DRN-5080465

The complaint

Mrs D complains that KIRBY THOMAS & CO (IFA) LTD (Kirby Thomas) misadvised her over a number of years that her pension investments were suitable for her when they weren't, resulting in significant losses. She wants compensation for her losses.

Mrs D is assisted in bringing her complaint by an accountant friend, but I will just refer to Mrs D except where necessary.

What happened

Mrs D has two plans with Aegon. A s32 plan arising from a bulk transfer from a former employer's pension scheme in 2013 and a Group Personal Pension Plan (PPP) set up in 2010. I'll refer to both as the plans unless otherwise necessary. Kirby Thomas didn't arrange either of the plans, but it acquired the business of the adviser that did in 2016.

Both plans were invested in the same lifestyle investment strategy and originally had a selected retirement date (SRD) in 2015, although Mrs D didn't take her benefits then. Kirby Thomas met with Mrs D in in 2017 and discussed her retirement intentions. In 2020 it provided some advice about the transfer of another pension plan. There were then various discussions about Mrs D taking her pension benefits in 2021 over a number of months, which she says weren't acted on in part because of her late husband's health issues and death.

Concerned about the fall in value of the plans in 2023 Mrs D asked the accountant to make enquiries about them with Aegon. A complaint was subsequently raised with Aegon about the investment returns. Mrs D said the funds were too risky and lacked diversification given her age (then 73). As she believed that her investment *"would be securely held in low risk/no risk funds as I approached retirement age".* Mrs D said the funds had fallen by around 40% over a short period of time, resulting in losses of around £107,000. Aegon didn't accept the complaint, it said the losses were due to market conditions and the investments held had been selected when the plans were set up in 2013 and it hadn't provided her with any financial advice.

Mrs D referred her complaint about Aegon to our service. In doing so she also complained that Kirby Thomas had advised her that the Aegon investments were suitable for her, and that no changes were required over a number of years. A complaint was also opened with Kirby Thomas.

Kirby Thomas didn't uphold the complaint. It referred specifically to the arrangement of the PPP rather than the s32 plan. It said Mrs D had been invested in line with a lifestyle strategy from outset, which *"could not be changed"* and she would have been provided with factsheets explaining the strategy and the risks involved. The strategy targeted purchasing an annuity at the selected retirement date (SRD) in 2015. And if an annuity wasn't purchase then she would remain 75% invested in long dated Gilts and 25% invested in cash until she instructed Aegon otherwise. It said advice about this was provided by the previous adviser not Kirby Thomas.

Kirby Thomas said there had been various discussions and emails through 2021 about Mrs D taking her pension benefits from both Aegon plans and other providers in the form of an annuity or partly through annuity and income withdrawal. It said during this time it had confirmed investment values could fluctuate. But by her own admission Mrs D had procrastinated and been unable to come to a decision and was still considering what to do. And she hadn't come back to Kirby Thomas until she asked for information to be provided to the accountant in March 2023. It said it had provided Mrs D with useful information about her plans. And whilst the fund value had fallen, annuity rates had increased counteracting the decline in value. It said the investment strategy matched Mrs D's *"moderately cautious"* attitude to investment risk (ATR). But it did offer Mrs D £300 for the time she'd spent on conversations and emails with it in case any *"duress"* had been caused.

Mrs D referred this complaint to our service. Kirby Thomas said it didn't think we could consider the complaint as Mrs D had brought it too late. Our investigator said he thought we could consider the complaint, but he didn't uphold it.

Our investigator said Mrs D had six years to raise a complaint or within three years of when she was reasonably aware she had grounds to complain if later. And she hadn't become aware of any issues regarding the investments until seeing a decline in the plan values in annual statements provided by Aegon after October 2021. And she'd complained within three years of then so our service could consider the complaint.

Our investigator said once Kirby Thomas took over Mrs D's plans it had met her in 2017 and there were various exchanges thereafter. He said in 2017 Mrs D appeared ready to take her benefits in the form of an annuity. And in various subsequent communications she always appeared to be on the verge of taking her benefits at least partly through an annuity. Our investigator said it was unfortunate that the sharp decline in values had largely occurred after Mrs D's last contact with Kirby Thomas in October 2021. He said the lifestyle investment strategy Mrs D was invested in was aimed at those looking to take benefits soon in the form of an annuity. And it was likely that Kirby Thomas would have assessed this as being suitable for her in the circumstances and recommending she change to longer term investments wouldn't have been appropriate.

Mrs D didn't agree. She detailed eight quotations from correspondence sent to her by Kirby Thomas over several years, saying things like, *"we believe that you continue to be well equipped to deal with the current investment climate"* and "*Your investments are however structured to deal with fluctuations in the market".* She said these and similar comments had reassured her that the investments were *"properly safeguarded and managed by experts"* and invested in a safe haven in keeping with her *"minimal"* ATR. She said Kirby Thomas knew she'd been left in an unsuitable short-term investment for around nine years, which still carried substantial risk to the capital value, and this hadn't been highlighted. Kirby Thomas said it hadn't agreed to provide Mrs D with an ongoing service, which had been offered and declined by her on a number of occasions.

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

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.

I think this complaint is one our service can consider. Mrs D was in discussions with Kirby Thomas about the plans until September 2021 and received correspondence from it subsequently alerting to her to the fall in fund values and she made her complaint within three years of then. Having considered all the evidence, I am not upholding the complaint.

I know how concerned Mrs D has been over her pensions, but I've thought carefully about what happened and I don't think Kirby Thomas has treated her unfairly. Mrs D was fully invested in the 75% Long Gilt and 25% Cash lifestyle investment strategy by 2015. And she returned directly to Aegon documents confirming she wished to defer taking her pension benefits but wanted to retain the current lifestyle investment strategy. There were subsequently a number of meetings and exchanges with Kirby Thomas from 2017 and the evidence shows that Mrs D was mindful to take her benefits on several occasions generally through annuity purchase, without proceeding. And the objective of the lifestyle strategy under both plans wasn't necessarily to preserve the capital value of the funds, but their annuity income purchasing power.

Fact find notes from a meeting in July 2017 describe Mrs D's ATR as *"Moderately Cautious"* and that she was to decide what to do with her Aegon plans and that *"annuities seem to be the way forward".* No action was taken then. Mrs D met with Kirby Thomas in March 2020 and taking her benefits was again discussed with it saying she was invested in "*moderately cautious funds which will go up and down a bit"*. Later in March 2020 Mrs D emailed Kirby Thomas saying she proposed leaving *"the money where it is just for a short while"* and asking whether she should change the retirement date to 2022. It replied saying the investment would be based on the old retirement date *"and is more than likely to be in low risk stocks even cash?!"* but that Mrs D could check her paperwork.

In 2021 there were multiple exchanges about taking the benefits. In May 2021 Mrs D emailed Kirby Thomas some questions, and said she was *"really aware that it is decision time and we should speak"* and referred to her *"procrastination"*. Further queries and exchanges continued through September and October 2021 and Mrs D said in an email *"I'll reach a decision very soon".* But she didn't contact Kirby Thomas again until March 2023 and unfortunately in the interim fixed interest capital values, including Gilts, had fallen significantly.

So, during the period of active contact Mrs D does appear ready to take her benefits, through both annuity purchase and income drawdown. And the emails from Kirby Thomas make it clear that different investments would be recommended under a drawdown plan. So, I don't think the funds held then were inappropriate in the circumstances. Because if Gilt prices were to fall annuity rates would generally rise in response. Which is largely what has happened since, meaning whilst the capital value is lower the income level that can be secured will be similar.

When Mrs D didn't act after October 2021, Kirby Thomas might, at some point, have contacted her for an update and to potentially propose alternative investments. But I don't think there was an agreement for it to provide her with ongoing advice on her plans. There's some dispute here with Mrs D saying Kirby Thomas hadn't proposed any alternative payment methods for its services and that she would have been receptive to this if it had. Kirby Thomas says ongoing advice services were offered on several occasions to Mrs D and her late husband but rejected on grounds of cost. A client agreement was signed on 2 March 2020 specifically in relation to advice about a pension plan with another provider. This was for a 1% initial fee and *"nil ongoing"* adviser charge. That suggests Mrs D didn't want ongoing advice at that point from Kirby Thomas. And the email exchange from March 2020 which I've quoted above, strongly suggests Kirby Thomas wasn't providing Mrs D with ongoing advice on the plans, as it suggests she check how they were invested herself.

We now have the benefit of hindsight over what happened to the various different types of investment assets after October 2021. But without hindsight even if ongoing advice had been provided it isn't clear that it would have changed anything. It is the case that fixed interest assets are considered to be a relatively low risk investment over the long term as they exhibit less volatility than shares. Mrs D's investment in these assets was long standing and reconfirmed by her without the involvement of Kirby Thomas. And she always appeared ready to take her benefits, either entirely or significantly in the form of an annuity.

So, as a moderately cautious investor, I think it would have been unlikely that Kirby Thomas would have recommended switching investments into shares and property in what was a generally turbulent period for most asset classes unless her plans had changed significantly. And if that was the case, I think Mrs D might reasonably have contacted Kirby Thomas herself. The main other alternative was further investment into cash deposits, which for several years had provided very low, even negative returns, after the impact of plan charges. And around 25% of Mrs D's funds were already held in cash. So, again I doubt Kirby Thomas would have recommended further cash holdings. If her plans hadn't changed then continuing the existing investments wasn't unreasonable as they were more likely than not suitable for her, given that annuity purchase was likely to be part of her retirement benefit choices. And that an investment is suitable doesn't mean it is guaranteed not to fall in value in certain market conditions.

I've thought carefully about the comments made by Kirby Thomas in various covering letters it sent Mrs D enclosing valuations. She says these re-assured her that her investments were safe. But I think the comments are largely generic and the enclosed valuations showed a broadly increasing value from 2019 through to November 2021, shortly after the last direct contact with Kirby Thomas. For much of this period Mrs D was in frequent contact with Kirby Thomas, considering her benefit options. And in her email to it of 20 September 2021 Mrs D said she wanted to take her maximum tax-free cash and split the balance equally between annuity and income drawdown and;

> *"When I looked at Aegon this morning there was a value of, in round figures £149,000 … and £122,000 … as we know these change!*
>
> *… If I have worked it out correctly and if I was very lucky and these were "cashed in" at a good time there would be perhaps in the region of £90,000 each for both the annuity and the drawdown.*
>
> *…*
> *I'll hope for a dramatic increase in the Aegon balances by the time we've sorted the details."*

I think this shows that Mrs D was quite engaged with her pensions and used Aegon's online system to monitor the plan values. Aegon would have also provided an annual statement by post, setting out plan values. This email also shows Mrs D was aware that her investment holdings were exposed to risk and their value could fall as well as rise. It also shows she was content to take some risk before proceeding.

Covering letters and valuations from 2022 haven't been provided by either Mrs D or Kirby Thomas and it was during this period that the most significant falls in value occurred. In turbulent investment markets even the most carefully constructed and diverse investment portfolio can still fall sharply. And as well as the decline in Gilt capital values due to the change in the interest rate cycle, unpredictable political events were also relevant. Mrs D may not have checked ongoing valuations given her unfortunate personal circumstances at that time. But Kirby Thomas wasn't aware of those matters, and it wasn't providing an ongoing review service.

So, whilst the decline in plan values is very unfortunate for Mrs D I don't think it is reasonable to say Kirby Thomas was at fault. It provided Mrs D with information and advice on her available retirement benefit options over an extended period without charge and it was left with her to decide whether to proceed. So, I don't think Kirby Thomas has treated her unfairly and I can’t uphold her complaint. Kirby Thomas did offer Mrs D a payment of £300 and this may still be available if she wishes to accept it.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs D to accept or reject my decision before 21 May 2025.

Nigel Bracken
Ombudsman