DRN-4575148

The complaint

Mrs P is unhappy with the advice provided to her by Tavistock Partners (UK) Limited ('Tavistock') in relation to her pension in January 2023 and feels this was unsuitable for her. Mrs P thinks she should have been advised to move her funds to cash and because this didn't happen, she says she has lost out financially.

What happened

Mrs P has had a longstanding relationship with Tavistock and as part of their ongoing service, they provided her with annual reviews, including in relation to her self-invested personal pension (SIPP) with Aviva.

Mrs P had an annual review with Tavistock in April 2019, where Tavistock looked at her Aviva SIPP and also her Aviva Stocks and Shares individual savings account (ISA). Mrs P's attitude to risk (ATR) was assessed as a 5 out of 10 (low-medium risk). This was a decrease from her previous ATR of 6 out of 10 (high-medium).

As a result of this decrease in her ATR, Mrs P was advised by Tavistock to switch into a different fund, which was more reflective of her ATR at that time. Mrs P accepted this and 100% of her funds were invested into the ACUMEN Capital Protection Portfolio. Tavistock explained in their recommendation letter dated 16 April 2019 that while this fund had a risk rating of 4 out of 10 and was therefore slightly below Mrs P's agreed risk level of 5 out of 10, they recommended this fund because Mrs P was wary of the current instability of the markets. So, it was noted she wanted a level of security in her investments.

This particular fund Tavistock recommended offered an element of protection as 90% of the highest unit value ever achieved by the portfolio was protected through a mechanism which tracks the growth of the portfolio and would lock in 90% of any growth each time the portfolio reached a new high.

Mrs P accepted this advice and the fund switch took place. Further annual reviews took place in the following years, but no further changes were made to Mrs P's investments.

Mrs P had another annual review in January 2023 and this was in relation to her Aviva SIPP only. It's this advice she has complained about. Mrs P was advised by Tavistock to remain invested within her SIPP in the ACUMEN Capital Protection Portfolio, which, as noted above, she had been invested in since 2019.

On 3 February 2023, Mrs P contacted Tavistock by email and said she wanted to withdraw her ISA so she could keep the funds in cash in her bank account as this offered a better interest rate for her.

Then, on 3 May 2023, Mrs P asked via email for her SIPP funds to be switched to cash as soon as possible. She mentioned in this email she'd review this if Tavistock could keep her informed of any significant interest rate changes.

Mrs P subsequently complained to Tavistock in June 2023 about the advice she'd received at her annual review in January of that year. Tavistock responded to the complaint in their final response letter dated 26 July 2023.

Tavistock did not uphold the complaint and in summary said that while they accept cash interest rates were higher at that time than they had been in recent years, they were satisfied their advice was suitable as Mrs P was invested in line with her ATR and investment timeframe and a cash fund would not have matched these. Tavistock said they appreciated that Mrs P's retirement plans included potentially accessing tax-free cash (TFC) at age 55 to repay her mortgage and reducing her working hours from that age as well. However, they confirmed they still would not have recommended a switch to cash in January 2023 since this potential access of the funds was still another two years away.

Mrs P remained unhappy with this response and referred her complaint to the Financial Ombudsman Service on 11 August 2023. The complaint was reviewed by one of our Investigators, who didn't uphold it. The Investigator noted that the recommended fund was in line with Mrs P's ATR and investment timeframe recorded at the time. They said the annual review documentation from 2019 confirmed Mrs P's target retirement date was age 55, but that the 2023 documentation showed this had changed since then and Mrs P's target retirement age was noted as a maximum of 60.

Based on this, the Investigator felt it was logical that Tavistock had not recommended a switch to cash and that their recommendation was suitable. They noted Mrs P had said she was risk averse, but that the documentation from the time noted she wanted capital protection, which the recommended fund did provide. The Investigator explained that they appreciate interest rates had risen recently and that this benefited cash investments, but they didn't feel this automatically meant that Tavistock had provided unsuitable advice by not providing the option of moving to cash to Mrs P.

Mrs P didn't agree. She said the adviser had strongly promoted a fund switch to her in January 2023 but that she had declined this since she was so close to age 55 and that the most important aspect of the advice to her was being able to protect her fund so that she could still retire at age 55. She said before appointing Tavistock as her advisers in the first instance she had made clear to them her intention to retire at age 55 and said the same at every annual review. She said the review in January 2023 was no different except for the fact that since her fund value had dropped by around 10% at that stage, it may be that she would now partially retire at age 55, taking a year out of working and then work part time if she was not able to retire fully by then.

Mrs P agreed it was logical to remain in the fund she was invested in, based on the limited options she had been made aware of by the adviser. She said she had discussed the lack of 'progress' with the fund and felt this was the opportunity for the adviser to have made her aware of the option of switching to cash. Mrs P therefore felt the adviser's focus was solely on her risk profile and not her financial best interests as a customer.

The Investigator considered Mrs P's further comments but confirmed their view remained unchanged.

As the two parties were unable to reach agreement at view stage, the complaint has been referred to me to make a final decision on the merits of the complaint.

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.

If I haven't commented on, or referred to, something that either party has said, this doesn't mean I haven't considered it. Rather, that I've focused here on addressing what I consider to be the key issues in deciding this complaint and explaining the reasons for reaching my decision.

I've also taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS').

I appreciate this may come as a disappointment to Mrs P, but having taken all of the above into account, I agree with the outcome reached by the Investigator, and for broadly the same reasons. I'll set out my findings below.

It's important to note at the outset that we don't look at complaints using the benefit of hindsight. What I have to consider here is whether the advice given was suitable and reasonable based on the information available to the adviser about Mrs P's circumstances and objectives at the time of the advice.

I've carefully reviewed the documentation from the annual reviews which took place.

At the annual review in 2019, Mrs P was 49. I can see from the 2019 fact find document that Mrs P's target retirement age was noted as 55 and that she was "*focused on stopping full time work*" at this age. It was also noted that she planned to pay off her mortgage at age 55 and would require approximately £70,000 to do so at that age. The notes also say her daughter may wish to purchase a property at that point, so any TFC may be used to assist with that. The review documentation shows Mrs P's ATR was assessed and concluded to be a 5 out of 10 ('low-medium'). The timescale for investment associated with this attitude to risk was 6-9 years.

This was all confirmed in Tavistock's suitability letter, sent to Mrs P following the 2019 annual review. Mrs P's SIPP and ISA were then switched into the ACUMEN Capital Protection fund following this advice.

So, based on this evidence, I do agree with Mrs P that she was aiming for a retirement age of 55 at this particular point in time.

As noted above, no further changes occurred at the annual reviews between 2019 and 2023.

At the 2023 annual review, which is the advice complained about, Mrs P was 53. In the 2023 fact find document, it was noted that Mrs P was intending to disinvest her ISA to cash in order to have a higher cash reserve, "*in light of the higher interest rates now available*". It was also noted this was in order to help her son when her grandchild was born.

Her ATR was assessed and concluded to be the same as previous years (5 out of 10/low-medium) and that the term to access the funds in her SIPP remained 6-9 years. It was noted Mrs P understood most would remain invested for the longer term and that she was comforted by the capital protection the current fund offered.

According to this document, Mrs P did not have a need to access any of her pension funds at this time as she still worked full time. In terms of her target retirement age, this was noted as a maximum of 60, with the intention of working part time until that age and that Mrs P was still "*focussed on building retirement pots*".

It’s not unusual for retirement objectives to change over the years, particularly as someone moves closer to potentially retiring. And, based on the evidence I’ve seen, I think this is what had happened here. It was not noted that Mrs P still had a clear objective to retire at age 55 in 2023. Rather, the evidence suggests this had shifted somewhat and that age 60 was now the maximum target, with Mrs P potentially working part time up until that age. Other objectives such as paying off her mortgage were not now mentioned. I think this also shows that while she had a target age in mind, Mrs P’s exact retirement plans were not completely certain and were still fluid to a degree.

So, while I appreciate the comments Mrs P has now made about her target retirement age still definitely being 55 in 2023, the documentary evidence I’ve seen doesn’t support this. Mrs P has also said the adviser initially strongly promoted a further fund switch and she then declined this. As per their final response letter, Tavistock have accepted that they did initially discuss a potential switch to an alternative portfolio, albeit within the same risk profile. But, they said that Mrs P didn’t want to lose the benefit of capital protection, and again, I can see this is reflected in the review documentation from January 2023.

Overall, I think the 2023 advice Tavistock provided was suitable and I’ll explain why.

COBS 9.2 of the FCA handbook outlines the obligations on a firm when assessing suitability.

This says a firm must take reasonable steps to ensure that a personal recommendation is suitable for its client and when making this recommendation, the firm must obtain the necessary information regarding the client’s investment knowledge and experience, financial situation at the time and objectives. I’d also particularly highlight COBS 9.2.2 which states that the information regarding the investment objectives of a client must include, where relevant, information on the length of time for which they wish to hold the investment, their preferences regarding risk taking, their risk profile, and the purposes of the investment.

In my view, the fund Mrs P was invested in was broadly in line with her recorded ATR, bearing in mind her objectives such as capital protection. Mrs P doesn’t dispute this but rather, doesn’t feel Tavistock should have placed as much weight on her ATR as they did. However, by aligning the investment with her attitude to risk as far as possible (again bearing in mind her objectives as well), Tavistock ensured it wasn’t too high risk for her, nor too low, meaning Mrs P would still be able to grow her pension over the longer term without potentially losing more than she was comfortable with. As outlined, firms such as Tavistock are required under their regulatory obligations to consider Mrs P’s preferences regarding risk taking and her risk profile in order for them to provide a suitable recommendation so I can’t agree it was unreasonable or a mistake for them to do so. I’ve also carefully reviewed the fund factsheets from both 2019 and 2023 and can see there was a mix of asset classes which were suitable for a low-medium investor like Mrs P.

I also can’t agree with Mrs P’s assertion that her ATR was the only thing Tavistock considered when making their recommendation. This is because the adviser made several notes about her objectives and what she was looking to achieve. I also think the recommendation was in line with her recorded objectives at the time. The reason I say this is the documentation available shows Mrs P was still looking for an element of security and for her capital to be protected, which this fund offered. It was noted she was comforted by that aspect of this particular fund. And, as explained above, it was not a certainty that she wanted to retire at age 55, her target retirement age was noted as up to 60. So, the recommendation was appropriate for how long her funds were likely to be invested as it offered the element of capital protection Mrs P was looking for, along with the potential of some longer-term growth which was something it was noted she was still looking for too.

Turning to whether Tavistock should have advised Mrs P to switch to cash instead, even if Mrs P did still wish to retire at 55 as she has now said, Tavistock have confirmed they still would not have recommended a switch to cash since it was still two years at least before Mrs P could access the funds. I think this is reasonable as switching to cash too early could've meant Mrs P losing out on potential growth in the years prior to retirement. Tavistock's recommendation also didn't prevent Mrs P from retiring at age 55 if she still wished to do so. And, one of Mrs P's main objectives was clearly noted as continuing to build her retirement pots further, and Tavistock's recommendation allowed her to do this, in line with the level of risk was prepared to take at that time.

Switching to cash is generally for investors who want no investment risk at all and whose ATR is zero or very low. The documentation from the time of the reviews doesn't suggest Mrs P didn't want to take any risk with her investments at all or that her ATR reflected this either. It isn't generally considered advisable to remain in cash for long periods due to the potential to miss out on growth over the longer term and ultimately a pension is designed to be a long-term investment. Cash also comes with inflation risk – the buying power of the funds being eroded over time and inflation has been particularly high recently. I haven't seen any persuasive evidence to suggest Mrs P would have been better off financially in the long term if she had been switched to cash in January 2023 and as outlined, it wouldn't have been in line with her recorded ATR, objectives and term of investment.

There may be several options which are suitable for a particular consumer in order to meet their objectives. By recommending one of these options, this doesn't automatically translate to a firm having given unsuitable advice. Rather, they have made an assessment and given their opinion as professional advisers as to the most suitable option for that individual consumer, who is then free to accept that advice, or not, as they wish. I appreciate Mrs P says she wasn't aware of the option to switch her pension to cash. But, I wouldn't expect an adviser to make a consumer aware of an option they didn't think was suitable for them.

But even if this wasn't the case, I think Mrs P's comments that she would have switched to cash if she'd known this was a possibility are largely made in hindsight. For example, Mrs P has said staying in her existing fund was logical and that she was happy with her selected ATR at the time. As I've explained, we can't consider arguments made in hindsight, only whether the recommendation was suitable based on the information available to the adviser at the time, which I think it was for the reasons explained above. I don't think there's sufficient evidence to suggest Mrs P would have acted against Tavistock's express advice, even if the cash option was mentioned. And in any event, as I've explained, I wouldn't expect an adviser to mention an option they did not feel was suitable.

Overall, having considered everything carefully, I don't think Tavistock made an error in not recommending a switch to cash in January 2023, or that what they did recommend was unsuitable for Mrs P. So, I'm not asking Tavistock to do anything further here.

My final decision

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 6 May 2024.

Fiona Mallinson
Ombudsman