

## The complaint

Mrs M complains the advice she received from Whitechurch Securities Ltd trading as Whitechurch Financial Consultants (Whitechurch), to switch three of her existing pensions along with a pension credit to a SIPP was not suitable. She's also unhappy about the discretionary fund management (DFM) arrangement that Whitechurch recommended and the adviser fees she was charged. She's also unhappy with some of Whitechurch's communications.

## What happened

As part of her divorce settlement, Mrs M was awarded a share of her ex-husband's pension scheme. The Trustees of that scheme wouldn't allow the credit to remain with them and required her to transfer the funds elsewhere. So, Mrs M sought financial advice on where to transfer the proceeds to.

In January 2012, Mrs M met with an adviser from Whitechurch. Whilst the meeting was initially arranged to discuss the transfer credit, it evolved to cover her wider retirement planning needs.

Whitechurch sent Mrs M a suitability report (SR) in March 2012. It recommended she switch her four existing pensions along with the pension credit into a James Hay SIPP. At the same time, the adviser recommended she invest her funds into a Whitechurch Securities prestige portfolio. The adviser had determined Mrs M had an attitude to risk ('ATR') level of 6/10.

After considering the adviser's recommendation, Mrs M explained to Whitechurch she only wished to consider transferring three of the four pensions in addition to the divorce pension credit. She also asked the adviser to reduce the level of risk from 6/10 to 4/10.

On 4 April 2012, Whitechurch met with Mrs M to complete the James Hay SIPP application. The next day, Mrs M signed the application form to invest £78,000 into their prestige portfolio DFM investment. The £78,000 was the total of the three pensions and the divorce pension credit that Mrs M had been awarded. The amount that was ultimately invested was closer to £100,000 because the divorce pension credit ended up being higher.

As Mrs M was making regular payments into two of the existing pensions, the adviser also recommended she switch that payment, along with the employer contribution into the new James Hay SIPP. Mrs M moved to a new adviser in May 2016, ending her relationship with Whitechurch.

In June 2021, Mrs M complained to Whitechurch. She explained she was unhappy because:

- One of the letters and an investment report about the property funds her monies were invested in, was misleading.
- She didn't get the service she paid for.

- She wasn't provided with a new adviser when her existing adviser moved to another firm.

Whitechurch issued their resolution letter to Mrs M in July 2021. They upheld her complaint. They said in summary:

- They agreed that despite a review meeting being undertaken in 2013, the ongoing service they provided in 2014 and 2015 fell short of the required standards. At the same time, they reconfirmed their fees.
- They agreed their letter to her about the property fund investment could've been clearer. They provided clarification on their investment report about the commercial property fund.
- A new adviser wasn't appointed because when he left, that's the point at which Mrs M moved her pensions away from their agency.

Whitechurch offered Mrs M £1,320 in redress to make up for the two review meetings she didn't have in 2014 and 2015 and £200 to say sorry for any confusion their property fund communications had caused.

Unhappy with Whitechurch's response, Mrs M raised her concerns to this service. Whilst repeating the same issues, she also raised additional points. Those were, in summary:

- The fact she felt the original James Hay pension was mis-sold to her.
- She felt the portfolio was unsuitable and not fully explained.
- The James Hay SIPP was only recommended as it allowed her adviser to invest in the portfolios only provided by his employer.

As these issues weren't part of her original complaint to Whitechurch, the case was passed back to them to provide a response. In April 2022, they rejected Mrs M's supplementary concerns. They said they felt the SIPP was appropriate for her needs at the time. They also said, in summary:

- A discretionary portfolio was suitable for Mrs M as it held more benefits over an advisory solution or managed portfolio, namely, the fund managers ability to act quickly to external events without having to contact her.
- They felt an advisory portfolio would've been a false economy as there would've been an additional cost of ensuring the monies were continuously reviewed.
- They felt that as Mrs M's ATR was a 4/10, it would've been difficult to provide her with a single, managed fund that matched her profile that was cheap but also independent.
- They felt as she was investing over £100,000 and investing regularly each month, a DFM was a far better proposition for her.
- They stated that cost alone shouldn't be a factor in determining whether a DFM was suitable or not. They compared their DFM to a number of basic personal pension (PP) managed funds that showed their prestige and growth portfolio had performed better despite being more expensive.

Whitechurch felt that as the performance comparison showed their fund had performed better than the benchmark and three other PP's with managed funds, they didn't believe any redress was necessary.

The complaint was considered by one of our investigators. After carefully considering the complaint, she felt that Whitechurch hadn't treated Mrs M fairly. She also said in summary:

- There wasn't any evidence Mrs M needed the complexity or the additional costs of a SIPP and DFM arrangement when her existing pensions appeared to already meet her needs.
- She didn't feel that Whitechurch had properly explored the option of moving the pension credit into one of Mrs M's existing pensions to help keep costs down.

Whitechurch didn't agree. In response, they said they felt a DFM arrangement would be better for Mrs M because it would negate the need for her to get involved in investment decisions, particularly given her limited understanding of investments. They also said, in summary:

- They didn't feel a fund of £100,000 was modest and was more than suitable for a customer needing a DFM arrangement.
- Even though Mrs M never mentioned performance as an objective for wishing to look at her existing pension plans, given Whitechurch were doing a full review, that was an area they'd typically focus on to ensure the customer's plans were on track.

However, our investigator wasn't minded to change her view as Whitechurch, in her opinion, hadn't raised any new points that she'd not already considered.

Whitechurch then asked for the case to be referred to an Ombudsman for a decision.

After carefully considering the complaint, I issued a provisional decision explaining that I planned to uphold Mrs M'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.

What's at the heart of this complaint is whether it was right for Whitechurch to move Mrs M from her existing PPs into a new SIPP along with her pension credit to a DFM. I don't think it was, and I'll explain why below.

In 2012, Mrs M was 47 years old and recently divorced when she initially discussed her retirement planning needs with Whitechurch. Unfortunately, Whitechurch haven't been able to source the fact-find (FF) from their meeting with Mrs M. Whilst I have no reason to doubt a FF was completed, the absence of it does leave information gaps on Mrs M's wider financial situation. From the SR, we know she was working as a secretary and the four pensions and the pension credit represented all of her retirement plans. She owned her home, had no debts and had savings of around £15,000. Her level of investment knowledge appears to be confined to that built up through holding the pensions which suggests she would've had some, albeit limited, experience of risk-based assets.

Whitechurch provided Mrs M with a SR that set out the main themes of their discussions along with their recommendation. Her main objectives were noted in the SR as:

- “*You have requested that I review fully the 4 plans to ascertain if they are still the most appropriate for your needs and where the pension share should be invested. You have confirmed your employers will continue to pay to a pension plan of your choice and you are not concerned if this means you have to change providers*”.
- “*You prefer the discretionary management route where the money is managed for you as you are aware that you do not have the necessary expertise or time to make investment decisions*”.

A SIPP is generally suitable for consumers who need access to a range of investments and funds not normally available via a basic pension wrapper. It's also typically suitable for individuals who need to have their monies managed in a bespoke, or discretionary style. Usually, a straight-forward stakeholder or personal pension may be more suitable for consumers who have only modest funds and non-complex needs. That's ordinarily because often, although not always, it's cheaper for the consumer.

It seems to me the SIPP and DFM recommendation was a ‘fait accompli’ from the first appointment. I say that not only because the SR positioned Mrs M's desire for a DFM as an objective, when from what I can see, she was a relatively inexperienced consumer who more than likely hadn't come across a DFM before, but because the SR is silent on whether the adviser explored alternatives to the SIPP. And, specifically it doesn't address whether the adviser even considered making use of either fund switches to better align the existing investments to the customers ATR, and / or consolidating the funds into a one of the existing plans.

From what I've seen of Mrs M's four pensions, the existing Aviva and Friends Life policies were both stakeholder plans. Both would've been capable of accepting transfers in of the other policies along with the pension credit. The adviser doesn't appear to have explored this alternative. Allied to this, whilst the adviser has noted the existing funds Mrs M's monies were invested in, he doesn't appear to have provided any view on why those pensions weren't suitable for her ongoing and future needs.

Charges play a very important part when considering whether it's in the consumer's best interest to switch their pension or not. Whilst they can't be viewed in isolation, higher costs would generally point towards being a good reason not to move. So, that means there'd need to be other, more compelling reasons to justify a switch. Mrs M's three existing plans were costing her approximately 0.78% per annum. She wasn't paying for an ongoing service. Whitechurch's recommendation totalled 1.37%, increasing her costs by around 75%, that's excluding the ongoing annual advice service they quoted. The new costs were significantly higher than her existing arrangements and not, ‘*slightly more expensive*’ as Whitechurch's SR had suggested. Taking the annual increased costs into account, would take many years of consistent outperformance over her existing funds to make the increased costs worthwhile.

The adviser provided an example within the SR of what Mrs M may receive back if her funds remained in their existing wrappers. He then provided an indicative illustration of what her funds could be worth if she moved them. In both instances, he used the mid-point for his growth assumptions. The existing wrappers were projected to provide £240,330 and the new solution £207,000. Despite the significant difference, he continued to recommend the transfer, stating the proposed plan was “*slightly more expensive than your current plans*”. He continued, that he was “*still recommending the transfer go ahead as I believe the new recommendation will benefit from day-to-day monitoring by a discretionary manager*”. By the

adviser's calculations, this would result in the consumer having a fund worth nearly 14% less than their existing arrangement at 65 years old. I think it's at this point the adviser missed an opportunity to change direction. That's because I believe it should've been very clear at that point that the new increased charges would have a significant impact on the final value of Mrs M's funds. Whilst better investment performance with the DFM could make up for the increased cost of the arrangement, this couldn't reasonably be relied upon by Whitechurch (especially given the extent of the cost increase) and shouldn't have been central to any recommendation.

The SR goes on to state the new SIPP would offer Mrs M maximum flexibility when she withdrew her benefits but, given she was in the accumulation phase and around 20 years from retirement, I think that was of very limited value to her at that point in time.

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

The SR explained in detail the benefits of a discretionary portfolio over an advisory solution. However, I don't believe Whitechurch properly explored and discounted why they didn't recommend a basic, cost-effective managed fund to Mrs M, similar to what she was already invested in. Their letter suggests a single managed fund would struggle to match her risk profile and be fully independent. I don't agree with Whitechurch's perspective. There's many low-cost managed funds on the market covering a range of risk profiles that offer a broad spectrum of differing underlying investments which are professionally managed that would've met Mrs M's needs that wouldn't need her continual input.

I've also reflected on whether the DFM solution may have been suitable because the adviser was aware of other factors about the customer that may, for example, have justified investing in a bespoke portfolio. Whilst I have to acknowledge the fact-find was missing from the record so it may have shed further light on to the case, the SR and notes are silent on whether Mrs M was potentially coming into further monies in the near future such as a large inheritance that may have warranted a DFM over a packaged product. I accept Mrs M was adding monthly contributions to the SIPP of £187 but, even taking that into account, I don't believe the DFM was either suitable for her current or future needs.

The regulator's guidance notice (Financial Standards Authority – "Assessing Suitability") from March 2011 highlighted a key theme that I think is very relevant in this case. Within the examples of poor industry practice, they identified clients with small pension funds being recommended DFM arrangements. The regulator explained a DFM investment approach was unlikely to be appropriate for such customers because of the additional costs incurred. I think it should've been clear to Whitechurch that such an arrangement was unlikely to be in Mrs M's best interests given the guidance the regulator provided at the time.

I acknowledge Mrs M needed to find a suitable wrapper for her pension credit, which as I've already said, I believe could've been met by one of the existing two stakeholder pensions. But, I also need to consider whether Mrs M would have proceeded with the transfer of her three pensions, even if the advice had been to remain in their existing schemes. I think given it was Whitechurch who introduced the idea of moving them and she was only seeking advice on the pension credit, I think it more likely than not she would've stayed where she

was or opted for a cheaper alternative had they advised her to do so. I say that because looking at Mrs M's circumstances at the time, she had limited investment experience and a modest fund.

Finally, as part of her original complaint to Whitechurch, Mrs M told them she was unhappy with the wording of the communication they issued to her about the property income fund investment that'd been made. She felt it was misleading. Whitechurch upheld that part of Mrs M's complaint and offered her £200 to apologise for any confusion they'd caused. I've looked at the letter and Q&A document Whitechurch sent Mrs M at the time. I can understand why she felt their correspondence could've been positioned better. Their letter explained the property fund was being wound down. Within the FAQ section, it stated "How much of my original investment will I get back?", it went on to say "100% of each investors stake in the fund will be returned to them". However, what investors were actually receiving back was whatever market value could be achieved from the units within the fund. Whilst the FAQ did go on to explain that customers may get back less than their original investment, I don't think Whitechurch's letter was particularly well worded.

I've considered the impact of the misleading communication on Mrs M. I'm content that aside from some initial disappointment of hearing she wouldn't get all her funds back, the impact of that incorrect information on her was limited. I therefore think the £200 Whitechurch have already offered to Mrs M appears fair and reasonable.

### Summary

I don't believe either of the customer's stated objectives or wider insight provided within the SR provide a compelling enough catalyst when considering Mrs M's wider financial position to switch her existing pensions to a new SIPP with a DFM arrangement. Whilst Mrs M, when educated about the differences between DFM and a passive or managed fund, may have been attracted to the potential benefits of having her money managed in a bespoke style, that doesn't necessarily mean it was the right thing for her. Just because a client is keen and wishes to act or has been told about the costs, doesn't necessarily mean it's in their best interest to do so and in such circumstances, it's incumbent on the adviser to help guide the consumer down the route that's right for them.

To summarise, for the reasons set out above, my view is that Whitechurch hasn't acted in the best interests of Mrs M and I believe it needs to take action to put things right.

### Responses to my provisional decision

After reviewing my provisional decision Mrs M contacted this service and explained she had further comments she wished me to consider. She didn't think the decision took account of what happened after May 2016 when she moved from Whitechurch. She said the service she received at the new firm she moved to wasn't as she had expected and therefore asked me to look into that for her. She also raised a number of questions about the redress I had set.

However, Whitechurch did not respond to the provisional decision. A prompt was provided to them, but a reply was not received.

### **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.

I explained to Mrs M this complaint was focused purely on the advice and service she received from Whitechurch. I also advised Mrs M that in the first instance, she should liaise in with the firm who advised her to switch from Whitechurch's agency in May 2016 to give them the opportunity to look into things for her. After providing further context to the redress, Mrs M had no further comment.

As neither Whitechurch or Mrs M presented any new arguments, it therefore follows that I uphold Mrs M's complaint for the reasons set out above.

### **Putting things right**

My aim is that Mrs M should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. In doing so, it will also take account of Mrs M's complaint point linked to the charges she's paid.

I think Mrs M would have invested differently. It's not possible to say *precisely* what she would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mrs M's circumstances and objectives when she invested. I think she would've stayed with her existing providers and added the pension credit to one of the existing plans.

### **What must Whitechurch do?**

To compensate Mrs M fairly, Whitechurch must:

- Compare the performance of Mrs M's investment with the notional value is she had remained with her previous providers. 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, Whitechurch should pay into Mrs M'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 Whitechurch is unable to pay the compensation into Mrs M's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs M won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- Pay Mrs M £200 for distress caused to Mrs M for the concern that she paid unnecessary extra charges for a solution that wasn't suitable for her needs.

- If it hasn't already done so, pay Mrs M £200 for the misleading property fund correspondence.

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

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
James Hay SIPP  - three transferred PPs	Still exists and liquid	Notional value from previous providers	Date of three PP transfers  (23 April 2012)	Date of transfer to new adviser  (May 2016)	8% simple per year on any loss from the end date to the date of settlement
James Hay SIPP  - Pension Credit	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of Pension Credit transfer  (26 July 2012)	Date of transfer to new adviser  (May 2016)	8% simple per year on any loss from the end date to the date of settlement

### **Actual value**

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

### **Notional value**

For the switched pensions this is the value of Mrs M's investment had it remained with the previous providers until the end date. Whitechurch should request that information from the previous providers.

For the pension credit, this is using the benchmark 50:50 FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds

Any additional sums paid into the pension plan and invested via the James Hay DFM should be added to the notional value calculation from the point in time when it was actually paid in.

If the previous provider is unable to calculate a notional value, you will need to determine a fair value for Mrs M's investment instead using these benchmarks; for half the investment: 50:50 FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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.

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

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mrs M wanted capital growth with a small risk to her capital.
- If the previous providers are 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 her capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs M's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs M into that position. It does not mean that Mrs M would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs M could have obtained from investments suited to her objective and risk attitude.

### **My final decision**

I'm upholding the complaint. My final decision is that Whitechurch Securities Ltd trading as Whitechurch Financial Consultants should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 17 April 2023.

Simon Fox  
**Ombudsman**