

The complaint

Mr Q complains that Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services advised him to switch his pension investments into a discretionary fund managed (DFM) portfolio. Mr Q feels the 'unnecessary excessive charges' weren't suitable and weren't made clear to him. In addition, he feels they failed to offer better performing funds. He feels he's lost out financially because of that.

Mr Q would like to be put back in the same position as if the transfer had not taken place.

What happened

In May 2015, Mr Q met with an adviser from Tavistock to review his existing Canada Life pension plan. At that time he was concerned about the charges and felt, as well as paying too much in fees, the performance wasn't where it should be. After reviewing Mr Q's circumstances, the adviser recommended Mr Q move his pension to Standard Life. Tavistock explained that would reduce his costs and, hopefully, see performance improve by investing in a new range of funds.

In January 2016, Mr Q's Canada Life plan was switched to Standard Life and invested in a range of medium risk funds that matched the attitude to risk ("ATR") level the adviser had earlier agreed with Mr Q.

Shortly thereafter, in May 2016, Mr Q's portfolio was reviewed, and alterations were made to rebalance his funds to ensure they remained aligned to his medium risk appetite. At the same time, Tavistock offered Mr Q the option of moving on to their Wealth Planning service and having his monies managed under a DFM arrangement but he declined that option because he wanted to keep costs down.

On 23 August 2017, Tavistock sent Mr Q a letter about his pension and the option again of moving on to a DFM service. The letter highlighted changing economic conditions that Tavistock believed may impact Mr Q's pension fund value. I will refer to this letter as the 'perfect storm' letter. It gave Mr Q three options:

- i) to take no action now but wait for his next review,
- ii) switch to their Abacus Discretionary Fund Management (DFM) service now, or
- iii) if unsure, the opportunity to speak with one of the advisers.

Tavistock's letter '*strongly recommended*' he select the option of moving onto their DFM solution.

Mr Q decided he needed to speak to an adviser. After having a conversation with Mr Q on 6 September 2017, Tavistock reconfirmed his ATR as medium. Shortly afterwards, he signed Tavistock's form to confirm he wanted to move onto their DFM solution.

As Mr Q wasn't paying to receive an ongoing advice service, he then didn't have any further review meetings. Mr Q then contacted Tavistock in December 2020 after seeing an article in the financial press. At that point, Mr Q wanted to better understand what charges he was paying on his pension and why the performance of his plan wasn't meeting his expectations. After several email exchanges between Mr Q and Tavistock in January and telephone discussions in February 2021, he decided to formally complain in the March.

In his complaint to Tavistock, Mr Q said, in summary:

- That he felt Tavistock were scaremongering customers into switching to a more expensive own brand product. He didn't think their letter of August 2017 should've been sent because it was pure speculation, none of which came true.
- He was unhappy that other funds were not considered by his IFA at the time. He was also surprised that his IFA would recommend a below benchmark fund when there were better options on the market.
- He didn't feel the charges of the new solution were made clear by Tavistock in their letter to him. He felt Tavistock hid them from him.

Tavistock issued its final response letter to Mr Q on 14 June 2021, declining his complaint. They stated they were satisfied he was placed in a fully informed position before he switched to the DFM solution. They also went on to say, in summary:

- They felt their August 2017 letter was sent with the best of intentions. They conceded that whilst none of the events referred to in the letter occurred, that didn't mean to say the points weren't valid concerns they held.
- They said the letter was designed to be sent to a wide range of other customers so they didn't feel it necessary to make recommendations of other alternatives. They felt if Mr Q wanted other options setting out to him, he should've asked. At which point, Tavistock explained there would be a cost for doing so.
- Tavistock also said the costs of changing to the new alternative were covered in one of the enclosures that was included within the letter he was sent at the time. They also said the costs were included within statements Mr Q received.
- They went on to say that it was unfortunate the Abacus Medium DFM had not performed better, however, they didn't think that made it unsuitable.
- Tavistock said all their advisers are independent and can recommend other providers' funds. They said Mr Q was provided with the option of using Tavistock to manage his funds and if he'd wanted to, he could've declined the offer retaining his existing funds or paid for further advice.

Dissatisfied, Mr Q brought his complaint to this service in July 2021. He echoed the same points he'd raised in his complaint to Tavistock.

Tavistock told this service they believed Mr Q's case was without merit and reiterated the points they made in their complaint resolution letter.

The complaint was considered by one of our investigators. She concluded that Tavistock had treated Mr Q fairly. She was satisfied Tavistock had been clear with Mr Q about the costs of the new DFM. She also said, in summary:

- She didn't think Mr Q had been rushed into making the decision to switch to the DFM. She felt that as Mr Q had spoken to Tavistock after receiving their letter and waited for 10 days before sending the agreement to proceed form back, that was sufficient time for him to have reflected on the change.
- She also felt there was sufficient information about the options presented to Mr Q to enable him to make an informed decision.

Mr Q, however, disagreed with our investigator's findings. He said he felt there was an injustice. He also said, in summary, the following:

- The documents that Tavistock and the investigator referred to, 'changes to how we manage your investment portfolio' and the factsheet which included the revised costs, do not appear to have been provided to him.
- He can't understand why, when Tavistock knew he was '*anti-higher costs*', they would recommend he move from Canada Life where he was paying 1.3%, to Standard Life at 0.78% and then onto a Tavistock DFM where he'd be paying far more, 1.97%.
- He said he should've been kept informed of the annual costs.

Our investigator was not persuaded to change her view. She felt she'd already addressed the points Mr Q had raised. She also explained that she thought it more likely than not that the relevant paperwork was included within the letter Mr Q was sent.

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

After carefully considering the complaint, I issued a provisional decision explaining that I planned to uphold Mr Q's complaint. For completeness, I've set out the findings I made in full below.

My provisional decision

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

In short, what's at the heart of this complaint is whether the letter that Tavistock sent to Mr Q in August 2017, which he's called the '*perfect storm letter*', was clear, fair, and not misleading as is required under the regulator's Principles. Mr Q doesn't think it was. Allied to that, the complaint is about whether their recommendation was suitable for Mr Q and his circumstances at the time. He says the letter scared him into taking action. He says when he eventually found out what the charges were that he'd been paying for the DFM, it came as a surprise. He says the charges made the new arrangement unsuitable because he was keen to keep costs to a minimum, which was something Tavistock was aware of.

Up until Mr Q received Tavistock's 'perfect storm' letter, he says he'd been happy with the service he'd had from them. He'd been a customer with them for several years. In 2015, Tavistock had provided retirement planning advice to him. At the time, he held a Canada Life pension plan that he'd asked Tavistock to look at for him. After assessing his situation, Tavistock recommended he switch the Canada Life pension to Standard Life.

In the Suitability Report (SR) that Tavistock sent to Mr Q in December 2015, one of his primary objectives for looking at a pension switch was to help drive down the costs he was paying. The SR stated: "*There has been a lot of media attention focused on high pension charges and you are concerned that your current arrangements are expensive. The area*

over which you have the most influence is charges – this exercise has evaluated and reduced them where possible”. When Mr Q held his pension with Canada Life, he paid a total of 1.3014% per annum in charges. By moving to Standard Life, his costs reduced to 0.6375%.

I've considered very carefully the 'perfect storm' letter that Tavistock sent to Mr Q in August 2017, along with the supporting documentation and chain of events. Their letter said:

Dear Mr Q

IMPORTANT INFORMATION

You may have seen reported in the media, that the UK inflation rate dropped last month, which was not what had been expected. Inflationary pressure remains high and many anticipate that the Bank of England will raise interest rates from their historically low level.

THE CHANGING ECONOMIC CONDITIONS ARE SET TO IMPACT THE VALUE OF YOUR PENSIONS & INVESTMENTS.

Whilst the investment approach that you have followed has been suitable in a low interest rate environment, I want to make you aware that in the event that UK Base Rates rise by 1.5%, funds invested in these lower risk investments could fall, we believe, by around 16.75%.

CONSEQUENTLY, I BELIEVE THAT YOU SHOULD SERIOUSLY CONSIDER MAKING CHANGES TO YOUR EXISTING INVESTMENTS NOW.

I do not wish to cause any alarm however I do believe market movements could be severe with a number of factors including inflation and wage pressures, creating a “perfect storm” leading to higher interest rates and the consequent effect on sterling and investment values.

I therefore feel it is my obligation to bring these concerns to your attention so that you can consider the potential impact on your own financial position and would urge you to act and if required to review your existing portfolio as soon as possible.

With the above in mind, Abacus believe that overseas investments would be better positioned investing in a way that hedges out this currency risk, i.e. you receive the return on the stock market you are invested into not a return in part dependent upon whether the pound does well or not.

*We have considered all options available to our 13,000 customers and the £650M we manage for them for you and we are **strongly recommending a change to the Abacus Discretionary Fund Management Service (DFM).***

This is a unique offering in our industry as it offers daily 24/7 portfolio monitoring/rebalancing, the mitigation of currency risk (by hedging) and institutional quality portfolios for our retail clients. For this we are working in partnership with Tavistock Wealth DFM who use the BlackRock ALADDIN risk management software to manage \$17 trillion of client portfolio assets across 33,000 portfolios.

This is the most advanced risk management system in existence and used by Governments and large corporations. For example - the US government pay BlackRock \$40M per annum to use it to manage their own assets. It is typically only available to individual investors with £10M+ to invest.

The attached documents explain in further detail the reasons behind the changes and how we feel they may benefit you.

There are 3 options available to you:-

1. If you **do not wish to make any changes at this time** and would prefer to wait until your next scheduled review, then please select **option 1** on the enclosed form, sign and return it in the pre-paid envelope provided.
2. If you **wish to proceed with the suggested changes** to your investments, then please select **option 2** on the enclosed form, sign the enclosed TWL Client Terms & Abacus Client Agreement and return these in the pre-paid envelope provided.
3. If you are **unsure** and would like to discuss this further then please select **option 3** on the enclosed forms, sign and return it in the envelope provided.

Alternatively, if you would like to discuss this, then please do feel free to call me on my mobile

(Note – the bold text/ emphasis in the letter was in the original and not added by this service).

Was Mr Q provided with advice?

I think the starting point is to determine whether the letter Tavistock sent to Mr Q was merely information or whether they strayed into providing advice; the latter thereby requiring them to take a higher level of care and demonstrate any alterations they were making were appropriate and suitable for Mr Q. At this point, I think it's also important to be clear about the Regulator's position on the difference between providing information, and going beyond that stage at which point it becomes advice.

The FCA set out in its Perimeter Guidance manual (PERG) some guidance on what could amount to advice. I think the following provisions are relevant:

PERG 8.28.1(G)

"In the FCA's view, advice requires an element of opinion on the part of the adviser. In effect it is a recommendation as to a course of action. Information, on the other hand, involves statements of facts or figures."

PERG 8.28.2(G)

"(1) In general terms, simply giving information without making any comment or value judgment on its relevance to decisions which an investor may make is not advice."

(2) The provision of purely factual information does not become regulated advice merely because it feeds into the customer's own decision-making process and is taken into account by them."

(3) Regulated advice includes any communication with the customer which, in the particular context in which it is given, goes beyond the mere provision of information and is objectively likely to influence the customer's decision whether or not to buy or sell."

(4) A key to the giving of advice is that the information:

(a) is either accompanied by comment or value judgment on the relevance of that information to the customer's investment decision; or

(b) is itself the product of a process of selection involving a value judgment so that the information will tend to influence the decision."

PERG 8.28.5(G)

“A key question is whether an impartial observer, having due regard to the regulatory regime and guidance, context, timing and what passed between the parties, would conclude that what the adviser says could reasonably have been understood by the customer as being advice.”

PERG 8.28.6(G)

“An explicit recommendation to buy or sell is likely to be advice. However something falling short of an explicit recommendation can be advice too. Any significant element of evaluation, value judgment or persuasion is likely to mean that advice is being given.”

Looking closely at the language Tavistock used, I'm satisfied their letter amounted to a recommendation to Mr Q. I say that because it's clear to me phrases such as *“strongly recommending a change”, “would urge you to act”, “you should seriously consider making changes”* and *“Abacus believe that overseas investments would be better positioned investing in a way that hedges out this currency risk”* are unambiguous in what they're stating and would leave little doubt in a consumer's mind that keeping the status quo was not in their best interests. Allied to that, the letter referred back to Mr Q's existing arrangements and ATR. That I believe created the impression a judgement had been passed on his particular personal situation. Finally, the letter was also sent by the consumer's own adviser rather than from an unknown individual.

In addition, Tavistock undertook a telephone call and an ATR assessment ahead of the switch. I asked Tavistock for a copy of the telephone call recording between themselves and Mr Q from August 2017. Tavistock explained to this service in December 2022 they don't have a copy of the recording.

Whilst we may not know what was specifically discussed during the call, on the balance of probabilities, I believe it's safe to conclude Mr Q would have thought Tavistock was endorsing what he was doing and therefore, that Mr Q would have considered this as advice. I also think the business would have known that he'd have considered it as such too.

I don't believe there's any doubt the chain of events meets the regulator's threshold on the definition of advice having been provided.

As advice was provided, was it suitable for Mr Q?

I'm satisfied Tavistock went beyond the mere provision of information to Mr Q. Having decided that Tavistock's adviser gave advice, under the Regulator's COBS rules, Tavistock had a duty to demonstrate the recommendation was suitable for him which I'm not persuaded they did.

Moving to a bespoke managed solution will tend to cost customers more, as is the case here. The end result was Mr Q was actually paying 1.97% for the new DFM solution, that was more than his Canada Life plan (that was 1.3%) that he originally asked Tavistock to help him reduce the charges on. So, I think it should've been clear to Tavistock that given Mr Q's previous conversations with them, that would be something he'd wish to avoid, particularly when according to Mr Q (in his words), he was *‘anti-higher costs’*.

The DFM would need to come with some additional benefits that Mr Q would find useful to make up for the higher costs, otherwise there would be little merit in moving. But it doesn't seem to me the DFM did have additional benefits that Mr Q would have found useful.

Additional costs may be justified by better performance. And whilst Tavistock may have believed better performance would have followed, this was by no means guaranteed and similar performance could have been achieved through other (cheaper) means anyway.

I can think of no plausible reason why Mr Q would benefit from having his monies managed on a bespoke basis, particularly when considering the size of his fund and his plans to phase down into retirement within the next 4 or so years combined with the increased drag the higher charges would have on it.

In their complaint resolution letter to Mr Q, Tavistock explained that given they'd contacted him in May 2016 offering the same DFM service, he must've known the recommendation in 2017 would come at an increased premium. They've said that because Mr Q rejected the same opportunity in May 2016 due to the higher costs involved. However, I'm not convinced it's as simple as that. I've looked closely at how both communications were positioned with Mr Q. In their email to him in May 2016, the option to invest in the DFM was framed very differently to their subsequent message in August 2017. When positioning the option to change to a DFM in 2016, Tavistock opened their message by saying, *"We are now able to improve our service for you with regard to your model portfolios with Standard Life"*. That communication didn't make a positive recommendation to move, whereas the latter one did.

Rather than include a comparison of the DFM charges in the 'perfect storm' letter, Tavistock says they included them as a separate addendum. Tavistock said their charges were made clear to Mr Q in the 'Changes to how we manage your investment portfolio' enclosure that was included with the pack they posted him. Mr Q has said he never received that additional information. However, I don't believe I need to make a finding on whether Mr Q received the charges addendum or not. That's because, even if he had been told about the costs and been given time to reflect, I don't think that would matter because it wouldn't have made the advice suitable.

Finally, given Mr Q's relatively short investment horizon, I fail to be convinced that having the benefit of a regularly rebalanced portfolio would be enough to make up for the additional costs Tavistock were charging. That's because he was unlikely to achieve the returns necessary to make up the extra costs. I've seen no evidence that Tavistock undertook any detailed analysis to understand what level of outperformance the new solution would require to at least match his existing arrangement. When Tavistock wrote to Mr Q in 2017, he was invested in their advisory solution. That meant any alterations Tavistock wanted to make needed his permission before changes could be made. Following their recommendation, he was paying higher charges for something that wasn't much different than he had before given he was already in their medium risk portfolio which doesn't appear that different to the medium risk DFM. The only exception being on the DFM, Tavistock no longer needed to check in with Mr Q to make changes to the underlying funds.

Importantly, Tavistock never considered wider more suitable alternatives and they failed to demonstrate specifically *why* the recommendation was suitable for Mr Q.

Was Tavistock's 'perfect storm' letter clear, fair and not misleading?

I'm of the view Tavistock's letter is problematic, and for a number of reasons. The letter isn't balanced and clearly caused alarm to Mr Q. It explains Mr Q's pension will most likely fall, such movements could be severe and they need to take immediate action to avert that. Their letter was framed in a way that such a fall was inevitable unless Mr Q changed his investments. Whilst Tavistock explained in their resolution letter they genuinely held that belief, I'm not convinced Mr Q needed to take out a DFM to avert that course of action. A DFM isn't right for many investors (and certainly from what I've seen, not for Mr Q) because of the extra charges. Particularly when the ability to protect against the market moves the

business is worried about can be achieved through other means. The overall sense is of a business attempting to push a solution following a change of ownership

I say that because Tavistock justified making changes to Mr Q's investments because of their own increased costs. In the 'Changes to how we manage your investment portfolio' attachment, they said that Mr Q's current Advisory arrangement was becoming too expensive for them to run. They said *"Furthermore, the cost for us to continue to run the portfolio on the current basis is increasing and could become prohibitive, hence the reason for us proposing to improve the way this service is provided"*. Tavistock say that after a review of a number of providers, their assessment determined Mr Q should invest his monies with Tavistock, who had just purchased their business the year before. So, it seems to me the recommendation doesn't appear to have been entirely about what was best for the consumer.

Tavistock's paperwork implies Mr Q's pension could only really be run efficiently as a DFM. Whilst that may be the case for Tavistock, other providers are able to provide standard pooled funds with a regular check-in with their adviser. This isn't an avenue Tavistock appears to have explored, which I think is pertinent, given the size of his fund and stated aims at the time. They've pushed a single solution, misleading Mr Q into believing the only course of action he can take to avoid the impending market crash is via a DFM. Consequently, I believe Tavistock breached the regulators PRIN7 rule by providing a communication that was misleading.

Summary

I think had Mr Q been provided with all the facts in a balanced way, he would have either stayed where he was or opted for a cheaper alternative. I say that because within the email chain Abacus sent him in May 2016, it was clear at the time Mr Q saw little benefit in paying higher charges. He was very much focused on low-cost solutions, having recently transferred from a higher charging Canada Life plan only 5 months earlier. In addition, I've seen nothing to persuade me the recommendation was suitable for Mr Q's circumstances at the time.

It was Tavistock that promoted the concept of investing in a DFM. I remain to be convinced that he was presented with all the key information necessary to make a balanced judgement on whether the investment was right for him. I also don't think Tavistock have demonstrated clearly enough *why* the change was suitable and met his ongoing needs and objectives. Whilst I accept Tavistock may have preferred to switch its clients off their advisory arrangements given the increased cost challenges, for clients such as Mr Q who only had a relatively modest fund, a straight-forward 'off the shelf', low cost managed or tracker fund would more than likely have sufficed.

Responses to my provisional decision

After reviewing my provisional decision both Tavistock and Mr Q contacted this service explaining they agreed with the outcome and had no further comment to make.

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.

As both Tavistock and Mr Q agreed with my provisional decision and explained they had nothing further to add, it therefore follows that I uphold Mr Q's complaint for the reasons set out above.

Putting things right

My aim is that Mr Q should be put as closely as possible into the position he would probably now be in if he had he not switched to a DFM portfolio.

I think Mr Q would have remained in his previous investments, however I cannot be certain that a value will be obtainable for what the previous funds would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr Q's circumstances and objectives when he invested.

What must Tavistock do?

To compensate Mr Q fairly, Tavistock must:

- Compare the performance of Mr Q's investment with the notional value if it had remained within the same funds. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- If there is a loss, Tavistock should pay into Mr Q's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Tavistock is unable to pay the compensation into Mr Q's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr Q won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr Q's actual or expected marginal rate of tax at his selected retirement age.
- Mr Q has confirmed he is a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr Q would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If Tavistock deducts income tax from the interest, it should tell Mr Q how much has been taken off. Tavistock should give Mr Q a tax deduction certificate in respect of interest if Mr Q asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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Standard Life / Tavistock DFM portfolio	Still exists and liquid	Notional value of previous Advisory funds	Date of switch to DFM	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)
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Actual value

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

Notional value

This is the value of Mr Q's investment had it remained within the original advisory funds until the end date. Tavistock should calculate this value.

Any withdrawal from the Standard Life SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Tavistock totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If Tavistock is unable to calculate a notional value, they will need to determine a fair value for Mr Q's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr Q wanted capital growth with a small risk to his capital.
- If Tavistock is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr Q's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr Q into that position. It does not mean that Mr Q would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker

investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr Q could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that Tavistock Partners (UK) Limited trading as Abacus Associates Financial Services should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Q to accept or reject my decision before 6 April 2023.

Simon Fox
Ombudsman