

The complaint

Mr B is represented. He says Ellis Bates Wealth Management Limited ('EBWML') gave him unsuitable advice in 2019 to switch from his Intelligent Money ('IM') Self-Invested Pension ('SIPP') to a Parmenion SIPP.

In the main, EBWML says the pension switch solution it recommended was suitable for him, was cheaper and provided him with management (at no overall and comparative extra cost) that the IM SIPP did not give him.

What happened

One of our investigators looked into the matter and disagreed with EBWML. He considered that the pension switch solution was unsuitable. He said Mr B should receive redress (to be calculated on a particular index benchmark) for any financial loss it has caused him, in addition to £200 for the distress and inconvenience he has faced in the matter.

The investigator's main findings began with summaries of Mr B's profile at the time of advice and of the events after the pension switch. This included reference to his personal and financial circumstances, evidence that EBWML initially assessed him as having a medium to high risk profile before reviewing it to a medium risk profile, his withdrawal of £12,500 (gross) after the switch and his investment of the remainder of the Parmenion SIPP in the Ellis Bates Dynamic Passive Growth (B) Strategy fund (the 'EBDPG' fund).

He then observed what he considered to be a mismatch between the objectives used in EBWML's suitability letter to justify the recommendation and what was recorded in fact find evidence. He noted that three of the four objectives were of a vague and generic nature, and that two of them – the pursuit of a high level of diversification in assets and fund management, and the ability to have reviews closer to retirement age – are not mentioned in the fact find document. The fourth objective was specific, being the cash withdrawal Mr B sought to make for personal reasons.

The investigator also said there was no evidence outside the suitability letter that Mr B wanted discretionary fund management – which was part of the recommendation – and no detailed information on his prior investment experience.

Overall, the investigator was not persuaded that EBWML had properly established Mr B's objectives at the point of advice. He said there is no evidence that the IM SIPP was unsuitable for him, or that it was not meeting his needs, or that any investment he wanted to make could not have been made within it, instead of having to switch to the Parmenion SIPP.

The IM SIPP was held in cash at the time. That had resulted from Mr B's reaction to a financial loss experience he faced in a high-risk fund his previous adviser had recommended. The investigator understood the advice he was given to reinvest the cash holding, but he considered that could have been done into a medium risk fund amongst the host of different funds offered in the IM SIPP, instead of conducting the pension switch. He took the view that the only purpose of the switch was to facilitate investment in the EBDPG

fund through the Parmenion SIPP.

With regards to costs, the investigator took the view that the lower product cost of the Parmenion SIPP was negligible, and that after adding EBWML's charges the total costs Mr B faced amounted to almost three times what he was paying in his previous arrangement.

Mr B's representative confirmed his acceptance of the investigator's findings. EBWML strongly disagreed with the investigator. It considered his main findings to be erroneous and/or misguided. Overall, it made the following core submissions:

- Its advice to Mr B on investing the cash holding within the existing IM SIPP would have come at a cost to him, one comparable to the cost of advice on switching to the Parmenion SIPP and investing the cash there. The same advice and implementation fee of up to 3% (subject to a minimum of £995) would have applied. Furthermore, the process of research, advice and execution for the former would also have been comparable to that for the latter.
- The recommended discretionary portfolio was a collection of carefully selected diversified funds which were not tactically traded, but instead were rebalanced quarterly, akin to the rebalancing of advised portfolios and at the same overall cost.
- It explored the options available to Mr B within the IM SIPP and found only one fund that would meet his needs. However, it was more expensive than the alternative option it recommended to him and, since then, it has performed worse than the fund it recommended.
- A comparison of charges for the invested recommended solution with that for the uninvested/cash IM SIPP showed/shows total costs of 0.52% for the former and 0.54% for the latter. It should be noted that this comparison excludes additional fund costs that would have arisen upon investment of the cash in the IM SIPP. The investigator's reference to its ongoing service and review charges unfairly distorts the costs comparison, because they were separate to the product solution it recommended. They were optional, so Mr B could have cancelled its service if he wished, and they would have been applicable to any solution (including retention and investment of the IM SIPP) if he wanted such a service.
- Even if the investigator's reasoning on merit was to be applied to the case, his redress proposal is conflicting. Instead of proposing the use of a randomly selected index benchmark, the redress benchmark ought to match his finding that Mr B should have invested in a medium risk fund within the IM SIPP. In other words, the benchmark should be one of the specific matching IM SIPP's index funds, probably its 'Index 60' fund.

The investigator responded to EBWML's key objections, but he was not persuaded to change his view on the case. The matter was referred to an Ombudsman.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I have reached the same conclusion expressed by the investigator – that, in Mr B's circumstances at the time of advice, the pension switch advice was unnecessary and unsuitable.

I consider there is enough evidence to show that Mr B's objective at the outset was clear; that it had nothing to do with a pension switch; that EBWML proposed an alternative objective to him which was about investing his cash holding; that he agreed with this alternative investment objective; that the notion of a pension switch was a step beyond the investment objective; and that, on balance, it was surplus to what Mr B wanted or needed at the point of advice.

Mr B approached EBWML for assistance in liquidating the IM SIPP. That was his objective, and was the only goal/instruction he initially presented. Fact find and suitability assessment (distinct from the suitability report) documentation establishes this. It was an objective that appears to have been influenced by his past financial loss experience in the SIPP.

The following statement is in the fact find document (signed and dated 3 December 2019) –

"wants to take whole IM SIPP – c. £40,000" [attached to this statement was another which confirmed his intention to use part of the withdrawal for a specific personal purpose.]

The following statements about Mr B's initial objective are in EBWML's suitability assessment document (which also refers to the fact find document) –

"He initially wanted to take the whole amount of the pension out but after discussions around tax and the impact of inflation on cash in the bank, he said that he would just take the £10,000 net he wants ..."

"He initially wanted to take the whole pension out as he had lost faith a little in it due to the loss, but we discussed the tax implications of this, any surplus money ... would sit in the bank being eroded by inflation, and the potential for the money to still grow within the pension made him realise that if he didn't need the whole amount then leaving it invested in line with his ATR would be the best thing."

The suitability report (and its covering letter) that was subsequently sent to Mr B repeated broadly the same thing. This evidence shows that EBWML proposed to Mr B an investment based alternative objective, which was arguably remote to the idea of a SIPP switch.

The assessment document proceeded to summarise key points of the alternative objective, as quoted directly below, and there is no mention of an objective directly relevant to a SIPP switch within the points.

"Take £10,000 net from the pension to ..."

"Adopt a more cautious ATR as has lost money from high risk investing in the recent past"

"Leave this money for future needs and uses"

In addition, there is a section in the document in which the generic investment related pursuits of 'capital growth', 'improve returns' and 'improve risk management' are selected. The remaining available pursuits/goals were not selected. Notably, they included goals like 'retirement planning', 'simplify administration' and 'reduce costs', which would probably have been relevant to a SIPP switch. Furthermore, the investigator's finding about the absence of evidence that Mr B wanted discretionary investment management is supported by the fact that goals like 'improve portfolio management', 'delegate portfolio management' and 'discretionary fund management' were also not selected. I have noted content in the suitability report that says both parties discussed investment management around the time of advice, but the suitability assessment document does not appear to support that claim.

The above gives basis to conclude that first, Mr B wanted to liquidate the IM SIPP, then he

agreed to EBWML's alternative proposal to make the partial withdrawal he intended in any case and then reinvest the remainder cash. In the context of this alternative objective, the following was said in the assessment document about Mr B's investment risk profile –

“Client came out as a Level 7 as a result of the risk questionnaire but after discussions he would like to reduce this to a 5. He has lost money in this particular pension in the past due to investing at a high level of risk and does not wish to suffer a loss like this again. Still appreciates that risk needs to be taken for the opportunity for returns and for the money to be given the chance to work for itself.”

This shows Mr B was engaged in considering the alternative investment objective. If he was insistent on liquidating the SIPP it is unlikely he would have participated in exploring his *investment* risk profile (for the purpose of reinvestment), to the extent of asking for a correction from risk level 7 to risk level 5.

As such, I do not consider that EBWML did anything particularly wrong in suggesting the alternative. It was faced with the clear liquidation objective that Mr B initially had, but it shared its professional advice that the alternative objective could be better for him, and he appears to have agreed. In this context, what should have followed was investment advice – in terms of investment within the existing IM SIPP. There is no evidence that he had or presented any dissatisfaction with the IM SIPP and, as illustrated above, no evidence of agreed goals that prompted consideration of a SIPP switch.

EBWML says it explored the options available within the IM SIPP and found only one fund that met his needs, but it was more expensive than the alternative option it recommended to him. Available evidence does not seem to support this assertion, instead evidence shows that investment within the IM SIPP was given little to no consideration.

The suitability report summarised Mr B's IM SIPP and in the section titled “Number of Funds Available” the report says “Unknown”. The recommendation section of the report focused on the investment objective, but it made no reference to the funds available in the IM SIPP. Another part of the report then said the following –

“We have also considered the option of switching funds internally rather than transferring benefits to an alternative provider, however, this was not deemed appropriate as you like the idea of [EBWML] being able to monitor, and when necessary, make changes to the investment to ensure that it continues to meet your attitude to risk of a Level 5.”

This makes a reference to switching funds within the IM SIPP, but it does not mention consideration of the funds available in that SIPP or the single fund in it that EBWML says met Mr B's needs but was more expensive than what it recommended. The above paragraph was followed by two paragraphs which mainly presented the benefits of EBWML's model portfolios. The report then goes on to address some pension specific aspects of the recommendation.

Even if EBWML maintains that it properly considered the fund options in the IM SIPP, it also appears to be its case that there was at least one fund that would have been suitable for Mr B. This alone, could reasonably be viewed as an implicit acceptance that the SIPP switch was unnecessary. It says the fund was more expensive than what it recommended, but there is a lack of evidence from the time of advice to support this or to show that a fund/fund costs comparison was presented to Mr B to consider.

Overall, on balance and for the reasons given above, I do not consider that the need for the SIPP switch in Mr B's case has been established. As I said at the outset of this section, the balance of evidence shows that the switch was unnecessary and surplus to what Mr B

wanted or needed.

I have noted EBWML's rebuttal points (as summarised in the previous section), and I address them as follows:

- Reference to comparable costs of advice – for investment within the IM SIPP and for the SIPP switch (and investment in the Parmenion SIPP) – is somewhat irrelevant. There is no suggestion that EBWML was/is expected to advise without charge.
- The point is that Mr B was entitled to *suitable* advice. As established above, that ought to have taken the form of investment advice within the context of the existing IM SIPP. No problems were identified with that SIPP and EBWML appears to concede awareness of at least one suitable (or potentially suitable) fund within it. I also retain the view that it did not properly consider the investment options within the IM SIPP so it has not shown that its offerings were unsuitable. EBWML's lead recommendation of a SIPP switch was unnecessary. On this basis, the same applies to the EBDPG fund investment that would not have happened but for the unsuitable SIPP switch.
- I am not persuaded it is necessary to be drawn into the merits (or otherwise) of the discretionary fund management that was recommended. There is no evidence that Mr B wanted such an arrangement and, as illustrated above, there is no evidence of EBWML recording any goals related to such an arrangement in its suitability assessment document.
- The costs comparison that EBWML relies upon is not the costs comparison that it should have conducted. If it properly looked into investment options within the IM SIPP, if it presented them (and their investment related costs) to Mr B, and then if it considered that a combined SIPP switch and like-for-like investment solution using the Parmenion SIPP produced lower total costs (and presented this information also), these would all have been the contents of a meaningful comparison. I do not accept that management related and/or ongoing servicing costs are costs Mr B would have incurred in any case. Management does not appear to have been something he wanted, and I have not seen enough evidence to be satisfied that he wanted ongoing servicing. Instead, he appears to have been convinced to accept both. I am quite mindful that he initially wanted to liquidate the SIPP altogether. It seems quite a questionable leap to move from that position to a client who wants a SIPP switch, a discretionary management arrangement and ongoing servicing.
- Overall, I do not consider there is a credible basis to support the costs comparison argument that EBWML has made. Furthermore, for the reasons given directly above, I agree with the investigator's view that the total costs, to Mr B, of the entire proposal are relevant.
- I understand EBWML's point about the redress benchmark, but it appears to have misunderstood the investigator's finding in this respect. Like the investigator, I share the conclusion that suitable advice to Mr B would have been to address the investment objective within the existing IM SIPP. There is evidence of his medium risk profile, so that would have been directly relevant to the task of identifying a suitable investment solution within that SIPP. However, this is the extent of the finding. The suitable investment in the SIPP is unknown because it did not happen. It cannot even be said that he would 'probably' have invested in one or another particular fund in the SIPP because there is no evidence to support such a finding. This point also applies to the Index 60 fund that EBWML has referred to, there is

nothing to say this is certainly or probably the fund he would have invested in. In this context, the use of a market index benchmark that reflects Mr B's medium risk profile is reasonable, and I explain this further below.

Putting things right

Fair compensation

My aim is that Mr B 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 he 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 his profile at the time of advice.

What must EBWML do?

To compensate Mr B fairly, EBWML must:

- Compare the performance of his 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.
- Pay into Mr B'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 EBWML is unable to pay the total amount into Mr B'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 is not a payment of tax to HMRC, so Mr B would not be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It is reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B 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 B £200 for the trouble caused to him by EBWML's unsuitable recommendation.
- Provide Mr B with the details of the redress calculation in a clear and simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
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Parmenion SIPP	Still Exists	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of settlement	Not applicable
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Actual value

This means the actual amount payable from the investment at the end date.

Fair value

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

Any 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 it 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 will accept if EBWML totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

- Mr B wanted Capital growth and, based on his medium risk profile, 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 B's circumstances and risk profile.

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

In Mr B's case, the complaint event occurred after 1 April 2019 and the complaint was referred to us after 1 April 2023 so the applicable compensation limit would be £415,000.

Determination and award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My decision is that EBWML should pay Mr B the amount produced by that calculation – up to the relevant compensation limit (inclusive of

the award for trouble but excluding costs) plus any interest on the amount set out above.

Recommendation: It is unlikely that the amount produced by the calculation of fair compensation will exceed the £415,000 compensation limit, but if it does I recommend that EBWML pays Mr B 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 EBWML.

My final decision

For the reasons given above, I uphold Mr B's complaint. I order Ellis Bates Wealth Management Limited to calculate and pay him redress (and compensation for trouble) as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 October 2023.

Roy Kuku
Ombudsman