

The complaint

Mrs L complains that some advice she received from Neovision Wealth Management Limited trading as Attanta ("Neovision") regarding her pension savings was unsuitable.

What happened

Mrs L has been assisted in making this complaint by a firm of solicitors. But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mrs L herself.

As I will go on to explain, the documentation relating to the matters forming Mrs L's complaint is very limited. But the advice that Mrs L received was followed by the opening of a new self-invested personal pension ("SIPP"). The application form for that SIPP shows the details of the regulated advisor. So I am satisfied that Neovision is responsible for the advice given to Mrs L and for the matters arising in this complaint.

Mrs L says she received advice from Neovision in 2017. At that time she held pension savings in three separate pension plans (with two different firms). She says that Neovision recommended that she should transfer the pension savings she held in those three plans into a new SIPP that she was advised to open with a firm that I will call X.

The transfers were completed in July 2017. The total amount that was transferred was approximately £85,000. Neovision advised Mrs L that she should invest the transferred pension monies using a DFM arrangement.

Mrs L says the advice she received, to transfer her pension savings to the new SIPP and then to invest the monies using a DFM arrangement, was unsuitable. So she complained to Neovision. Although it acknowledged Mrs L's complaint it has failed to provide her with its response. And Neovision has also failed to provide us with any information about its dealings with Mrs L. We have however received some information from Mrs L's previous pension providers, and from X, the current administrator of her SIPP.

Mrs L's complaint has been assessed by one of our investigators. In the absence of any evidence from Neovision, the investigator looked at what had happened, and why Mrs L thought the advice had been unsuitable. The investigator concluded there was little to suggest that Mrs L needed the complexity of a DFM service, or in fact to transfer her pension savings into a new SIPP at all. So she thought the complaint should be upheld and asked Neovision to calculate whether Mrs L had lost out.

Mrs L accepted that assessment. But, disappointingly, Neovision failed to respond to it. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs L accepts my decision it is legally binding on both parties.

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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs L and by Neovision. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There is very limited evidence from the time the advice was given to Mrs L. In particular I would normally expect to see a suitability report that should have been provided under the relevant regulations. It is reasonable here to expect Neovision, either through its suitability report or its subsequent submissions to us, to justify the advice that it gave to Mrs L. It has not provided any of that information. Although I might not have written evidence of the advice received, I am satisfied it is reasonable to conclude the actions Mrs L took, opening a new SIPP to transfer in her pension savings and then investing them through the DFM, are a fair reflection of the advice she was given.

It appears that, at the time she made the complaint, Mrs L's pension savings had fallen in value by around 15%. I want to be clear that this in itself is not a reason to conclude that the investments that were recommended were unsuitable for Mrs L. Sometimes investments that appear entirely suitable at the outset fail due to wider economic circumstances. It might be unreasonable to conclude those circumstances should have been foreseen a number of years earlier.

Mrs L has told us that the pension savings that she received advice on in 2017 were an important part of the provision she held for her retirement. So it would be understandable if she were keen to ensure that they were safely invested. At that time she was 59 years of age, and expected to retire within the next six years. Mrs L says that she had little previous investment experience. So it seems reasonable when she says that she would have told Neovision she had a low capacity for loss, and wanted to take little risk with her pension savings.

I have seen some details of the pension plans that Mrs L held before the transfer. Each of her pension plans were with large established providers and were invested in mainstream funds that appear to have been suitable for her circumstances. I am satisfied that it is likely the pension plans would have provided Mrs L with a range of investment opportunities if she were looking to diversify her investments further. I haven't seen anything that makes me think those existing plans were unsuitable for Mrs L, or that a transfer to a new SIPP was necessary.

A DFM is generally suitable for more experienced investors, seeking higher returns balanced by a higher capacity for loss. The regulator has said that advisors should be confident that an investor could understand the nature of the risks of any underlying investments that the DFM might make. That doesn't mean that a DFM will always be unsuitable for a lower-risk or unsophisticated investor, but it does come with some drawbacks.

The costs of using a DFM will generally be higher than direct investments in managed funds, as charges will be levied by both the financial advisor and the DFM. And, for more modest funds, the additional diversity provided by a DFM approach might be unnecessary. So it is important that a financial advisor can show that factors such as these were considered and clearly explained to a consumer as part of its advice.

As I said before, Neovision hasn't provided us with any details about why it considered a DFM approach to be necessary or suitable for Mrs L. I think that Mrs L's acceptance of Neovision's advice, given what I've said earlier about her circumstances, underpins a conclusion that she would be unlikely to have understood the nature of the risks of any underlying investments that the DFM might make. So I cannot reasonably conclude, on the basis of the evidence that has been provided, that this part of Neovision's advice to Mrs L was suitable either.

So, taking everything that has been provided into account, I cannot reasonably conclude that the advice Mrs L received from Neovision in 2017 was suitable for her circumstances. I think that, without that advice, Mrs L would have left her pension savings with their previous providers. So I think that Neovision now needs to consider whether Mrs L has lost out, and if necessary to pay her appropriate compensation.

Putting things right

My aim is that Mrs L should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs L would have remained with her previous providers, however I cannot be certain that a value will be obtainable for what the previous policies would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs L's circumstances and objectives when she invested.

What must Neovision do?

To compensate Mrs L fairly, Neovision must:

- Compare the performance of Mrs L's investment with the notional value if it had remained with the 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.
- Neovision should also add any interest set out below to the compensation payable.
- Neovision should pay into Mrs L's pension plan to increase its value by the total 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 Neovision is unable to pay the total amount into Mrs L'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 total amount 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 L won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mrs L's actual or expected marginal

rate of tax at her selected retirement age.

- For example, if Mrs L is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs L would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mrs L £300 for the distress and inconvenience caused to her by receiving the inappropriate advice.

Income tax may be payable on any interest paid. If Neovision deducts income tax from the interest it should tell Mrs L how much has been taken off. Neovision should give Mrs L a tax deduction certificate in respect of interest if Mrs L 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
SIPP	Still exists and liquid	Notional value from previous providers	Date of transfer	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.

Notional Value

This is the value of Mrs L's investment had it remained with the previous providers until the end date. Neovision should request that the previous providers calculate this value.

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

If either, or both, of the previous providers are unable to calculate a notional value, Neovision will need to determine a fair value for those parts of Mrs L's investment instead, using this benchmark: For half the investment: 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.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs L wanted Capital growth with a small risk to her capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to 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 L'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 L into that position. It does not mean that Mrs L 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 L could have obtained from investments suited to her objective and risk attitude.

My final decision

My final decision is that I uphold Mrs L's complaint and direct Neovision Wealth Management Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 20 July 2023.

Paul Reilly
Ombudsman