DRN-5158419

The complaint

Mr W has complained about the advice he received from Manning & Company (South West) Ltd to switch benefits held under three existing pension policies into a personal pension in 2012.

What happened

Mr W met an adviser from Manning in 2012 and it was recorded that he wanted to discuss his pension provision. Mr W held pension policies with Blackrock, Scottish Widows and Standard Life that were the result of previous periods of employment. In May 2012 the adviser recommended that Mr W transfer the benefits under all three policies to a MetLife Retirement Portfolio, which was a personal pension plan, with a Secure Income Option ('SIO'). The adviser said the three existing policies were invested in funds that were not consistent with Mr W's cautious attitude to risk ('ATR'). He recommended investment in the MetLife Max fund, and stated the policy would be reviewed quarterly.

In July 2023 Mr W complained to Manning about the 2012 advice he'd been given. He commented that despite his cautious ATR, the MetLife Max fund recommended was the highest risk of the three available MetLife funds, with up to 70% invested in equities. He also said that both his Blackrock and Scottish Widows policies potentially allowed him to take more than 25% of the fund as a tax-free sum, but following the switch these funds were now limited to 25% tax-free cash.

Mr W said that Manning had never issued him with a finalised 'suitability' letter that explained its reasons for recommending the pension switches, but instead had more recently given him an earlier draft of a May 2012 letter from the adviser that included Manning feedback to the adviser on it. Within that suitability letter Mr W commented that it was confirmed he wanted to retire at age 65, but he said the transfer was illustrated to age 70. This meant he was shown a secure income level at age 70, but this was significantly higher than the income level which applied at age 65. He also said that Manning had referred him to a death benefit guarantee available from MetLife, but it hadn't warned that if the fund value was eroded, there might be no death benefit payable.

In response Manning confirmed that it did not hold a copy of a finalised suitability letter issued to Mr W, and it apologised that it could not explain why this was the case. However it referred to an August 2012 customer survey that Mr W had signed which indicated he had received a letter explaining the advice he'd been given. In terms of tax-free cash limits, Manning said there was no indication that the Scottish Widows policy had the potential to provide more than 25% of the fund in this way. For the Blackrock policy, Manning accepted that it was possible more than 25% of the fund might be available as protected tax-free cash ('PTFC') for benefits accrued up to 5 April 2006. It then commented that Mr W had not applied for enhanced protection against a lifetime allowance ('LTA') charge.

In terms of the risk applicable to the MetLife fund recommended by the adviser, Manning said the income guarantee via the SIO that had been chosen allowed Mr W to consider a more adventurous fund. Whilst it accepted that when giving advice it had illustrated benefits to age 70, Manning said there was flexibility to retire from age 55 onwards under the new policy, albeit with reduced benefits. Manning commented the death benefit would not be affected by the erosion of the fund, but by the amount of cash and income taken from the policy. Its view was that the switching advice given in 2012 was suitable.

Unhappy with Manning's stance, Mr W brought a complaint to this service. He pointed out that Manning's complaint response had referred to the Scottish Widows policy as a personal pension when in fact it was a section 32 buyout plan. Mr W also commented that whilst Manning had mentioned enhanced protection against an LTA charge when considering the benefits available under the Blackrock and Scottish Widows policies, he was referring to the possibility that scheme specific rules could have allowed more than 25% tax-free cash to be taken.

Our investigator upheld Mr W's complaint. She considered Mr W was a cautious investor, and that Manning's decision to categorise him as having a risk profile of three out of seven (with an investment mix of 10% high risk, 40% medium risk and 50% low risk) was inconsistent with this. The investigator agreed that the three existing policies Mr W was advised to switch by Manning were too high risk for his ATR. She noted that Manning had commented that Mr W could consider a more adventurous MetLife fund because of the guarantees that came with the SIO, but in her view because the Max fund was noted as likely to have greater fluctuations in its value compared to the Min or Mid portfolios, it was not in line with Mr W's ATR.

The investigator stated that charges applicable to the MetLife investment were higher than for any of the three policies whose benefits were switched. Her view was that in particular, the charge for the SIO impacted the growth potential of the MetLife policy. She stated Mr W had limited capacity to take risks with his pension funds, and concluded Manning's recommendation for the pension switch in 2012 was not suitable for his objectives. The investigator proposed that Manning should calculate compensation based on a comparison of the current value of the MetLife policy to a benchmark applicable to an investor wanting to take a small risk to his capital.

Mr W confirmed that he was happy with the investigator's findings.

Manning said that it was attempting to obtain an updated valuation for the MetLife policy but it was unable to do so because it's not the servicing agent for the plan. It asked if Mr W could provide his authority so that Manning could obtain the information, or ask MetLife to send this to it directly. The investigator forwarded this request to Mr W.

Manning also asked the investigator if her view was that the benchmark she proposed in her redress calculation was in line with what she thought was Mr W's ATR. The investigator responded that the benchmark she'd suggested was based on her opinion that Mr W was willing to take a small amount of risk with his money.

In the absence of any further response from Manning, the investigator confirmed that this complaint was being passed for review by an ombudsman.

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.

When Mr W met the Manning adviser in 2012, details from the meeting were recorded in a fact find. It was confirmed that Mr W was employed on an annual income of £13,000, and his retirement age was recorded as being 65. For pension planning his ATR was said to be cautious, and this was described as someone who was not prepared to lose capital. Mr W had £9,500 emergency funds in a current account. On a separate document, Mr W was recorded as having very limited investment experience and knowledge.

Around this time a risk tolerance questionnaire for Mr W was also completed. It was recorded that Mr W was a low risk taker and somewhat uneasy if things went wrong financially. 'Danger' was the word which came to mind to Mr W when thinking about financial risk, and he'd never invested a large sum in something risky for the 'thrill' of seeing its performance. For major financial decisions, he was usually more concerned about possible losses than possible gains. Mr W was said to be prepared to take a small risk with financial decisions at that time, and it was recorded that any fall in the value of his investments would make him feel uncomfortable.

Mr W was asked to select a portfolio from a list of seven that appealed to him most, with number seven having the highest level of risk. It was recorded that he chose portfolio three, which had a mix of 10% high risk, 40% medium risk and 50% low risk investments. I would agree with the investigator that this mix of investments (with 50% being in medium or high risk assets) does not correlate with the answers Mr W had given to the risk questions, as detailed above. From the weight of evidence, I consider it is clear that Mr W was a cautious investor who wanted to limit any element of risk that his pension funds were exposed to. And in line with this, I note that Manning commented in 2012 about Mr W's risk tolerance answers that he had a "*very low score, lower than 80% of all scores*".

When Mr W made his complaint about the advice to move his benefits to MetLife, Manning was only able to provide him with a draft copy of a recommendation letter from the adviser in May 2012 that included comments from someone at Manning who was reviewing the quality of the advice given. Manning has apologised for this. Whilst I appreciate why Mr W has questioned whether he ever received a finalised suitability letter from Manning, like the investigator my view is that it is more likely than not that he did, in light of the August 2012 customer survey that Mr W signed to say he'd received such a letter. In the absence of that finalised letter being available, I have considered the content of the draft May 2012 letter that has been provided by Manning.

The letter initially described Mr W as a cautious investor, and this was repeated later in the document. However at one point the letter said that Mr W had a balanced ATR. It is not clear why the adviser suggested this, and on balance I consider this must have been an error by the adviser. The letter stated that Mr W wanted "*to build in some guarantees to* [his] *contract*". The adviser also said that Mr W was seeking investment growth on his pension fund.

The adviser recommended that due to Mr W's cautious ATR and his requirement to incorporate some guarantees in his pension, he should invest in the MetLife policy and select the SIO. The adviser said this would give "*the certainty of a guaranteed income for life, even if your fund falls to zero*". He went on to say that the SIO could provide a guaranteed income for life immediately, but because this wasn't needed at that time, he said income should be deferred for a number of years. In my view, in the absence of Mr W requiring a guaranteed income at this time, there was no clear need for him to move his pension funds in 2012 into a policy with the SIO attached to it.

I also note Mr W's comments that the suitability letter confirmed he wanted to retire at age 65, but provided him with the guaranteed yearly income figure under the SIO for age 70. I would agree with Mr W that by omitting the SIO figure for age 65, the adviser failed to provide him with information that was relevant to his specific circumstances and requirements.

The adviser stated that Mr W's three existing pension policies were not invested in line with his ATR. He said he'd considered suggesting a switch of funds within the existing policies, but said this would not meet Mr W's objective of having guarantees. But as I've already commented, in my view there was no pressing need in 2012 for Mr W to place his pension funds in a policy with a guaranteed income attached to it. Mr W was still around ten years from his intended retirement age of 65, was still working, and did not need income from his pension funds immediately.

The adviser explained that the MetLife policy offered three portfolios called Min, Mid and Max, and that the Max portfolio was likely to have larger swings in its value compared to the other two. As it was more volatile in its price, it appears the Max portfolio was the riskiest of the three available. The recommendation of the adviser was that Mr W place all his switched funds into the Max portfolio. He confirmed that this portfolio had a maximum exposure to equities of 70%.

The reviewer on the draft May 2012 suitability letter questioned why, in light of the risk profile Manning had established for him, Mr W had been recommended to invest in the Max portfolio. In its complaint response to Mr W, Manning said that the guarantee which came with the SIO meant Mr W could consider a more adventurous fund. In light of my comments questioning Mr W's need for the SIO when the switch advice was given, I would not agree that the SIO guarantee made the recommendation of a more adventurous fund suitable for Mr W.

In terms of the Max portfolio that was recommended, in my view this was not consistent with Mr W's cautious ATR. One of the reasons given by the adviser for the switch to the MetLife policy was because he said that the three existing policies were not invested in a way which was consistent with Mr W's ATR. In my view placing Mr W in a more 'adventurous' fund in MetLife was clearly not suitable for him, both in terms of his ATR, and also his capacity to take that much risk with his pension fund, bearing in mind his broader circumstances. In light of the Max portfolio having exposure of up to 70% of assets in equities, I do not consider that recommending Mr W invest in this portfolio was suitable for him.

Further to this, I have considered the charges that were incurred as a result of the advice given to move the funds to the MetLife policy. The draft May 2012 suitability letter confirmed the ongoing annual charges under the existing policies to be 1.05% for Blackrock, 0.875% for Scottish Widows and 0.755% for Standard Life. The MetLife plan had an annual management charge of 0.7% and a fund manager's charge of 0.54%, totalling 1.24%. In the May 2012 letter the adviser said that comparing these charges, the cost of the MetLife plan was lower than the existing plans. However, as the figures I've detailed here show, that appears to have been an inaccurate comment.

In addition to these charges, the SIO under the MetLife policy added a further yearly charge of 1.8%, bringing the MetLife charges to a total of 3.04%. This charge was almost 2% a year higher than the charge applicable to the Blackrock policy, which had the highest charge of the three existing plans. And as I explained above, in my view there was no discernible need for Mr W to take out a policy in 2012 that had a feature like the SIO attached to it.

According to the MetLife information sent to Mr W in July 2012, a further two charges applied to the policy. An establishment charge was to be applied to each transfer value every month for the first five years to recoup the initial commission paid to the adviser. As I understand it, the initial commission equalled 3% of each transfer value. A further charge was for trail commission to be paid to the adviser. This was 0.5% of the fund value, to be deducted each year.

MetLife provided information about how the charges would affect the policy's value. It said that if the effective average annual growth rate under the policy were to be 7%, the charges would reduce that to 2.8% after ten years. Switching his three pension funds to MetLife clearly resulted in significant additional charges being applied to them compared to if they'd stayed in their original policies.

In the draft May 2012 letter, the adviser said that Mr W's objectives were to avoid his pension being depleted due to market conditions, and to benefit from investment growth. It seems to me that Mr W had limited capacity to take risk with his pension fund. By advising he switch his benefits to MetLife, Manning was exposing the funds to significantly higher charges, and placing them in a portfolio that was higher risk than Mr W's ATR indicated he was willing to take. Based on the limited information available about the risk profile of the funds that Mr W was invested in under the three existing policies, it seems that these were not consistent with Mr W's ATR. But in my view, the adviser should have considered further the option of retaining the existing policies and moving the benefits into lower risk funds. And overall, my view is that the recommendation to switch the funds to MetLife was not suitable for Mr W's circumstances and objectives.

Mr W has highlighted the possibility that he could have taken more than 25% of the fund values of the Scottish Widows and Blackrock policies as tax-free cash, as a result of a right to PTFC, but that under the MetLife plan he is now restricted to 25%. The information obtained in 2012 about both these policies mentioned the possibility that they offered more than 25% tax-free cash. I note that whilst Manning's complaint response mentioned that Mr W had not applied for enhanced protection against an LTA charge, the PTFC that Mr W has said he might have been eligible for relates to scheme-specific lump sum protection that might have applied to the benefits held under the Scottish Widows and Blackrock policies.

From the evidence provided, it does not seem that the Manning adviser looked into the possibility that Mr W had the right to PTFC under the two policies in question. It is now a number of years since Mr W's employment that resulted in the Scottish Widows and Blackrock benefits being accrued. Unfortunately, in my view this makes it more difficult to determine whether Mr W did have the right to PTFC under these policies. Whilst I accept that the policies may have allowed for more than 25% tax-free cash to be taken from them, on balance I'm not persuaded that it's been shown that this was the case. But I do consider that failure to consider this issue represented another reason why Manning did not suitably advise Mr W about the pension switch.

Fair compensation

My aim is that Mr W should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr W would have retained his pension benefits with his previous providers but where appropriate moved these benefits to funds which were more suitable for his ATR. It is not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below as an alternative is fair and reasonable given Mr W's circumstances and objectives when he invested.

What must Manning do?

To compensate Mr W fairly, Manning must:

- Compare the performance of Mr W's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair value is greater than the actual value there is a loss and compensation is payable.

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

- Manning should pay into Mr W's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Manning is unable to pay the total amount into Mr W'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 total amount 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 W won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

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

Income tax may be payable on any interest paid. If Manning deducts income tax from the interest it should tell Mr W how much has been taken off. Manning should give Mr W a tax deduction certificate in respect of interest if Mr W asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
MetLife plan	Still exists and liquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Mr W's acceptance)

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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Manning should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the MetLife plan 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 if Manning totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr W wanted capital growth with a small risk to his capital.

- 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.

- 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.

I consider that Mr W's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. The 50/50 combination would therefore reasonably put Mr W into that position. It does not mean that Mr W 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 W could have obtained from investments suited to his objective and risk attitude.

My final decision

My final decision is that I uphold this complaint and require Manning & Company (South West) Ltd to pay the amount calculated as set out above.

Manning & Company (South West) Ltd should provide details of its calculation to Mr W in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 March 2025.

John Swain
Ombudsman