

The complaint

Mrs S has complained about the advice she received, the costs involved in switching her investments and the level of risk her portfolio had been exposed to by Nexus Independent Financial Advisers Limited ('Nexus'). She would like to be financially compensated for this.

Mrs S is represented by a relative, Mr P, I will be referring to both in my final decision.

What happened

Mrs S held her portfolio with (the predecessor of) Nexus since 1997. She held a whole of life plan, an Investment Bond and two ISAs in collective investments valued at a total of £140,000.

Mrs S signed her client agreement with Nexus in February 2021 after it took over the preceding business. It carried out an annual review that year. It suggested the ISA funds held no longer matched Mrs S's attitude to risk and recommended that she take advantage of its internal discretionary fund management service. Mrs S agreed to this but says she wasn't aware this would incur the initial charges that it did.

In 2021 Mrs S complained to Nexus about this and that the new portfolio had performed badly compared to her previous investments. As a minimum Mrs S would like for the initial charges to be reimbursed as well as the increased ongoing charges which had risen from 1.82% per annum to 2.54%. She questioned the lost returns due to the poor performance and the level of risk she was exposed to prior to the amendments being made.

In its response Nexus said said;

- It had taken particular care of Mrs S when giving advice, taking account of her age, and didn't have any concerns about her understanding of what was discussed.
- The ongoing fee enabled Nexus to provide an ongoing robust review service and an annual adviser meeting. Its charges were comparable with the industry.
- It accepted it did not give enough detail about the Investment bond, but Mrs S hadn't been disadvantaged by this.
- It gave a breakdown of the initial charges incurred which amounted to £2,340.00.
- The discretionary investment model matched Mrs S's investment objectives, particularly during the then recent market volatility.
- It had negotiated a reduction in the platform fees that Mrs S would benefit from.
- It was satisfied with the level of risk Mrs S was exposed to.
- It didn't uphold the complaint but offered £1,000 as a gesture of goodwill.

Not satisfied with the outcome, Mrs S brought her complaint to the Financial Ombudsman. Our investigator who considered the complaint reviewed Mrs S's investments from the earliest point advice was given by the predecessor of Nexus – 2014 – and thought it should be upheld. He said;

- He didn't think that Nexus had acted fairly by not changing Mrs S's portfolio in line with her attitude to risk as identified back in 2014.
- She was over exposed to equities until 2021 when the portfolio was amended to 75% in fixed interest and 25% in equities – compared to 60% fixed interest and 40% equities previously held.
- He didn't think it was fair and reasonable for Mrs S to have paid the charges she did as that only brought Mrs S's attitude to risk in line with how it had been identified in 2014.
- To put the matter right the investigator concluded the performance of Mrs S's portfolio should be compared half to the FTSE UK Private Investors Return Index and half to the average rate from fixed rate bonds.
- The advice costs and charges should be refunded with 8% interest added from 2014 to 2021.

Nexus agreed with the investigator, but its calculations showed that Mrs S was actually better off by over £10,000 because of its error and its charges were included within that. So, nothing was payable to Mrs S. It was still willing to offer the goodwill payment of £1,000. Mr P initially agreed with the outcome but with the exception that the charges should be repaid to Mrs S.

As the complaint remains unresolved, it has been passed to me for a decision.

What I've decided – and why

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

I've reviewed the file and agree with the outcome that was reached by the investigator and broadly for the same reasons. I'll explain why.

Nexus has said it was only responsible for the first point of advice given by its predecessor business which was in October 2014 as recorded in the fact find from the time. It didn't provide the original advice for the investment in 1997/2002. It was upon takeover of the previous business that Nexus carried out due diligence and made contact with its clients. As mentioned already, Mrs S completed a fact find in October 2014. In that document she recorded that she wanted 'mostly growth' from her investments and that she was a 'lower risk' investor expecting 'modest' growth.

The investigator found that Nexus hadn't acted fairly by not changing Mrs S's portfolio in line with her attitude to risk of 'lower' from 2014 to 2021. That has been accepted by the parties and I make no further finding on this.

However, in putting the matter right, Nexus has calculated that Mrs S hasn't suffered a financial loss because of the business's error. She had instead been financially advantaged by it, so nothing was owed to Mrs S, but Nexus was willing to stand by its goodwill gesture of £1,000.

Nexus has explained that any fees Mrs S incurred have been included in the performance calculations it has provided. But Mr P isn't satisfied that Mrs S hasn't had the initial fee returned to her.

He has said that Mrs S had always paid ongoing fees throughout her relationship with Nexus and these fees were designed as a retainer to cover the costs of future advice. The only reason that Mrs S had paid additional 'initial charges' was because of the switch to the change of platform provider to Nexus' own platform. Mr P considers that switch was unnecessary. And in any event, Mrs S hadn't been receiving the service levels she should have, and those fees were paid inappropriately.

Mr P has also expressed his concerns about the unbiased nature of Nexus' advice when recommending its own in-house discretionary service. Mrs S had never had or needed such a product and Nexus didn't consider fund switching within the existing platforms.

Nexus acknowledged that Mrs S should be exposed to a lower level of risk in its 'Investment Recommendations' on 22 February 2021 when it suggested to Mrs S that she transfer her existing Aegon and Fidelity ISA to a new ISA on its Nucleus platform. This was to 'allow you to consolidate your investments on a single platform, making any administration easier and allowing you to benefit from an investment portfolio in line with your agreed attitude to risk'. It was noted that Mrs S should be aware that one of the possible disadvantages was that 'initial costs [would be] incurred to implement the recommendations', but I also note that the portfolio being recommended was 0.9% and 0.11% cheaper than her existing portfolios.

Mrs S agreed to the advice she was recommended. Mr P is concerned that Nexus made the recommendation to transfer to its platform to suit its own purpose. He said Mrs S had no need for this. Mrs S paid for this initial advice and Mr P thinks this should be returned to her. Mrs S was effectively paying for advice to put Nexus' error right.

But I don't agree. I say this because Nexus was offering Mrs S a different service. It was offering to take her ISA onto its discretionary fund managed platform and manage the investments for her. I'm satisfied that Nexus was entitled to recommend that Mrs S take advantage of its discretionary fund management service, and that it explained that clearly to Mrs S and the 'before and after' costs plus the initial cost.

The Investment Recommendations documents has a section entitled 'investment strategy for your investments' which outlined the difference between advisory management and discretionary fund management services. The comment 'From our discussions and based on your objectives and your agreed attitudes to risk, I feel that your money should be invested on a Discretionary basis' suggests to me that both options were discussed and the discretionary portfolio was considered the more appropriate for Mrs S.

The report also explained how the discretionary management would work and the recommended 'Nexus 2 – MPS Portfolio';

'The aim of the portfolio is to generate capital growth over a five year rolling period with low levels of volatility. It is a multi-asset portfolio which can invest in open and closed ended funds, across the whole market and will include exposure to equities, properties and bonds and alternative investments. The exposure of higher risk assets (equities and property) will not exceed 25%.'

Mrs S was also provided with a graph showing the performance of her current ISA investments compared to the Nexus 2 portfolio and the reasoning behind the recommendation which was 'The nexus 2 portfolio is lower risk than your current portfolio and has outperformed both your current portfolios'.

While it is noted in the report that past performance is not an indication of future performance, I don't find that the reasoning – the hoped-for better performance – for the recommended switch to be unreasonable. Because of this, there's no reason for me to

conclude that the recommendation was made for the benefit of Nexus rather than Mrs S. The discretionary fund management service was one that Nexus offered its clients so I can't conclude it shouldn't have offered that service to Mrs S.

Mr P has concerns about the advice being given to Mrs S via virtual mediums during the Covid pandemic. He said Mrs S was 86 years of age and didn't have anyone to assist her in a personal manner and it was difficult for her to understand what was being done, the charges and why it was necessary. He said she would have struggled with the documents she received and was asked to sign and return.

I have considered Mr P's comments about Mrs S's age and whether she had the capacity to acknowledge all of the information she was given in the investment's recommendation and other documents. I appreciate the changes were recommended during the Covid pandemic and a face to face meeting wasn't possible. I've carefully considered this point and whether Nexus took advantage of Mrs S if she was a vulnerable customer.

I note that the adviser's meeting notes further to his call with Mrs S recorded that she was in good health and lived independently. She had relied on her late husband – who was an active investor – to have made investment decisions for them both. She didn't take too much active interest in the management of the portfolio with Nexus or another direct equity portfolio she held elsewhere. But I note its recorded that Mrs S filled out her tax return on an annual basis and her response recorded in the quite detailed attitude to risk questionnaire in November 2020 suggest she fully understood the questions being asked.

And the comment that Mrs S didn't take an active interest in her investments would suggest that may have been one of the reasons Mrs S decided to take advantage of the discretionary service. She may have been comforted to know that her portfolio was being actively managed on her behalf.

Mr P has said that bearing in mind Mrs S's age, the initial cost to make the switch was unnecessary. But equally it could be argued that Mrs S wanted to ensure that all of her finances were in good order and being properly managed. And in order to do so she was willing to pay that cost for the service and to benefit from a hoped-for better return on her investments. So, after considering Mrs S's age and circumstances, I don't find the recommendations made to her were inappropriate for her situation.

Mr P was confused how the 2014 review became included in the complaint. He had only complained about the advice given to Mrs S in 2021. He also questioned the redress method and whether it matched an equivalent portfolio that was ultimately recommended. Mr P has said that it is irrespective of whether Mrs S is better off because of Nexus' error. The charges were unfairly levied.

With reference to the inclusion of the 2014 review, when bringing a complaint, a consumer may not always be fully aware of the reasoning behind that complaint. They may just recognise that something is wrong. Our inquisitorial remit allows us to comment on anything we see during the course of our investigation which we don't think is fair and reasonable in the circumstances. In this case, the investigator felt it appropriate that in order for him to look at the full picture of Mrs S's complaint and be fair to the parties, it was necessary to review the advice given in 2014 as well.

Because of the time since the advice was given – and the time limits that apply – the investigator sought Nexus' consent for us to consider it. It agreed that we could look at the advice given from October 2014 onwards, so it was included in the investigator's review and as the complaint was upheld, for compensation purposes it was from that point. And I agree

that the advice given in 2014 and that Mrs S was recognised as a lower risk investor at that point, to be intrinsically linked to the initial complaint.

The outcome of the calculations for putting the matter right for Mrs S is that she has financially benefited from the portfolio she has been invested into compared to the benchmark. Mr P says that in addition, Mrs S should be paid the fees incurred as stated in the investigator's view letter – the advice cost and charges should be refunded from 2014. However, I don't agree. I say this because in order for me to make a financial award as a result of a fault by Nexus' actions or inactions, I'd need evidence to show that Mrs S had suffered a financial loss because of those actions or inactions. In this case, it was found that Nexus was at fault, but Mrs S hasn't suffered a financial loss because of that fault. She has in fact financially benefited. So, there is no loss for me to order compensation to put the matter right.

Mrs S was paying both on going charges and a one-off initial cost for the advice she received in 2021. Part of that advice was for Mrs S to move her ISA investments onto the discretionary managed platform which was a significant change for Mrs S and both of which required effort by Nexus to assess and implement. I don't find that there is any reason it couldn't charge for this. Mrs S was fully informed about this initial fee as evidenced by the information given in the Investment Recommendations document. And Mrs S wasn't under any obligation to proceed with the advice or agree to the initial charge if she didn't want to.

Nexus also compared the total charge of the existing ISAs with the future charges if she were to switch to the Nucleus platform. And those charges are higher which was detailed in the Investment Recommendations document as it took into account the additional discretionary fund management charges. This was all clearly explained, and I haven't seen anything to suggest that there were any costs that weren't transparent.

So, taking all of the above into consideration I am satisfied that Mrs S was aware of the reasoning for the recommendation and costs, and had sufficient time to consider whether she wanted to go ahead on that basis. In short, she made a fully informed investment decision to proceed.

In its calculations of the performance, Nexus has told us that the adviser fees are taken into account. And I have confirmed with Nexus that this includes the one-off initial fee of £2,340.00 Mrs S paid. It said the calculation wasn't based on fund performance against the benchmark but the actual portfolio performance with the fees taken into consideration – it said this is the real portfolio valuation.

Mr P has questioned the comparator indices used for redress purposes. He doesn't agree with it because it wasn't an equivalent benchmark to the portfolio she should have been in 75% fixed interest and 25% equity.

It's impossible for me to know how Mrs S would have invested since 2014. But taking into account her attitude to risk, I don't find a split between the FTSE UK Private Investors Return Index and the average rate from fixed rate bonds to be an unreasonable alternative. It isn't meant to be, and can't be, an accurate representation of what Mrs S would have done as that can't be known. It is a benchmark that I consider reasonably matches what Mrs S would have invested into in line with her objectives and attitude to risk.

Taking all of the above into consideration, and for the reasons give, I uphold Mrs S's complaint and for completeness I include the method for the redress calculation below. The calculation carried out by the business has shown that nothing is due to Mrs S as she is in a better financial position than she would otherwise have been.

The gesture of goodwill offer of £1,000 is still available to Mrs S so it is now for her to decide whether to accept that payment.

Putting things right

In assessing what would be fair compensation, I consider that my aim should be to put Mrs S as close to the position she would probably now be in if she had not been given unsuitable advice.

I take the view that Mrs S would have invested differently. It is not possible to say *precisely* what she would have done differently. But I am satisfied that what I have set out below is fair and reasonable given Mrs S' circumstances and objectives when she invested.

What must Nexus do?

To compensate Mrs S fairly, Nexus must:

- Compare the performance of Mrs S' investment with that of the benchmark shown below and pay the difference between the *fair value* and the *actual value* of the investments. If the *actual value* is greater than the *fair value*, no compensation is payable.
- Nexus should also add any interest set out below to the compensation payable.

Income tax may be payable on any interest awarded.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
ISAs	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 investment (2014)	Date of Nucleus Portfolio (2021)	Not applicable

Actual value

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

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Nexus should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal, income or other distributions paid out of the investments 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 Nexus totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically. If any distributions or income were automatically paid out into a portfolio and left uninvested, they must be deducted at the end to determine the fair value, and not periodically.

Why is this remedy suitable?

I have decided on this method of compensation because:

- Mrs S wanted Capital growth with a small risk to her capital.
- 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 a mix of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mrs 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 S into that position. It does not mean that Mrs S would have invested 50% of her money in a fixed rate bond and 50% in some kind of index tracker fund. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mrs S could have obtained from investments suited to her objective and risk attitude.

My final decision

For the reasons given, I uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 24 May 2023.

Catherine Langley
Ombudsman