

The complaint

Ms R is unhappy with the service she's received from Strategic Asset Managers Limited (SAML) since she employed them in November 2015 to help with her pension planning.

What happened

I'm not going to refer to everything, just what I see as the key events.

Ms R is a member of her employer's final salary occupational pension scheme (OPS). In October 2015 she was planning to use money she'd inherited to buy additional pension in the OPS to make up for years she'd missed during a two year career break. She'd completed an application form but sought advice from SAML before submitting it. In a meeting in November 2015 Ms R told SAML's adviser that she wanted to make an additional contribution of £35,409 to buy extra pension in the OPS. The adviser said he'd look into whether she should do that or contribute to a personal pension instead. Ms R made the adviser aware there was a deadline of 31 March 2016 for making the additional contribution to the OPS.

Ms R and her husband met with SAML's adviser on 14 March 2016. The adviser's handwritten notes of the meeting record, amongst other things, a discussion based on a rough calculation of what additional pension Ms R could buy in the OPS and what a personal pension might provide. The notes also record that Ms R liked the idea of tax relief on her personal pension contributions and flexible withdrawals if she stopped working at age 57. I understand that information requested from the OPS wasn't received until 19 March 2016, after the meeting had taken place.

In November 2016 SAML recommended that Ms R take out a personal pension rather than purchase additional pension in the OPS. Ms R accepted the recommendation but noted the contribution figure the adviser suggested didn't include the £35,409 Ms R had planned to pay the previous year. The adviser said he'd revise his calculations. Ms R approached the adviser in early 2017 as she was concerned that the end of the tax year was coming up. When she told the adviser she was on maternity leave he said she was no longer able to contribute a lump sum for the previous tax year as she had insufficient pensionable earnings. The adviser said Ms R hadn't disclosed she'd likely stop work in the next twelve months. But Ms R says the adviser misinterpreted the carry forward provisions.

The adviser recommended that Ms R make a net contribution of £29,872 to the personal pension. It turned out, taking into account her contributions to the OPS and her earnings, that was £10,260 more than she could contribute in the 2016/2017 tax year and get tax relief on which gave rise to an excess tax liability plus a late payment charge/interest.

Ms R contacted the adviser in February 2021 about making a further pension contribution. The adviser made a recommendation. And in January 2022 Ms R got in touch again about making her maximum allowed pension contribution for the 2021/2022 tax year. A meeting was arranged for 8 March 2022 and a recommendation made. Ms R queried the level of contribution which had been recommended. In the end the adviser admitted he'd calculated the contribution incorrectly due to a misinterpretation of the rules.

Ms R complained to SAML in April 2022. SAML upheld the complaint in part and offered compensation. Ms R referred the matter to this service. In summary the investigator's findings were:

- When Ms R first met with SAML in November 2015 she was clear she wanted to maximise her pension contributions and she had funds available. The December 2015 risk tolerance report recorded a 'very low score' for Ms R and that she was likely to remain in the OPS until retirement. She'd accrued only five years' service in the OPS so had plenty of scope to buy additional pension.
- SAML had said a guaranteed retirement income was less important to Ms R because of her husband's significant retirement income. And a personal pension would allow more flexibility, was tax efficient and meant something could be left for her family after death. SAML had also highlighted the potentially higher income available through the personal pension's growth. Those were generic benefits which weren't particularly tailored to Ms R's circumstances and goals.
- Looking at the projected income comparison figures provided by SAML, the likely personal pension retirement income wasn't attractive enough for Ms R to pass up the opportunity to purchase guaranteed income, with a spouse's benefit and provision for surviving children in the event of both parents' deaths.
- It should've been apparent to SAML from the outset that Ms R was a suitable candidate for purchasing additional pension. Even without getting information about the OPS, SAML were required to highlight the benefits of purchasing additional pension through the OPS. If SAML had done that, Ms R would've submitted her application immediately.
- The investigator said SAML should undertake a calculation, on the basis he set out, to compare the value of Ms R's personal pension with the value of the benefits she'd have in the OPS if she'd contributed £59,140.45 to the OPS instead.
- SAML had admitted making an error about the contribution in the 2016/2017 tax year. Ms R's earnings weren't enough to make the maximum permitted contribution of £40,000 and she'd contributed £10,260 more than she was entitled to. SAML had calculated the excess tax liability and late payment/interest charge and offered to cover the full liability. After receiving a copy of Ms R's P60 for the 2016/2017 tax year, SAML had recalculated the excess tax liability (£5,095) and the late payment fee (£799) and had offered to cover the increased liability (£5,894). If Ms R had evidence to suggest those figures were incorrect we could look into that with SAML.
- SAML had offered £900 for the admitted service errors and had agreed to waive their adviser's fee of 0.75% pa for twelve months – around £3,611.44 based on the assets held and would increase if Ms R made additional investments. The investigator acknowledged the impact of SAML's errors on Ms R, including the time she'd spent dealing with the matter and the distress and frustration she'd experienced. But he thought the amount offered was in line with what we'd expect.

Ms R commented on the investigator's view. Her main points were:

- The correct figure for the tax liability arising from the excess contribution for the 2016/2017 tax year was £5,909 and that would impact on the late interest penalty.
- She hadn't received the compensation by way of waiver of the adviser's fee, estimated at £3,611.44.
- She was concerned the loss calculation would be undertaken by SAML and suggested an independent third party should be instructed.
- She agreed she hadn't lost the £35,409 which she hadn't contributed. But she'd lost out on the associated tax uplift which would've been available so that should be awarded to her.

- The adviser had been initial set up fees of over £7,000. And he'd taken a fee each year for managing her pension. The element of the set up fee relating to the pension and the ongoing annual management fee should be included in the compensation.
- £900 compensation wasn't adequate taking into account all the stress and inconvenience she'd endured.

In reply the investigator said, if Ms R could provide evidence of the correct figure for the tax charge/liability, we'd ask SAML to honour it. The £3,611.44 wouldn't be paid to Ms R. It had been waived and so not deducted from her pension/assets under advice. We're not actuaries and we don't instruct third parties to conduct calculations. We'd look at the calculations to see if they were in line with what we'd said but, if Ms R wanted an in depth analysis, she'd have to instruct a third party herself and meet the costs. In terms of the tax relief, the comparison of the amount of gross contributions being paid into the OPS took that into account. We couldn't consider contributions not made as Ms R had retained that money. As to the start up fee, if Ms R had received correct advice, she'd have had to pay for that. Fees for the personal pension would be reflected in the calculation recommended as they'll have been deducted from the fund.

Ms R said she'd provide her calculation for the tax charge and check if the £3,611.44 had been waived. As I've mentioned below she did provide updated figures. She told us that she and her husband were in the process of leaving SAML. Her main point was that she'd been unable to invest the £35,409 into her pension and so she'd lost the tax relief uplift (£7,081.80) and which SAML's adviser had said would negate his fees. She'd reminded the adviser about the impending deadline of 31 March 2016 but he said it was irrelevant as unused carry forward allowances would be utilised. By the time he discovered that wasn't possible, the deadline had been missed. Ms R accepted she hadn't lost the money and still had it available to invest but she wanted compensation for the lost tax relief.

SAML didn't accept the investigator's finding that Ms R should've been advised to buy additional pension in the OPS. SAML said the '*expansion*' of the original complaint into personal pension versus OPS additional income was unnecessary. SAML pointed to an email sent by Ms R on 6 January 2023 (two days after she'd submitted her complaint to us) as evidence she wasn't unhappy with the personal pension and it was appropriate. SAML's other main points were:

- The recommendations weren't generic but tailored to Ms R's and her husband's particular circumstances, details of which were set out. Based on discussions in November 2015 they'd wanted to maximise returns and ensure the long term tax efficiency of their financial affairs. Ms R's former profession meant she fully understood tax, risk and the value of guarantees. Her priority was to make sure she added to her pension in the most efficient way and to make up for two years' lost service. She was happy to explore the personal pension option and eventually signed mandates with information from the OPS not arriving until March 2016.
- Ms R had a firm retirement age of 57 when her husband, the main earner, was 60. She wouldn't have been accruing benefits in the OPS from then and would've been a deferred member for a significant portion of her service. Her sole focus was on the fact she'd lost 2/60th of her pension at age 65. Based on a salary of about £35,000 that was a pension loss of £1,666 pa.
- At the time, Consumer Price Index (CPI) inflation was - 0.1% and forecast to remain low, with no prospect of significant pay rises in the public sector. Assuming 2% pa pay rises to age 57, gives an increased salary of £44,388 and a pension of £1,479 pa increasing to £1,732 pa, assuming CPI was 2% pa. Ms R and her husband agreed that wouldn't be significant, given their overall wealth and other pensions and assets.

And, based on the annual allowance restrictions, Ms R wouldn't have been able to pay in £35,000 to buy the larger additional pension quoted on the OPS' website.

- Both Ms R and her husband understood the lower risk nature of defined benefits and the value of the guarantees but also the inflexibility of these benefits in later life. Their wealth, the absence of children, their firm retirement plans at 57 and 60 respectively and the low annual value of the 2/60th benefit made the personal pension more attractive and Ms R was relaxed about missing the deadline.
- Moving forward to November/December 2016, when the personal pension was recommended and set up, tax relief on contributions annually to suit Ms R's tax efficient long term growth aims and the ability to pass the accumulated fund to their child in an IHT and potentially income tax efficient basis, was an additional personalised factor for them.
- When presenting the recommendation report, SAML acknowledged Ms R's more cautious attitude to risk compared to her husband. Ms R said the annual pension on offer for the last two years due her career break was insignificant. She preferred the idea of maximising her personal pension contributions. The potential to contribute further up to age 57 to help offset the tax paid for the rental property income and the more flexible options within the personal pension were also more attractive as there was a cap on the OPS additional pension purchase.
- If Ms R had invested £35,000 in the 2015/2016 tax year that would've breached the annual allowance. She'd only wanted to buy the equivalent pension to cover the pension she'd lost because of her two year career break. Future years contributions may not have been made had SAML not outlined the ongoing tax efficiency of making personal pension contributions. The context of low inflation and the public sector pay freeze had influenced her decision. Given her former profession, Ms R fully understood the implications of her decisions.

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.

Ms R's complaint is detailed and a number of issues have been raised. Although I've read and considered everything, I'm going to focus on what I see as key and in particular on those matters which haven't been resolved following the issue of the investigator's view.

SAML's main issue is with the investigator's finding that Ms R should've been advised to buy additional pension in the OPS, instead of taking out the personal pension.

First, I don't agree, in considering that, we've expanded Ms R's complaint. Her complaint to SAML listed a number of areas of concern, including what had happened in November 2015 when Ms R had first begun working with SAML's adviser. It's clear from what Ms R sets out that she was unhappy with the time the adviser took to undertake the comparison he'd promised between buying additional pension in the OPS and the personal pension he was recommending. And Ms R was concerned as to whether she should've accepted the advice to take out the personal pension – she says if she'd just done as she intended and posted the application she'd already completed to purchase additional pension in the OPS, then she'd have been in a better position in terms of her pension provision than having accepted the advice to set up the personal pension.

Further, SAML dealt with that aspect of the matter in its final response letter dated 26 July 2022, under the heading '*Added Years versus Money Purchase Pension*'. And, when Ms R referred her concerns to us she said, on her complaint form, that her complaint was '*in relation to a catalogue of errors as detailed in her attached letter of complaint presented to [SAML]*'. I don't see there's any doubt that Ms R's complaint – to SAML and us – included

the recommendation to take out the personal pension and if she should've instead been advised to buy additional pension in the OPS.

Nor do I see that Ms R's email of 6 January 2023 is particularly significant. Whether or not it appeared from that email that Ms R wasn't unhappy with the personal pension, the fact remains that by then she'd questioned the recommendation to set up the personal pension instead of buying additional pension in the OPS. Continuing to deal with SAML and instructing SAML to work out the maximum contribution she could make to her personal pension in the current tax year doesn't, in my view, indicate that she must be happy with the personal pension. Rather, it reflects the situation that she's currently in and a desire to maximise her pension provision using the pension vehicle that's available to her. It isn't evidence that she no longer wants to complain about the advice SAML gave. I also understand that it's still open to Ms R to explore options to purchase additional pension in the OPS. But again I don't think that negates any complaint about the earlier advice and whether it was suitable at the time.

I've considered very carefully all SAML has said about why it maintains the recommendation to take out the personal pension was suitable and more appropriate, given Ms R's circumstances and objectives. I also note all SAML has said about Ms R's background and professional qualifications and why she'd have understood and weighed up the options in making her decision. But that said, she'd approached SAML for professional advice and it was up to SAML to give suitable advice. I agree with the investigator and for the reasons he gave (which I've set out above) that suitable advice would've been that Ms R buy additional pension in the OPS. I don't have much to add to what the investigator said about that.

Ms R approached SAML in November 2015 with a specific aim in mind – to make up the two years' service she'd lost when she'd taken a career break. She'd already filled out the application form to buy additional pension in the OPS. Although she may have been happy to explore other options – hence she'd contacted SAML – whatever SAML recommended had to be suitable for her.

If Ms R was going to buy additional pension in the OPS there was a deadline for doing that – 31 March 2016. That was presumably set out in the rules governing the OPS. So, even if SAML understood that Ms R would be carrying on working (and so would have relevant earnings for pension purposes as well as the ability to use the carry forward provisions), the deadline was nonetheless important.

To advise Ms R if she should go ahead with buying additional pension in the OPS or if another solution might be more suitable, SAML needed to obtain full details of the additional benefits Ms R could buy in the OPS. SAML has said that information from the OPS wasn't forthcoming until mid March 2016. Which would've left insufficient time to consider it and make a compliant recommendation as well as for Ms R to make any actual contribution to the OPS. But Ms R had approached SAML in November 2015. If the OPS was slow in providing the information needed, SAML should've chased things up. If there's any suggestion that Ms R didn't sign the relevant forms of authority to enable SAML to obtain details from the OPS, SAML should've explained to Ms R why it was important that the information was obtained in good time.

I understand that in March 2016 SAML's adviser told Ms R she'd be better off taking out a personal pension as it would provide more flexibility and so the 31 March 2016 deadline was no longer relevant. But I don't see how SAML could properly advise Ms R in favour of a personal pension if, as it seems, information about buying additional pension in the OPS hadn't been received in time for SAML's adviser to consider it fully.

By the time SAML's formal recommendations were given in November 2016, Ms R's circumstances had changed. She'd started maternity leave in August 2016 and her earnings had reduced. HMRC's carry forward provisions allow, subject to certain conditions, unused annual allowances from the last three tax years to be used to make pension contributions in excess of the annual allowance. But one of the conditions is that earnings in the tax year the contribution is for must be at least as much as the contribution that's to be made.

In looking at if the recommendation to take out the personal pension was suitable, I've considered the position on the basis that SAML should've provided advice to Ms R reasonably promptly and taking into account what her position was in late 2015/early 2016.

SAML needs to be able to show that the decision to bypass buying additional income in the OPS in favour of setting up a personal pension was justified at the time. I don't think after arising factors such as Ms R having a child and which may have made the death benefits from the personal pension more attractive are directly relevant. I note the risk tolerance report prepared from the questionnaire Ms R completed on 15 December 2015 said her risk tolerance was very low. She was in risk group 3 (out of seven). She was a cautious investor. Buying additional guaranteed pension income in the OPS would be an obvious choice for such an investor. And Ms R had already concluded – having '*done her homework*' with the OPS – that's likely what she'd do, using the money she'd inherited.

SAML has stressed that the focus of its advice was on tax efficiency and maximising tax relief. But the primary purpose of a pension is to provide an income in retirement. The figures quoted by SAML more recently don't include the additional tax free cash lump sum of £11,785 in addition to the income of £1,767 pa and which would've increased in retirement. The personal pension fund based on growth of 2.4% pa would be £44,400 which would give a commencement lump sum of £11,100 and a residual income of £1,665 pa. So it appeared the personal pension would provide retirement benefits of lower value. I think SAML would need to put forward compelling reasons why Ms R shouldn't proceed with the course she'd more or less decided she wanted to take and which it seemed would deliver higher retirement benefits with less risk and when, as I've said, her risk tolerance was low.

SAML has pointed to Ms R's and her husband's overall wealth and other assets, including Ms R's husband's significant benefits in his OPS, an analysis of which had been undertaken and a decision made to retain those benefits, rather than take the significant transfer value on offer. But, even if Ms R's circumstances were such that she had capacity for loss, she'd indicated she was only prepared to take a low level of risk. And, even if her knowledge, experience and qualifications meant she was in a position to understand the options and the risks, SAML was required to provide suitable advice, taking into account Ms R's objectives and circumstances, including the level of risk she was prepared to accept. I'm not persuaded that the reasons SAML has put forward justified the recommendation to take out the personal pension instead of buying additional pension in the OPS. So I'm upholding Ms R's complaint.

I've said below that SAML must undertake a loss assessment to see if Ms R is worse off financially having taken out the personal pension instead of buying additional pension in the OPS. The redress I've set out differs from that suggested by the investigator. But it's in line with what we told Ms R and SAML I was minded to award. I said that a redress calculation should be carried out using the regulator's guidance for the FSAVC (Free Standing Additional Voluntary Contributions) review on an added years basis. It was aimed at calculating redress where a consumer had taken out a FSAVC plan instead of buying added years in an OPS. Whereas here, Ms R's additional contributions would've bought additional pension amounts. But I considered the situation was broadly equivalent and awarding redress on that basis would be fair and reasonable. I've added below a couple of points to clarify the basis on which the calculation should be undertaken.

I also said that, although the investigator had said that SAML should pay £5,984 to cover the additional tax liability and interest arising from the excess contribution in 2017, Ms R had said her additional tax liability was £5,906.80 and against which interest would be calculated.

SAML had also agreed to waive the 0.75% adviser's fee for 12 months, calculated at £3,611.44 based on the assets under management and assuming no additional investments were made. But Ms R had moved to a new adviser and so wouldn't benefit from the waiver of fees offered. I said a cash payment of, say, £2,888.80 should be made instead.

Both SAML and Ms R commented on my proposed redress. I've considered what's been said against the background that, in awarding compensation, my aim is to put Ms R, as far as possible, back in the position she'd be in if she'd been given suitable advice. Here suitable advice would've been to recommend that Ms R buy additional pension in her OPS. And I think that recommendation should've been made before the 31 March 2016 deadline. We can't put Ms R exactly in the position she'd be in now if that had happened – we can't say the OPS must accept a backdated application to purchase additional pension now and we can't 'unwind' the personal pension that Ms R took out instead. So the redress aims to ensure Ms R isn't financially disadvantaged because she made contributions to a personal pension which she'd have otherwise used to buy additional pension in her OPS.

The calculation itself is complex. And more so in this case because there are additional considerations such as the fact that Ms R's payment into the OPS should've been made before the end of March 2016 whereas her personal pension wasn't set up until towards the end of 2016 so the timing of the initial payment she'd have made and the actual payment doesn't tally. The calculation is generally undertaken by consulting actuaries. We'd expect it to be shared with Ms R, together with an explanation to assist her understanding as to the basis on which the calculation has been done and any assumptions used.

Ms R said she should also get the tax relief she'd have got on a pension contribution of £35,409. Ms R has continued to press this point very strongly. We've more recently asked her about it again. I said I wasn't sure if she was saying, if she'd made the payment of £35,409 to buy additional pension before the March 2016 deadline, she'd also have made the further contribution (£37,340) in December 2016.

Ms R confirmed that was her point. And that she'd wanted to maximise her pension provision in March 2016 and every tax year going forwards. She had substantial cash savings and an inheritance and she was looking to contribute the maximum using all of her eligible earnings each and every tax year. She thought the maximum additional pension she could've bought in the OPS in March 2016 was £6,500 which would've cost her £58,760. She wouldn't have been able to buy that amount in one year as she didn't have sufficient eligible earnings. But she could've bought a lesser amount that year and again the following year and each and every year going forwards that she had eligible earnings.

I think my further enquiries may have raised Ms R's expectations. But I was just making sure I'd fully understood her position. I'm sorry to disappoint her but, having considered the matter very carefully, I don't think, on balance, it would be fair and reasonable to make an award for lost tax relief on the further contribution she says she'd have made. On the one hand, I don't have any reason to doubt Ms R's testimony. But, and I mean no discourtesy to Ms R, I have to take into account all the available evidence and the wider circumstances in deciding what would've likely happened if things had gone as they should've done. It's recorded that Ms R had approached SAML with a specific aim – to make up for the two years she'd lost because of her career break. And from SAML's final response letter, it appears Ms R's inheritance was around £30,000 which she'd earmarked to make additional pension provision. Although

she had savings and other assets, that's nevertheless consistent with just one contribution of around that amount being made.

After making the contribution in December 2016, Ms R didn't then make any further contributions until March 2021. I'm not sure of her earnings position during all of the intervening years and to what extent she could've made further contributions. And she's said she didn't want to consult SAML's adviser further, having lost faith in him. But, if her intention to maximise her pension provision was overriding and she'd wanted to continue to contribute what she could, year on year, I'd have expected there to have been some discussions about to what extent she could do that. Even if that was with a different adviser and even if any contributions she could've made may have been limited.

On balance I can't say Ms R would've made two contributions to the OPS to buy additional pension, one in the 2015/2016 tax year and another in the next tax year, assuming it would've been open to her to do that and even if I accept she could've afforded to do so. In the circumstances, and although I know Ms R will be very disappointed, I'm not going to make any award for lost tax relief. I think it's fairer to proceed on the basis Ms R made the contributions she actually did, albeit that they should've been made to a different pension vehicle – the OPS – and taking into account the initial contribution that would've been made before the 31 March 2016 deadline.

SAML has argued, if I maintain Ms R would've bought additional pension in the OPS, it should be restricted to the two years' missed service she'd said she wanted to make up. And that later 'top ups' to the personal pension were for tax planning purposes only and shouldn't be taken into account. But, and notwithstanding what I've said in the preceding paragraph, I don't agree. As I've explained, I don't think it's fair to say Ms R would've made an additional contribution. But it isn't unreasonable to assume, if she'd been advised to buy additional income in the OPS, that the further contributions she did make would've been directed similarly.

My understanding is that Ms R made three contributions to the personal pension totalling £59,080.45 (and not £59,140.45 as recorded in the investigator's view) made up of £37,340 gross on 1 December 2016; £9,500 gross on 23 March 2021; and £12,240.45 gross on 30 March 2022. I haven't seen anything to suggest that, by the time she came to make those further contributions, she had any reason to believe the advice to pay into a personal pension might have been unsuitable for her. So the further contributions just followed on from the advice she'd been given which, for the reasons I've indicated, was unsuitable.

I think there may have been some discussion in early 2023 about Ms R making another contribution. As far as I'm aware, that didn't happen. But if I'm wrong then I'd draw a distinction as to that contribution on the basis that by then Ms R had complained to SAML that she'd been given unsuitable advice to take out the personal pension. So the loss calculation shouldn't assume that contribution would've also bought additional pension in the OPS.

SAML also said that the FSAVC review protocols weren't broadly similar as they take into account projections to the client's normal retirement age whereas Ms R intended to retire at age 57. In addition, the OPS added pension doesn't act as added service with a link to the superannuation pensionable salary. Those personalised factors should be addressed in any redress calculation. But I think Ms R's situation is broadly analogous and using the FSAVC review guidance on an added years basis is a fair and reasonable approach to assess if she's suffered any loss because she didn't buy additional income in the OPS and contributed to the personal pension instead.

As to the other redress elements, there's no dispute that, having recommended that Ms R take out the personal pension, Ms R then contributed too much as SAML wrongly calculated what she could pay in which led to a tax liability and interest. SAML has agreed to cover both which I think is fair and reasonable. SAML is happy to proceed on the basis of the revised figures Ms R has put forward. SAML has said its understanding was that the late payment interest would apply but no penalties due to the 'inadvertent nature' of the late payment. SAML has asked Ms R to provide the final notification from HMRC as to the debt and interest. If, in fact, there's also a penalty, I'd expect SAML to cover it.

SAML had also agreed to waive the 0.75% adviser's fee for 12 months which SAML had calculated at £3,611.44. Although Ms R and her husband had now moved to new advisers, that offer was made in July 2022 and Ms R and her husband remained clients until early October 2023. During that period £3,503.76 had been paid across their accounts, of which £1,257.01 had already been refunded and without any tax deduction. SAML proposed a payment of £2,000 taking into account the earlier refund. I think that's reasonable and in line with what I proposed and taking into account that some fees had in fact been refunded.

I think the offer of £900 for distress and inconvenience is fair and reasonable and taking into account the other redress which I've awarded and/or SAML is prepared to pay.

Putting things right

Strategic Asset Managers Limited must:

Undertake a redress calculation in line with the regulator's FSAVC review methodology on an added years basis. This involves using, in part, the Pension Review methodology as updated by the Financial Conduct Authority in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4. This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of the consumer's acceptance.

The calculation should be done on the basis Ms R would've paid £35,409 into the OPS to buy additional pension before 31 March 2016. And it should be assumed she'd have gone on to buy additional pension from the contributions she made to the personal pension in March 2021 (£9,500 gross) and March 2022 (£12,240.45 gross). But it should also take into account the saving in contributions she made from only paying £29,872 net into the personal pension in December 2016 compared with the £35,409 net payment towards additional pension in March 2016.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Strategic Asset Managers Limited should:

- calculate and offer redress as a cash lump sum payment,
- explain to the consumer before starting the redress calculation that:
redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension,
- offer to calculate how much of any redress the consumer receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if the consumer accepts the offer to calculate how much of the redress could be augmented, request the necessary information and not charge the consumer for the

calculation, even if they ultimately decide not to have any of the redress augmented, and

- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around the consumer's end of year tax position.

Redress paid directly to the consumer as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Strategic Asset Managers Limited may make a notional deduction to allow for income tax that would otherwise have been paid. We'd presume that a consumer's likely income tax rate in retirement would be 20%. But if the consumer would've been able to take a 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

Strategic Asset Managers Limited must also cover the additional tax liability (currently thought to be £5,906.80) and interest arising from the excess contribution in 2017. Ms R should forward to Strategic Asset Managers Limited the final notification from HMRC as to the debt and interest. If any penalty is imposed Strategic Asset Managers Limited should pay that too.

There's also a cash payment of £2,000 to Ms R to cover the balance of the adviser's fee which Strategic Asset Managers Limited agreed to refund. And the payment of £900 for the distress and inconvenience Ms R has suffered.

My final decision

I uphold the complaint. Strategic Asset Managers Limited must redress Ms R as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 19 April 2024.

Lesley Stead
Ombudsman