DRN-4141698

The complaint

Mrs T and her husband ('the couple') submitted a joint complaint, on broadly the same grounds, about Mattioli Woods PLC ('MW'). The case was split into two, one for each complainant. I have already issued a decision for her husband's complaint, so this decision is for hers.

Mrs T says MW recommended an unsuitable switch from her Standard Life ('SL') Self-Invested Personal Pension ('SIPP') into a new SIPP in an MW Family Pension Scheme (the 'FPS'); that the FPS has underperformed significantly since then; and that she seeks redress.

What happened

MW took over the firm that previously serviced the SL SIPP. In 2018, the couple's longstanding adviser retired and around the middle of the year a new adviser was assigned to them. Their pension arrangements were immediately reviewed by the new adviser, and then reviewed again later in the year. The pension switch was recommended in the second review, in November 2018, then FPS was set up around April 2019.

The same advice was given to the couple jointly, with regards to switching away from their respective SL SIPPs, but, in the main, Mrs T's husband took the lead and communications were from and to him. Her pension formed the minority in the FPS, and her husband's the majority.

MW disputes Mrs T's complaint.

In terms of suitability of its advice, it says the new adviser's first review in 2018 made no recommendations to change the couple's pension arrangements; his second review later in the year recommended the joint pension approach, and the switch; recommended benefits were legal control as trustees of the FPS (which was not the case in the SL SIPP) including or especially in the event of one's death, the ability to add their son as another trustee, the ability to invest in commercial property, and the ability to be more active and strategic in their pension investments; the FPS was to be more costly than the SL SIPPs, this was disclosed to and agreed by them at the time; the discretionary basis of the FPS' portfolio was to be similar to the SL SIPPs' but the former was to be managed daily (compared to the latter's six monthly) and the management fee covered any associated advice from MW; the SL SIPPs had served them well but they needed to be changed.

By July 2019, MW says the structure, strategy and investments (including the details and implications of associated costs/charges) for the FPS SIPP's portfolio were known to and agreed by the couple, and that the investments were based on an income generating discretionary balanced portfolio, a Real Estate Investment Trust ('REIT') holding, a structured products fund, and a cash holding.

MW concedes that Mrs T's husband began to raise concerns about loss of value in the FPS very early, in April 2019 – including his comment around September 2019 that he was "… *yet to be convinced of the merits of the decision to switch from SL* …" and his view that investment of the new SIPP was being unduly delayed – and that his concerns remained and were repeated up to January 2020 (when he challenged both the performance and fees in the new arrangement) and up to the formal complaint in September 2021.

MW did not uphold the complaint. In a nutshell, it considered that its advice at the outset (and since) was suitable, that costs and charges were transparent and agreed, and that performance (which was never guaranteed) had been affected by the markets and by events beyond its control (including the pandemic).

The complaint was referred to us and one of our investigators looked into it. He concluded it should be upheld and mainly found as follows (using references to Mrs T's husband, as the lead in the matter, in most of his findings):

- Key points to consider are whether (or not) the pension was moved from the previous SL SIPP into a more expensive alternative without good reason, and whether (or not) the switch was suitable in terms of risk profile and personal circumstances.

- With regards to the reasons given by MW for the switch evidence shows that the couple's son had his own separate pension arrangement and financial adviser, so it was never an intention for him to join the FPS; that there was never an intention to buy commercial property and that their son worked from home; and, in terms of legal control upon a SIPP holder's death, it is normally the case that the beneficiary on record gains control, this is what happens generally for SIPPs so it is not clear why a different approach was viewed as cause for the switch.

- There was no compelling reason to justify the higher costs (administrative and advisory) under the FPS as there was no justification for the switch.

- The balanced risk profile attributed by MW to Mrs T's husband, and the medium to high capacity for loss that he was assessed as having, conflicted with the following – his selection, in the risk profiling questionnaire, of a conservative portfolio; his limited investment experience and knowledge; and his history of having only ever taken small risks with past financial decisions. In this context, the structured products recommended for the new SIPP's portfolio would have been more suited to very experienced investors. It is also of note that Mrs T's risk profile was slightly more cautious than her husband's.

- There were a large number of investment funds available under the SL SIPP to achieve a rebalancing within it for the income generation objective.

- The ability to have pension investments managed on a daily basis was either irrelevant or unnecessary.

- Overall, Mrs T should have been advised to retain the SL SIPP and there was no good reason to switch to the FPS SIPP. She should be compensated for the unsuitable switch advice, using, if possible, the notional value of the SL SIPP as the redress benchmark.

MW disagreed with the investigator's view and submitted its comments to explain why.

It mainly said its engagements with the couple included discussions about them gaining more control over their finances in life and in death; it was not a primary reason for the pension switch, but the FPS gave more oversight and control to meet this objective; establishing potential access to the FPS (and to commercial property investment) for their son was also discussed, this too was not a primary driver for the switch but it added to its overall justification; their previous portfolios were invested for growth, that had to be revised towards income; the SL policies did not allow the sort of discretionary fund management and structure MW could offer and did not have the specific income portfolio it recommended to them (which was needed for the prospects of sustaining withdrawals without eroding capital); the recommended portfolio had a risk score of 4 out of 10 so it did not breach their balanced profile; the facility for daily active management in the new SIPP meant that could be done when and where necessary, not that it would be done unduly; it also stood in contrast to the limited facilities (one review and two rebalances per year) available in the SL SIPPs.

MW also commented on factors related to the performance of the recommended portfolio, the need to have been committed to it for longer than the couple were in order to reap its rewards, and its concerns about us giving their present claims more weight than the weight given to what they discussed with MW at the time(s) of advice.

The investigator was not persuaded to change his view and the matter was referred to an Ombudsman.

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 I said above, I have already issued the decision for Mrs T's husband's complaint. I upheld that complaint and concluded that the switch in his case was unsuitable. Given that the key facts pertaining to Mrs T's case, in relation to the switch recommended by MW, are broadly the same as those in her husband's case it is perhaps unsurprising that I have reached the same conclusion in her complaint. I uphold her complaint and I find that MW recommended an unsuitable pension switch to her.

I have reached this conclusion for the reasons set out below, and for the core reasons set out by the investigator in his view. I endorse and incorporate those core reasons (as summarised above) into this decision.

Having gone through evidence from the period in which the couple were assigned the new adviser, and in which the adviser conducted the first two financial reviews, it is reasonably clear that the pension switch was wholly or mainly MW's idea. There is no evidence of initiation by the couple and arguably no evidence of circumstances (or a change in circumstances) that called for it. I appreciate that this does not automatically make it unsuitable, but as I explain below there are reasons why the switch was unsuitable.

The following summary illustrates how MW, in the main, initiated the switch:

- In the adviser's initial letter of 30 July 2018 (mainly directed at Mrs T's husband but addressing both of their pension arrangements) he said – "*In terms of the structures you currently have, <u>I see no immediate need to make any significant changes</u>. Over time, things will naturally evolve and we will ensure things are streamlined and as efficient as possible to provide you with the best possible outcomes*"; and "*In the interim though, we agreed we would start to consider the possible establishment of a family pension fund as this will allow for continuity from generation and generation and as you are now approaching age 75, the rules around death benefits will effectively change*"; and "*<u>A pension scheme, such as I will be suggesting, could have some possible advantages for</u>* <u>[the couple's son]</u> *<u>in terms of funding, possible purchase of commercial value, etc</u>. Nonetheless, we can discuss this further when we next meet, together with the advantages associated with more flexible pension* *funds and the possible creation of efficiencies in terms of your investment exposure*". [my emphasis]

- The letter states that there was no cause for a change to the pension arrangements at the time. There is wider evidence that suggests the couple's previous adviser, up to his retirement, had serviced their SL SIPPs well and that the new adviser was aware of this. Furthermore, they appear to have raised no major concerns about the SL SIPPs. The adviser's idea of a family pension appears to have resulted from what could be regarded as his *blue sky thinking* at the time, as opposed to precise factors or instructions prompting it. In addition, and as the investigator was concerned about, the letter shows – or at least suggests – that the notion of the couple's son potentially benefitting from a family pension and from a 'possible purchase of commercial value' was raised by the adviser, not by the couple and not by circumstances.

- The adviser's letter of 20 November 2018 included recommendation of the pension switch, the FPS and its underlying discretionary portfolio (to occupy 45% of the new FPS SIPP); inclusion of discreet holdings in the portfolio; recommendation of the REIT holding (to occupy 30% of the new SIPP); recommendation of the structured products fund (to occupy 10% of the new SIPP); and recommendation of a cash holding for 5% of the new SIPP.

- This letter also referred to "*the possibility of further flexibility*" in the FPS "… *should* [the couple's son] *need it in the future*". There is no evidence such a need was ever presented by them and the uncertain words used in this quote show it was a somewhat surplus consideration. Indeed, as I summarised in the background above, MW accepts it was not a 'primary driver' for the switch.

- Notably, the letter also said this – "*The pension structure you have with Standard Life has served you well over the years. The growth generated by the Select portfolio management service, which re-balances at two agreed points during the plan year, has certainly worked well throughout the last ten years of a 'bull' market. However, as we are reaching a more complex stage, I do feel there needs to be some changes in terms of investment strategy. I would like to see a more active management structure, namely one that is managed on a daily basis, rather than one which is purely reactive and look more strategically around the balance of your assets within your pension funds*." [my emphasis]

- It seems safe to say the adviser did not consider there was anything wrong with the SL SIPPs. He acknowledged that they had served well for 10 years and had generated good growth in that period. However, *he* (the adviser) – not the couple – wanted to see more active management in the pension arrangements, and he justified this with reference to an approaching more complex stage in their lives that warranted such a change.

- The objective for Mrs T's pension arrangement was for her to define, not for the adviser. In this context, and in the absence of circumstances defeating the context, it was not for the adviser to determine that *he* wanted to see more active management in the pension and that there should be such management. I can understand how his statement might be viewed less as defining her objective and more as proposing what he considered beneficial to her. However, I consider that unlikely because by the adviser's own admission the existing arrangement that he met was working well, four months earlier he could not find a reason to change it and no major changes in circumstances had happened since, so there does not appear to have been a problem to match the proposed solution of more active management.

- I also appreciate that Mrs T accepted the recommendation. That was not unreasonable. She (and her husband) engaged the services of professional advisers and she was entitled to follow the advice she received. That does not dilute evidence that it was the adviser who had the objective for more active management. This means the argument about the FPS matching this particular objective loses significant value, because it was not her objective. Returning to her acceptance of the advice, it is also noteworthy – as MW reflected in its submissions – that her husband did so on their joint behalf and he did so with explicit reservations about the advice. He was somewhat sceptical and cautious about it from the outset of its implementation and there is undisputed evidence of him doubting the merit of the switch and evidence of the consistent and repeated concerns he put to the adviser from the point of implementation and all the way to the point of complaint.

- Another key observation is about the letter's reference to an approaching more complex stage in their lives. This was the adviser's justification for the more active management he wanted to see in the pension arrangements and, essentially, for the switch recommendation. In the July 2018 letter, there was no mention of this approaching complexity. As quoted above, no action was deemed (by the adviser) necessary at the time. The alleged approaching complexity in or around November 2018 is not quite clear from available evidence. The matter also begs the question why any impending *complexity* was not foreseen and addressed in the adviser's review just four months earlier. Overall, on balance and for these reasons, I am not persuaded by the claim about an approaching complexity warranting the changes and switch the adviser recommended.

The recommendation was associated with considerable initial costs and increased ongoing costs. Year one fees for the switch advice and implementation, for establishment and administration of the new SIPP, and for HMRC reporting were around £3,000. Ongoing fees of up to 3,000 per year then applied for administering and running the SIPP. All fees were stated as net of VAT. Previously, an ongoing charge of 0.27% per year applied to the SL SIPP, which in monetary terms was significantly less.

The adviser revised his investment recommendations on 3 July 2019. He said he was concerned about the risk of income withdrawals eroding capital in the pension, so he recommended a change to the investment splits. He proposed placing 60% of the FPS SIPP into the discretionary income portfolio, 25% into the REIT, 10% into structured products and holding 5% in cash. Notably, he also set out the associated initial and ongoing fees, which were – initial investment placement fee total of 1.2%, ongoing annual fees of 1.9% for the discretionary portfolio, ongoing annual fees of 1.47% for the REIT, and ongoing annual fees of 1.62% for the structured funds.

There is SIPP account statement evidence that the total average yearly cost of all charges deducted from the SL SIPP was at the rate of 2%.

The switch recommendation and associated investment recommendations increased costs significantly. Higher costs that appear to have contributed to loss of value in the FPS SIPP.

The regulator's Principles for Businesses, at Principle 6, requires a firm to pay due regard to the interests of its customers and treat them fairly. This is partly echoed in the regulator's Conduct of Business ('COBS') rules, at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. These regulatory provisions are directly relevant to a firm's responsibility for the suitability of its recommendations.

In 2009, the regulator produced a checklist for pension switching, which highlighted four key issues that advising firms were/are expected to consider seriously. MW would have – or ought reasonably to have – been mindful of this. One of the four issues/considerations was *charges* – in other words, the question advisers were expected to address was whether (or not) the consumer was being switched to a more expensive pension without good reason.

On balance, based on the above analysis, and on the additional findings to follow, I consider that MW recommended an unsuitable pension switch to Mrs T; the switch itself was unnecessary and costly; it was prompted by objectives mainly initiated and held by the adviser; the SL SIPP was performing well and she did not seek to change it; there is a lack of evidence of a change in her circumstances warranting the switch; the FPS SIPP was more expensive; and there was not a good reason to justify the additional expense.

With regards to the crux of MW's post-view comments, there is no available evidence that Mrs T presented any of the following as objectives for a change to her pension arrangement – more legal control over her pension, more active management of her pension's investments, planned or optional access to a family pension by her son, specific rebalancing of her pension's investments, a preference for more frequent rebalancing of her pension investments. I do not accept that any parts of the switch recommendation that addressed these matters were parts that addressed her objectives. I consider it more likely (than not) that the entire affair was unreasonably taken over by the adviser, and was quite remote to what she asked for, wanted or needed.

I acknowledge the technical points MW has made in support of its recommendation. These points alone do no defeat the complaint. The facts of the FPS and the facilities within it are not in dispute. The issues to address are whether (or not) the switch was suitable for Mrs T and was in her best interests, in the circumstances as they were. Those circumstances were as I have addressed above, and, on balance, they do not establish suitability of the recommendation. Even if the FPS SIPP had more or better facilities than the SL SIPP, the balance of available evidence is that Mrs T did not need it, especially not at the significant initial costs and more expensive ongoing costs associated with it.

Furthermore, even if the adviser foresaw that her financial arrangements were, either soon or further in the future, unlikely to continue sustaining any income requirements, the first consideration ought reasonably to have been rebalancing funds in the SL SIPP. As the investigator said, there is evidence that there were sufficient options to make this potentially viable. It does not appear that the adviser properly looked into this alternative. Instead, he seems to have focused on reasons to present the FPS and the recommended portfolio and investments as being better products than the SL SIPP and its underlying portfolio. This was arguably misguided. The matter was not limited to a competition between products.

If there was cause to reconstitute pension investments for Mrs T that would have been the task to address. If, as it appears, such rebalancing could have been done in the existing SL SIPP, which all acknowledged had performed well, that would have been the solution to apply. Resolving any such investment concerns within her existing arrangement where possible – and thereby protecting her from avoidable costs and/or avoidable increases in costs – would have been in her best interests and would have been what she was entitled to expect from the adviser. The adviser did not deliver this.

Overall, on balance and for all the above reasons, I consider that Mrs T was given unsuitable advice by MW to switch from her SL SIPP to the FPS SIPP. Instead, she ought to have been advised to retain the SL SIPP. The alternative that could have been explored was a rebalancing of the SL SIPP's underlying investments. However, for the purpose of this decision I have not found enough evidence to conclude that the SL SIPP required rebalancing at the point of advice in November 2018 (or at the point of the switch in 2019).

Putting things right

fair compensation

In deciding what is fair my aim is to put Mrs T as close as possible to the position she would probably now be in if MW had not given her unsuitable advice to switch her pension arrangement.

On balance, I consider that with suitable advice the switch would not have happened. As I said above, and for the reasons I explained, she should have been advised to retain the SL SIPP. I have not seen evidence to say or suggest she would not have done that, if advised to. This serves as a basis to use the SL SIPP's notional performance/value as the natural benchmark for the calculation of redress. In other words, but for MW's unsuitable advice she would have continued with the SL SIPP, so its notional performance from the date of the switch to the date redress is settled should illustrate where her pension would now be had she not switched it. That will then be offset against the performance of the FPS SIPP (and/or any pension it subsequently changed to) during the same period.

If the notional performance and value of the SL SIPP cannot be obtained, I will provide for an alternative benchmark in the table below.

The start date for the redress calculation will be when the SL SIPP was switched to the FPS SIPP. The end date will be the date of settlement because the effect of the unsuitable pension switch continues to date, so the calculation must reflect this.

Mrs T is ordered to engage meaningfully and co-operatively with MW to provide it with all information and documentation, relevant to its calculation of redress, that it does not already have.

To compensate Mrs T fairly, MW must do the following:

- Compare the notional performance of her FPS SIPP (and/or any pension it subsequently changed to) with that of the benchmark shown below. If the *fair value* is greater than the *actual value* the difference must be paid to her in compensation. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Pay any interest set out below. Income tax may be payable on any interest paid. If MW is required by HM Revenue & Customs to deduct income tax from the interest, it must tell her the deduction amount and give her a tax deduction certificate if she asks for one, for her to reclaim the tax from HM Revenue & Customs if appropriate.

- Pay the compensation into Mrs T's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. The compensation should not be paid into her pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into her pension plan, pay it directly to her. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. The *notional* allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age. For example, if she is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If she has been or would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculations to her in a clear and simple format.

investment name	status	Benchmark	from ("start date")	to ("end date")	additional interest
Mrs T's FPS SIPP (portfolio)	-	Notional Value of the SL SIPP; or, if that cannot be obtained, FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	date of switch to the FPS SIPP	date of settlement	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.

Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if MW totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

- The notional performance and value of the SL SIPP provides a natural benchmark, for the reasons given above.

- In the alternative – the SL SIPP appears to have had a broadly balanced risk profile; there is evidence in a review document dated July 2018 showing that its portfolio was populated with around 60% in equities, around 17% in bonds, around 10% in property related funds, around 7% in absolute return funds and around 6% in cash; 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 is a fair measure for someone who was prepared to take some risk to get a higher return; I consider that SL SIPP's balanced profile can be matched by this alternative benchmark; so it broadly reflects the sort of return Mrs T could have obtained from the SL SIPP had it been retained.

compensation limits

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mrs T's case, the complaint event (the unsuitable pension switch) occurred in 2019 and the complaint was referred to us in 2021, so the applicable compensation limit should be £355,000.

My final decision

For the reasons given above, I uphold Mrs T's complaint and I order Mattioli Woods PLC to calculate and pay redress to her as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 18 July 2023.

Roy Kuku
Ombudsman