

The complaint

In October 2019 Tavistock Partners Limited trading as Duchy Independent Financial Advisers (I will refer to as 'Tavistock') recommended a pension switch and investment management service to Mr B. He followed the recommendation, and by January 2020 his previously held Old Mutual Wealth ('OMW') group pension had been switched to an Ascentric (now M&G) pension, with the pension's portfolio placed under an LGT Vestra discretionary management service (I will refer to as the 'DMS').

In October 2022 Mr B complained to Tavistock and mainly alleged the following – he had incurred a 15.8% loss in the Ascentric/M&G pension between September 2021 and October 2022, he considered this in conflict with his balanced (5 out of 10) risk profile and he held Tavistock liable for the loss; the broad range of investments he was promised did not happen, instead his pension was mainly held in sustainable funds that mismatched his risk profile and that he did not ask for; the adviser that made the 2019 recommendation was potentially unauthorised to do so; he was denied annual reviews; his pension portfolio cannot be audited (due to the absence of a cash account); there has been mismanagement, lack of transparency and haphazard/illogical transactions within it; and a range of specific transfer, de-risking and drawdown instructions he gave in 2021 and 2022 were not carried out.

The pension was withdrawn from Tavistock's service in November 2022, and in his letter to Tavistock on 22 December 2022 Mr B added to the complaint by questioning why he was recommended the pension switch to Ascentric in the first instance.

What happened

Tavistock partly upheld Mr B's complaint. In its initial response to the complaint (in December 2022) it mainly said –

- It did not have or share in the discretionary management responsibility for the pension's portfolio, LGT Vestra (alone) had that responsibility;
- so, Mr B's mismanagement related allegations have not been considered and, if he wishes, he can direct them to LGT Vestra;
- his underperformance related allegation is not upheld because the portfolio's performance was primarily due to market conditions rather than poor choice of investment;
- his portfolio appears to have been wrongly invested in LGT Vestra's sustainable balanced portfolio, which was not what Tavistock had recommended, so this part of the complaint is upheld, however the associated redress calculation shows no financial loss;
- his complaint about annual reviews is upheld because there is no record he received the reviews that should have been held in January 2021 and January 2022, so it offers a refund of all ongoing fees paid (almost £9,000) and payment of an additional £200 for the distress and inconvenience caused;
- the adviser's advice to delay the transfers that Mr B suggested was sound, risk management within LGT Vestra's service was beyond Tavistock's remit, the adviser suggested moving the entire portfolio to a less risky model but Mr B does not appear

- to have responded, and his drawdown instruction happened around the time of his complaint and withdrawal from its service, so the instruction could not be processed;
- and the adviser was authorised to advise.

In subsequent correspondence Tavistock addressed, amongst other matters, Mr B's queries about why, given the yield reduction in the illustration at the point of advice, it recommended the pension switch to Ascentric in the first instance and why he had been recommended a product that was worse than the original (what he previously had). In response, it said his reference to a 'reduction in yield' was not a comparison between the old and new pension provider, but was instead information about additional growth needed in the new plan to cover all associated fees.

Mr B did not accept the above outcome and the matter was referred to us. One of our investigators looked into the complaint and upheld it. He accepted it is correct to say the management aspects of the complaint relate only to LGT Vestra, as the discretionary portfolio manager, but, primarily, he found that Tavistock's pension switch recommendation was unsuitable, so had that not happened the matters that followed would not have occurred. In terms of redress and compensation, he agreed with Tavistock's offer to refund fees due to the missing annual reviews, and he found that Tavistock should also calculate and pay redress for financial loss arising from the unsuitable pension switch and that it should pay Mr B £250 for the trouble and upset he has been caused.

The investigator highlighted the following:

- At the point of advice Tavistock's main issues with the OMW pension were that its portfolio's risk profile was higher (at 7 out of 10) than Mr B's 5 out of 10 risk profile, and the portfolio was without a clear investment strategy. The latter seems redundant because strategy was determined by the portfolio being invested in line with the risk profile, as was the case with what Tavistock recommended. The former, could have been addressed by fund switches within the existing portfolio. The suitability report says Tavistock considered but discounted this because OMW would not accept LGT Vestra. This shows the main purpose for its recommendation was to facilitate the recommendation of LGT Vestra's service.
- The report also refers to a poor experience of appalling administration from OMW. That might have been the adviser's experience, but there is no evidence that Mr B had such an experience. The report says he just wanted to review his pension and to ensure it remained suitable for him.
- The report refers to Mr B's dissatisfaction with the OMW portfolio's performance and its servicing adviser, but neither was cause for a pension switch. He could have changed the servicing adviser and switched funds within OMW.
- In addition to Tavistock's £4,000 initial advice fee for the pension switch, the Ascentric pension and LGT Vestra portfolio service recommendation came with higher charges than those in the OMW pension arrangement. The suitability report recognised this and noted that superior growth would be needed in the new pension just to match the net return from the OMW pension. Tavistock considered that was achievable but did not evidence how so.
- The yield reduction associated with the switch was quoted as 2.9%. The quoted OMW pension return of 11.73% was better than the 8.18% quoted for the alternative and, with charges taken into account, the former was more likely to provide better growth.
- These facts meet the regulator's published view at the time that recommendation of a pension switch with higher costs/expense, and without good reason or justification, would be unsuitable. This also stands in the context of Mr B being close, at the time, to retirement (and to the point of drawing from his pension) so he had a short time for

any pension performance to recover from, and have growth above, the increased charges.

- Other reasons given for the switch were generic and most could have been achieved within the OMW pension, and for those concerning management of the portfolio there is a lack of evidence that Mr B wanted or needed discretionary management, instead it was an idea driven by the adviser.

Tavistock resisted this outcome by asserting that the complaint did not include an allegation about the pension switch being unsuitable, so it took the view that the investigator had gone beyond the complaint. The investigator addressed this and referred to evidence from both sides citing Mr B's complaint about the pension switch. Tavistock then accepted that, despite its stance on the matter, it was/is in our remit to address the issue. It asked for, and was granted, time to send us more submissions. Then it asked for, and was granted, additional time in this respect, especially after it said its submissions had been concluded but required approval from its insurer before they could be sent.

The case was referred to an Ombudsman.

Tavistock then indicated that it might be prepared to consider a without prejudice settlement offer. We allowed even further time for this to be explored (alongside time for the additional submissions it wished to make). Further extensions of time were granted in this respect too.

Tavistock then presented a without prejudice to liability offer that was below what Mr B would get based on the redress the investigator had set out. It shared its calculations and explained that it had used a different redress benchmark because it considered it appropriate to do so. Mr B rejected the offer and Tavistock was invited to confirm whether (or not) its offer was final. It awaited instructions from its insurer and we allowed additional time for this. Very recently, it confirmed that its offer is final.

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 as the investigator's for broadly the same reasons he gave. I endorse those reasons (as summarised above) and incorporate them into this decision.

Despite time extensions and reminders given to Tavistock, for the additional submissions it said it wished to make, those submissions do not appear to have been received.

Dialogue between us and Tavistock in this respect began following the investigator's June 2023 view. By the end of that month, it confirmed that it had additional submissions it wished to consider and make. Thereafter it informed us that it had completed and sent the submissions to its insurer on 20 July 2023. We heard no further and in September we reminded it that the submissions remained outstanding. It asked for, and was granted, additional time to obtain its insurer's approval, and it explained why its insurer had suspended the previous approval request. Further additional time was subsequently granted.

Tavistock then made enquiries about Mr B's potential loss and said this could help to *expedite matters*. In response, both Mr B and the investigator took steps to provide the information requested. That took some time to accomplish, but the information was provided to Tavistock on 12 November. On the next day it confirmed it had completed a loss calculation and had sent it to its insurer for approval. The without prejudice to liability

settlement offer I mentioned above was then made in December.

I have provided the above summary in order to illustrate the opportunity Tavistock has had, since June 2023, to provide us with the additional submissions it said it wished to make. Its attention might have been shared, or distracted, by the settlement consideration from around October onwards, but by then it already had around four months to make the submissions and, in total, it has had around six months to do so.

We cannot reasonably await the submissions indefinitely. Both parties are entitled to determination of the complaint without undue delay. Overall, I am satisfied that the complaint can be concluded based on factual information and evidence available to us. Whilst the submissions Tavistock mentioned could have presented arguments for us to address, they could not have redefined the facts. Those facts are as they are. For the reasons given below, I consider that Mr B's complaint is upheld on the key facts and on the balance of evidence pertaining to them.

Complaint

The complaints made by Mr B to Tavistock, and those cited in the complaint form he submitted to us (a copy of which was issued to Tavistock), are mainly as I summarised at the outset of this decision.

Like the investigator, I find that Mr B's primary complaint is the allegedly unsuitable pension switch. *Everything else* followed from that, so if the switch was unsuitable, that is the matter to uphold and redress, and such redress automatically resolves most of the other issues. With regards to *everything else*, I echo and endorse the investigator's finding on the management related aspects of the complaint. The DMS was not performed by Tavistock so it is the wrong respondent for any enquiries Mr B has about or related to the management of his pension portfolio.

The secondary matter to address, which is arguably distinct from the suitability of Tavistock's initial advice, is his claim that he was denied the annual reviews that essentially defined its ongoing advice service.

Tavistock conceded Mr B's claim in this respect in its first complaint response. It accepts that he was not provided with annual reviews in 2021 and 2022. Tavistock's ongoing service did not include management/the DMS. Some communications happened between Mr B and his Tavistock adviser during the relevant period, but the annual reviews were the main service provision that justified its ongoing service fee. As such, I agree with this issue being upheld, I uphold it, and I commend Tavistock for being forthcoming in offering to refund the ongoing service fees to Mr B. My redress orders below will reflect this.

Returning to the matter of suitability of the pension switch, Tavistock said this was never presented as a complaint issue.

In its second complaint response to Mr B, dated 4 January 2023, Tavistock summarised its understanding of the additional issues he had raised. Within those summaries was the following –

“Given the reduction in yield shown in the illustration, you would like to know why were you advised to move to Ascentric and not somewhere else? You would also like to know why a financial adviser would recommend and provide a product that is worse than the original.”

Tavistock did the same thing in its letter to Mr B of 31 January 2023, in response to further communication from him. It summarised one of the issues he had raised as follows –

“Were the appropriate checks were [sic] made regarding the recommendation to comply with FCA rules?”

In Mr B’s complaint form, which was shared with Tavistock, he said his complaint includes Tavistock’s “... *selection of the product, selection of the operator* ...”. Amongst other things, he also said that no alternatives were recommended in its 2019 advice, that “... *the returns promised were more optimistic ... than was realistic and were said to cover the additional SIPP costs plus growth*” and that “[the adviser] *also seems to have ignored advice from his colleague ... provided in a separate report shown that LGT Vestra provided a lower return than the funds provided by my previous provider*”.

The above sufficiently establishes that Mr B’s complaint includes the allegation that the pension switch was unsuitable, that it has always included this allegation, that Tavistock was aware of this as it addressed the complaint and that the same was so when the complaint was referred to us.

The Pension Switch

The regulator’s Principles for Businesses, at Principle 6, requires a firm to pay due regard to the interests of its customers and treat them fairly. This is partly echoed in the regulator’s Conduct of Business (‘COBS’) rules, at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. These regulatory provisions are directly relevant to a firm’s responsibility for the suitability of its recommendations.

In 2009, the regulator produced a checklist for pension switching, which highlighted four key issues that advising firms were/are expected to consider. One issue was about charges and the question advisers were expected to address was about whether (or not) their client(s) was being switched to a pension that was more expensive than the existing one(s) without good reason. Like the investigator said, the regulator’s view was broadly that if such a pension switch was recommended, it would be unsuitable.

Tavistock would have been and, judging by the contents of its suitability report, was aware of the above. It could be said that the regulator’s statement in 2009 and other similar statements thereafter were stating the obvious. Principle 6, COBs 2.1.1R and, perhaps, common sense dictate that it would be inherently unsuitable and contrary to a client’s best interests to make a recommendation that cost her/him more without good reasons justifying the additional costs.

In Mr B’s case, Tavistock’s suitability report based its recommendation mainly on its views that the Ascentric pension gave better administration than OMW; that it allowed for its recommended investment strategy and the discretionary LGT Vestra portfolio/management service, where OMW did not; that its recommendation enabled the downward adjustment of a higher risk exposure in the OMW pension portfolio; and that the OMW portfolio had not performed in line with his needs and expectations.

As the investigator said, evidence shows that Mr B simply wanted a pensions review. The suitability report says the same. I have not seen evidence that he instructed Tavistock to explore a switch away from the OMW pension or that he gave reasons to encourage such exploration. An adviser firm can have discretion over the content of its advice, so I do not say or suggest that Tavistock should not have looked into a switch, but I do find that a switch was not Mr B’s idea.

Tavistock considered the switch. By doing so its main consideration had to be suitability for

Mr B and his circumstances. I have not seen evidence that there was notable feedback from him about bad administration experiences with OMW, so I do not accept this was an issue for him.

I agree with the investigator's views about the lack of evidence showing that he wanted a DMS – so this was not an objective for Tavistock to address – and about how any concerns related to the OMW portfolio being too risky could have been addressed, in a simpler and cheaper way, by fund switches within it. There is no evidence that suitable fund switches within it were unavailable. The reason Tavistock did not favour this, as it said in the report, was because OMW did not allow the LGT Vestra based DMS portfolio strategy that it sought to recommend. Given that this was a strategy that Mr B had not asked for, and in the absence of evidence that it was one he needed, I do not consider that this was a good reason to discount the simpler, cheaper and somewhat obvious idea of fund switching.

In terms of performance, available evidence is as the investigator cited in his view (and as I summarised above). On balance, based on a comparison of performances in the previous year and with costs factored in, the existing OMW portfolio's performance potential was better than the alternative that Tavistock recommended.

With regards to annual costs, the aggregate total cost for the OMW based arrangement was 1.14% and the aggregate total cost for the alternative arrangement that Tavistock recommended was 2.22%. This was a significant change in costs, resulting in around double the previous cost, and it was explained by the latter including charges for the DMS (that Mr B neither asked for nor needed) and Tavistock's ongoing service (which, in broad terms, appears to have arisen from the DMS based strategy it recommended). Mr B also incurred the £4,000 initial charge for Tavistock's work in effecting the pension switch, a cost that would have been avoided but for the implemented pension switch recommendation.

The above initial cost and increased ongoing costs stood in the context of a lack of evidence that the switch would provide better performance, instead there was evidence to the contrary. It also stood in the context of the reduction in yield of around 3%, as stated in the report, following the switch and the fact that Mr B had only a few years before retirement at the time.

Overall, on balance, and for the above reasons, I am satisfied that Tavistock knew or ought reasonably to have known that the pension switch was unjustified, was unsuitably and significantly more expensive for Mr B, was unlikely to improve net performance for him (and would probably do the opposite), would result in a yield reduction that was unlikely to be rectified in the relatively short time before his retirement and was devoid of a good reason(s). It was an unsuitable pension switch and it should not have been recommended. Instead, and as Mr B presented a balanced risk profile at the time, if the OMW pension's portfolio was inconsistent with that risk profile it should have been rebalanced by fund switches to match his risk profile.

Putting things right

fair compensation

My aim is to put Mr B as close as possible to the position he would probably now be in if Tavistock had not given him unsuitable advice to switch his pension arrangement. On balance, I consider that with suitable advice, to rebalance the existing OMW pension portfolio, his pension arrangement would not have been switched and the existing portfolio would have been rebalanced instead.

It is not possible to say precisely how the rebalancing would have been done, so I do not find

that there is a natural redress benchmark to use in this case. Instead, I am satisfied that redress should be based on the benchmark in the table below, which matches his balanced risk profile. The start date for the redress calculation will be when the pension was switched to the SIPP and the end date will be the date of settlement. The end date differs slightly from the investigator's proposal. The effect of the unsuitable pension switch – that is, any financial loss during the relevant period that would have been part of the pension's value thereafter, and any loss of returns, to date, on such lost value – presently continues, so the calculation must fairly reflect this. As this is a final decision I must ensure redress is brought up to date.

As the investigator said, the calculation should not apply/deduct Tavistock's ongoing service charge. That service did not exist prior to the unsuitable pension switch and it appears to have arisen mainly because of that switch.

As stated in the background above, Mr B has already provided information related to his financial losses. However, if reasonably necessary, he is ordered to engage meaningfully and co-operatively with Tavistock to provide it with any additional information and documentation, relevant to its calculation of redress, that it does not already have.

To compensate Mr B fairly, Tavistock must do the following:

- Compare the performance of Mr B's pension portfolio (as it has been between the start and end dates below) with that of the benchmark shown below (for the same period). If the fair value is greater than the actual value the difference must be paid to him in compensation. If the actual value is greater than the fair value, no compensation is payable.
- Pay any interest set out below. Income tax may be payable on any interest paid. If Tavistock is required by HM Revenue & Customs to deduct income tax from the interest, it must tell Mr B the deduction amount and give him a tax deduction certificate if he asks for one, for him to reclaim the tax from HM Revenue & Customs if appropriate.
- Pay the compensation into Mr B'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. The compensation should not be paid into his pension plan if it would conflict with any existing protection or allowance. If the compensation (and any interest) cannot be paid into his pension plan, pay it directly to him. Had it been possible to pay it into the plan, it would have provided a taxable income, so the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using his actual or expected marginal rate of tax at his selected retirement age. For example, if he is or is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. If he has been or would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Provide the details of the calculations to Mr B in a clear and simple format.
- Pay Mr B a refund of the total ongoing service fees he paid to Tavistock, as Tavistock has offered to do and for the reasons addressed in my findings above.
- Tavistock has already offered Mr B £200 compensation for trouble and distress, but I agree with the investigator that the amount should fairly be increased to £250. It must pay this increased amount to him.

Investment name	Status	Benchmark	from ("start date")	to ("end date")	additional interest
Mr B's Ascentric/M&G Pension Portfolio (and any subsequent pension it has been transferred to)	No longer exists/transf erred	FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index)	date of pension switch to the Ascentric/ M&G Pension	date of settlement	not applicable

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 withdrawal, income or other payment out of the investment should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if Tavistock totals all those payments and deducts that figure at the end instead of deducting periodically.

why is this remedy suitable?

- Mr B had a balanced risk profile.
- 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 is a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr B's balanced risk profile can be found in this benchmark. It broadly reflects the sort of return he could have obtained from a rebalancing of the OMW pension portfolio, to the same risk profile, had it been retained and rebalanced.

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 legal 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 2022, so the applicable compensation limit would be £375,000.

decision and award

I uphold Mr B's complaint on the grounds stated above. Fair compensation should be calculated as I have also stated above. My decision is that Tavistock should pay him the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that Tavistock pays Mr B the balance. This recommendation is not part of my determination or award. Tavistock does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Mr B's complaint and I order Tavistock Partners Limited trading as Duchy Independent Financial Advisers to calculate and pay him compensation and redress as set out above, and to provide him with a calculation of the payment(s) in a clear and simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 March 2024.

Roy Kuku
Ombudsman