't incurred a loss – but it had in fact dropped by 10% between May 2015 and February 2016. The adviser said that he would make an adjustment later in the year but said that Mr W was in a good place – following which the TRF dropped another 10%. The email was therefore misleading and factually wrong.

- Unbeknown to him, there had been complaints about the performance of the TRF with this service during 2016 and it had been conceded by the fund manager that it was on track to miss its target for two years running. But this information hadn't been shared with him by abrdn or used to recommend that he move to the Portfolio 2 fund and minimise his losses over the period in question.

- He understood that no fund performance was guaranteed, but his abrdn adviser had access to a number of funds, such as the Portfolio 2. He received no information on the better performing alternatives until early 2019.

- Although contact may have occurred between him and abrdn in the disputed period, this had never been about fund performance.

- The last email he'd received from the abrdn adviser was in March 2018, which was in response to his request for tax free cash and income for 2018.

- At the beginning of each year, Mr W made an email request for tax free cash and income for the coming year. This was a specific request, although it was rarely acted upon in good time and he'd also complained many times about this.

- The adviser was often not available, contrary to the assurance that he was meant to be if Mr W had any queries or instructions. The letter from August 2012 set out that abrdn's adviser would aim to make its business more efficient and to enable it to be more proactive and respond to its customers' needs.

- But although SLW may have provided information about the fund's performance in isolation, there was no proactive management by the abrdn adviser over the period in question. This meant that he was unaware of how it was performing compared to other available funds. abrdn was paid to be proactive to preserve the value of his fund.

- Mr W disagreed with the investigator's comment that it wouldn't have been suitable advice to recommend that he transfer out of the TRF, due to the prospect of locking in losses already incurred, saying that the TRF had been specifically designed to minimise market fluctuations and could therefore never recover a 20% drop in performance in comparison to its target of LIBOR plus 3%.

- In the email from the SLW adviser in January 2020, he commented that the gap between actual performance and the target was significant and too big to chase without taking greater risks than would be appropriate for him.

- The TRF didn't remain in line with his risk profile and he should have been made aware when it dropped substantially below its target – especially when another alternative had performed better.

- Although his circumstances and risk attitude didn't change in the relevant period, the performance of the TRF certainly did – and it should have been communicated to him that an alternative fund within his risk profile was performing very well.

- The investment proposal confirmed at several points that information contained in the report didn't amount to an investment recommendation or advice and that ongoing advice would be provided by the abrdn adviser.

- The TRF was only available to clients who had received a recommendation from an adviser – in this case the abrdn adviser.

- The evidence provided by abrdn didn't demonstrate that he was comfortable seeking advice from its adviser – on the contrary, he had concerns about the adviser's ability to perform he simplest of requests. And information he'd provided – for example relating to the TRF's performance - had been misleading and wrong.

- abrdn had the ability and knowledge to have advised him to switch funds, as evidenced by the recommendation in 2018, but it should have done so earlier. The complaints to this service about the fund demonstrated that awareness of the poor performance existed.

- The "Summary of Discussion" notes from September 2019 said that 1825 no longer believed that target return portfolios were an appropriate investment solution, a decision which had been made due to that proposition failing to meet the stated objectives, and failing to meet clients' and 1825's expectations. But this failure had been evident since early 2015 and Mr W hadn't been advised on this for three years.

There was further communication between the investigator and Mr W, in which the former said that she wasn't persuaded to change her view on the complaint, and to which Mr W reiterated the points above, adding that a loss of 20% had damaged his financial circumstances, which should in any case have prompted a review of his investment and available (better performing) alternatives.

As agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on the matter dated 5 December 2022, in which I set out my reasons as to why I thought the complaint should be upheld. In summary, my view was that Mr W should have been advised to change his investments earlier – at the point of the annual review in February 2016.

The following is an extract from that provisional decision.

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

<u>The responsibilities of abrdn and SLW</u>

It hasn't been a straightforward matter to distinguish the respective responsibilities here. But having sought further clarification from abrdn on the matter, my understanding is as follows.

According to abrdn, either the abrdn or SLW adviser could have been responsible for suitability. If SLW was responsible, this would involve an understanding of Mr W's investment requirements, financial situation, attitude to risk, investment time horizon and investment experience. This would enable it to determine Mr W's objectives and risk profile, which would in turn enable it to determine whether it could provide a suitable investment solution.

In other words, the "financial adviser's" primary responsibility was to ensure that they understood Mr W's circumstances and objectives, along with his attitude to risk, and then ensure that the overall financial proposition, or strategy, was in line with this.

In essence, they would provide a mandate to the DFM (SLW) that Mr W wished to invest in a particular way, or had specific investment objectives, and that they had a particular risk attitude/tolerance.

Then, regardless of which arm – abrdn or SLW – provided the "financial adviser" function, SLW would be responsible for ensuring that the underlying investments within the strategy was suitable for the agreed mandate and that it continued to manage the assets in accordance with that.

As to which arm provided the financial adviser function to Mr W, this seems to be quite complicated, and abrdn hasn't been able to offer much clarity on this. The adviser who I understand represented SLW met with Mr W each year to review his investments and conducted such meetings as suitability meetings, although I agree with Mr W's point that the adviser's understanding of his own function seems to have been at odds with this, as set out in the note from April 2013.

Nevertheless, the abrdn adviser had also been contacting Mr W on an annual basis, according to abrdn to conduct suitability assessments. In the email from the SLW adviser in 20 January 2020, he said that:

*"as a reminder, **we made significant changes** to your Target Return portfolio in 2018 and the result is proving very positive".*

And then:

*"I recollect from each meeting that your final decision is not to change and based on your approach to risk this is sensible. It is pleasing to see the Target Return deliver returns in line with expectations and in line with the market conditions we are experiencing. Therefore, we need to maintain the portfolio and monitor the progress of your portfolio in 2020. We will meet as normal to review matters **and if appropriate we can make changes**." (my emphasis)*

The first comment reasonably would refer to the portfolio itself, and the changes which were made in 2018 and contributed to an upturn in its performance. The second comment would suggest that, after the initial referral and portfolio recommendation by abrdn, it was SLW which would take on the responsibility for making any changes in the individual client's investment strategy to maximise performance on their behalf.

And this is lent further credence by Mr W's own comments in his complaint to abrdn dated 28 April 2021, in which he said that the initial proposal document and the notes made by the SLW adviser at each of the annual meetings between 2015 and 2018 all "served to establish and maintain my attitude to risk and that the Target Return Fund of LIBOR + 3% was a suitable target. I reiterate that [the abrdn adviser] wrote none of these documents".

This is the type of annual review in which the suitability of the investment strategy would be reassessed. And before the discontinuation of the overlap in 2019, it was seemingly conducted by SLW, if not also by abrdn.

Following the review of the TRF in 2018, the decision was made to return the advisory function – again, I appreciate the contradictions here, given the apparent overlap existing beforehand - and so the annual risk rating/suitability assessment moved exclusively to abrdn, and this also coincided with the recommendation to clients of the TRF to "sell out" of that proposition.

The "overlap" seemingly discontinued in 2019, and thereafter the SLW adviser was responsible for explaining the investment approach, with the suitability assessments being conducted by abrdn only.

But I have to say, this is a distinctly confusing picture of who was actually responsible for providing financial advice to Mr W – and I can't see that the respective responsibilities of the advisers was clearly set out to Mr W.

<u>*Did Mr W receive suitable advice?*</u>

Irrespective of the rather complicated picture as to which party was responsible for advising Mr W, my understanding is that it was the abrdn adviser who, having initially assessed suitability, identified the Target Return strategy as being suitable for Mr W. And I think the aims of that strategy, as recommended by abrdn, were likely to have been appropriate for Mr W – a low-medium risk investor - at the outset. I think it's important to note that Mr W was seemingly consistent in his outlook on his tolerance to risk and, as such, the investment strategy would seem to have been agreed with both the abrdn and SLW adviser as being appropriate.

As I've said above, it would then have been for SLW to determine which particular investments or funds to be used within the Target Return strategy or portfolio. And the aim of *the TRF portfolio, to achieve 3% above LIBOR, whilst minimising the fluctuations due to market movements, would in my view have been suitable for a low-medium investor.*

The actual returns of the portfolio weren't in line with expectations - neither Mr W's nor SLW's, and this is the point at which Mr W's view is that the portfolio should have been changed.

And irrespective of which arm of abrdn was responsible for suitably advising Mr W, one of them was – or should have been. I've noted that Mr W's complaint has been aimed squarely at abrdn, with no suggestion of wrongdoing on the part of SLW, but they are part of the same organisation, and so I'm able to consider the responsibilities of both in this complaint.

And so I've then thought carefully about the actual period complained of – May 2015 to November 2018 – and what should have happened.

I think it's more likely than not that, at the annual reviews held with the abrdn adviser, any changes in Mr W's circumstances and objectives would have been discussed – this is the purpose of such meetings, but it also seems as though performance issues were also discussed, for example in the February 2016 meeting. The record of that meeting is as follows:

"Client Wanted to review this week. Call completed on mobile. No changes to client's position worried about markets and performance. [The SLW adviser] to speak to [Mr W] immediately after my call. Decision was made to use some of client's cash ISA to fund income this year to reduce the amount taken from the SIPP whilst fund value is down. Client to email me his income need once he decides."

This confirms that the communications weren't always restricted to the specific matter of tax free cash and income withdrawals for the coming year.

But I've in any case considered whether either the abrdn or SLW adviser should have gone further and advised Mr W to switch out of the TRF on the basis of its returns. Mr W has said that the abrdn adviser had access to many different funds, including the 1825 Portfolio 2 fund which performed significantly better.

As I've said above, the abrdn adviser needed to ensure the investment proposal was right for Mr W in the first place and that it was consistent with his circumstances and attitude to risk, and it's fair to say that they would have been able to compare the ongoing fund performances of different portfolios.

So the question is whether either arm of abrdn should have advised Mr W to switch into a different fund before this ultimately happened in 2018.

As I've also said above, the initial consideration should have been whether the TRF was suitable for Mr W – and I'm satisfied that it would have met his objectives.

And ordinarily, I might conclude that, so long as the aims of the portfolio remained suitable for Mr W, there would be no reason to recommend that he switch out of an ostensibly suitable portfolio. If there were no material changes in Mr W's circumstances and attitude to risk, nor the portfolio's aim, then the portfolio would likely have remained suitable for him.

Further, a 20% reduction in the portfolio's value wouldn't in itself reasonably be deemed to be a change in Mr W's circumstances which should have prompted a reassessment of the investment strategy. And in terms of the actual performance, there was a drop of 20% below the target, not on the value of his funds, which remained broadly stable.

Additionally, Mr W has said at various points that abrdn failed to be proactive in preserving the value of his fund, but as far as I can tell, the value of his fund was preserved. Although the fund fluctuated in value and experienced some significant drops at times, at no point in the contested period was the fund value below that at which Mr W had invested.

But I think there's an additional consideration here, irrespective of the initial and seeming ongoing suitability of the portfolio, at least in terms of its aims being consistent with Mr W's circumstances and objectives. Mr W should effectively have had two sets of eyes on his investment, and was paying for both investment advice and portfolio management.

And if Mr W was having annual reviews with both the abrdn and SLW adviser, I think this ought reasonably to have prompted consideration around whether there was an alternative to the TRF which would serve him better, especially when it would have been reasonably clear that the TRF was, after a reasonable amount of time, failing to meet its objectives.

abrdn has said that the 1825 Portfolio 2 is a completely different investment strategy to the TRF. But it nevertheless recommended that Mr W switch into this in 2018, and so it must have satisfied itself that it was suitable for Mr W. Therefore, given that there have been no material changes to Mr W's circumstances or objectives, I must conclude that it would have been suitable for him beforehand as well.

And so I think that below par fund performance over a reasonable timeframe ought to have prompted – from an active portfolio management, with two annual reviews seemingly occurring - a reconsideration of Mr W's investment. As I've set out above, performance issues were clearly discussed between Mr W and the abrdn adviser during the annual review of February 2016. By this point, judging by the performance record of the TRF, it was trailing its target return by around 5%.

And I think if this was an equity based fund, underachievement by 5% wouldn't necessarily have prompted cause for concern. But my understanding is that a TRF operates differently, and caters for the more cautious investor, in that it should broadly track the target return on the basis of more predictable fixed returns. That it consistently failed to do so is the reason, as far as I can tell, that investors were later advised to switch out of it.

My current view, therefore, is that either the abrdn or SLW adviser should have recommended that Mr W transfer out of the TRF at the end of February 2016, which I think constitutes a reasonable timeframe for the TRF's underperformance to have been noted and would have coincided with the annual review, at which point Mr W spoke to both the abrdn and the SLW adviser – and at which performance issues were definitely discussed, as per abrdn's records.

And given that abrdn ultimately advised Mr W to switch into the 1825 Portfolio 2 in 2019, and that this seems to have been available in 2016, I think this would have been a suitable replacement.

<u>Putting things right</u>

Abrdn should therefore determine the notional value of Mr W's SIPP, as at the date of any final decision along these lines, had he switched out of the TRF and into the 1825 Portfolio 2 on 28 February 2016, which I think would have afforded time for a recommendation to be made, considered, and for the switch to then occur. The notional value should factor in any actual switches, contributions and withdrawals made since.

This should be compared against the actual value of Mr W's SIPP at the same date. If there *is a loss, abrdn should in the first instance make the value of the SIPP up to its notional value as identified above, taking into account any available tax relief, charges, and any protections in place.*

If it's not possible to pay the amount into Mr W's SIPP, it should be paid to Mr W, but with a notional deduction to reflect the fact that he would have paid income tax on the pension benefits. My assumption is that Mr W would be a basic rate taxpayer in retirement, and so the notional deduction of 20% should be applied to 75% of the loss (to account for the tax free cash) – resulting in an overall notional deduction of 15%."

In response, Mr W said that he agreed with my findings. abrdn submitted further documentation, including notes of review meetings, and said the following:

- It sought to clarify the roles and responsibilities between the SLW and PCM advisers, saying that SLW wasn't authorised by the FCA to provide investment advice or recommendations to retail clients. This was the role of the PCM adviser.
- This was confirmed to all prospective clients at the outset of new relationships and on an ongoing basis during meetings.
- In respect of investment suitability, clients' relationships and agreements with financial advisers are based upon one of two arrangements, which is separate to any advice received by a client from a financial adviser. Either the adviser is responsible for assessing investment suitability – or SLW is.
- If SLW is responsible, this would involve an understanding of the client's investment requirements, financial situation, attitude to risk, investment timeline and knowledge/experience to ascertain their investment objectives and risk profile – and to enable SLW to determine whether it can provide a suitable investment solution for their requirements.
- Regardless of the arrangement, SLW is responsible for ensuring that the underlying investments within the strategy are suitable for the agreed mandate and that the assets are managed in accordance with this.
- It was satisfied that a low-medium risk profile was appropriate for Mr W, along with its assessment for his capacity for loss. This position was continually reviewed during the period Mr W was invested with SLW and at no time was it deemed appropriate for the risk profile to change.
- The portfolio was managed in accordance with the investment mandate and at no time was Mr W exposed to a greater risk.
- Mr W was also fully aware of the performance issues. The evidence demonstrated that, in 2018, Mr W further discussed performance with the SLW adviser, who acknowledged that the last three years' performance hadn't been good enough and that changes to the asset allocation and funds were taking place. Mr W confirmed that he was happy to hear this.
- In Mr W's complaint letter of February 2021, he confirmed that he was aware of the difference between SLW and PCM. In the same letter, he confirmed that he wasn't worried about the fund's performance, but that his concern was that the PCM adviser hadn't highlighted this performance.
- But the review notes demonstrated that performance was discussed, which can't be overlooked. Without the benefit of hindsight, performance hadn't been an issue and there was no need for change.
- The redress proposal – that the exercise begin from February 2016 - was surprising, given that the TRP performance had only begun to move away from its target in the later part of 2015. A "rash" recommended change wouldn't be expected if a portfolio didn't achieve its goal for a few months or more – instead, it would continue to work on the medium to long term in accordance with the agreed timeline.

- Although, due to system changes, it didn't have access to all historical records, the available evidence did suggest ongoing contact with both the PCM and SLW advisers, which demonstrated full awareness of how Mr W's portfolio was performing.
- Mr W was advised to exit the TRF, as the business had made a decision that it no longer supported this option. But Mr W declined that advice on a couple of occasions.
- Mr W was aware of the poor performance and was willing to continue with the TRF in the hope that it would improve over time – albeit with no guarantees that this would be the case.
- The available evidence didn't support a rationale for advising a switch prior to 1825 no longer endorsing that option.
- The clear statement from Mr W that performance wasn't an issue could raise an issue in relation to time barring the complaint – under the "3 and 6" timeliness rules.

What I've decided – and why

Jurisdiction

I've firstly noted abrdn's closing comments relating to there potentially being an issue with this service considering Mr W's complaint due to timeliness considerations. Specifically, abrdn has said that, as Mr W had confirmed that performance wasn't an issue, this might mean that it was out of time under the rules which govern the operation of this service.

These are known as the DISP rules within the FCA's handbook, and under DISP 2.8.2, we wouldn't be able to consider a complaint if a firm has objected to us considering it on the basis that it can be demonstrated to have been raised more than six years after the event complained of, or, if later, more than three years after the complainant either became aware, or ought reasonably to have become aware, of having cause for complaint.

But I'm not entirely sure I follow the reasoning as to why this complaint might fall foul of either of these provisions, as if Mr W wasn't complaining about performance, then awareness of performance issues more than three years before he actually complained wouldn't reasonably have constituted grounds for that complaint.

My understanding of Mr W's complaint, as set out above, is that, although all parties were aware of performance issues, it was the responsibility of the abrdn adviser to provide him with the advice for which he was paying and to suggest an alternative investment – and one which was capable of producing the targeted returns.

I think it's strongly arguable that Mr W only reasonably became aware of having cause for complaint about this matter when he became aware of the possibility that he could have moved into the alternative fund he was later in any case advised to switch into – the 1825 Portfolio 2 – much sooner than was the case.

This would have been in late 2018, and as Mr W raised his complaint in February 2021, this would have been within three years of him having become aware of cause for complaint.

But notwithstanding issues relating to the time elapsed since awareness of cause for complaint, given that Mr W's complaint is that he received no advice relating to the poor performance of the fund from May 2015 to November 2018, and that the "event" complained of would therefore reasonably be the beginning of that period, Mr W in any case raised his complaint within six years of that point.

As such, I'm satisfied that the complaint falls within our jurisdiction and is therefore one which we can consider.

The merits of the complaint

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I note that abrdn has offered additional clarity regarding the respective roles of the PCM and SLW advisers.

It's said that SLW wasn't authorised to provide investment advice or recommendations to a retail client such as Mr W. But on the other hand, abrdn then says that either the PCM adviser is responsible for assessing investment suitability, or the SLW adviser is. And where it is the latter, it says that this involves understanding a client's requirements, financial situation, attitude to risk, investment timeline and knowledge/experience to ascertain their investment objectives and risk profile in order to enable it to determine whether it can provide a suitable investment solution.

I have to say I don't think this sounds very far removed from providing financial advice, but as far as I can tell, I think the meaning is that SLW would take all of a client's circumstances and objectives – as ascertained by the PCM adviser (who was responsible for the initial recommendation) – into account and ensure that the investment strategy is aligned with this.

I'm still unsure as to how the clarity offered by abrdn can comfortably coexist with the apparent decision taken by abrdn in 2018 to return the advisory function to PCM from SLW. This must surely imply that, prior to this, there were circumstances in which SLW was providing the advice to clients. And if, as suggested by abrdn, Mr W understood the respective roles of the two advisers, then I'd need to credit him with a better ability to understand the overall position than my own.

But this isn't in any case the central point here. My view, as expressed in the provisional decision, is that one or other, or both, of the advisers within PCM or SLW, ought to have appreciated, given the regular (at least annual according to abrdn) reviews which were being undertaken, that Mr W's objectives (and indeed those of the TRF) weren't being met.

Mr W may have been aware of the performance issues – I don't think this is disputed, and as noted in the provisional decision, he himself raised these at at least one of the reviews. And I agree that the review notes reflect this. But as set out above, his complaint doesn't specifically relate to this. His complaint is that, given the prevailing awareness of the performance issues, he should have been advised to switch into a different fund.

And I still think he has a point. If anything, I think Mr W's awareness of performance issues and that he raised this at reviews enhances his claim. As the professional parties, both the PCM and SLW adviser were better placed to understand that the effects of the TRF's poor performance, which Mr W had himself noted, could be mitigated by a switch into a different fund – and one which was in any case later recommended to him as being suitable for his objectives. As I said in the provisional decision, if it considered that it could suitably have been recommended to him in 2018/19, then I don't see why, given that his own circumstances and objectives hadn't changed, it couldn't have been suitably recommended earlier.

And I don't think this position is undermined by Mr W's later decision to remain in the TRF. This was based upon an upturn in its performance, which as far as I can tell had been produced by an amendment to the underlying assets, and which it's noted Mr W commented on approvingly. And so this isn't therefore indicative of the decision he would have made, had he been made aware of, and advised to transfer into, the alternative portfolio when the TRF was performing below expectations. Rather, this is demonstrative of his keenness to be invested in a fund which was producing something closer to the expected returns.

abrdn has suggested that the comments within the review notes indicate that Mr W was comfortable with the performance of the TRF, but I think it's more likely than not that these conclusions were in response to reassurances offered by the respective advisers (relative to volatility in other markets), and notably are couched in relation to the level of risk which Mr W was prepared to accept, with his preference for greater certainty over volatility. But had Mr W been made aware of stronger performing alternatives which nevertheless adhered to his attitude to risk and capacity for loss, I think he would have capitalised upon this.

Addressing the comment relating to the start date of the proposed redress calculation, I understand the point being made and, as set out in the provisional decision, had this perhaps been a largely equity based fund, I might be inclined to consider a longer "wait and see" period to be appropriate. But for the reasons also given in that decision, I think the nature of the fund in question and the circumstances here were different, and that by February 2016, given what Mr W was himself saying about the fund's performance and that the fund had been missing the target by around 5% (and increasing) since October 2015, this would have been an appropriate point at which to suggest to Mr W that he consider an alternative.

And so, for the reasons given in both this and the provisional decision, my view remains that the complaint should be upheld.

Putting things right

abrdn Client Management Limited should therefore determine the notional value of Mr W's SIPP, as at the date of this final decision, had he switched out of the TRF and into the 1825 Portfolio 2 on 28 February 2016, which I think would have afforded time for a recommendation to be made, considered, and for the switch to then occur. The notional value should factor in any actual switches, contributions and withdrawals made since.

This should be compared against the actual value of Mr W's SIPP at the same date. If there is a loss, abrdn Client Management Limited should in the first instance make the value of the SIPP up to its notional value as identified above, taking into account any available tax relief, charges, and any protections in place.

If it's not possible to pay the amount into Mr W's SIPP, it should be paid to Mr W, but with a notional deduction to reflect the fact that he would have paid income tax on the pension benefits. My assumption, as set out in the provisional decision, is that Mr W would be a basic rate taxpayer in retirement, and so the notional deduction of 20% should be applied to 75% of the loss (to account for the tax free cash) – resulting in an overall notional deduction of 15%.

Payment of any redress should be made within 28 days of abrdn Client Management Limited being notified of Mr W's acceptance of this decision. If it isn't, abrdn Client Management Limited should add 8% pa simple interest to any loss from the date of this decision to the date of settlement.

My final decision

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr W to accept or reject my decision before 12 February 2023.

Philip Miller
Ombudsman