DRN-4159069

The complaint

Mr N complains about pension advice given by G & E Wealth Management Ltd (GEWM). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr N had a pension fund with a pension provider I'll refer to as Firm A. Around November 2018, Mr N says he transferred around 75% of this into a cash-based fund as he was nervous about market fluctuations and the fund losing money. Around November 2020 he transferred the remaining value into the cash-based fund.

Mr N says that, following a family member's recommendation, he spoke to GEWM in August 2021. He wanted advice as to which funds he was best to invest in as he was concerned about the effect of inflation on his cash fund.

GEWM completed a fact-find to gather information about Mr N's circumstances and objectives. This recorded that Mr N was:

- 61 years old, married and with no dependents;
- Employed;
- Had an annual income of £13,000;
- Owned his home with no mortgage or other debt;
- Had cash savings of around £88,000; and
- Had another pension with a fund value of around £43,000 and two defined benefit pensions which together would pay around £13,000 per year from age 65.

GEWM also carried out an assessment of Mr N's attitude to risk (ATR) by asking a series of scripted questions. The answers given by Mr N deemed him to have a 'cautious to moderate' ATR, or 2 out of 5. The meeting notes suggest that following a discussion around the concept of risk versus reward, Mr N agreed to be categorised as having a moderate ATR (3 out of 5).

Mr N's priority was recorded as having a net income, joint with his wife, of £4,000 per month. He was planning to fund this with employment and his cash savings for the next four years as he slowed down the amount of work he was doing. And then, his pensions would aim to fund this from the age of 65 when he planned to retire fully.

Following the fact-find, GEWM presented a recommendation to Mr N. It recommended his pension remain with Firm A, but all of his funds be switched into a managed pension fund. Mr N accepted this recommendation, and the funds were switched.

Mr N has said that his pension fund was worth about £496,000 at the time he transferred to the new fund in November 2021. In January 2022, Mr N complained to GEWM about the suitability of the transfer advice. At this point the fund was worth around £370,000. He said the advice was unsuitable as it had exposed his pension fund to more risk than he was willing to take. He said he was getting close to retirement and didn't know how he could recoup these losses. His fund value has fallen further since.

GEWM didn't uphold Mr N's complaint. It said the advice to transfer to the new fund was suitable for Mr N based on his ATR. GEWM offered Mr N some options of what he could do now that his pension fund had fallen in value. Mr N has to date opted to leave the pension in the advised fund in the hope that it recovers its value.

Mr N referred his complaint to our Service. An Investigator upheld the complaint. He thought that the level of risk Mr N was being exposed to hadn't been fully explained to him. And, he said that had GEWM properly considered the answers Mr N had given to the ATR questions, and his previous actions with regards to this pension, then Mr N should've remained categorised as a 'cautious to moderate' investor rather than moderate. He also noted the advised fund risk rating was at the high end of what would be considered moderate. The Investigator set out how he felt things should be put right.

Mr N accepted this, but GEWM didn't. It said, in summary, that Mr N had previously invested as a moderate risk investor and referred to how his pension had been invested prior to it being transferred into cash. It disagreed that Mr N was a 'cautious to moderate' investor and felt Mr N should take responsibility for his decision to invest in the fund. It also disagreed with the method our Investigator had used for redress in this complaint. Overall, GEWM didn't think the complaint should be upheld and asked for an Ombudsman to review the complaint. So it was passed to me to make a decision.

I issued a provisional decision on 15 May 2023. In this, I set out that I agreed that the complaint should be upheld. But I had points I wished to address in addition to our Investigator. And I felt that things should be put right in a different manner to that recommended by our Investigator. In this provisional decision, I said:

"First, I'd note that GEWM has responded in great detail making a number of points when disagreeing with our Investigator's opinion. I want to reassure GEWM that I've thought about all the points it's raised. However, I won't address them all within my decision. That simply reflects the informal nature of this service. Instead, I'll focus on what I consider to be the crux of Mr N's complaint – whether the pension fund recommended to him was suitable.

When assessing the suitability of the advice given to Mr N, I have to consider it in light of the information available when the advice was given, and not with the benefit of hindsight. It's clear that Mr N's pension has significantly fallen in value, and had it not done, it's unlikely he would be unhappy. That said, I need to consider the overall suitability of the advice at the time it was given.

Within the Financial Conduct Authority's (FCA) handbook, COBS 2.1.1R required a regulated business to "act honestly, fairly and professionally in accordance with the best interests of its client".

The FCA's suitability rules and guidance that applied at the time GEWM advised Mr N were set out in COBS 9. The purpose of the rules and guidance was to ensure that regulated businesses took reasonable steps to provide advice that was suitable for their clients' needs and to ensure they weren't inappropriately exposed to a level of risk beyond their investment objectives and risk profile.

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I've thought about when deciding whether the advice was suitable. In summary, the business must obtain the necessary information regarding the consumer's knowledge and experience in the investment field relevant to the advice, their financial situation and their investment objectives.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

The crux of Mr N's complaint is that he thinks the fund he was advised to invest in was too high risk for him and his ATR. So, that is the issue that I've focussed my decision on. Mr N has told us that he'd sought advice following a discussion with a family member and he was concerned that he was being too cautious and worried about the effect of inflation on his pension. So, I think it's fair to say Mr N was willing to increase the risk he was taking with his pension.

Like our Investigator, I think that the pension fund recommended to Mr N was at the high end of the spectrum of risk a moderate investor would be willing to take. I say this due to the high proportion of equities, and low proportion of what are considered lower risk investments such as bonds. And the fund provider rated it as 5 out of 7 from a volatility point of view. So, it could be argued that this fund was in fact above the risk a moderate investor would likely be willing to take. But I don't think I need to make a finding on this. That's because, even if I accept this fund was suitable for a moderate investor, I still think it was too high risk when taking into account Mr N's actual ATR and his capacity for loss. I'll explain why.

Mr N was asked to answer a number of questions by GEWM when it was assessing his ATR. I won't repeat these questions here as it's not disputed that the answers to these questions suggested Mr N had a 'cautious to moderate' attitude to risk - or 2 out of 5. Mr N's pension had previously all been held in cash funds.

The discussion around risk versus reward between GEWM and Mr N has been documented in a file note. I think it was good practice for GEWM to discuss this with Mr N. And the file note suggests the concept of risk versus reward was explained to Mr N. Following this discussion, Mr N agreed he was willing to take a moderate risk with his pension (an ATR of 3 out of 5). But, there is no explanation of how or why Mr N decided he was now comfortable with taking more risk following this discussion. I can understand that, following a discussion about the potential increase in growth by taking more risk, Mr N may have been motivated to do so. However, when assessing ATR, the entire picture of a consumer's circumstances need to be considered, including their capacity for loss. And I think GEWM should've questioned Mr N's motivation to change his ATR following this discussion and ultimately advised against it.

In this case, Mr N had moved all of his pension into cash funds over the previous few years with a view to reducing the risk of investment losses. This indicates someone who was relatively averse to risk. And the answers from to the questionnaire designed to help assess his ATR also suggests he was naturally very cautious and the thought of his pension fund losing value worried him. For example, he agreed with the following statements in the risk profile questionnaire:

- *To reach my financial goal I prefer an investment which is safe and grows slowly but steadily, even if it means lower growth overall*
- *I would prefer small certain gains to large uncertain ones*
- *I want my investment money to be safe even if it means lower returns*

Furthermore, Mr N planned to retire in less than four years and to go into a flexible drawdown arrangement. Whilst the options of flexible drawdown did mean that a majority of Mr N's funds would remain invested beyond the four years when he retired, he still needed to have sufficient funds in his pension to provide him with his desired retirement income in the longer term. Taking greater risk with his fund exposed Mr N to not only the possibility of investment growth, but also an increased risk of loss, and I can't see that GEWM made him sufficiently aware of this. I also can't see that GEWM made Mr N sufficiently aware of the *effect that investment losses might have on his retirement plans.*

I also note that, whilst the Personalised Risk Analysis report stated that Mr N had a moderate attitude to risk, further on in this report it confirmed Mr N had a low capacity for loss. This essentially confirmed that losses to the pension fund would have an impact on Mr N's retirement, which was only a few years away. So in my view, the recommended fund, which involved a high proportion of equities, wasn't compatible with Mr N's capacity for loss.

As I've said, it wasn't wrong of the advisor here to further explain the relationship between risk and reward so that Mr N had a better understanding. However, I've seen that GEWM provided Mr N with examples of how the recommended fund had performed compared to where he was currently invested. And this showed he would've benefitted over the past number of years from much increased growth. However, he was invested in cash funds, so this isn't surprising. And there was no comparison showing the impact of a period of losses or no growth on the fund value. I also think showing Mr N the higher level of growth he could expect if he took more risk would likely have swayed Mr N's thinking here. But as GEWM should know, past performance is no guarantee of future performance.

This was Mr N's main pension provision and what he was going to rely on most in his retirement, which was only four years away. And overall, I don't think he had much capacity for loss – certainly not the amount of loss that this fund exposed him to. Ultimately, I think Mr N was essentially looking to take more risk to protect his funds against the effects of inflation and achieve a steady level of growth. And he wasn't prepared, nor did he have the capacity, to take a high risk to achieve this.

So, I think a fair assessment of Mr N's ATR should've remained as 'cautious to moderate', and I think GEWM should've advised him to invest in a fund in line with that ATR.

I understand GEWM says Mr N decided to increase the risk he wanted to take, but as I've said above, I think this would've likely been influenced by the performance charts he was shown. It wasn't for GEWM to explain to Mr N how much risk he needed to take to achieve his goals. Instead, it should've correctly assessed Mr N's ATR and then recommended an investment strategy that matched this. And if Mr N had genuinely wanted to take more risk than GEWM thought was suitable for him, I would've expected GEWM to have clearly set out the risks associated with the level of risk it says he wanted to take and that doing so would be against its recommendation. However, it didn't do so.

GEWM has highlighted that Mr N's pension was invested in a moderate risk fund previously. Whilst this may be true, this can't be used to inform future advice. Circumstances and financial objectives change over time, and the advice given should reflect the current situation. And it's clear to me that Mr N had become much more risk adverse over the years leading up to this advice. In fact, in an email from Mr N to GEWM, Mr N described the previous managed fund he was invested in as "scary".

Overall, I think Mr N would've still taken more risk than he had with his pension fund invested in cash. However, I think GEWM should have realised Mr N had a 'cautious to moderate' ATR rather than moderate and should've advised him on an investment strategy accordingly. For the reasons set out above, I think the fund GEWM recommended was too high risk for him and exposed his pension fund to more risk than he was willing to take. So I'm going to tell GEWM to compensate him for this.

Mr N should realise that had his pension been invested in a lower risk fund, this may still show a reduction in fund value over the same period due to the poor market performance during this time. And it will only be if the comparison shows less of a fall in value or an increase that GEWM will need to compensate him.

In response to our Investigator's opinion, GEWM also made representations about the redress set out by our Investigator. It said that if the advisor shouldn't have recommended the fund they did, then a fund from the same provider with a lower risk profile would've been recommended instead. GEWM has said this is a limited list of funds and the advisor can confirm which funds would've been recommended. However, I think taking this approach would be using the benefit of hindsight, and I don't think this is a fair way in which to compensate Mr N. Overall, I think comparing the performance of Mr N's pension with a benchmark is a fair way of compensating Mr N for the unsuitable advice he received. This is the way in which I would ask businesses to compensate customers in a similar position to Mr N, and I see no reason to depart from this in the circumstances of this complaint."

I also set out how I thought things should be put right and I invited both parties to respond to my provisional decision.

Mr N accepted my provisional decision and had nothing further to add.

GEWM responded reiterating that it believed its advice was suitable and that Mr N ought to bear some reasonability for not raising any issues when the advice was first presented to him.

GEWM again confirmed that it disagreed with the manner in which I thought the redress ought to be calculated. In summary, GEWM said:

- The benchmark I'd suggested using within my provisional decision didn't reflect the position Mr N should've been in.

- It was possible to reasonably estimate which funds Mr N might've invested in and provided a list of seven alternative funds and suggested I pick from these funds the fund with the lowest risk score, or one of the other funds as they had similar risk profiles.

- If I chose not to pick from these funds, then the FTSE UK Private Investors Income Total Return Index should be the benchmark used as this would be a closer approximation to the level of risk I'd determined Mr N should have taken.

- That Mr N would have been invested in a mix of investments (including equities, bonds and cash) and that is reflected in the FTSE UK Private Investors Income Total Return Index, which is such a mix. He would not have had a separate bond investment delivering a totally different return.

- the methodology is totally at odds with how Mr N would have invested, which can be estimated with sufficient certainty. Using an index based on bonds would artificially insulate Mr N from losses he would've sustained and wouldn't result in a fair outcome – instead it gives Mr N a windfall.

The complaint has now been passed back to me to consider again and make a final 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 thought carefully about what GEWM has said in its response to my provisional decision.

But this doesn't change my opinion that the complaint should be upheld, nor how matters should be put right. I'll address the points GEWM has made below. For clarity, my findings below and those findings made in my provisional decision (copied above) should be considered together as part of this final decision.

Firstly, I've thought about GEWM's points that it believes the advice was suitable and that Mr N ought to take some responsibility for not questioning the advice at the time. I've already set out within my provisional decision why the advice wasn't suitable as above, and I won't repeat this here. And I see no reason why Mr N should've questioned the financial advice provided to him by a qualified professional advisor whose advice he was paying for at the time. GEWM set out that this was the right choice for Mr N, and I don't think it was for him to go away and find out whether this advice was correct or not - he was entitled to rely on it. It wasn't until the significant and quick drop in value of his pension fund that Mr N would likely have realised that this advice had placed him in a fund which exposed him to more risk than he was willing to accept.

Moving on to the method of redress. For the avoidance of doubt, the benchmarks I've suggested are not what I'm saying Mr N would've invested in. Instead, I consider this a fair and reasonable benchmark to use when assessing redress.

As I explained within my provisional decision, picking an alternative fund would risk using the benefit of hindsight. Ultimately, GEWM had an opportunity to provide Mr N with a suitable investment recommendation, and it didn't do so. So, I don't think allowing GEWM the opportunity now to suggest what it thinks would've been a suitable alternative (notwithstanding the fact it disagrees with the outcome I've reached) is a fair approach here. Using a benchmark what our Service considers to be the fair and reasonable way of compensating consumers like Mr N in a situation like this. And I'm not persuaded there are reasonable grounds to depart from this benchmark in the circumstances of Mr N's complaint.

I've thought about the point GEWM has made with regards to which benchmark should be used. Whilst I accept that the benchmark suggested by GEWM does have a mix of assets, I've already explained why I think Mr N had a cautious to moderate ATR. And I think he should've been advised to invest in a mixture of assets including a higher proportion of bonds and fixed interest investments to reflect that. So, I think using a 50/50 split of the two benchmarks I set out in my provisionally decision is a reasonable recommendation here. That's because it is a fair reflection of the investment strategy that I think someone with Mr N's ATR should've been advised to take. So, I remain of the opinion that this is a fair method of compensation.

Overall, having thought about everything again, I think Mr N was provided with unsuitable advice, and GEWM should put things right. I've set out again below how it should do so.

Putting things right

Fair compensation

I think Mr N would have invested differently had GEWN given him suitable advice. As set out above, it's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr N's circumstances and objectives when he invested.

What must GEWM do?

To compensate Mr N fairly, GEWM must:

- Compare the performance of Mr N's investment with that of the benchmark shown below. If the *actual value* is greater than the *fair value*, no compensation is payable. If the *fair value* is greater than the *actual value* there is a loss and compensation is payable.

- GEWM should also add any interest set out below to the compensation payable. If there is a loss, GEWM should pay into Mr N'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 GEWM is unable to pay the compensation into Mr N'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 N won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr N's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr N is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr N 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 Mr N £400 for the distress and inconvenience this matter has caused. Our Investigator thought £150 was a fair amount, but I don't agree. As set out above, Mr N was clearly a very cautious person. And the investment recommended exposed him to significantly more risk than he was willing to accept. This meant the value of his main pension dropped a significant amount within just a few months and continued to fall in value. I understand that this still hasn't recovered, so I think Mr N has been caused significant distress by this.

Income tax may be payable on any interest paid. If GEWM deducts income tax from the interest, it should tell Mr N how much has been taken off. GEWM should give Mr N a tax deduction certificate in respect of interest if Mr N 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
Standard Life Baillie Gifford Managed Pension fund	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	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)

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, GEWM 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.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr N wanted Capital growth with a small risk to his 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 his 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 N'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 N into that position. It does not mean that Mr N 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 N could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold this complaint and direct G & E Wealth Management Ltd to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 29 June 2023.

Rob Deadman
Ombudsman