DRN-4214952

The complaint

Mr D complains that after Invest Southwest Ltd (ISW) consolidated his two pensions into a single plan, the value fell significantly. He believes that despite raising his concerns early on with ISW, they failed to act promptly enough when the value of his savings started to fall.

Mr D would now like ISW to recompense him in part, for some of the losses he's incurred as a result of their inaction.

What happened

In October 2020, Mr D met with an adviser from ISW to discuss his retirement planning needs. At the time he held two Group Personal Pension plans with Aviva and Standard Life. After assessing Mr D's circumstances, the adviser recommended he consolidate both plans into a new personal pension with Aviva. In July 2021, the adviser issued a suitability report to Mr D setting out the reasons for his recommendation.

ISW determined that Mr D had a 'cautious to moderate' attitude towards risk (ATR) and invested the transferred funds into a mix of six Aviva managed funds which ISW felt collectively, matched the level of risk Mr D was happy to take. The new Aviva plan received the monies from the two former plans in July and August 2021.

Shortly after the monies were transferred, Mr D contacted ISW in December 2021. He explained that after looking at his plan online, he was concerned the value had fallen. After a number of email exchanges over the next 9 weeks, Mr D had a telephone discussion with ISW on 24 February 2022. The purpose of the conversation was to discuss Mr D's concerns about the performance of his funds. After reflecting on his telephone discussion with the adviser, Mr D emailed ISW the same day and asked them to move his monies into cash.

Shortly afterwards, Mr D decided to formally complain to ISW. He said in summary,

- He didn't think ISWs advice met his needs or expectations. He also thought the advice to retain the existing six funds was poor as ISW hadn't listened to his concerns. He explained that he'd asked ISW for alternate options to 'stop the rot' but, they recommended he remain invested.

After reviewing Mr D's complaint, ISW concluded they were satisfied they'd done nothing wrong. They also said in summary,

- they felt the recommendation they'd made was in line with his attitude towards risk. They also felt Mr D had been provided with all the necessary information to make an informed decision. They went on say they're not stockbrokers so can't advise when might be the best time reinvest. They said it was world events that impacted Mr D's portfolio which was outside of their control and he'd gone against their advice to cash in the investments.

Mr D was unhappy with ISW's response so he referred his complaint to this service. In summary, he didn't feel ISW had acted upon the multiple concerns he'd raised with them. He said that had ISW acted sooner, his losses would've been less. He said that ISW failed to take his concerns seriously when the value of his pension started to fall.

The complaint was then considered by one of our Investigators. She concluded that ISW hadn't treated Mr D fairly and felt his complaint should be upheld. She also said in summary, the original advice to switch the two pensions wasn't as clear as it should've been and the portfolio ISW had arranged for Mr D didn't meet his needs.

ISW however, disagreed with our Investigator's findings. In summary, they said Mr D's complaint was an emotional reaction to performance and they as professionals, applied logic to their interactions with him. They felt the investment term of 22 years drove the suitability of what they'd arranged for him and 'time in the market' would've allowed him to ride out the falls. Our Investigator was not persuaded to change her view as she didn't believe ISW had presented any new arguments she'd not already considered or responded to already.

ISW then asked the Investigator to pass the case to an Ombudsman to review that outcome.

After carefully considering Mr D's concerns, I issued a provisional decision explaining that I was planning on upholding his complaint but I was doing so for different reasons to the Investigator. In addition, I also explained I was amending the redress calculation that the Investigator had set out. For completeness, I've set out the findings I made in full below.

<u>My provisional decision:</u>

Before considering whether ISW mis-managed Mr D's concerns about the performance of his monies, I've looked at their initial advice to switch his two pension plans to the new Aviva personal pension. Whilst I appreciate the focus of Mr D's complaint as well as ISW's response has been anchored around the response of ISW's adviser to Mr D's emails, I believe it's important to go back a stage and consider the original pension switch advice. The inquisitorial remit of our service allows me to do this. In addition, I also believe it's appropriate to do so because in their complaint response to Mr D, ISW noted they'd deemed the original transfer advice as being suitable for Mr D's stated objectives. However, after carefully considering that advice, I've reached a different conclusion to them. I don't think they treated Mr D fairly, failing in their obligations under COBs 9. I'll explain why below.

In reaching my decision, I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements:

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of ISW's actions here.

PRIN 6 : A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).

The provisions in COBS 9 which deals with the obligations when giving a personal recommendation and assessing suitability. In addition, the regulator's checklist (published in 2009) for pension switching, which highlighted four key issues it thought should be focussed on:

• Charges (has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?);

• Existing benefits (has the consumer lost benefits in the switch without good reason?);

• Risk (has the consumer switched into a pension that doesn't match their recorded ATR and personal circumstances?);

• Ongoing fund management (has the consumer switched into a pension with a need for ongoing investment reviews, but this was not explained, offered or put in place?)

The regulator's pensions related industry alert to firms in 2013 which included the following: "It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or pension switches without assessing the advantages or disadvantages of investments proposed to be held within the new pension."

• The regulator's further alert in April 2014 which included the following; "Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable."

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole."

<u>Was the original advice to transfer Mr D's two pensions suitable?</u>

The regulators guidance above was all issued prior to ISW providing advice in 2020/21.

When thinking carefully about the guidance the regulator provided, it meant that ISW needed to obtain relevant information about Mr D's overall profile and, given that it considered a pension switch for him, it was also obliged to address the 2009 checklist related to his profile, circumstances and objectives at the time. The switch had to be in his best interests. It had to be worth the movement away from the two pensions and it should have had meaningful prospects of being better for him than the existing two plans, otherwise there would arguably have been no point in switching and no justification in incurring the costs associated with the switching process. It follows from this that a comparison should also have been made between Mr D's two plans and the proposed new Aviva plan in order to illustrate whether or not the latter was in his best interest.

ISW provided Mr D with a suitability report that set out the main themes of their discussions along with their recommendation. His main objectives were noted in the suitability report as, in summary:

- *Consolidate his pensions to make administering his monies simpler.*

- *Allow him to draw an income flexibly in the future should he wish.*
- *Wanting to ensure his monies had a greater potential for growth.*
- *Invest as ethically as possible.*

Having thought about this carefully, I'm not convinced the objectives above when considered against the wider evidence within the file, are strong enough catalysts to support the recommendation to switch away from the two PP's and into the new plan. I'll explain why.

Mr D wanted to consolidate his pensions to make administering his monies simpler so on the face of it, amalgamating the plans together into a new pension met Mr D's first objective. However, it's not quite as simple as that. From what I've seen of Mr D's original two pensions, the existing Aviva policy terms and conditions suggest that plan would've been capable of accepting a transfer in of the other Standard Life plan. The only alternative to the new Aviva plan that ISW appear to have considered is that of a stakeholder which they discounted due to the limited funds on offer. However, the file is silent on whether they looked at utilising the existing Aviva plan to house the Standard Life monies and then undertake a fund switch.

That's important because of the costs ISW levied for their advice. 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. The existing Standard Life plan had an annual charge of 0.39% p.a. and the Aviva plan 0.21% p.a. Following the recommendation, the new Aviva plan had annual charge of 0.61% p.a. with an ongoing advice fee of 1% p.a. However, I think ISW's suitability report from 7 July 2021 confused the situation because it only covered the investment/fund fee, stating his ongoing charge would be 0.61% rather than 1.61% (which included the ongoing adviser fee). But, ISW did subsequently provide Mr D with a client agreement which set out the new costs that he signed on 14 July 2021 to confirm his understanding. However, just because the consumer was advised what the new costs were, doesn't then make the advice suitable.

And that's because, in addition to the ongoing costs, ISW charged Mr D an initial advice fee of 2% to move both plans, or £6,394. The larger Standard Life plan made up the bigger portion of that charge (£5,890). So, rather than just considering a fund switch, ISW charged Mr D 2% (£504) to replace one Aviva plan with an almost identical policy. I've seen no evidence that ISW explored switching Mr D's Standard Life plan into the existing Aviva plan to save on the initial advice fee.

In respect of his second priority, being able to draw an income flexibly, whilst the Standard Life plan didn't provide a flexi-access drawdown option, the existing Aviva policy did. So, moving from one Aviva scheme to the new Aviva plan didn't improve Mr D's position, it simply put him in the same position he was already in. By retaining the existing Aviva plan, Mr D would've met that objective and saved £504 that would have remained invested within his pension.

Another driving factor in switching from the existing two plans to the new PP was Mr D's desire to invest ethically. In their suitability report to Mr D, ISW stated "given your current objectives I recommend that you invest in a range of funds and asset classes. Your current provider does not provide access to a sufficient range of funds to allow us to create an appropriate ethical portfolio". I've looked at the ceding scheme information on both policies. The existing Aviva plan provided the option to undertake a fund switch with the ability to invest in over 1000 funds.

I've looked closely at the available fund options on Mr D's existing Aviva plan and compared them to what ISW selected for him. It appears that a broad spectrum of similar funds to the ones ISW set up in the new Aviva plan were available on his previous plan, including ethical and fixed interest options. It therefore seems to me, ISW switched the existing Aviva plan for something that was already readily available to Mr D.

As part of their pension advice, ISW reviewed the level of risk Mr D was prepared to take with his retirement savings. Using electronic risk software, they established Mr D was a 'cautious to moderate' investor. Their definition explained he'd be comfortable taking a limited amount of investment risk to increase the chances of achieving a positive return, but he only wanted to risk a small part of his capital to achieve this. The suitability report went on to say that for a typical cautious to moderate portfolio, it would have up to half invested in fixed interest products which are low risk but have low return. However, from what I've seen of Mr D's subsequent communications to ISW about the volatility of his monies, there appears to be a mismatch between the underlying investments they selected for his pension and, the level of risk he was prepared to take. I also think ISW's choice of words in their suitability report is problematic because they didn't just invest a small part of his capital in investments that exposed him to risk.

ISW recommended six funds in Mr D's portfolio, three were gilt and corporate bond based and the other three were predominantly equity based. The latter three (Managed Growth, Global Growth and Ethical), accounted for around 61% of Mr D's monies in equities. ISW said that when the customer's other assets are taken account of, that total figure works out at far less of his total wealth being exposed to risk. But, what we're focusing on here is the amount of risk Mr D wanted to take with these funds. So, I don't think exposing a consumer who had a risk appetite at the lower end of the spectrum to as much risk as ISW did, was appropriate.

In his complaint, Mr D stated his original objective in moving his monies was to 'at least maintain their value, meet costs and allow for some fluctuations along the way whilst hopefully making some modest gains'. I've looked at the funds Mr D's existing Standard Life and Aviva plans were invested in. As he was age 64 at the time of the advice, his monies appear to have defaulted into the respective pensions lower risk solutions which by enlarge were cash, fixed interest and corporate bonds. As such, Mr D would've been used to seeing lower volatility on his existing monies when compared to the new higher equity content funds that ISW recommended so I well suspect that's what caused alarm to him when he saw his monies fall so quickly. The file seems to suggest Mr D may return to work. But, given his age and recent health concerns along with the fact he was looking to access his funds flexibly along with the fact he was phasing down in retirement, I'm not convinced he was looking to take any greater risk than he was already doing.

So in summary, for the reasons I've noted above, I don't think ISW's advice to switch Mr D's two plans to a new policy was in his best interests. Ordinarily, such a conclusion would mean that I wouldn't need to comment on the subsequent missteps Mr D states ISW took by failing to act on his concerns. However, for completeness I will and that's because I think the actions ISW took exacerbated the problems Mr D faced.

<u>Should ISW have acted differently than they did when they received Mr D's emails?</u>

In their correspondence with this service, ISW explained they spoke to Mr D on each occasion he raised a concern about the value of his money falling. I asked them for copies of any telephone recordings they held with Mr D about his investment. ISW conceded they'd not spoken to Mr D from when they received his first email on 22 December 2021 until 24 February 2022, the day he asked them to cash his policy in and that discussion hadn't been *recorded. They also explained that when Mr D raised his concerns about the plan's performance, they'd responded only via email.*

I've looked very carefully at the correspondence that ISW exchanged with Mr D where he set out his concerns about the performance of his pension funds. When Mr D saw his monies going down, he emailed ISW on six different days between December and February.

A summary of the exchange between Mr D and ISW is as follows:

22 December 2021	*Mr D asked if he should be concerned after seeing his portfolio decrease by 2%. He noted the FTSE had gone up in value but his portfolio had decreased.*
23 December 2021	*ISW responded saying performance is never linear and goes down and up in value over time. They say the fund managers must be given time to perform.* *Mr D then asks what level of loss ISW would consider making changes at.* *ISW explain valuations can appear volatile over the short term but over the long term they'd be hoping for greater growth than available from deposits. They said if Mr D's circumstances changed, then they'd consider making alterations.*
7 January 2022	*Mr D responds saying had his money been invested in the FTSE, his funds would've been up by around £14,000. He explains he's concerned by the widening gap and, should the losses continue, he'll have to ask himself what options he has if the loss reaches £20,000.*
20 January 2022	*Mr D emails ISW again explaining his concerns that his portfolio had fallen further.*
27 January 2022	*ISW email Mr D updating him on the pension. They explain their position is, if Mr D's objectives, attitude towards risk, capacity for loss and circumstances are unaltered, their advice is to continue as originally recommended.*
21 February 2022	*Mr D writes in saying he's got to the point where he feels it's time to make a change as he's had enough. Having followed ISW's advice and sat tight, he explained all that has happened is his portfolio has gone down in value. He said at this point it was now causing him a great deal of stress. He asks ISW to consider what his options are.* *ISW respond explaining they'd typically only consider altering course if Mr D's circumstances have changed. They then provide a detailed response to Mr D's points.* *Mr D asks for time to consider ISW's email.*
23 February 2022	*Mr D responds explaining he doesn't believe his attitude towards risk has changed. He also restated his objective which was to 'make his pensions flourish'. He asks ISW to transfer his funds to cash.*

24 February 2022	*ISW and Mr D speak on the telephone. This is followed up by an email to Mr D confirming ISW have submitted the request to Aviva to switch his portfolio to cash.*

I don't think there's any doubt Mr D understood he was investing in the stock market when he moved his two pensions to the new Aviva plan. In his complaint to this service, he stated "I don't think it reasonable for me to expect to be wholly put back in the position before I started with them, as I understand that some fluctuations should be expected, and the value of investments can go down as well as up". So, he understood his money would vary in value but, based on the email chains between himself and ISW, clearly not to the extent that it did.

I'm not convinced that Mr D actually understood what he was invested in. I say that because despite the make-up of his portfolio, he kept comparing his investment to the FTSE which is made up entirely of equities. In his complaint to this service, he also explained he wanted an investment that at least maintained its value. Something the portfolio that ISW had arranged couldn't achieve.

After being invested for only four months, Mr D contacted ISW expressing concern his investment had fallen by 2% and benchmarked it to the FTSE (which his monies weren't in). This was followed up only two weeks later by another email from Mr D expressing further concern. I think it's at that point ISW should've realised that something was clearly up and either telephoned Mr D or met up with him to explore those worries further. I say that because I think at that point, it should've been very apparent to ISW that he wasn't comfortable with the risk level they'd agreed with him and a larger intervention beyond an email was needed.

It's not uncommon for consumers to become concerned and contact their advisers when they see their funds falling. And, it's quite normal for advisers to provide reassurance that in times of market volatility, consumers should stay invested if their circumstances haven't changed. However, ISW placed that onus on Mr D to tell them whether his circumstances had altered. Mr D I think was under the impression his investment objectives hadn't changed but the problem was, his understanding of the level of risk he was prepared to take with his money was evidently different to ISW's understanding of the level of risk he was prepared to take and as such, both were at 'crossed wires'. Had ISW proactively satisfied themselves sooner whether what they'd arranged was still actually appropriate for Mr D, they could've intervened and stopped the loss earlier.

Finally, as part of his complaint, Mr D has also explained he's unhappy that ISW have ended their ongoing relationship with him. Deciding on which clients they'll provide a service to is a commercial decision for ISW and not one for this service to comment on. However, I have taken a look at the service agreement provided to Mr D when he became a client at ISW. The terms of that agreement which Mr D signed in July 2021 do provide ISW the option to end their relationship at any time and that's set out in section seven. So, I won't be asking ISW to take any other action in respect of that point.

<u>Responses to my provisional decision</u>

After reviewing my provisional decision, Mr D explained that he had nothing further to add.

ISW, however, said that they didn't agree with the provisional decision. They submitted a detailed explanation setting out why they believed the pension switch they'd arranged was in Mr D's best interests and resulted in a good outcome for him. In summary, ISW said:

- Mr D would have seen the ups and downs of investment performance within his ISA and therefore it would be disingenuous to say that he didn't understand what he was taking on. They also said that they clearly explained the costs and charges to Mr D so he knew what he would be paying.

- They also felt that Mr D had accepted the pension was a long-term investment yet was not willing to wait and follow their advice. ISW feel Mr D complained due to an emotional response to short-term underperformance when it was clear and he agreed that this was a long-term investment.

- They also say they would never consider arranging investments for anyone who couldn't leave their monies untouched for at least five years. ISW said that Mr D has significant savings and therefore his portfolio had time to recover and grow if he had continued to follow their advice.

- ISW also stated, there was no doubt Mr D was a cautious to moderate investor. That's because, they say, his risk profile was established through the use of psychometric risk questioning. It was ISW's view that Mr D was placed into a suitably diversified portfolio for his attitude to risk. They went on to say that in a good economic climate, he would have been more than happy and also, if he had left the portfolio long enough to go through the relevant economic cycle then he would have been pleased with its performance.

- ISW said that Mr D 'wanted the impossible'. In effect, he wanted an invested environment where his portfolio would not go down in a very poor economic climate using ethical funds.

- ISW said that Mr D needed to invest within his risk profile and see out the economic cycle. Investing in cash or gilts in their opinion wasn't the most suitable advice for him because of the impact inflation would have on his monies.

- ISW also explained that they didn't think the smaller Aviva pension was suitable to retain. That's because, they argued, it didn't allow adviser charging/ servicing in any way. ISW felt that they therefore couldn't offer a suitable service using that existing Aviva plan to meet Mr D's requirements of an adviser guiding him through retirement.

- ISW didn't feel it was necessary to have called Mr D when he sought clarification or comfort about his investments. They say the FCA don't place any undertaking on firms to telephone customers in such circumstances. ISW also said Mr D could have called themselves should he have chosen to.

- ISW went on to explain that they offered Mr D the opportunity to move some or all of his monies into cash should he have wished in one of their emails to him. However, they went on to say that in their opinion, cash and bond-based investments wouldn't be suitable for a long-term pension client due to the eroding effects of inflation.

- Finally, ISW said that if the case were to be upheld, they didn't think how the redress was set out in the provisional decision was fair. They felt the larger Standard Life plan would have been moved regardless and therefore, it would be unreasonable for them to have to pay redress on that part of Mr D's investment. ISW asked for clarification on the benchmark that should be applied in any redress calculation if the complaint was upheld.

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.

Having considered ISW's further submissions, I'm not persuaded to alter the outcome of my provisional decision. Before I explain why this is the case, I think it's important for me to note that I very much recognise ISW's strength of feeling about this matter. They have provided very detailed submissions which I've taken great time to read and consider very carefully. However, I hope ISW won't take the fact that my findings focus on what I consider to be the central issues, and not in as much detail as they have outlined, as a discourtesy.

As I've already explained, the purpose of my decision isn't to address every single point raised. My role is to consider the evidence presented by Mr D and ISW and to reach what I think is an independent, fair and reasonable decision based on the facts of the case. In deciding what's fair and reasonable, I must consider the relevant law, regulation and best industry practice, but it is for me to decide, based on the available information I've been given, what's more likely than not to have happened.

ISW have explained that Mr D must have known his pension investments could go down in value because he held an investment ISA elsewhere. However, I don't think that's in any doubt - Mr D has already conceded he knew his pension monies could vary in value. What's at the heart of this issue is the *extent* to which those pension monies would alter in value.

I don't doubt ISW's contention that they wouldn't ordinarily look to arrange equity-based investments for any consumer who wasn't prepared to invest for at least five years. And, whilst I don't doubt Mr D may have been content to invest for the medium term, the underlying investments and level of risk he thought he was taking were clearly misaligned with ISWs understanding of his wishes. It's for that reason I believe Mr D reacted in the way he did when he saw his investments falling in value.

In their response to the provisional decision, ISW say there was no uncertainty that Mr D was a cautious to moderate investor. That's because, as they explained, his risk profile was established through the use of psychometric risk questioning. As I've already highlighted though, ISW's definition of a cautious to moderate investor is someone who is comfortable taking a *'limited investment risk to increase the chances of achieving a positive return but you only want to risk a small part of your capital to achieve this'.* The suitability report ISW sent to Mr D explained that for a typical cautious to moderate portfolio, it would have up to half invested in fixed interest products which are low risk but have low return. The suitability report does go on to say '*the larger part of the portfolio will be invested in equities and property which can boost longer term returns which are associated with more risk'*. So, whilst ISW have stated that Mr D is prepared to take a limited amount of risk to a small part of his funds, they've then contradicted themselves by stating that the larger part of his monies will be exposed to more risk.

Having carefully considered ISW's further submission, I fail to be convinced about the appropriateness of the investments arranged by themselves for Mr D and that's because they didn't just invest a '*small part'* of his capital in equities. ISW have said that when they've referred to a 'small part' of Mr D's capital, rather than focusing on just the pensions monies which they're providing advice on, they're actually talking about Mr D's wider wealth (which totals around £684,000). But, as I've already explained, I think that approach is problematic because the suitability report is dealing purely with advice on Mr D's two pension plans and, by ISW's own admission, they don't know what underlying investments are held in his ISA. That's important because if they were taking full account of all of his monies, if the ISA funds were invested in high-risk investments, they would need to adjust how the pension monies were invested to take account of that. But, that's only part of the problem.

Each of the funds that ISW selected for Mr D had a risk rating attached to them ranging from one (lowest volatility) to seven (highest volatility). The ratings reflect the potential for a fund to go up and down in value over time. A fund with a risk rating of seven, has a much higher risk of losing money than a fund rated as one but conversely, the potential for the money to grow over the long term is potentially higher than a fund with a lower rating.

As I've already explained, ISW say that for cautious to moderate investors, they're able to invest around 60% of the consumer's monies in equities. When I've looked at the risk profile of the funds ISW selected for that part of his investment, 20.75% of his pension was invested in a fund that had a risk rating of 7 out of 7, another 20.75% of his monies were invested in a fund that had a risk rating of 6 out of 7 and the third had a risk rating of 5 out of 7 that represented 19.5% of his funds. So, the equity content within those three funds was skewed towards investments that were higher risk/ more volatile which is at odds with a consumer who only wants to take a limited amount of risk with a small part of their capital. Whilst I should acknowledge that ISW invested a further 23.75% of Mr D's portfolio in two funds both with risk ratings of 3 out of 7, the remaining 15.75% of his monies were invested in an index linked fund with a risk rating of 5 out of 7.

So, in summary, more than three quarters of Mr D's monies were invested in funds with a risk rating of five and above. And I think given the higher volatile nature of those funds, that's what led to Mr D's surprise when he saw his monies varying in value to the extent they did. I don't think exposing a consumer who had a risk appetite at the lower end of the spectrum to the nature of those investments with as much volatility and risk as ISW did was appropriate.

As I've already explained in my provisional decision, Mr D's main objectives were noted in the suitability report as, in summary: consolidate his pensions to make administering his monies simpler, allow him to draw an income flexibly in the future should he wish, wanting to ensure his monies had a greater potential for growth and wanting to invest as ethically as possible. I've seen nothing to persuade me that his objectives, when considered against the wider evidence within the file, are strong enough catalysts to support the recommendation to switch away from the two PPs and into the new plan.

Whilst I appreciate the comments that ISW have made about Aviva's inability to add them on as a servicing adviser to the existing Aviva plan, that's not a reason in isolation to discount using the existing plan. Importantly, there's no evidence that the option of retaining that plan was explored with the consumer to seek their views on that as a viable course of action to try and keep costs down. ISW say they clearly explained the costs and charges to Mr D, so he knew what he was taking on. But, as they've quite rightly noted, Mr D's complaint wasn't about costs and as I've already explained, just because a business has pointed out the costs of a new arrangement, it doesn't necessarily make it suitable by default, especially when there may be other more effective solutions available which must first be considered (and if necessary, discounted) with the consumer.

In their response to the provisional decision, ISW explained that in one of their emails to Mr D, they offered him the opportunity to move some or all of his monies into cash should he have wished. However, ISW placed that onus on Mr D to tell them whether his circumstances had altered. And, as I said earlier, in my opinion Mr D was under the impression that his investment objectives hadn't changed but the problem was that his understanding of the level of risk he was prepared to take with his money was evidently different to ISW's understanding of the level of risk he was prepared to take and as such, both were at 'crossed wires'. I think that, if an adviser has got to the point where they're offering a consumer the option to switch funds to cash after such a short window of being invested, a greater intervention than just an email is likely necessary.

ISW said that they didn't feel it was necessary to have called Mr D when he sought clarification or comfort about his investments. Whilst ISW are correct in that the FCA doesn't place any undertaking on firms to telephone customers in such circumstances, just because the regulator's rules don't cover a specific scenario, given the frequency and tone of Mr D's emails to them, I would consider it good industry practice to have telephoned the consumer to directly discuss his concerns with him given that the transaction had only recently completed and a new relationship was being established with the firm. I think had they done, it would've given the adviser an opportunity to further explore Mr D's concerns and satisfy themselves whether what they had recently arranged was suitable or not.

Finally, ISW said they didn't think how the redress was set out in the provisional decision was fair. They felt that the larger Standard Life plan would have been moved regardless and therefore, it would be unreasonable for them to have to pay redress on that part of Mr D's investment. I don't agree though. That's because, as I've already explained, I don't think the transfer was in his best interests for the reasons I've set out above. I don't think the underlying investments that ISW arranged for Mr D met his needs and as such, my aim is that Mr D should be put back as closely as possible to the position he would probably now be in had he been given suitable advice.

ISW asked for clarification on the benchmark that should be applied in any redress calculation. They didn't think it was reasonable to use bonds as a comparator. However, the starting point is to determine whether Mr D's previous pension providers are able to calculate a notional value, had he remained where he was. If they can't, ISW will need to determine a fair value for Mr D's investment instead, using the benchmark of average rate from fixed rate bonds. It doesn't mean that Mr D would have invested only in a fixed rate bond - it's the sort of investment return a consumer could have obtained with little risk to their capital.

Further information about redress can be found on our website:

https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation

Summary

I have therefore reached the same decision for the reasons I've already set out above and as such, require ISW to take the following actions to put things right for Mr D:

Putting things right

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

I think Mr D would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr D's circumstances and objectives when he invested.

What must ISW do?

To compensate Mr D fairly, ISW must:

Compare the performance of Mr D'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.

ISW should also add any interest set out below to the compensation payable.

If there is a loss, ISW should pay into Mr D'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 ISW is unable to pay the compensation into Mr D'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 D won’t be able to reclaim any of the reduction after compensation is paid.

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

It’s reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D 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 D £250 for having to contact ISW on multiple occasions to address his concerns.

Income tax may be payable on any interest paid. If ISW deducts income tax from the interest, it should tell Mr D how much has been taken off. ISW should give Mr D a tax deduction certificate in respect of interest if Mr D 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
New Aviva Pension	Still exists and liquid	Notional value from previous provider	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.

Notional Value

This is the value of Mr D's investment had it remained with the previous provider until the end date. ISW should request that the previous provider calculate this value.

Any additional sum paid into the New Aviva Pension should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the New Aviva Pension 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 is a large number of regular payments, to keep calculations simpler, I'll accept if ISW totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, ISW will need to determine a fair value for Mr D's investment instead, using this benchmark: 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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, ISW 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 D wanted to achieve a reasonable return without risking any of his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below if appropriate.
- The average rate for the fixed rate bonds would be a fair measure given Mr D's circumstances and objectives. It doesn't mean that Mr D would have invested only in a fixed rate bond. It's the sort of investment return a consumer could have obtained with little risk to their capital.

My final decision

I uphold the complaint. My decision is that Invest Southwest Ltd should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 August 2023.

Simon Fox
Ombudsman