DRN-4657649

The complaint

Mr Z has complained, through a representative, that NeoVision Wealth Management Limited gave him unsuitable advice to switch his pensions and make unsuitable investments.

What happened

Mr Z's complaint was considered by one of our investigators. She sent her assessment of the complaint to both parties on 5 January 2024. The background and circumstances to the complaint were set out in that assessment. However to summarise, in 2017 Neovision Wealth Management Limited (Neovision) – as it is now trading as - advised Mr Z to switch three personal pensions to a self- invested personal pension (SIPP) and invest into a discretionary managed arrangement.

A fact find recorded that Mr Z was in his mid-forties, married, with dependent children. He had £20,000 savings in addition to the pensions subject to this complaint.

A financial planning report was provided to Mr Z dated 30 January 2017. The firm recommended that Mr Z open a SIPP and transfer his three personal pensions into it. The transfer values were £7,331, £25,614 and £1,109 It recommended investing through a discretionary fund manager (DFM).

In the report Mr Z's attitude to investment risk was described as 'Balanced'. It said he had 'limited' knowledge of investments. A replacement analysis form was also completed, and a pension switching report was provided to Mr Z on 30 January 2017. This confirmed the proposed new pension plan and investments, and also said the new recommended plan was more expensive than Mr Z's previous plans.

Our investigator said in 2009 the financial services regulator had published a report and checklist for pension switching that she said was applicable at the time of the advice provided to Mr Z in 2017. The investigator said she thought Mr Z had lost out as a result of the switches. And that in the light of the regulator's report, she said Mr Z had been advised to switch to a more expensive pension and which didn't match his recorded attitude to investment risk and personal circumstances.

The investigator said Neovision's recommendation was for Mr Z to use the DFM and invest 100% of his pension fund into the DFM's portfolio as confirmed in the supplemental pension switching report. She said Mr Z had explained that his fund had steadily depleted, and in October 2019 the DFM entered 'special administration' and Mr Z's account was frozen.

The investigator said a portfolio factsheet available from November 2016 showed that almost 50% of Mr Z's portfolio with the DFM was invested into property. She said given the inherent illiquidity associated with property, she didn't think it was in line with the level of risk Mr Z had been prepared, or able to take. The investigator said she didn't think, given Mr Z's previous pensions and cumulative value, lack of investment experience, and recorded risk profile, that the use of a DFM was appropriate or that the advice to invest 100% of his switched pensions into the balanced portfolio was suitable.

The investigator therefore thought that Mr Z's complaint should be upheld. And she went onto outline how she thought Neovision should calculate and pay Mr Z fair compensation.

The investigator asked Neovision to let her know if it accepted her assessment of the complaint. And if it didn't accept to provide any further evidence or arguments that it wanted us to consider. The investigator didn't receive a response.

The investigator wrote to Neovision on 13 February 2024 updating how she thought Neovision should calculate and pay fair compensation. A copy was sent to Mr Z's representative. She asked Neovision to let her know if it accepted her assessment of the complaint. And if it didn't accept, to provide any further evidence or arguments that it wanted us to consider. The investigator didn't receive a response.

The investigator wrote to Neovision on 1 March 2024 saying that as she hadn't received a reply to her previous letters she was passing the case to an ombudsman for a final decision. She asked Neovision to provide any further evidence or arguments that it wanted us to consider.

The investigator sent another copy of her assessment of the complaint and follow up correspondence to another address we had for Neovision on 22 April 2024. She asked it to provide any further evidence or arguments that it wanted us to consider. However we didn't receive a response.

The complaint was therefore passed to me to consider further.

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've come to the same conclusions as the investigator, and largely for the same reasons.

Neovision was providing regulated investment advice to Mr Z. It was required to provide suitable advice, which is reflected in the Regulator's rules on providing such advice. These rules were set out in COBS (Conduct of Business Sourcebook), and in particular in COBS 9.2 - assessing suitability.

As explained by the investigator, the financial services regulator published a report and checklist for pension switching that was relevant when Neovision advised Mr Z to switch his pensions. The regulator had identified some areas where it was concerned that consumers were losing out, including that they had been switched to a pension that was more expensive than their existing one(s) (because of exit penalties and/or initial costs and ongoing costs), without good reason.

The investigator said that the SIPP was more expensive than Mr Z's existing pension arrangements. That is consistent with the contemporaneous documentation. The Pension Switching Report dated 30 January 2017 showed that when all charges and penalties were taken into account, the SIPP was projected to provide a fund that was *significantly* below the value that was projected if Mr Z remained with his existing pension providers. So was there a good reason to switch that would outweigh those additional costs incurred?

Having carefully considered the matter, I'm not persuaded there was. Mr Z had a modest fund value; had little experience of investments, and wasn't a particularly sophisticated or knowledgeable investor. Mr Z's existing pensions were invested in a spread of asset classes.

The suitability letter said that Mr Z wanted to discuss the transfer of his existing pensions into a *"…lower risk, less volatile fund as protecting the fund is now a key focus for you."* Yet the whole of the aggregated transfer values were invested in the single portfolio which had significant exposure to property related assets. This exposed Mr Z to the well-known liquidity risks associated with that asset class. I think it lacked diversification, and presented greater degree of risk than Mr Z was willing to take. Ultimately, however, given all the costs and charges associated with the switch which, as I've said above, were significant in this case, I think it was always likely that the value of Mr Z's pension was going to be higher at retirement staying with his existing pensions.

So taking all the above into account, I'm not persuaded that there was any real need or benefit to Mr Z in switching, and, like the investigator, I don't think the advice to switch was suitable in the particular circumstances.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Mr Z as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr Z would have remained with his previous providers. I'm satisfied what I have set out below is fair and reasonable, taking this into account and given Mr Z's circumstances and objectives when he invested.

What should NeoVision Wealth Management Limited do?

To compensate Mr Z fairly NeoVision Wealth Management Limited should:

- Compare the performance of Mr Z's actual investment with the total notional value if it had remained with the previous providers. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value there is a loss, and compensation is payable.

- NeoVision Wealth Management Limited should also add any interest set out below to the compensation payable.

- If there is a loss, NeoVision Wealth Management Limited should pay into Mr Z's pension plan, to increase its value by the amount of the compensation and any interest. NeoVision Wealth Management Limited should allow for the effect of charges and any available tax relief. Neovision shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If NeoVision Wealth Management Limited is unable to pay the compensation into Mr Z'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 compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr Z won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr Z's expected marginal rate of tax at his selected retirement age. I think it's reasonable to assume that Mr Z is likely to be a basic rate taxpayer at his selected retirement age, so the reduction would equal 20%. However, if Mr Z would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- In addition, NeoVision Wealth Management Limited should pay Mr Z £300 for the distress and inconvenience I'm satisfied Mr Z has been caused due to the impact of the unsuitable advice, in particular a significant part of his pension being frozen.

- NeoVision Wealth Management Limited should provide the details of the calculation to Mr Z in a clear, simple format.

investment	Status	Benchmark	from ("start date")	to ("end date")	additional interest
SIPP	Still exists but partly illiquid	Notional values from previous providers	Date of transfers	Date of this decision	8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of Neovision being notified of Mr Z's acceptance of this decision

Actual value

This means the actual amount payable from the investment at the end date.

If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. So NeoVision Wealth Management Limited should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount should be included in the actual value before compensation is calculated.

If NeoVision Wealth Management Limited is unable to buy the any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. NeoVision Wealth Management Limited may wish to require that Mr Z provides an undertaking to pay it any amount Mr Z might receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the money from the pension plan. NeoVision Wealth Management Limited will need to meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr Z's investment had it remained with the previous providers until the end date. NeoVision Wealth Management Limited should request that the previous providers calculate these values.

Any additional sum paid into the SIPP should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal from the SIPP should be deducted from the notional 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 are a large number of regular payments, to keep calculations simpler, I'll accept if Neovision total all those payments and deduct that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, NeoVision Wealth Management Limited will need to determine a fair value for Mr Z's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

I've chosen this method of compensation because The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return. The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

I consider that Mr Z's risk profile was in between, in the sense that he was prepared to take some risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr Z into that position. It does not mean that Mr Z would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr Z could have obtained from investments suited to his objective and risk attitude.

My understanding is Mr Z can't transfer or close the SIPP because of illiquid assets. So he is stuck paying the fees associated with the SIPP. In order for the SIPP to be transferred/closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by NeoVision Wealth Management Limited taking over the portfolio, or this is something that Mr Z can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved and we don't have the power to tell them what to do. **If** NeoVision Wealth Management Limited is unable to purchase the portfolio, to provide certainty to all parties I think it's fair that NeoVision Wealth Management Limited pay Mr Z an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed/transferred.

My final decision

My final decision is that I uphold Mr Z's complaint.

I order NeoVision Wealth Management Limited to calculate and pay compensation to Mr Z as I have outlined above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 7 June 2024.

David Ashley
Ombudsman