

The complaint

Mr G complains that Sterling Wealth Ltd failed to advise him that the investments recommended to him by a third party were unsuitable for him. He says that led to a financial loss when the investments failed.

What happened

In mid-2015 Mr G was given advice by a regulated adviser who I'll refer to as Adviser J. At that time Adviser J had his own regulated limited company (Firm T) and he'd been Mr G's adviser for several years.

Mr G says the recommendation given to him in 2015 by Adviser J was to switch his personal pension from a Nucleus self-invested personal pension (SIPP) to two Novia SIPPs. He was advised to put 70% of his funds into the first SIPP (SIPP1) and invest in a managed portfolio of funds. The remaining 30% of his funds (around £150,000) was recommended to be put into a second SIPP with Novia (SIPP2) and invested with a discretionary fund manager - Greyfriars Asset Management (GAM) - in their P6 portfolio.

During 2015 Adviser J entered into a memorandum of understanding with Sterling Wealth where it was agreed that all clients of Firm T would be transferred to Sterling Wealth.

On 1 September 2015 100% of Mr G's funds were transferred from Nucleus to Novia SIPP1.

On 12 October 2015 Mr G queried with Sterling Wealth why his Novia SIPP2, intending to hold the GAM P6 investment, was showing a £0 balance. Sterling Wealth responded on 14 October 2015 to say they were checking into what had happened as they had requested 30% of Mr G's funds be transferred to GAM P6.

On 14 October 2015 Mr G's Novia SIPP2 received a transfer in of £157,007 from SIPP1.

On 30 November 2015 the following investments were made with the funds in Mr G's Novia SIPP2 through GAM;

- Dolphin Corporate bond - £46,108
- Enviroparks Corporate bond - £46,108
- Resort Group III Inc - £46,108
- Lateral Eco Parks III Inc - £15,369

GAM later went into administration and Mr G says his investments now have a value of nil.

In 2019 Mr G complained to Sterling Wealth via a professional representative. In his complaint Mr G said Sterling Wealth had a duty to advise him to make investments which were suitable having regard to his circumstances, objectives and risk profile. He said Sterling Wealth failed to give him suitable advice regarding the investments which he said resulted in a financial loss.

In response Sterling Wealth said it was Firm T that had given Mr G advice, not them. They

said they didn't take on Firm T's liabilities when taking on their client bank and so didn't uphold Mr G's complaint or offer any redress.

Mr G was unhappy with Sterling Wealth's response and so brought his complaint to our Service.

I sent Sterling Wealth and Mr G a provisional decision on this complaint. In it, I explained that I didn't think Sterling Wealth had acted in the best interests of Mr G. Had they done so, I thought it was unlikely Mr G would have invested in GAM.

Neither Sterling Wealth nor Mr G had anything to add in response to my provisional decision. So, I have no reason to depart from the findings I've already made in this complaint which I've set out below.

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 Mr G, his representatives and by Sterling Wealth.

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 have happened.

I haven't seen any evidence that Mr G was unhappy with the investments in SIPP1, or that they were obviously unsuitable for him. So, my decision and subsequent redress will focus solely on SIPP2 and the GAM P6 investment.

It's Mr G's testimony that it was Adviser J of Firm T who recommended the GAM investment to him in May 2015. And it's Adviser J who signed the GAM application form in August 2015. So, I think it's likely that the recommendation to invest in GAM P6 was given by Firm T and not by Sterling Wealth.

Sterling Wealth did, however, have responsibilities to Mr G.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms including Sterling Wealth. Of particular relevance to this complaint is:

PRIN 2: A firm must conduct its business with due skill, care and diligence.

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

In addition, the more detailed Conduct of Business Sourcebook (COBS) says:

A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule). (COBS 2.1)

I've first considered the point at which Sterling Wealth's started to act on Mr G's behalf and therefore the point at which I think Sterling Wealth's responsibilities towards Mr G began.

Novia provided information on the adviser's attached to Mr G's plans. On their records Firm T were Mr G's advisers until 10 August 2015 when Sterling Wealth took over as the advisers on the policies on 11 August 2015.

Mr G's SIPP2 statement from May 2016 also shows on-going adviser fees being paid each month from the SIPP's opening on 6 October 2015. The statement notes Mr G's adviser as Sterling Wealth.

On balance, I'm satisfied Mr G was Sterling Wealth's client by August 2015, and so they were his advisers prior to any funds being sent to SIPP2 or any investments made in the GAM P6 investment.

Mr G sent us emails he sent to a Sterling Wealth email address on 12 and 14 October 2015 when he was concerned the balance of SIPP2 showed £0.

Mr G received a reply from a Sterling Wealth email address on 14 October 2015 saying;

"Sorry for the delay I am checking into this for you as I did request a transfer of 30% of your funds into Greyfriars P6. Novia are looking into this for me, I will update you as soon as I can."

Mr G's SIPP statements show the funds were then received into the Novia SIPP2 for the intended GAM P6 investment on the same day.

While I accept there's no evidence Sterling Wealth recommended the investment in GAM P6 in the first place, the evidence demonstrates it's likely Sterling Wealth brought about the investment in GAM P6 by transferring the funds to SIPP2 while Mr G was their client. And therefore, they had obligations to make sure that by carrying out the transaction they were acting in Mr G's best interests.

But I haven't seen any evidence that Sterling Wealth checked whether the investment was in Mr G's best interests. Had they done so they could have looked into the underlying assets GAM were likely to purchase in the P6 portfolio. GAM went on to put Mr G into unregulated, overseas investments which carried more risk than mainstream investments.

The types of investments in the P6 fund were usually reserved for experienced investors who could truly appreciate and tolerate the risks involved. But I've seen no evidence Mr G was an experienced or sophisticated investor. His previous investments in his Nucleus SIPP had been in regulated, mainstream investments. So had Sterling Wealth checked, I think they would have established Mr G didn't have the required knowledge or experience to deal in these types of investments. And I think that this is something it should have done.

Mr G also had his attitude to investment risk assessed by Firm T in mid-2014, which had recorded his attitude as six out of ten. When Sterling Wealth reassessed it in June 2016 it had fallen to four out of ten. But even as a six out of ten, the types of investments held in the GAM P6 funds were too high-risk and conflicted with his attitude to investment risk.

Mr G says that at the time the only assets he owned were the house that he lived in, and his share of his business. But Mr G was relying on those assets at the time to live and for employment. The Novia SIPPs were Mr G's only pensions. I've seen no evidence Sterling Wealth asked Mr G about his circumstances at the time. And his testimony now seems to demonstrate he didn't have the required capacity for loss to invest as much as 30% of his only pension funds into high-risk investments.

Mr G was paying Sterling Wealth on-going advice fees to look after his best interests. They had responsibilities to truly know their client and consider his circumstances at the time. I think it's likely, had they done so, they would have concluded he didn't have the attitude to investment risk or capacity for loss to tolerate investing 30% of his pension provisions in the GAM P6 fund. So, Sterling Wealth should have pointed out to Mr G that the investment

wasn't in his best interest.

Of course, I have to consider whether Mr G would've gone ahead anyway, against Sterling Wealth's opinion.

I've considered this carefully, but I'm not persuaded that Mr G would've insisted on investing in GAM P6. I say this because Mr G was inexperienced in that type of investment and the associated risks. His attitude to risk didn't match the intended investment and this pension accounted for the majority of Mr G's retirement provision. So, if Sterling Wealth had pointed out their concerns, explaining why it wasn't in his best interests, I think he would've accepted that.

Putting things right

Fair compensation

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

I take the view that Mr G would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr G's circumstances and objectives when he invested.

What must Sterling Wealth do?

To compensate Mr G fairly, Sterling Wealth must:

- Compare the performance of Mr G'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.

- Sterling Wealth should also add any interest set out below to the compensation payable.
- Sterling Wealth should pay into Mr G'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 Sterling Wealth is unable to pay the total amount into Mr G'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 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 Mr G won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr G's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr G will likely be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G 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 to Mr G £350 for distress caused by the loss of the investment. These were funds Mr G would have been relying on in his retirement and I appreciate that seeing a significant loss in their value would cause Mr G upset.

Income tax may be payable on any interest paid. If Sterling Wealth deducts income tax from the interest it should tell Mr G how much has been taken off. Sterling Wealth should give Mr G a tax deduction certificate in respect of interest if Mr G 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
Novia SIPP2	Still exists but illiquid	FTSE UK Private Investors Income Total Return Index	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.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Sterling Wealth should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Sterling Wealth pays should be included in the actual value before compensation is calculated.

If Sterling Wealth is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Sterling Wealth may require that Mr G provides an undertaking to pay Sterling Wealth any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Sterling Wealth will need to meet any costs in drawing up the undertaking.

Fair value

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

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

Any withdrawal from the Novia SIPP2 should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Sterling Wealth totals all those payments and deducts that figure at the end to

determine the fair value instead of deducting periodically.

The Novia SIPP2 only exists because of illiquid assets. In order for the Novia SIPP2 to be closed and further fees that are charged to be prevented, those assets need to be removed. I've set out above how this might be achieved by Sterling Wealth taking over the illiquid assets, or this is something that Mr G can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. If Sterling Wealth is unable to purchase the illiquid assets, to provide certainty to all parties I think it's fair that it pays Mr G an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the Novia SIPP2 to be closed.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr G wanted Capital growth and was willing to accept some investment risk.
- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr G's circumstances and risk attitude.

Sterling Wealth Ltd should provide details of its calculation to Mr G in a clear, simple format.

My final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £160,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £160,000, I may recommend the business to pay the balance.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that Sterling Wealth Ltd should pay Mr G the amount produced by that calculation – up to a maximum of £160,000 (including distress or inconvenience but excluding costs) plus any interest on the amount set out above.

Recommendation: If the amount produced by the calculation of fair compensation exceeds £160,000, I recommend that Sterling Wealth Ltd pays Mr G the balance plus any interest on the amount as set out above.

This recommendation is not part of my determination or award. It does not bind Sterling Wealth Ltd. It is unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept this decision.

If Sterling Wealth Ltd does not pay the recommended amount, then any portfolio currently

illiquid should be retained by Mr G. This is until any future benefit that he may receive from the portfolio together with the compensation paid by Sterling Wealth Ltd (excluding any interest) equates to the full fair compensation as set out above.

Sterling Wealth Ltd may request an undertaking from Mr G that either he repays to Sterling Wealth Ltd any amount Mr G may receive from the portfolio thereafter or if possible, transfers the portfolio to Sterling Wealth at that point.

Mr G should be aware that any such amount would be paid into his pension plan so he may have to realise other assets in order to meet the undertaking.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 October 2023.

Timothy Wilkes
Ombudsman