DRN-4945327

Financial Ombudsman Service

The complaint

Mrs M complains that Uniq Family Wealth Ltd (Uniq) gave her unsuitable advice to transfer her personal pension plan (PPP) causing her losses. She wants the losses refunded.

What happened

Mrs M's financial adviser recommended a PPP with Royal London in 2015. The adviser's firm subsequently merged with Uniq. She contacted it about starting regular contributions in May 2019. In September 2019, it advised her to transfer the Royal London plan, which was then worth around £383,000 and pay contributions to a new PPP on the Transact investment platform. With the funds to be invested in a discretionary investment management (DIM) portfolio run by JM Finn & Co.

Uniq's suitability report said Mrs M's objectives were to retire as soon as possible and to maintain her desired standard of living in retirement. It said the new plan offered funds matching her attitude to risk (ATR), quarterly fund rebalancing and that ongoing reviews would be provided. It said the new plan's charges were higher but that it was *"better value".* It said Royal London charged 0.4% per annum and its own ongoing adviser charge (OAC) was 0.5%, so 0.9% per annum in total, but that it's OAC would be increased to 1% per annum. The new plan had charges of 1.04%, so overall ongoing charges of 2.04% per annum compared to 0.9% under the current plan. But it said the comparison to make was to consider total charges on the current plan as being 1.4% because of the increase in the OAC. There was an initial 2% charge for the advice. Mrs M accepted the recommendation and around £416,000 was transferred in January 2020, with Uniq receiving an initial fee of around £8,300.

Mrs M says she subsequently became concerned about the advice charges paid to Uniq. She complained in August 2023, but it didn't accept the complaint. It said all fees had been fully disclosed, and it had provided the services and reviews it had promised in return for them.

Mrs M referred her complaint to our service and our investigator looked into it. He said he agreed the charges had been disclosed, but he didn't think the advice to transfer was suitable.

Our investigator said Uniq's recommendations hadn't made clear what Mrs M wanted to achieve. Or that her existing plan didn't meet her requirements. He said the new plan was much more expensive than the existing plan, which already offered investment rebalancing. He said there didn't appear to be a need for the DIM service given her ATR and investment objectives. He said Uniq was required to consider whether transferring was likely to benefit her, which included the impact of its own charges. But according to the suitability report the new arrangement would need to return an additional 3.7% per annum just to match the Royal London plan. He said he thought Mrs M would have stayed in her original plan and switched to a lower risk portfolio had suitable advice been provided. He said Uniq should calculate whether she'd suffered losses as a consequence and pay compensation if she had. And pay Mrs M £300 for the distress and inconvenience she'd been caused.

Uniq disagreed. It said Mrs M was aware of the charges and hadn't queried them at subsequent reviews. And it didn't think our service could consider the complaint as it was time barred. It made a number of points about its investment process and the additional services offered like cashflow modelling.

Our investigator said we could consider the complaint as Mrs M had raised it within six years of receiving the advice. He said he didn't think the advice was suitable as the new product was more expensive without adequate justification. He said her financial planning needs were basic so additional services like cash flow modelling didn't justify doubling the OAC.

As Uniq doesn't agree it has come to me to decide.

My provisional decision

I issued my provision decision on 25 June 2024, I explained the reasons why I was planning to uphold the complaint. I said:

I've considered all the available evidence and arguments to decide (provisionally) what's fair and reasonable in the circumstances of this complaint. Having done so, I'm planning to uphold the complaint.

Our service can consider Mrs M's complaint. She had six years from the date the advice was provided or if later three years from when she should have reasonably become aware she had grounds to complain. The advice was given in 2019 and the transfer completed in January 2020. Mrs M complained to Uniq in August 2023, clearly within six years of the advice being given.

Mrs M originally complained that the charges involved on transferring her PPP hadn't been disclosed, but I think they were. However, I think the advice itself wasn't suitable and she was switched into a significantly more expensive pension without good reason. That may have caused losses and if so, it's fair that she be put back as closely as possible into the position she should have been in but for the poor advice. Because I think it is clear that Mrs M should have been advised to switch investment portfolios within her existing plan to one aligned with her revised ATR, I think the loss calculation Uniq should carry out is different from the one outlined by our investigator.

In 2009 the financial regulator provided a checklist for pension switching (transferring) advice, which identified areas where consumers might lose out. This included switches to a pension plan that was more expensive than their current plan without good reason. And when making a recommendation the regulator's Conduct of Business rules (COBS) 6.1A.16 make it clear that;

> *"In order to meet its responsibilities under the client's best interest rule and Principle 6 (Customer's interests)*
>
> *a firm should consider whether the personal recommendation or any other related service is likely to be of value to the retail client when the total charges the retail client is likely to be required to pay are taken into account."*

So, Uniq needed to consider the overall impact of charges including its own fees in assessing whether the advice was suitable and offered any advantage to Mrs M. I don't think that happened here. Costs increased significantly, partly from higher product charges and partly from additional fees payable to Uniq. But it isn't clear that Mrs M had a requirement for any additional services it might have been offering and I don't think there was any requirement for a new product.

Mrs M initially approached Uniq because she and her employer wanted to pay regular contributions to the Royal London plan. She didn't appear to be seeking a review. I accept that Uniq would have to consider the suitability of the existing plan if it were to arrange new contributions to it. And the phrasing of the suitability letter recommending the transfer to Transact suggests regular contributions to Royal London had been arranged. So, the existing arrangement met that objective. Uniq issued new terms and conditions (terms) to Mrs M which she signed on 25 May 2019. The covering letter says her objective was to "build your pension sufficient for retirement."

The terms set out a range of services that would be provided and that as a previous client the initial fee would be waived and that the OAC would increase from 0.5% to 1% per annum. It isn't clear what service Uniq was already providing for the 0.5% per annum charge, around £2,000 at the time of the transfer. But it says a key new service was the "Creation of Lifetime Cashflow Forecast" (cashflow modelling), which it says clients find "extremely helpful" and offers "peace of mind".

It isn't unfair for a business to change the services it provides or to increase its charges, particularly if it is providing additional services. But a business shouldn't be promoting services and products a consumer has no requirement for. I don't think it is clear that Mrs M then had a need for additional services. Some of which were quite intangible such as "Continual focus on getting more out of your life, with a view to helping you achieve this" or were not specifically relevant to her objectives at the time such as "Ensuring that your estate is distributed in as efficient way as possible." And apart from the revision in her ATR there seems to have been no change in her objectives other than wanting to pay regular contributions.

Uniq assessed her ATR as risk classification five, on a rising scale from one to seven. On the system it used that categorisation called for around 70% of the portfolio to be invested in "high risk" assets like shares. However, the suitability report says that on discussion, Mrs M preferred a risk rating of four (around 50% invested in shares) due to concerns about how Brexit might impact investment markets. Her existing managed portfolio with Royal London (Governed Portfolio 7) was around 86% in shares. So, switching the investments to reduce risk does appear to have been appropriate advice, which Mrs M hasn't questioned.

Mrs M wasn't dissatisfied with the Royal London plan. She completed Uniq's "Knowledge & Experience" questionnaire on 13 May 2019 answering "Well" to the question "How did the previous investments perform". And also said she wanted to keep investment charges to the minimum. And it seems to me her requirements at that point were straightforward. She was in the accumulation phase of her retirement planning and wouldn't be able to take benefits for around ten years at the earliest due to the legislation in place. That's a simpler scenario than someone accessing their benefits flexibly or through drawdown, which might make services like cashflow modelling particularly relevant. And only passing reference is made to the actual cashflow modelling output in the suitability report and Uniq hasn't provided a copy of the "Lifetime Cashflow Forecast" it refers to.

So, Uniq needed to provide good reasons why the transfer was beneficial, but many of the reasons given to justify the recommendation applied equally to the existing plan with Royal London. This was a modern contract offering a wide range of investment solutions and product features. Including online valuations which Uniq cited as a specific advantage offered by the Transact plan of interest to Mrs M.

And Uniq was recommending its own centralised investment proposition (CIP) in the DIM service. A CIP held through a platform offers the advisory firm administration advantages as well as simplifying the recommendation process but won't be appropriate for all clients. And

the regulator expects that any conflicts of interest be carefully managed by advisory firms. An FSA factsheet issued in July 2011 explained that there were,

> *"clients whose existing investments adequately meet their needs and objectives and it may not be in their best interests to switch them to the firm's investment proposition."*

And the new plan was significantly more expensive.

According to the appendix to the suitability report the overall impact of the additional charges required an additional return of 3.7% per annum over the Royal London plan to provide the same projected fund value at Mrs M's planned retirement age. That is a demanding level of extra performance. Uniq says that it considers the most important aspect of investment portfolio construction to be the allocation between the different types of investment asset, which is a commonly held view. Its advice was to invest more cautiously than the existing arrangement. That would generally be expected to result in lower investment returns over the medium to long term, making the additional costs even less likely to be recovered even if the recommended investments performed relatively well.

But the arguments made as to why incurring extra costs was beneficial were weak. The suitability report states that the,

> *"additional charge reflects the fact that you will be accessing a portfolio with JM Finns's active management and benefitting from regular reviews"*

It continued that the new plan was "better value for money" and that "we hope the new plan will see better performance" although this wasn't guaranteed. And that the portfolio,

> *"will be aligned to your risk profile and continues to reflect you (sic) individual needs and investment objectives".*

Switching within the existing Royal London plan is "ruled out" because it wouldn't "benefit" from being invested with J M Finn where it would receive ongoing management without any "additional administrative burden on you". But the existing Royal London plan already offered a wide range of risk rated managed portfolios, constructed on an asset allocation basis, which were automatically rebalanced to match their risk profile, without requiring any administration from Mrs M.

The Royal London and DIM portfolios both made extensive use of passive investment funds like index trackers. It doesn't appear the DIM adopted an active trading strategy in an attempt to boost returns. So, it seems Royal London's portfolios were broadly comparable to the combined service offered by Uniq and the DIM, but at lower cost. So, it isn't clear how the new plan could be seen as "better value for money". And Mrs M had said she wanted to minimise charges.

The suitability report says a benefit of transferring and accessing the DIM would be that Uniq would have input on the asset allocation to be used for each model portfolio. And would authorise rebalancing on a quarterly basis following discussions with JM Finn. Whilst the usual caveats about past performance not being a guide to the future apply, it maybe that this process had successfully added value in the past. And generated returns over and above the additional charges being incurred. But there was no comparison to the broadly equivalent model portfolio Royal London offered that Mrs M could have switched into at no cost. And it's possible that some of the oversight Uniq says it provided merely duplicated work (and costs) that the DIM would be expected to undertake as part of its role. For example, the "On-going monitoring of the investment managers used in the portfolio".

And some of what Uniq describes as "benefits" of the DIM service, like having "access to a broad range of funds at institutional rates", are entirely typical features that would be part and parcel of any investment managers proposition, including those available under the existing plan.

The financial regulator has confirmed it isn't "acceptable to shoe-horn client's into a CIP solution", where alternative arrangements are more suitable for their needs. And I don't think the new plan and DIM offered anything more than what was available under the existing plan. And as it was significantly more expensive overall, I don't think the advice was suitable. And if a reason for the recommendation was that it wasn't possible for Uniq to advise Mrs M unless she was invested in its CIP, then it should have confirmed this and offered to end the relationship as an alternative option, and I can't see that it did.

I think Mrs M's existing plan could have adequately met her requirements at lower cost and she had no need for the additional services that seem to have been offered, given her straightforward requirements. As the advice wasn't suitable it's possible that she has suffered losses as a consequence and if so, it's fair that she be compensated.

Putting things right

I said my aim in awarding compensation is to put Mrs M back into the position she should have been in but for the poor advice. I thought she should have been advised to retain the Royal London plan and switch investments to a lower risk portfolio. I set out how I thought Uniq should calculate whether Mrs M had suffered a loss, and if so that she should be compensated. I also said it should pay Mrs M £300 for the distress and inconvenience she'd been caused.

I asked both parties to send me any further evidence or comments they wanted me to consider.

Response to provisional decision

Mrs M said she accepted my provisional decision.

Uniq said it had received my provisional decision and would respond further but hasn't done so.

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 decided to uphold the complaint.

Uniq has questioned whether our service can consider Mrs M's complaint. She had six years from the date the advice was provided or if later three years from when she should have reasonably become aware she had grounds to complain. The advice was given in 2019 and the transfer completed in January 2020. Mrs M complained to Uniq in August 2023, clearly within six years of the advice being given. We can consider this complaint.

Given the regulatory requirements around suitability Uniq needed to be able to show that its recommendations were beneficial and suitable for Mrs M. I don't think that they were. The requirements of the regulator's checklist for pension switching are clear as is the more

generally requirement under COBS 6.1A.16, that total costs including advice charges need to be taken into account to ensure recommendations are *"likely to be of value"* to clients.

The plan recommended was significantly more expensive than the existing arrangement, which I think could have adequately met Mrs M's requirements at a lower cost. Particularly as if already provided risk-based investment portfolios which would be regularly realigned to the applicable ATR category, which was one of the main purported advantages of the new arrangement. So, I think the extra costs including those related to advice charges weren't justified. It also isn't clear the additional services Uniq wanted to provide, at an increased cost, were needed by Mrs M.

Because the advice wasn't suitable Uniq hasn't treated Mrs M fairly and it maybe that she has suffered losses as a consequence of the higher costs incurred.

Putting things right

My aim in awarding compensation is to put Mrs M back into the position she should have been in but for the poor advice. I think she should have been advised to retain the Royal London plan and switch investments to a lower risk portfolio. Based on the asset allocations of the Royal London Governed portfolios it appears that switching out of Governed Portfolio 7 into Governed Portfolio 6 would have closely reflected the target asset allocation called for under the ATR assessed for Mrs M.

However, I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs M's circumstances and objectives when she invested.

What must Uniq do

To compensate Mrs M fairly Uniq must:

- Compare the performance of Mrs M's investment with the notional value if it had remained with the previous provider. 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.

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

- If there is a loss, it should pay into Mrs M'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. Uniq shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If Uniq are unable to pay the compensation into Mrs M's pension plan, it should pay that amount direct to her. 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 Mrs M won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mrs M's actual or expected marginal rate of tax at her selected retirement age.

- It’s reasonable to assume that Mrs M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs M 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%.

- Pay Mrs M £300 for the distress and inconvenience suffered due to concerns about the poor advice and the erosion of her retirement benefits through unnecessary charges.

- Provide the details of the calculation to Mrs M in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Transact Personal Pension Plan	Still exists and liquid	Notional value from previous provider if invested in Governed Portfolio 6.	Date of investment	Date of settlement	Not applicable

Actual value

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

Notional Value

This is the value of Mrs M's investment had it remained with the previous provider until the end date. Uniq must request that the previous provider calculate this value.

Any additional sum paid into the Transact Personal Pension Plan should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the Transact Personal Pension Plan 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 is a large number of regular payments, to keep calculations simpler, I’ll accept if Uniq 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, Uniq will need to determine a fair value for Mrs M's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. 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.

Why is this remedy suitable?

I’ve chosen this method of compensation because:

- Mrs M wanted capital growth and was willing to accept some investment risk.

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- 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.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs M's circumstances and risk attitude.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-0mbudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints. Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against Uniq Family Wealth Ltd.

I direct Uniq Family Wealth Ltd to carry out the loss calculations and pay any compensation due as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 September 2024.

Nigel Bracken
Ombudsman