DRN-5379982

The complaint

Mr M has complained about the advice provided to him by KRD Financial Advisers Limited ('KRD') in relation to his personal pension.

KRD advised Mr M to transfer his pension from Royal London to an Aviva Self-Invested Personal Pension ('SIPP') and utilise a discretionary fund manager ('DFM').

Mr M has stated that this advice was unsuitable and has caused financial loss.

What happened

Mr M and KRD completed a fact-finding exercise on 8 January 2020. This documented Mr M's circumstances and objectives at that time and formed the basis for the KRD advice.

Mr M's attitude to risk ('ATR') was also assessed around this time. Mr M was initially assessed as having a low medium ATR however this was subsequently increased to high medium.

KRD's advice was documented in their suitability report dated 20 January 2020.

This recorded Mr M's circumstances at that time, with the letter stating that Mr M was aged 59, married, employed, and had an income of £55,000 a year.

Mr M's objectives were documented as being to review his pension and, if appropriate, to move this to a new provider and utilise a DFM which matched an increased appetite for risk with higher potential for growth.

The suitability letter said that the existing pension was a Royal London personal pension which had been moved into flexi-access drawdown. The fund value of £115,423 was invested into the Royal London Governed Portfolio 2. This was considered a low medium risk fund with the policy having charges of 0.45% per year.

The new pension being recommended by KRD was detailed as being an Aviva Wrap pension with the funds being placed within the Brewin Dolphin Managed Portfolio Service in line with Mr M's newly assessed high medium risk profile.

The charges applicable to the new pension were a product charge of 0.3%, investment and DFM charges of 0.88%, an initial advice charge of 1% and ongoing adviser charges of 0.65%.

Mr M accepted the advice, and his Royal London pension was transferred to Aviva.

Mr M's adviser left KRD for a new advisory business around July 2021, with Mr M becoming a client of this new firm shortly afterwards.

Having become concerned about the value of his Aviva pension Mr M arranged for it to be transferred back to Royal London in July 2022.

Subsequently, Mr M registered a complaint with KRD about the suitability of the advice they provided in January 2020.

KRD did not uphold the complaint and stated that they considered their advice to have been suitable.

Unhappy with KRD's response to his complaint, Mr M referred the issue to this service in January 2024.

Our investigator looked into things and upheld Mr M's complaint. The investigator concluded that the advice to switch Mr M's pension to Aviva and utilise a DFM investment strategy was unsuitable, and that had suitable advice been given Mr M would have most likely retained his existing Royal London pension.

Whilst Mr M agreed with the outcome reached, he has since provided significant documentation and commentary regarding the redress recommendation provided by our investigator relating to both what should be included in the redress calculation and the size of any payment to cover the distress and inconvenience this issue has caused.

For their part, KRD also disagreed with the outcome reached and redress recommended.

As no agreement could be reached the case was passed to me for a decision.

I initially issued a provisional decision which said:

"The first thing I've considered is the regulation around advice like that provided by KRD in this case.

The FCA Handbook contains the principles for business.

These include:

- *Principle 2, which requires a firm to conduct its business with due skill, care, and diligence.*
- *Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.*
- *Principle 6, which requires a firm to pay due regard to the interests of its customers.*
- *Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair, and not misleading.*

The principles are relevant and form part of the regulatory framework that existed at the time of this advice and as such I need to have regard to them in deciding Mr M's complaint.

Additionally, COBS 2.1.1 R requires a firm to act honestly, fairly, and professionally in accordance with the best interests of its clients and COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments.

Further, in 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching that I believe is still helpful today.

It highlighted four key issues it thought should be focussed on:

1. *Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?*

2. *Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.*
3. *Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?*
4. *Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered, or put in place.*

Finally, the regulator has also made it clear that when considering the use of a discretionary fund management (DFM) arrangement, firms need to take into account issues such as:

- *Likely cost: do the overall costs justify the potential for improved performance?*
- *Size of funds under management: once a consumer has a moderately-sized fund, they may benefit from a model portfolio which is rebalanced automatically by a DFM ranging all the way up to bespoke arrangements for clients with larger funds.*
- *Investor's knowledge and experience: FCA has said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments the DFM might make.*
- *Level of disclosure: whether the benefits vs costs of the arrangement were explained to the investor in terms they were likely to (or appeared to) understand.*

In considering the regulation and guidance in place at the time of KRD's advice I have reached the same conclusion as our investigator and for broadly the same reasons.

The new Aviva policy was more expensive than the existing Royal London arrangement with there being limited justification for the additional expense.

Whilst the use of a DFM has been recorded within the file as a reason justifying the transfer, I'm not convinced that this was required for Mr M. Mr M did not have any specialised investment requirements nor an especially large pension portfolio that may justify the additional management of the funds.

In line with what our investigator has said, I am also of the opinion there was no need for Mr M to increase the level of risk associated with his pension savings. The Royal London pension represented the bulk of his pension assets and Mr M was potentially looking at major life changes (retirement and emigration) in the near future. As such the low medium risk associated with the existing Royal London pension is considered suitable.

Even Mr M did want to increase the level of risk taken with his pension investments, this could have been achieved with an internal fund switch at Royal London without exposing Mr M to the increased costs of the Aviva / DFM.

Overall, in line with what our investigator has already said, there are limited justifications on file in support of the transfer advice. It was reasonable for Mr M to take some risk with his pension investments; however, the existing Royal London plan was already investing Mr M's pension at a risk level I consider suitable, and at a lower cost to Mr M than the new Aviva SIPP.

As such, had suitable advice been given, I am of the opinion Mr M would have been advised to retain his existing Royal London pension and the same underlying investment portfolio.

In line with the above, I have reached the same outcome as our investigator and for broadly the same reasons. Where this provisional decision differs from the findings issued by our investigator is with regard to the redress instructions.

Since our investigator issued their findings Mr M (through his representative) has provided significant detail around the redress they consider reasonable. I would firstly like to note that what I have provided below is the process I would expect KRD to follow in calculating redress rather than detailing the specific figures to be used in any actual calculation.

In requiring KRD to base the redress calculation on a notional value showing what the Royal London pension would have been worth had it been retained, the redress below covers the difference in performance between the ceding Royal London scheme and the new Aviva scheme. The calculation also covers the differences in charges levied on the two pension schemes.

A key point which I have had to consider when establishing fair redress relates to the fact that KRD were removed as Mr M's financial advisers around July 2021, with a new firm being appointed. I appreciate here that the individual adviser remained the same however the business ultimately responsible for the adviser's actions, and for providing Mr M with ongoing advice and support changed at that time.

With regard to the transfer of the Royal London pension to Aviva I do not believe it would be appropriate to cap the redress calculation in July 2021. Whilst Mr M had a new advice firm at that time there is no evidence of any new advice or review taking place, and I consider it reasonable for Mr M to assume the ongoing suitability of the Aviva pension recommended by KRD in January 2020.

Additionally, I have reached the same conclusion regarding any ongoing regular contributions made by Mr M into the Aviva pension from inception until its transfer back to Royal London in July 2022.

With regard to the transfer in of Mr M's occupational defined contribution pension with Legal and General which took place around April 2022, KRD did not gave any advice with regard to this transfer, with Mr M being a client of another advisory business at the time. As such I do not consider it reasonable to hold KRD accountable for any gains or losses made as a result of this. As such, this transfer should not be included in the redress calculation.

Moving on to Mr M's Contracted Out Pension Entitlement ('COPE'). The documentation on file shows that only one Royal London policy was transferred as part of the January 2020 KRD advice. Royal London have confirmed that this policy did not have any COPE element attached. Whilst Mr M did have a previous Royal London policy which did have a COPE element, this had been transferred internally some time ago. I appreciate that Mr M feels he has lost out on this COPE element, however this decision is focussed on the suitability of KRDs January 2020 advice. As the advice provided at this time did not have any impact on Mr M's COPE I have not considered this further within this decision nor within the redress instructions below.

Finally, I have considered the amount recommended by our investigator regarding the distress and inconvenience KRDs unsuitable advice has caused Mr M. I appreciate that Mr M suffers with ill health, and that the impact of this ill health is exacerbated by the fact that Mr M now lives in Thailand where he is personally liable for medical costs. However, I have again reached the same conclusion as our investigator regarding the level of payment needed here.

Whilst I sympathise with Mr M's ill health, I do not believe it is reasonable to hold KRD solely *responsible for any detriment to Mr M's health. In addition, whilst it is unfortunate any medical care Mr M may need must be paid for, I also do not consider it reasonable to hold KRD responsible for Mr M's decision to live in Thailand where medical costs fall to Mr M personally.*

Additionally, whilst I accept that the fluctuating value of Mr M's Aviva pension would have been concerning, Mr M removed KRD as his advisers in July 2021, limiting their ability to provide ongoing advice and support which may have provided reassurance at that time.

Overall, given this, I believe the £300 amount recommended by our investigator is reasonable in relation to the distress and inconvenience caused by the unsuitable advice."

In addition to the above, I asked all parties to provide any additional commentary or evidence they wanted taken into consideration before I issued my final decision.

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.

Both KRD and Mr M (through his representative) provided additional commentary which I have considered below.

KRD provided performance graphs which showed that had Mr M stuck with the recommended investments in the longer term he would, most likely, have been better off.

However, when I assess the suitability of advice, performance of the underlying investments recommended is not something I consider. As I have detailed above, the pension recommended by KRD was more expensive than his ceding scheme with the use of a DFM investment solution not sufficiently justified. As such, whilst the recommended investments may have eventually outperformed the ceding investments had they been retained over the longer term, this is not something which can be used to justify the initial advice.

KRD have also noted that Mr M removed them as his advisers around July 2021 and questioned whether the redress calculation should be capped at that time. As I explained in my provisional decision, I considered carefully whether the redress calculation in its entirety should be capped at the point Mr M removed KRD as his advisers. However, in line with what I have said above, whilst KRD were removed as advisers, no new advice was received on the pension, and as such Mr M was, more likely than not, still of the opinion the Aviva SIPP was suitable based primarily on the advice received from KRD and as such do not believe it is fair or reasonable to cap the whole redress at the point KRD were removed.

Overall, the additional commentary provided by KRD has not persuaded me to change my decision regarding the suitability of the advice they provided nor the redress I have concluded is required.

Moving on to the additional commentary provided by Mr M and his representative the first point I would like to clarify relates to the redress instruction relating to the Legal and General policy Mr M transferred into the Aviva SIPP in April 2022. I have explained above that this should not be included in the redress calculation as KRD did not advise this transfer. I remain of the opinion that this is a fair outcome however to be clear the redress instructions provided require the value of the Aviva policy to also be recalculated based to reflect this transfer's omission from the redress. This is to ensure the value of the Aviva policy is not overstated in the redress calculation required.

With regard to the amount I have awarded in relation to the trouble and upset this issue has caused Mr M I remain of the opinion that the amount I have included is fair. I have considered the additional documentation provided by Mr M however the non-financial injustice document forwarded does not relate to this service, with The Pensions Ombudsman being a different organisation with their own internal processes. I do not intend to dimmish the impact this issue has had on Mr M, and fully accept that Mr M has suffered significant ill health over recent years. However, I must also consider that Mr M removed KRD as his advisers around July 2021 and as such any help, guidance, or reassurance that Mr M may have required (and which may have reduced his stress levels at that time) were another firms responsibility. I do not consider it reasonable to hold KRD accountable for all the distress the fluctuating value of his pension caused Mr M, when their ability to aid Mr M during this time was removed by his replacement of them as his advisers.

With regard to the comparison, I have requested below, this will effectively compare the value of the unsuitable Aviva SIPP to the value of the Royal London policy had it been retained. If the growth of the Royal London policy over that time was higher than the Aviva SIPP, then a financial loss will have occurred, and redress will be payable.

Finally, with regard to Mr M’s tax status in retirement I remain of the opinion that over the course of his retirement Mr M is most likely to be a basic rate taxpayer. As such, in line with the instructions below, if the redress cannot be paid into the pension a notional reduction to the redress figure should be made to reflect this.

Overall, the commentary provided by both KRD and Mr M have not persuaded me to change either the outcome of my decision nor the redress instructions I believe are fair and reasonable.

As such the redress instructions below are unchanged from those included in my provisional decision.

Putting things right

Fair compensation

My aim is that Mr M 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 M would have remained with his previous provider, 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 Mr M's circumstances and objectives when he invested.

What must KRD do?

To compensate Mr M fairly, KRD must:

- Compare the performance of Mr 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.

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

- If there is a loss, KRD should pay into Mr M'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 KRD is unable to pay the compensation into Mr M'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 M won't be able to reclaim any of the reduction after compensation is paid.

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

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

- If either KRD or Mr M 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 M receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.

- Pay Mr M £300 for the worry of losing money because of the advice he'd received.

Income tax may be payable on any interest paid. If KRD deducts income tax from the interest, it should tell Mr M how much has been taken off. KRD should give Mr M a tax deduction certificate in respect of interest if Mr M 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
Aviva SIPP	No longer in force	Notional value from previous provider	Date of investment	Date the policy was transferred back to Royal London	Any losses identified at the date the policy was transferred back to Royal London should be brought up to date in line with the performance of Mr M's new Royal London pension.

Actual value

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

Notional Value

This is the value of Mr M's investment had it remained with the previous provider until the end date. KRD should request that the previous provider calculate this value.

Any additional sum paid into the Aviva SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in. as I have explained above, the amount transferred in from Legal and General does not need to be considered here.

Any withdrawal from the Aviva SIPP 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 KRD totals all those payments and deducts 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, KRD will need to determine a fair value for Mr M's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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:

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

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

- 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 M'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. So, the 50/50 combination would reasonably put Mr M into that position. It does not mean that Mr M 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 M could have obtained from investments suited to his objective and risk attitude.

My final decision

In line with the commentary above I am upholding his complaint and require KRD Financial Advisers Limited to pay redress in line with the methodology outlined above.

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

John Rogowski
Ombudsman