DRN-4469818

The complaint

Mr S complains that Skerritt Consultants Limited ('SCL') gave him unsuitable advice to bring four personal pensions under a single self-invested personal pension (SIPP) wrapper. He complained that he paid SCL to manage his investments and it failed to deliver the expected growth.

What happened

In 2017 Mr S approached SCL regarding pension advice. He had four separate personal pensions with combined fund values around £65,000.

SCL determined the following regarding Mr S' circumstances:

- He was employed with earnings around £23,000 a year;
- He owned his main residence, valued around £250,000, with no outstanding mortgage;
- He had money held in savings and ISAs and had no debts;
- In addition to the pensions that SCL were considering Mr S had a final salary pension scheme.

SCL recorded Mr S' objectives in its financial planning report of 24 October 2017 as:

- Review the funds invested within his four money purchase pensions;
- Consider consolidating those pensions in readiness for retirement at age 65;
- Ensure that the pension funds were invested in a manner that matched his attitude to risk and could be managed for future growth.

SCL recommended that Mr S switch his existing money purchase pensions to a SIPP. And that he allow his pension funds to be managed by Skerritt's Discretionary Fund Managers (DFMs).

Mr S followed SCL's advise and opened a SIPP and his pension funds were transferred into that. Around this time SCL explain that it launched a range of managed investment funds – its VT funds. It says that Mr S was switched, from the DFM service that he'd agreed to receive, to the VT Tactical Growth Fund. It says his annual adviser charge was reduced from 1.25% a year of the fund value to 0.25%.

Mr S complained that his pension fund had failed to perform as he'd expected. He said that he paid SCL to manage his investments with a diverse portfolio of investments and didn't accept that it couldn't have performed better. He wanted to know whether he'd have had better investment returns if he hadn't switched his pensions to the SIPP.

SCL didn't uphold Mr S' complaint. It said:

- Mr S was advised to transfer four separate personal pensions to consolidate his money purchase pension arrangements.

- The existing pension arrangements were invested in differing ways and consolidating would enable all funds to be invested in line with his current attitude to risk.
- A SIPP was recommended and an investment into the "VT Esprit Tactical Growth Portfolio' which matched his 8/10 attitude to risk rating.
- The SIPP was subsequently invested in the 'VT Esprit Tactical Growth Fund' instead. SCL say that the advantages of being invested in a fund were: ease of administration; single unit pricing and transparency of communication.
- There is no evidence that the investment fund performed poorly but that the returns instead reflected wider market conditions.

Our investigator considered Mr S' complaint but was unable to resolve it. So the complaint was referred for an ombudsman's decision. I then considered all of the circumstances in the case and issued a provisional decision to both parties to explain why I thought Mr S' complaint should be upheld and what I thought SCL should do to put things right.

Both SCL and Mr S responded to acknowledge my provisional decision and offered no further evidence or arguments for me to consider.

What I've decided – and why

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

Having considered the responses to my provisional decision, as well as all of the available evidence my final decision is that I'm upholding Mr S' complaint for the same reasons that I have already shared with both parties. For completeness I will set my reasoning out again in what follows.

Having read all of Mr S' correspondence I think that his complaint was initially brought about because of his disappointment with the investment returns on the funds held within his SIPP. And whilst I accept that investment returns can fluctuate for any number of reasons outside of SCL's control, I think it's really the thing that has caused Mr S to question the suitability of the advice he was given to switch his pensions. So it is this issue that I will address.

At the time of receiving advice Mr S had four different personal pensions with small fund sizes invested in different ways. These were summarised in our investigator's view and are recorded in the suitability report that SCL provided Mr S. So I won't repeat the details here.

SCL identified objectives of consolidating the pensions. Which was a reasonable objective to try to achieve for Mr S. He was approaching retirement age and having all of his money purchase pensions in one newer pension plan would afford him flexibility when it came to taking benefits. As well as added simplicity. SCL additionally listed an objective of ensuring that Mr S' pension funds were invested in a suitable way for him. Again, consolidating the existing pensions would have made this objective easier to achieve. Overall I think that recommending that all of Mr S' existing pensions were brought into one plan was likely to be suitable for him.

SCL documented its recommendation for Mr S in a financial planning report dated 24 October 2017. It summarised that Mr S had a medium-high attitude to investment risk, having a score of 8 out of 10 on the risk assessment questionnaire that it had separately obtained. And it recommended that Mr S had the capacity for loss to enable him to invest in line with that attitude to risk because he had other pension provisions in addition to this and had no outstanding mortgage on his home. Overall, I think that these assessments were fair and reflected the information that Mr S had provided SCL. So I think it was appropriate for

SCL to look for a way to invest Mr S' total money purchase pension pot – around £65,000 – in a single pension arrangement in a way that matched this attitude to risk.

Having determined that consolidating was in Mr S' best interests, there were still a number of options that SCL had to consider for Mr S. The SIPP that it recommended wasn't the only way that Mr S could achieve his objective of consolidation. Nor was it the only type of pension that would offer investment choices that matched his attitude to risk.

SCL's analysis demonstrated that the overall charges for its recommended solution were clearly higher than his existing pensions. Which were personal pensions from four different pension providers. So I think that consolidating the four plans into a similar type of personal pension plan would similarly have been cheaper as well. The impact of higher charges on investment performance was significant. So I would expect there to be a good reason for SCL to consider a more expensive pension to be in Mr S' best interests.

SCL's recommendation also disregarded a stakeholder pension as being suitable for Mr S because it would limit his fund choice. And that Discretionary Investment Management services would not be available through a Stakeholder pension. So again, the focus of SCL's recommendation seemed to start from the point that Discretionary Investment Management was suitable for Mr S.

Based on its recommendation, I think that the main reason that SCL recommended a SIPP for Mr S was that it enabled SCL to recommend that Mr S invest via SCL's DFM service. I've considered whether this was the most suitable means of investment for Mr S. If it was, then the recommendation of the SIPP was, most likely, appropriate. If it wasn't then a more cost effective pension arrangement would more likely have been in Mr S' best interests.

Mr S' fund size was relatively modest for a pension fund, at £65,000. Which meant that, even if the investment performance was sufficiently high to offset the additional charges for the SIPP and DFM service, the potential gains were likely to end up being modest. It meant that the additional risk, with no specific guarantee of higher performance, would be unlikely to significantly improve the retirement benefits in the five to ten years to Mr S' planned retirement. It meant that the potential benefit was modest. Yet the risk that Mr S' funds might be eroded by the higher charges was unnecessarily high.

So, overall, I'm not convinced that a Discretionary Fund managed service was suitable for Mr S. And there is no evidence that he had previously taken an active interest in investment choices that might otherwise have made a SIPP something he'd be interested in. I can't see any reason that a more basic pension arrangement with access to a range of different mixed asset investment funds would not have been in Mr S' best interests. And would, most likely have been a more cost effective way for Mr S to achieve his objectives.

I think that, had SCL recommended a stakeholder or personal pension with an investment option in line with the medium-high attitude to risk, Mr S would have followed that recommendation. I say that because I've seen no evidence that Mr S' objective prior to being advised by SCL was to seek Discretionary Fund Management. But he was prepared to trust and accept the recommendation he received from SCL. It means that, but for SCL's unsuitable advice, Mr S wouldn't have his funds in the SIPP platform requiring more regular supervision. But he would most likely be invested in a way that still reflected the attitude to risk that SCL identified.

I am aware that SCL changed the service that it provided Mr S shortly after he accepted its advice. It explains that it ceased to provide him with a DFM service. And instead invested his fund wholly in one of its own managed funds. It meant that Mr S was no longer receiving Discretionary Investment Management of his pension fund. But I can see that the annual advisor charge that SCL took from his pension fund also reduced. This may not seem entirely unfair. And made his pension more cost effective. But I've seen no evidence that Mr S was aware of this change or that he agreed to it. Which wasn't a fair way to treat Mr S. And also removed the reason that SCL relied upon in justifying Mr S' need for a SIPP.

The fund factsheet appears to make it suitable for the attitude to risk that Mr S agreed to. So the change that SCL introduced may have gone some way to addressing the elevated costs associated with the recommendation that led to Mr S' pension switch. But it still left his pension in a SIPP platform with potentially higher fees and an ongoing advice charge. And, had suitable advice been provided at the outset, I don't think Mr S would have been in the SIPP.

Putting things right

For the reasons I've given above, I think that Mr S would still have consolidated his pensions. But would have been in a different pension product and therefore invested in a different way.

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

I think Mr S would have invested differently. It's not possible to say precisely what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr S' circumstances and objectives when he invested.

What must SCL do?

To compensate Mr S fairly, SCL must:

- Compare the performance of Mr 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.

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

- SCL should pay into Mr 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 SCL is unable to pay the total amount into Mr 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 S won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mr S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal the current basic rate of tax – 20%. However, if Mr S 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%

Income tax may be payable on any interest paid. If SCL deducts income tax from the interest it should tell Mr S how much has been taken off. SCL should give Mr S a tax deduction certificate in respect of interest if Mr S 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
Aegon SIPP	Still exists and liquid	FTSE UK Private Investors Growth 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.

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 Aegon SIPP 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 SCL 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?

I've decided on this method of compensation because:

- Mr S wanted Capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Growth ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Growth 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.

My final decision

I uphold the complaint. My decision is that Skerritt Consultants Limited should pay the amount calculated as set out above.

Skerritt Consultants Limited should provide details of its calculation to Mr S in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 20 December 2023.

Gary Lane
Ombudsman