

The complaint

Mr W complains that Finance Shop Ltd trading as Finance Shop (Finance Shop) mis-advised him about transferring a pension and the investments in the new plan causing him losses. He wants compensation for the losses incurred.

What happened

Mr W says he approached Finance Shop to review his existing pension arrangements. He had deferred benefits in a defined benefit scheme (DB scheme) and a personal pension plan (PPP) to which he and his employer contributed. He says in January 2016 Finance Shop advised against transferring the DB scheme, at which time its transfer value was £367,000. Mr W requested another transfer value in February 2017, which had increased to £513,241. He says he discussed this with the adviser at Finance Shop and was told it was a “no brainer” not to transfer.

Finance Shop says it introduced another firm, Pearson Financial (Pearson) to provide recommendations as to whether Mr W should transfer his DB scheme. Pearson subsequently provided a report in May 2017, recommending the transfer proceed, with Finance Shop to manage the investments. He says various documents were selectively presented to him by Finance Shop at a meeting which appears to have been on 24 March 2017. He says he wasn't given the opportunity to consider this paperwork before signing it and says he went ahead with the transfer because it advised him to do so.

Finance Shop also set out investment recommendations in a suitability report dated 24 March 2017. It said it wasn't authorised to offer advice on DB transfers, hence the introduction of Pearson, but it would recommend the SIPP provider and underlying investments. These were a Self-Invested Personal Pension Plan (SIPP) with A J Bell, with investment into a bespoke Discretionary Portfolio (the portfolio) with Raymond James.

The suitability report said as Mr W had already transferred to his new scheme and Finance Shop “now need to advise on how to invest the cash.” It said having discussed risk with him, he'd “chosen” the Balanced risk category sitting at four on a scale of one to seven. It recommended a “Bespoke” portfolio in view of the level of funds to be invested, which would include “structured products” and cash would be retained until these became available. The report summarised the charges involved for the various parties involved. It said its own costs were an initial fee of 2% for:

“the project management of the transfer, including fact-finding, meetings, research and portfolio construction”

Which;

“was included in the total fee deducted from your plan.”

It said its ongoing fees would be 1.17% per annum, including an additional fee of 0.4 % per annum for the bespoke service. It said the underlying fund costs were expected to be 0.66% per annum in addition, although this would depend on the actual underlying investments

purchased. There were charges from AJ Bell and Raymond James in addition. The report set out various risk warnings about investment returns. It says Mr W accepted the advice on 7 April 2017 and the recommendations were actioned. He subsequently met with Finance Shop for review meetings.

In June 2023 Mr W complained about the advice to transfer the DB scheme and the performance of the investments, which he said he been told would return at least 5% per annum and instead were showing a loss. Finance Shop said it hadn't advised him to transfer and most of his complaint points needed to be addressed to Pearson. But it said no guarantees had been given that the investments would grow at 5% per annum. It said the investments were long term and that explanations about the returns achieved had been set out at the review meetings.

Mr W referred his complaint to our service. Our investigator said we couldn't consider the complaint about advice to transfer from the DB scheme given Pearson's involvement and he assisted Mr W in raising a complaint with Pearson.

Our investigator then considered Mr W's complaint about Finance Shop's investment recommendations. Having done so he didn't uphold this complaint.

Our investigator said the financial regulator had provided a checklist of areas of concern over pension transfers in 2009. But as Finance Shop hadn't advised on the transfer it wasn't possible to consider issues like a cost comparison to Mr W's DB scheme. He said there would be some cost from any new pension plan. He said Finance Shop had invested Mr W in a large number of investments with its portfolio but there was no evidence it hadn't invested outside a Balanced fund risk categorisation. He said the annualised returns achieved by Finance Shop, both positive and negative weren't outside the upper and lower thresholds it had set out. So, there was no evidence Mr W hadn't been invested in line with his attitude to risk (ATR).

Our investigator said Finance Shop had provided the ongoing reviews and advice between 2018 and 2023 and Mr W had been made aware of the costs of this and hadn't appeared to question the service being provided. He said investment markets had been turbulent and there was no evidence that Mr W had been told 5% annualised returns were guaranteed, even if the potential had been mentioned in conversation.

Mr W didn't agree with our investigator's conclusions. He still thought Finance Shop had advised him on the DB transfer, referencing his notes where it had told him not to transfer in 2016, before saying to do so in 2017, due to the increased transfer value. He said no one would agree to pay a 1% fee on a speculative basis (to Pearson) without having been advised it was a good idea. He said he'd lost guaranteed benefits without good reason and the costs were higher than under the DB scheme he'd transferred from, issues specifically identified by the regulator in 2009.

Mr W said his notes from the meeting recorded that the adviser had said the funds recommended were "*virtually guaranteed to perform at 5% p.a.*" and Finance Shop's response to this was to just say this wouldn't have been said. He said it had presented the Pearson recommendation but given him no time to consider it.

Our investigator said as only Mr W and the adviser were at the meetings there was nothing concrete to confirm what had been said and there was no reference to guaranteed returns in the paperwork and report provided. And he said a suggestion that it might be a good time to transfer didn't amount to a recommendation to do so. He said he didn't think the fees involved for the advice were excessive and how they were structured between Finance Shop and Pearson wasn't something we could consider.

Our investigator said there were no set rules on how long a customer should be given to consider documents and reports and the onus was on Mr W to say he wanted to reflect before proceeding. And as Finance Shop didn't make the recommendation to transfer it wasn't required to make cost and benefit comparisons against the DB scheme.

Our investigator confirmed that as Pearson had ceased trading Mr W has referred the complaint about the DB transfer advice to the Financial Services Compensation Scheme (FSCS).

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

My provisional decision

I issued my provision decision on 6 September 2024, I explained the reasons why I was planning to uphold the complaint. I said:

I understand how concerning this has been for Mr W. I thought there were gaps in the evidence that Finance Shop had provided, and I requested more details from it. When compared to evidence provided by Mr W about Pearson's role these showed chronological inconsistencies and raised a number of concerns about shortcomings in Finance Shops advice which might mean it wasn't suitable.

It is clear from the evidence provided by both Finance Shop and Mr W that its investment recommendations preceded the actual pension transfer being applied for, let alone completed, despite the suitability report stating the transfer had been finalised and Mr W merely required investment recommendations. I don't think that was an oversight on Finance Shop's part. I think it did clearly encourage Mr W to transfer and had a very clear financial incentive for him to do so. But it didn't provide the advice for him to transfer his DB scheme. That was provided by Pearson. Without an appropriately authorised (by the FCA) adviser signing the transfer paperwork to confirm Mr W had been provided with financial advice (as Pearson did) the transfer wouldn't have been released by the DB Scheme.

So, I can't consider any complaint about the pension transfer itself against Finance Shop. Its suitability report states it is only providing recommendations on the pension provider to be used (which conflicts with subsequent statement that the transfer had already completed) and the underlying investments to be made.

When an adviser makes recommendations, these need to be suitable for the customer given the objectives and circumstances. I don't think it is sufficiently clear what Mr W's objectives were or why the relatively expensive investment solution recommended was suitable for him. Bespoke services at additional cost are recommended without adequate explanation of why they were appropriate for Mr W. And costs are summarised in the suitability report but weren't reflected on the required SIPP illustration from A J Bell and were materially understated to the extent that I think Mr W wouldn't have been able to make an informed decision about the recommendations put to him. That means I don't think he's been treated fairly.

The recommendations made

Finance Shop needed to know enough about Mr W's circumstances and objectives to show the recommendations made were suitable for him. It has provided a copy of a fact find document dated 21 February 2017. This contains minimal information about his objectives and no, what are normally referred to as, "soft facts" at all. By this I mean further notes setting out why he thought certain things or why particular issues were important to him.

Instead, a typed answer of “Now” to the question “I want to review my retirement provision” is the only objective recorded. The fact find states a “Supplementary Questionnaire must be completed for each objective selected as now”. But it hasn’t provided any further questionnaire. In the fact find Mr B’s ATR is recorded as Balanced.

So, at this stage it really isn’t clear what Mr B’s retirement objectives were because the suitability report barely elaborates on this. It merely sets out an investment recommendation applicable to Mr W’s assessed ATR of Balanced. The objective of which would be to provide capital growth over the medium to long term with diversification. It refers to the “Finance Shop Guide to Investment Solutions” document being discussed, which it hasn’t provided a copy of either.

The report then recommends “due to the level of assets involved” a “Bespoke investment portfolio managed on a discretionary basis”. That would be “specifically tailored to your requirements”. As I’ve noted Mr W’s “requirements” aren’t otherwise identified or referred to. It is noted that the bespoke service would cost an additional 0.42% per annum in fees payable to Finance Shop.

The suitability report continued that the,

“underlying investment portfolio has been constructed by the Investment Committee and Finance Shop’s Chief Investment Officer, xxx, has described the approach taken as follows:”

This recommended a portfolio with two core holdings from its own portfolios to be augmented by other undescribed investments which would include structured products. No other information about these investments is given although the report says a summary schedule of current holdings is set out in Appendix 1, which also hasn’t been provided. So, from the suitability report it isn’t fully clear what was being recommended to Mr W and why it met his objectives. Or, why Mr W required the bespoke service and the extra costs it resulted in.

The report says given the level of Mr W’s assets he qualifies for additional services with the “highest level of bespoke care”. These services included “Reviews on demand”. And an annual “personalised review document” which isn’t described but would in my view be required if any level of ongoing service was being charged for. As well as access to the “Chief Investment Officer” referred to above. It isn’t clear whether this higher level of service in itself incurred the additional 0.42% per annum fee. It isn’t unreasonable for a business to charge for additional services where a client has a requirement for them.

But it isn’t clear whether Mr W wanted or required reviews on demand. Or whether access to the Chief Investment Officer added any value given the majority of the pension was invested in discretionary portfolios run by Raymond James who would manage the funds on a daily basis. So, it seems likely that there would be duplication of roles that both Raymond James and Finance Shop were charging for.

A balanced portfolio was recommended seemingly based on Mr W’s own appraisal of his ATR. Future investment returns are unknown, but broadly the greater the exposure to riskier investments like shares and property the higher the expected return will be over the medium to long term. So, Mr W’s ATR would be the basis of the asset allocation of the recommend investment portfolio. And the mix of those assets would largely determine the likely future investment returns. So, the charges applying to those investments and any accompanying SIPP were extremely important in the actual returns that would be achieved. And because the charges are largely known their impact can be easily considered. As I’ve said I think the

overall charges were high, included services unlikely to be required by Mr W or of benefit to him, and services likely to be duplicated by the DM provider and Finance Shop.

The charges

In giving advice Finance Shop needed to consider the overall impact of charges including its own fees in assessing whether the advice was suitable. If charges are high, then the investors objectives are less likely to be achieved. The evidence on what Mr W objectives were is limited, but he has consistently referred to comments from Finance Shop that a 5% per annum return was effectively a given. The financial regulator sets out requirements for pension illustrations (that must be provided when advice is given) and for pension plans the mid future growth rate assumption is 5% per annum when assets like shares are going to be held. That's before charges.

Other evidence I've seen that may have been put before Mr W at the meeting of 24 March 2017 indicates a 5% annual return was a "breakeven" return for the transfer on certain assumptions. So, whilst it wasn't recorded by Finance Shop it seems to me that achieving at least that level of return was Mr W's objective. That might or might not have been a realistic objective for him to have, but clearly how the funds were invested and the charges that were involved were key to what could be achieved.

As I've noted the various charges applying to Mr W's arrangements with AJ Bell, Finance Shop and Raymond James were summarised in the suitability report. As they were a combination of percentage and monetary based charges that weren't totalled or estimated, I think they could have been set out more clearly. And they should have been fully disclosed in the illustration provided to Mr W, but they weren't.

The illustration should show the impact of charges on the future fund values projected. So, if the investments achieved the mid 5% per annum projected return the impact of charges would reduce that return to X% and so on.

The AJ Bell key features illustration provided by Finance Shop dated 22 March 2017, shows only the initial charge of 3%. It shows the investment as being in "Panel Cash" (a bank deposit account) that had no ongoing charges itself. So, Finance Shop's own ongoing advice charge (OAC) of 1.17% per annum isn't reflected at all. Neither are Raymond James charges which the suitability report sets out as being around 0.81% per annum with further variable charges also payable on investment trades and so on. But according to this illustration, required under the financial regulations, the total annual impact of all charges over the 10 years to Mr W's intended retirement date was only 0.4% per annum, effectively being the impact of the 3% initial fee and AJ Bell's charges.

In reality the ongoing charges were at least 1.98% per annum, based on the details shown in the suitability report, with other flat rate charges and dealing fees to be added as well. If the impact of the initial charge and AJ Bell's charges was 0.4% as set out on the illustration then annual costs were more like 2.4%, so about half the return if the investments did achieve a 5% return. When setting the growth rates allowed in illustrations the regulator bases these on typical long-term returns for the type of assets to be invested in, in this case shares.

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, there's two issues here. First, the charges were so high, they'd consume half the typical long term expected return from the investment being recommended. That seems excessive given Mr W's likely objectives and a lower cost solution would have been more appropriate, particularly as he seemed to have no requirement for complex solutions or some of the services which were incurring costs. Finance Shop should have either recommended a cheaper solution or if it couldn't do that, confirmed this and suggested Mr W seek advice elsewhere. And second, because he hadn't been provided with full and clear information about the cost of the advice and product costs, he wasn't able to make an informed decision about the recommendations that had been put to him.

Given these multiple issues it isn't clear, as it needs to be, that Finance Shop's advice was "of value" for Mr W. It's possible that he may have suffered losses as a consequence.

I've considered this carefully. In terms of the investment recommendations, it isn't clear they met Mr W objectives, the costs were high and weren't properly disclosed. That said, Mr W was clearly aware of the initial cost of 3% of the value of his transfer. And whilst Finance Shop wasn't giving advice on the DB transfer that sort of charge wasn't untypical in the marketplace at the time. It also seems from the evidence that the Balanced ATR classification was appropriate for Mr W. I think he was aware that returns weren't guaranteed and that there was investment risk.

So, what I think is fair here is that the actual returns of his investment through Finance Shop be compared to a suitable benchmark investment. If the benchmark return is higher than he's suffered a loss and it's fair that Finance Shop compensate him for that. If there isn't a loss, then no compensation will be due. I'll set out how I think the comparison should be made below.

Putting things right

I said my aim in awarding compensation 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 set out how I thought it should do that by comparing the performance of the recommended portfolio of investments to a suitable benchmark. If the comparison showed a loss had been suffered I said compensation should be paid to Mr W's pension plan where possible and if not directly to him.

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr W said he accepted my provisional decision. He made a number of points. He said he was unaware of all the ongoing charges or that he was in a bespoke arrangement with additional charges. He said he had no requirement for "on demand" reviews and didn't require access to Finance Shops chief investment officer. In terms of the loss calculation, I'd proposed he said he was concerned about the fairness of any calculation undertaken by Finance Shop and asked if this could be independently verified with the costs of doing so being covered. And he said the benchmark comparison should be from the date funds were transferred to the AJ Bell Sipp as Finance Shop had delayed investment for many months seeking to better time investment markets, and funds still hadn't been fully committed by 20

November 2017. He says it later admitted in a review meeting that it would have been better to invest immediately.

Finance Shop didn't accept my provisional decision and provided a substantial response, including copies of documents it hadn't previously provided. It said there were a number of errors and misunderstandings. It said it provided the discretionary investment management not Raymond James so there was no dual charging.

Finance Shop said Mr W was fundamentally complaining about investment performance and was satisfied when this was good and unsatisfied when it wasn't. It said he'd been happy with the service provided at reviews but had expressed "*frustration*" in 2018 over performance, but market context was given, and cash flow modelling showed he was still on target. And that he'd been satisfied with performance during 2021 and 2022. It said it considered the complaint was time barred as Mr W had brought it too late and it couldn't be referred to our service. It said Mr W had either six years from the date of the advice or three years from when he ought to have known there was problem to make his complaint. It said as the transfer was made more than six years before he complained and as Mr W had said he was told a 5% annual return would be achieved, and clearly wasn't being by 2020 he should have complained then but hadn't.

Finance Shop said it was Mr W who was keen to transfer, having been referred to it by work colleagues who'd already done so. It said it clearly explained in 2016 that it couldn't provide transfer advice. And when he contacted it again in 2017 it had referred him to Pearson for transfer advice but said its adviser had completed the fact find around this on 21 February 2017. It said at this meeting it was established that "*Mr W had investment experience*" through owning Aviva shares and self-selecting investment funds in his Aviva group personal pension plan. It said he wanted to know how it would manage the funds if Pearson recommended transfer, referring to how satisfied his work colleagues were and specifically enquired about its discretionary portfolio service.

Finance Shop said that should Pearson advise Mr W to transfer it had explained "*all potential investment solutions*" using its Guide and a copy was given to him. And he expressed a preference for option 4 – the Bespoke Discretionary Portfolio, which was warranted for various reasons including "*his general investment knowledge*". It said it hadn't made any investment recommendations at this stage. It said potential returns would have been discussed in relation to risk, but at no point was a 5% return promised and that Mr W had sufficient investment knowledge to know that returns couldn't be guaranteed, as was made clear in the subsequent suitability report. It said there was no evidence its adviser had encouraged the transfer, and this was "*selective recollection*" on his part.

Finance Shop said a further meeting on 24 March 2017 was arranged at its office "*For convenience*", as Mr W was concerned about the transfer value deadline of 4 May 2017, with Pearson to attend to make its own recommendations in the morning. It said a second meeting was then to be held in the afternoon with it to "*complete the necessary forms*" if Pearson recommended transfer. It said Pearson completed the transfer forms with Mr W and he had the option to wait until the transfer was complete before discussing investments again, but "*he chose not to*". It said it couldn't comprehend why Mr W thought it had provided any transfer advice and was presenting a misleading version of events to support his argument and was mis-representing his level of knowledge.

Finance Shop said Mr W then met with its adviser (that day) to discuss investment solutions and his requirements and all costs were fully discussed, including lower cost options as set out in the Guide, with the bespoke discretionary portfolio recommended. It provided various client agreements it said had been signed by Mr W on 24 March 2017, which it said confirmed he was aware of and had accepted all charges. It said it believed "*Mr W was*

provided with an illustration ... showing all investment costs” But unfortunately it didn’t have a copy, but it provided a sample for another client to demonstrate this was its procedure. It said the illustration already provided (showing no investment charges) had been sent to it by Pearson and retained in its records. It said charges were not excessive for the services provided. It said he viewed the ongoing services charged at 0.75% per annum as being “*vital*” due to size of his fund and close proximity to retirement. It said this charge wasn’t excessive. It said there were no additional charges for services like reviews on demand which were automatically provided due to the size of his investment. It said that its overall ongoing charges agreed by Mr W were 2.02% per annum and were lower than this in subsequent years.

It said it then introduced its chief investment officer and Mr W was keen to proceed and went ahead and signed the necessary paperwork with FS, which due to Mr W’s “*desire to wrap everything up*” had been pre-prepared “*in preparation for a meeting*”.

Finance Shop said once everything had been reconfirmed with Mr W its admin team had finished the suitability report which was then presented to him and signed. It said this had contained an inadvertent error in stating the transfer had already been completed, but that Pearson had at that point made the transfer recommendation.

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.

I’ve considered Finance Shop’s comment that the complaint is time barred carefully. I don’t think that it is, and it is one our service can consider. This potential issue was raised with our investigator and Finance Shop consented to our service considering the complaint, and it isn’t possible for a firm to withdraw consent once it has been given.

So, I am satisfied our service can consider the complaint.

Finance Shop didn’t give the transfer advice, but it was closely involved, confirming that it “*project managed*” the transfer in its suitability report, so Mr W initial concern that it had given him advice is hardly surprising. Instead, I provisionally upheld the complaint on the basis that his investment objectives weren’t adequately clarified, charges hadn’t been properly disclosed, that additional services were charged for without adequate justification.

Finance Shop has now provided further documents setting out its charges which it says show that Mr W understood and agreed to the costs involved. It has also provided a further commentary in respect of his objectives and requirements including attributing quotes from him. For example, that during the initial fact find meeting he’d wanted to know how it would manage the funds if the transfer proceeded. That he specifically wanted information on the Discretionary portfolio with him saying he didn’t want “*anything inferior*” and that this was “*vital*” given the size of the transfer, “*as he feels*” with,

“his general knowledge of investing, a hands-on, in-house approach with greater diversification and the ability to make changes without seeking permission first is warranted”.

Details like this are what I referred to as soft facts in my provisional decision but there aren’t recorded in the fact find provided. And, Finance Shop hasn’t provided copies of any notes or other records from the time showing these comments, or indeed mentioned them previously.

So, it isn't clear where this evidence has come from and I'm not persuaded by it now, particularly as these soft facts aren't referenced in the suitability report either. Which says having discussed the options the "*Bespoke*" discretionary portfolio was recommended, but only because of the level of assets involved to allow further diversification, using structured products which could normally be purchased outside a discretionary portfolio without the additional cost if deemed appropriate. Speed of dealing is referred to, but no other justification is provided. I don't think it is clear from the evidence why Mr W required a discretionary service that appears to have been an additional cost option to the alternatives referenced on the Guide to Investment Solutions.

Nor am I persuaded by Finance Shop's argument that Mr W had significant investment knowledge and experience and would be aware of risks and so on and in effect had already made up his mind about what he wanted. I don't think he can be fairly described as having wide investment experience. He held some shares in his employer through a saving scheme and was a member of the money purchase pension fund and appears to have generally picked index tracking type investment options. Had he had wide investment experience he would have been unlikely to need Finance Shop's advice and recommendations.

As I said in my provisional decision Mr W did know there were charges and Finance Shop has now provided further documents including agreements signed by him in respect of ongoing charges. But it accepts that it doesn't have a specific key features illustration setting out the costs and showing their impact on future investment returns as it should have. The key features illustration is an important document in not just confirming the charges involved but what their impact would be on future investment returns, which might only be briefly summarised in a meeting or a suitability report. It isn't clear to me why Pearson would have sent Finance Shop the illustration that does exist, which significantly understates charges and costs or why it would retain it on its file.

Taken at face value the haste in which things were actioned might explain why no illustration is available, but either way without clear evidence of it being provided to Mr W, I don't think the full costs and charges involved were adequately disclosed to him. And that meant he couldn't make an informed decision about the recommendations. In part that's because it's clear from Finance Shop's explanation of what happened on 24 March 2017 that Mr W was asked to sign many different documents and forms that day. From the suitability report, it is difficult to follow what all the charges are. The documents now provided, whilst confirming costs and signed by Mr W somewhat add to the confusion by setting out the charges differently and seem to use the word "*bespoke*" as arbitrarily as the suitability report in respect of different things.

For example, there is a Discretionary portfolio management agreement with an annual fee of 0.35% plus VAT of 0.07% to give 0.42% in total, which is signed by Mr W running to 16 pages. With an additional one page "*On-going Fee Agreement*" form which is also signed. The suitability report refers to this as a "*the additional cost for the Bespoke service above*". But "*bespoke*" is one of eight options under the discretionary service, all of which appear to have the same charge. Mr W also signed a Finance Shop "*Fee and Service Level Agreement Form*", with the "*Active*" service level picked which is described as "*MANDATORY*" at a cost of 0.75% per annum. But a "*Bespoke*" service level is also offered at an additional 0.35% per annum charge, which is presumably different from the discretionary portfolio option. But the document doesn't set out what services are to be provided and refers to several other documents for this, which haven't been provided.

So, I'm not persuaded that the impact of the many charges would have been entirely clear to Mr W at that meeting in the absence of an illustration. But these additional documents do clarify that the extra "*Meridian+*" services referred to in the suitability report as providing the "*highest level of bespoke personal care*" being reviews on demand an annual review

document, access to Chief Investment Officer and liaison with your tax and legal advisers, weren't being additionally charged for as the annual fees Mr W would pay exceeded the £5,000 threshold for these to be provided.

Likewise, simply asserting that Mr W wanted bespoke services without there being any explanation of why they were appropriate or what benefit they would specifically provide in return for the additional costs doesn't explain why the recommendation was suitable as required under the Conduct of Business rules.

Taking everything together I don't think the advice was suitable, the charges were unclear and not properly illustrated. And it's possible that Mr W has suffered losses because of the unsuitable advice, if so, it is fair that he be compensated for that. So, I think Finance Shop should undertake a comparison to see if a loss has been suffered. Mr W has asked if any calculations can be independently checked and the cost of this covered by Finance Shop. He can certainly have the calculations checked if he wishes but our service would expect the calculations to be correctly carried out by Finance Shop and there is no reason to believe this won't happen. And it must also provide him with a simple calculation of how it arrived at the figures.

Putting things right

My aim in awarding compensation 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.

Fair compensation

I think Mr W would have invested differently. It's not possible to say *precisely* what he would have done, but I'm satisfied that what I've set out below is fair and reasonable given Mr W's circumstances and likely objectives when he invested.

What should Finance Shop do?

To compensate Mr W fairly, Finance Shop 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.
- The date of investment I refer to below is the date funds were first invested by Finance Shop into the DM portfolio, after the deduction of the 3% initial charge that Mr W was aware of.
- Finance Shop should also add any interest set out below to the compensation payable.
- If there is a loss, Finance Shop must pay into Mr W's pension plan to increase its value by the 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 Finance Shop is unable to pay the compensation 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 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 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%.
- If either Finance Shop or Mr W dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr W receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- Provide Mr W with a simple calculation of how it arrived at the figures.

Income tax may be payable on any interest paid. If Finance Shop deducts income tax from the interest, it should tell Mr W how much has been taken off. Finance Shop 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
Finance Shop Bespoke DM portfolio pension	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of investment	Date ceased to be held	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid 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 withdrawal from the portfolio 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Finance Shop 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 chosen this method of compensation because:

- Mr W wanted Capital 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 Mr W's circumstances and risk attitude.

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 Finance Shop Ltd.

I direct Finance Shop Ltd to undertake the loss calculation set out above and to pay any compensation due.

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.

Nigel Bracken
Ombudsman