DRN-5102303

Financial Ombudsman Service

The complaint

Mrs P complains that Adanac Financial Services Ltd led her to believe that she could expect higher returns than she has actually achieved. She is unhappy that fund switches weren't considered, and with the fees Adanac quoted to move her pension. She says that from the beginning her funds were placed with a Discretionary Fund Manager (DFM) whose fixed charges precluded any possibility of a sensible return.

What happened

Mrs P's complaint was considered by one of our investigators. He sent both parties his assessment of it on 1 July 2024. The background and circumstances to the complaint were set out in that assessment and are known to both parties, so I won't repeat them all again here. But to summarise, Adanac provided Mrs P with advice to switch her pensions in 2013. She had four pensions with three different pension providers. She was advised to switch them to a Self Invested Personal Pension (SIPP) and invest through a DFM.

A suitability report dated 27 August 2013 recorded:

- Two pensions were held with one provider and were valued at £19,935 and £11,031. The two other pensions with different providers were valued at £17,722 and £36,636 – so a total value of £85,324. There were no guarantees attached to the pensions and they didn't offer an income drawdown facility.

- The SIPP had an annual charge of £180, a transfer in fee of £100 and a £50 charge to set up a DFM account.

- The DFM had an annual management charge of 0.75% and underlying fund charges between 0.3% and 0.5%.

- Mrs P had an attitude to risk of realistic/balanced.

Mrs P became unhappy with the performance of her pension and complained to Adanac. Adanac didn't uphold her complaint and she referred it to us.

Our investigator thought that the complaint should be upheld. He said he'd taken into account the Financial Conduct Authority's pension switching review which had been published in December 2008. He said he thought Mrs P's needs could have been met from a cheaper and less complex product. He said once the advice fee and initial income had been taken, Mrs P would only have had a fund of around £80,000 which would have meant that the fixed fees of the SIPP would have a greater impact.

The investigator said the DFM arrangement cost up to 1.25% and then had adviser charges and SIPP fees on top. which would have taken the total costs closer to 2% per annum, which represented a large proportion of the realistic returns. The investigator said there would have been cheaper options available, and the suitability report didn't explain why other options had been discounted.

Overall, whilst the investigator thought the advice to move pensions was appropriate, he didn't think the use of a specialist DFM was suitable in the particular circumstances.

The investigator went onto say that whilst he recognised that Mrs P had raised other concerns, as he didn't think Mrs P should have been invested as she was in the first place, and was upholding her complaint, he didn't need to address them.

Adanac didn't agree with the investigator's findings. It said, in summary, that Mrs P – along with her husband Mr P - were both clear that they wanted the same arrangements as Mr P, as it would mean their portfolio would be managed as a whole, with one coherent investment strategy. It said they were told of the high costs of doing so and had signed knowing the impact of these charges. It referred to its letter dated 8 August 2013 which it said explained the levels of returns required were 8%. Adanac said Mr P heavily influenced Mrs P's decision and Mr P was clearly the decision maker. They were advised as a couple, their pension assets were invested as one "portfolio" and they benefited from lower advice fees as a result.

Adanac said looking at Mrs P's portfolio on a total return and timeweighted basis i.e., making allowance for any additions/or withdrawals, it was 3.94% per annum. With the average cost, of advice and the SIPP – 2.6% per annum – it meant she'd received a return of 1.34% per annum after costs. So it thought Mrs P hadn't suffered a loss.

Adanac said If Mrs P had approached it as a single person, with a fund that size, she would have indeed ended up with a personal pension. And it said the only reason she ended up with a DFM was because Mr P insisted she had a DFM, as this meant all the money was being managed by one person. It said Mr P had previously tried to get this with his former advisers. Adanac also questioned the use of the benchmark for calculating redress as it said it didn't take any fees into account.

Mrs P accepted the investigators findings albeit provided some further arguments in support of her 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.

Having done so, I've come to the same conclusions as the investigator, and largely for the same reasons.

Like the investigator, I don't think switching pensions in itself was unreasonable given Mrs P's existing arrangements didn't allow the flexibility Mrs P required when taking benefits. But whilst I have taken into account what Adanac has said about Mrs P being alerted to the higher costs of using a DFM, the benefits of it, and the significant role that Mr P played in the decision making, it was the firm that was providing the professional expertise in the matter. Adanac was obliged to act in Mrs P's best interests and provide suitable advice in accordance with the requirements set out in the Financial Conduct Authority's Handbook – in particular the rules contained in the Conduct of Business Sourcebook – COBS.

The amount invested with the DFM was fairly modest – I understand around £65,000 after Mrs P had taken her tax-free cash. As the investigator said, the charges provided a drag on performance and so there needed to be a good reason to use the DFM. I accept that Mrs P would have had to pay fund management fees in any event. And that the DFM may have access to slightly better rates on some funds. But Mrs P was paying 0.9% for the DFM arrangement, 0.5% for an ongoing service from Adanac as well as the SIPP fees and possibly slightly lower fund fees. Mrs P could have been advised to invest in managed/index funds by Adanac, and continued to pay it the 0.5% fee to review her circumstances saving the 0.9% DFM fee from the off.

I note that in Adanac's letter to Mrs P dated 8 August 2013 the adviser said, in summarising Mrs P's four existing pensions:

"The fact that the funds are all broadly invested similarly worries me as there is no real diversification…"

Diversification is a well-known investment strategy used to mitigate investment risk. Whilst I accept it's generally referred to in relation to having capital invested in different asset classes, I think the principle of not having 'all your eggs in one basket' also applies here. Mrs P was advised to combine all of her pensions and invest them with the same DFM as Mr P's pension (which had a significantly higher value). Whilst the DFM invested in different asset classes and Mr and Mrs P weren't identically invested, relying on one DFM exposed Mrs P (when considered in the context that Mr P had the same DFM) to concentrated risk if the DFM's strategy and judgement failed. As I've said above, Mrs P could have invested in different funds and at lower cost, which would have provided a blended approach and limited risk for their combined pensions.

I accept that Mr P may have played a significant part in the decision-making process. However I can't see that Adanac set out the advantages of Mrs P not using a DFM and employing a different investment strategy. Mr P may have gone into the process favouring that Mrs P also use a DFM. But as I've said above, Adanac Financial Services Ltd was providing the professional expertise when advising Mrs P (and Mr P) and they were paying for that expertise. I've seen no reason to suggest that Mrs P (and Mr P) would more likely than not have gone against Adanac Financial Services Ltd's professional advice if it had suitably recommended a different investment strategy for Mrs P and outlined its advantages.

As I said above, Mrs P made some further comments following the investigator's assessment of the complaint. I've fully considered what she said. However given I am upholding her complaint and that in my opinion the compensation is fair and appropriate for all the issues she has raised, I don't think it's necessary for me to make further comment.

Taking everything into account, and for the reasons set out by the investigator and what I have said above, I'm not persuaded that Adanac's advice was in Mrs P's best interests in the particular circumstances of the case Therefore I think her complaint should be upheld.

Putting things right

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

I think Mrs P would have invested differently. It is not possible to say precisely what she would have done, but I'm satisfied that what I have set out below is fair and reasonable given Mrs P's circumstances and objectives when she invested

.
To compensate Mrs P fairly Adanac Financial Services Ltd should:

- Compare the performance of Mrs P's investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.

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

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

- If Adanac is unable to pay the compensation into Mrs P'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 P won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using the basic rate, so the reduction would equal 20%. However, if Mrs P 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, Adanac Financial Services Ltd should pay Mrs P £200 for the distress and inconvenience I'm satisfied the matter has caused.

- Adanac should provide details of the calculation to Mrs P in a clear, simple format.

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 additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in. Any withdrawal from the SIPP should be deducted from the fair 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 Adanac totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Investment	Benchmark	from ("start date")	to ("end date")	additional interest
SIPP	FTSE UK Private Investors Income Total Return Index;	Date of investment into the DFM	Date that Mrs P transferred away from the DFM	The same benchmark on any loss calculated from the date Mrs P transferred away form the DFM to decision date. And then 8% simple a year from date of this final decision to date of settlement if settlement isn't made within 28 days of being notified of Mrs P's acceptance of this decision

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mrs P wanted Income with some growth and was willing to accept some investment risk.
- 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 P's circumstances and risk attitude.
- Some alternative investments (including charges) will have provided higher returns. And some lower - the index is used as a proxy for what Mrs P might have achieved if invested in a suitable manner.

My final decision

My final decision is that I uphold Mrs P's complaint.

I order Adanac Financial Services Ltd to calculate and pay compensation to Mrs P as I have outlined above under 'Putting things right'.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 23 May 2025.

David Ashley
Ombudsman