DRN-4365265

The complaint

Mrs P complains that Beacon Wealth Management Limited (Beacon) mis-sold her a Self-Invested Personal Pension (SIPP) which doesn't meet her objectives

What happened

I set out the background to this complaint in my earlier provisional decision. For clarity I repeat it here.

On 29 November 2021, Mrs P met with a financial adviser from Beacon. She sought financial advice because she wanted to transfer her pension to a plan which would allow access to her funds through drawdown. Her existing pension provider had said she needed to obtain financial advice to facilitate a move to such a product and she says she approached Beacon as it was located near to where she lives.

Beacon acquired the necessary information about Mrs P's circumstances and details of her existing pension. It provided a recommendation to switch her existing pension to the Standard Life Wrap SIPP and invest into the Beacon Wealth Ethical 2 portfolio.
In March 2022, Mrs P queried the recommendation with Beacon Wealth challenging its suitability on the grounds of her objective being to obtain flexible access to her funds through drawdown. Mrs P felt the plan Beacon had arranged a complex investment, with higher charges and requiring her to retain their services to manage it.

Beacon Wealth responded supporting its recommendation and discounting the other alternatives Mrs P had mentioned. It suggested that once the transfer had completed Mrs P could disengage them as servicing advisers and then she could manage the investment directly. It also said if she didn't proceed, she would need to pay the consultancy fee.
Mrs P told this service she felt she was left with no choice but to follow their recommendation as the alternative would have been to pay Beacon Wealth's consultancy fee and then pay for advice from another financial adviser, which she could not afford. The transfer then took place, and her existing pension was transferred to Standard Life Wrap SIPP.

In January 2023, Mrs P complained to Beacon. She was worried about the switch and its current value. She felt the SIPP was invested into a number of funds making arranging any withdrawal of benefits under drawdown complex and tied her into paying on-going fees to Beacon Wealth for them to manage.

In March 2023, Beacon issued its final response. In summary they didn't uphold her complaint. They said the recommendation was suitable for Mrs P's needs and met her attitude towards risk. Beacon felt the product had been fully explained and was performing well. It also made reference to Mrs P previously working as a pensions adviser and this seems to have been seen as an indication that she had significant knowledge of pensions and investments.

Mrs P remained unhappy and referred her complaint to this service.

An investigator looked into things for Mrs P. In his view he could see Mrs P was consistent in her testimony that her objective was to move her pension funds to a plan which offered drawdown, so she had better flexibility with her retirement income. Her existing provider offered such a plan but wasn't able to move her existing provision to a flexible drawdown option until Mrs P had sought advice. The investigator also noted that the same objective was repeatedly indicated in both the advisers' meeting notes and the fact find.

The investigator also didn't find anything in the information provided that suggested Mrs P was looking for a discretionary fund management service. He noted this seemed to have been the basis for the advice provided to her with no consideration if this service was suitable for her.

He also looked at the costs and charges of Mrs P's existing provision and the comparison with the recommended plan. He noted Mrs P was being transferred to a plan which would incur higher costs, including those for on-going advice, and he didn't find this reasonable when her objective was to obtain flexible access to her pension through drawdown.
On balance he found that Mrs P would more likely than not have invested in a lower cost more suitable and simplified by comparison drawdown plan that would have met her objectives and her needs had she not been advised otherwise. In his view he agreed the advice wasn't suitable and asked Beacon to put matters right.

Mrs P accepted the investigators findings.

Beacon did not. In summary it said:

- The recommended portfolio was consistent with Mrs P's attitude to risk
- The portfolio of funds it recommended does not detract from, or make it difficult to extract funds, as any encashment or withdrawal is automatically taken across the spread of funds.
- It is not offering outsourced Discretionary Managed Funds. It says it is an in-house investment team who manage the portfolio service for the clients and as such doesn't consider that this service is just for high-net-worth individuals.
- It does not believe the charging structure is high. It says if the fees on the plan are deemed too high it could move the plan into a low-cost cautious fund and remove the 1% fee as it would no longer manage the portfolio. The new cost would be below the former costs of the previous provider, and Mrs P could manage it herself.
- With regard to putting things right it believes the suggested comparison fund was not a fair alternative due to the much higher risk rating that would be comparable for Mrs P's attitude to risk as a cautious investor.

Beacon asked for an ombudsman review.

In my provisional findings, I reached the said I was minded to uphold this complaint.
I explained that as Beacon was providing regulated investment advice to Mrs P, it was required to provide suitable advice, which is reflected in the Regulator's rules on providing such advice. These rules were set out in COBS (Conduct of Business Sourcebook), and in particular in COBS 9.2 - assessing suitability.
Broadly speaking, that section sets out the requirement for a regulated advisory business to undertake a "fact find" process. Once the fact finding was complete, COBS 9.4.7R required a business to "explain why the firm has concluded that the recommended transaction is suitable for the client" - in other words, it needed to provide its client with a suitability report outlining its advice and the reasons for it.

I said in 2009 the regulator published a checklist for pension switching. It 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 them recorded ATR and personal circumstances?) and
- 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?)

I said that having considered all the evidence available, I wasn't persuaded that the advice to transfer the pensions was suitable in the circumstances.

I explained my starting point here was Mrs P's motivation to seek advice. It is clear from the beginning Mrs P was only seeking advice because she wated to transfer her existing arrangement to a flexi-drawdown to access as and when she needed to. Based on what I've seen, I think Mrs P would have arranged that with her existing provider were it not for the fact she was instructed she needed to seek advice first.

A SIPP is generally suitable for consumers who need access to a range of investments and funds not normally available via a basic pension wrapper. It's also typically suitable for individuals who need to have their monies managed in a bespoke, or discretionary style. Usually, a straight-forward stakeholder or personal pension may be more suitable for consumers who have only modest funds and non-complex needs. That's ordinarily because often, although not always, it's cheaper for the consumer.

Having sought the advice, the suitability report records both Mrs P and her husband as retired and living off their savings which they chose not to disclose. Her husband was due to claim his final salary pension benefits, and this would meet their basic expenditure. The switch was to facilitate a drawdown option for one of Mrs P's pensions to allow for one off luxuries such as holidays.

Mrs P reported a low-medium attitude to risk indicating she was prepared to take some risk for growth. There was no indication in any of the information that Mrs P sought investment within a discretionary managed fund whereas the evidence suggests as this was what Beacon offered, this was the recommendation.

This is evident in the suitability report on page 5 which says:

"An internal switch could be made to the "existing providers retirement account", which offers flexi access drawdown. This option has been discounted due to our inability to actively manage this scheme using our preferred fund choice, and therefore manage your pension effectively."
In my view, the fact that Beacon could not manage the fund within her existing providers provision is not a valid reason for discounting it.

The Suitability letter explained the benefits of a discretionary portfolio. But I said I couldn't see that Beacon properly explored and discounted why they didn't recommend a basic, cost-effective managed fund to Mrs P, similar to what she was already invested in. Its letter said the reasons the new plan was recommended were:

• *Mrs P could invest in a wide range of investment funds that have the potential for growth over the longer term*

• The death benefits are completely tax free before the age of 75 when paid to your beneficiaries and only taxable at their marginal rate of tax after 75.
• When taking benefits there are no restrictions on the amount of money you can withdraw at any one time.
• Our investment team are to be able to vary the underlying funds and risks within the pension to reflect any changes in your personal circumstances.

But these reasons do not explain why a DFM was suitable. There are many low-cost managed funds on the market covering a range of risk profiles that offer a broad spectrum of differing underlying investments which are professionally managed that would've met Mrs P's needs that wouldn't need her continual input.

I also reflected on whether the DFM solution may have been suitable because the adviser was aware of other factors about the customer that may, for example, have justified investing in a bespoke portfolio. The Suitability letter and notes are silent on whether Mrs P was potentially coming into further monies in the near future such as a large inheritance that may have warranted a DFM over a packaged product. If anything, the suggestion was that both Mrs P and her husband would be living off their retirement income and although they had savings, the amount was not disclosed, and they were using them at present to live off. So, at the time of the advice there was nothing to suggest the DFM was either suitable for her current or future needs.

Furthermore, I pointed to the value of Mrs P's existing fund being a lower value than I would expect for a recommendation of this nature. As our investigator pointed out, a discretionary fund management service is usually for high-net-worth clients who have a moderately sized portfolio and sufficient knowledge and experience to understand the underlying investments. Mrs P's pension portfolio was modest in size and not one that we would generally consider suitable for investment through a discretionary fund management service. Beacon says because it carries out the fund management in house, it isn't just for high-net-worth individuals. I'm not sure what it means by this statement. Whether a discretionary fund is managed in-house or outsourced, one would still usually see this service for high-net-worth clients seeking active management of multiple funds. Mrs P has made no such request or even suggested this was important to her.

<u>Charges</u>

I explained that 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. Mrs P's existing plan was costing her approximately 0.95% per annum. She wasn't paying for an ongoing service. Beacon's recommendation totalled 2.18%, increasing her costs by around 129.47%. The new costs were significantly higher than her existing arrangements. Taking the annual increased costs into account, would take many years of consistent outperformance over her existing funds to make the increased costs worthwhile. Importantly, just because a firm has explained what the costs are to a consumer, it doesn't then make the recommendation suitable.

Beacon has also said Mrs P previously working as a pensions adviser and this seems to have been seen as an indication that she had significant knowledge of pensions and investments. But Mrs P explained she used to work for a pension's administrator so, although she has some knowledge and experience from this, I said I agreed with the investigator that this doesn't constitute the level of knowledge expected of a pension's adviser. And, as the investigator said there is no reference to her previous employment in any of the correspondence from Beacon, at the time of the advice, which could have made Mrs P aware of this misconception and allowed her to correct it.

The adviser did state in the suitability letter if anything did not coincide with Mrs P's view of the situation, she should contact them, and this is exactly what Mrs P did. She contacted the adviser to query the recommendation on the basis she wasn't looking for a complex investment in multiple funds or on-going advice but rather a simple plan, such as a stakeholder plan, with the flexibility of drawdown. The response she received was that the advice and product were still suitable, and she could remove them as advisers once the transfer completed if she no longer wanted Beacon's services.

I said having seen all the information available, I'm not persuaded the recommendation to transfer her existing pension plan to a SIPP within a discretionary fund was suitable advice for Mrs P and so I said I was minded to uphold her complaint and ask Beacon to put things right.

Mrs P accepted my provisional findings.

Beacon did not. It said:

The Standard Life SIPP that it recommended wasn't a true SIPP but rather was more akin to a personal pension

It isn't a DFM, rather it has an in-house management with permissions to choose funds in each plan and points out there is a difference. It also believes this offering is suited to investors with lower net values than a recognised DFM.

It doesn't agree the benchmark identified as a suitable comparison is reflective of Mrs P's attitude to risk.

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 haven't been presented with any new evidence in submissions to persuade me to alter my provisional findings and so it follows I have reached the same conclusion.

I have carefully considered the submissions brought by Beacon and I understand the points it raises but I'm not in agreement that this makes the advice it provided to Mrs P suitable.

Beacon has argued that it isn't strictly a DFM, so I've carefully considered its submission. I accept that Beacon does not hold DFM permissions with the regulator. Beacon has an inhouse management team that acts in a sort of quasi DFM role. It issued a discretionary investment management agreement. In it states:

Discretionary Portfolio Service

Under the Discretionary Fund Management Service, decisions relating to the day-to-day management of the Client's portfolio ("the Portfolio") will be at the discretion of the Company although subject to the investment objectives and guidelines agreed with the Client. This will include, but not be limited to, the sale and/or purchase of investments, the determination of *appropriate asset class weightings (between, bonds, equities, alternative strategies/hedge funds, property and cash). No correspondence or communication will be entered into with the Client prior to the implementation of investment decisions, however, notification of the switch/rebalance completed and the reasoning behind the decision made will be sent shortly afterwards via our mutually agreed communication method.*

So, Beacon made it clear that its recommendations were based upon it making all the investment decisions for Mrs P in line with her attitude to risk with any reasoning for decisions sent after the fact and importantly this is a service which Mrs P would be paying for.

But in her email to Beacon following the recommendation Mrs P said:

Could you please confirm that the only option Beacon Is prepared to offer me for transfer of my existing pension is a SiPP? With regard to Stakeholder pensions and personal pensions, both of these are available from Standard Life, the same provider as for the Illustrated SIPP and both allow transfers in. I can only assume from this that no other option has been considered – even though I made plain what I wanted both at our meeting and in various messages, I do not want a SIPP, I want a drawdown stakeholder or personal pension that I can access myself immediately on transfer and is straightforward to manage and lower-risk

Beacon responded and said:

Beacon offer financial planning and wealth management services. Our recommendation is based on what we believe is the best route to achieve your objectives and combines these two features but there is a route whereby it is possible for you to disengage us as servicing advisers and instruct the provider direct should you wish.

Beacon recommended a plan with twenty different funds. It seems more likely to me, given the size of her fund she would likely only need a simple, single, low-cost managed fund. By having multiple funds in the offering, although this would spread her risk, it would take more management, which she didn't need and actually clearly said she didn't want.

The fact that after raising the complaint Beacon has said it will withdraw this service and its ongoing charges does not alter the recommendation in the first place. This does not fit with Mrs P's objectives. She asked for a simple drawdown product, she did not need or want a fund managed on her behalf. And that also begs the question if Beacon is recommending this product as it will manage the investments on her behalf, but then withdrawing the very service it recommended.

The charges for the recommended scheme were also significantly higher and there is no explanation as to why Mrs P needed to transfer to a scheme that would cost her more money when she wanted to commence income drawdowns.

So given the size of the fund and Mrs P's clear instructions, I find it more she likely than not that she only needed a simple, single, low-cost managed fund. So, on balance taking all these factors into account, I don't agree that the advice was suitable.

Beacon have also challenged the benchmark index I have suggested for calculating any redress. It's starting point is to use a universal score allocated by an independent body called Trustnet with the FE fund info Risk Scores. The recommended portfolio has a score of 43 in comparison with its benchmark (IA Mixed Investment 0-35%), which is 38 and is regarded as cautious in line with the requirements of Mrs P. The benchmark fund I have used has a score of 54 in comparison to the sector score of 38 which would be regarded as a higher risk and therefore inappropriate to the client given the high equity content and potential volatility.

It is fair to say I haven't used the same universal scoring system. This service uses benchmark indices based upon one which is reflective overall of P's attitude to investing. I have considered an alternative lower risk benchmark but because Mrs P was assessed as a low to medium risk investor, rather than cautious investor, I am of the view that the FTSE UK Private Investors Income Total Return was more suitable because it is made up of a range of indices with different asset classes, mainly UK equities and government bonds. I'm persuaded it's a fair measure for someone who was prepared to take some risk to get a higher return. When I consider the twenty funds in the recommended portfolio, I'm of the view the benchmark index I have directed is nearer in comparison than a the 50:50 index as the alternative.

I am persuaded from the information available that Mrs P would have invested differently if all the options available had been considered.

It follows that I intend to uphold this complaint.

Putting things right

Had she received suitable advice, in my view Mrs P would more than likely not have stayed with her existing provider making an internal switch to a product that would have offered her the flexibility she was seeking. But as it's not possible to assess precisely how she would have invested; I have sought to be pragmatic in my approach and assume her investment had performed in line with a benchmark which broadly reflects the level of risk she was prepared and able to accept.

I appreciate Beacon has challenged the FTSE UK Private Investors Income Total Return Index as a suitable comparison index and I have thought carefully about whether this is comparable to Mrs P's stated attitude towards risk, and I think it is.
I'm persuaded it's a fair measure for someone who was prepared to take some risk to get a higher return.

I have considered the advisers fees and it's here that I differ from the view of our investigator. The redress calculation will take account of the adviser's fees that were deducted from the investment at inception, and this will put Mrs P back in the position she would have been in. So, if Mrs P were to then seek advice she would be doing so as she was required to do, should she wish to transfer her pension and as such I don't find it fair that Beacon bears those costs. I haven't included further advice fees then within my redress.

I'm also going to direct Beacon to pay Mrs P £100 for the distress and inconvenience this matter has caused.

Fair compensation
In assessing what would be fair compensation, my aim is to put Mrs P as close as possible to the position she would probably now be in if she had been given suitable advice. As I have said, I'm persuaded Mrs P would have invested differently. It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested.

What should Beacon do?

To compensate Mrs P fairly it should:

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

- Beacon should also add any interest set out below to the compensation payable.
- If there is a loss, it should pay into Mrs P's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. It shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If it is unable to pay the compensation into Mrs P'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 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 Mrs P won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mrs P's actual or expected marginal rate of tax at her selected retirement age.
- It's reasonable to assume that Mrs P is likely to be a basic rate taxpayer as she is already retired and hasn't indicated otherwise, so the reduction would equal 20%.
- However, if Mrs P 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%.
- In addition, Beacon should pay Mrs P £100 for the inconvenience caused in having to challenge the advice provided and the concern she experienced following the transfer to an overly complex pension plan.
- Provide the details of the calculation to Mrs P in a clear, simple format.

Portfolio name	Status	Benchmark	From (start date)	To (end date)	Additional interest
Pension plan	Still exists liquid	FTSE UK Private Investors Income Total Return Index	Date of investment into new Beacon plan	Date of my final decision	8% simple per year if Beacon has not paid any redress due within 30 days of the decision.

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.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs P 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's 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 Mrs P's circumstances and risk attitude.

My final decision

For the reasons I have given I uphold this complaint and direct Beacon Wealth Management Limited to undertake the redress as detailed in the Putting Things Right section of my decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 27 October 2023.

Wendy Steele
Ombudsman