DRN-5408327

The complaint

Ms T is represented.

In 2018 she had two Standard Life ('SL') Personal Pensions ('PPs') – one was a Group Personal Pension ('GPP') and the other was a Flexible Retirement Plan ('FRP'). She says DTE Risk and Financial Management Limited trading as DTE Financial Planning ('DTE') gave her unsuitable advice, in the same year, to move both PPs into an SL Self-Invested Personal Pension ('SIPP'). It is also her representative's view that the recommendation was driven by DTE's desire to generate initial and ongoing fees from the transaction.

What happened

On 19 February 2025 I issued a Provisional Decision ('PD') on the complaint, upholding it.

The PD's main findings were –

"*The Pension Switch Recommendation*

Before dealing with the recommendation itself, I will briefly address the reliability of the point of advice documentation. DTE stands by them, but I have noted submissions from Ms T and her representative that appear to dispute the application of the service terms, fees, risk profile assessment and the basis on which the pension switch was recommended to her – all of which were documented in the service agreements, risk profile questionnaire/assessment form and the suitability report (and its enclosures).

The completed fact-find document is signed by Ms T and dated 21 August 2018. By her signature, she confirmed she had received the client agreement terms document and the client agreement charges document. The client agreement document was signed by her on the same date, directly below the section in the agreement that confirmed the 3% Initial Advice Fee ('IAF') and the 1% Ongoing Advice Fee ('OAF'). It would appear that her onboarding by DTE happened mainly on this date, because the completed knowledge and experience assessment document and the completed risk profile questionnaire were also signed by her on 21 August 2018. The risk profile assessment outcome document (including information on the recommended portfolio) was signed by her on 16 October 2018.

I am satisfied that these documents are reliable, they were presented to Ms T and her signatures confirm she read and agreed with their contents.

She does not recall receiving the 10 October 2018 suitability report (and its enclosures). The report is not signed by her where her signature should be. However, there is evidence that SL wrote to her on 5 November 2018 to confirm that the SIPP had been set up. On the balance of probabilities, I consider it more likely (than not) that the report was issued to her. It is unlikely she would have proceeded with the switch and application for the SIPP, culminating in SL's notice about the SIPP being set up, if the details of the recommendation had not been presented to, and agreed by, her.

I now turn to suitability of the recommended pension switch. As summarised in the background section, Ms T and her representatives dispute the objectives stated in the suitability report.

In this respect, I have taken the following approach – DTE was the expert in the relationship; of course, it had to give due regard to its client's objectives; however, its advisory role meant it also had a regulated responsibility to give advice in Ms T's best interests (as I expand on below); this meant that if there were grounds to advise that an objective was not in her best interest DTE was obliged to do so; this allows for consideration of the objectives in the report in terms of what she asked for (which is disputed) but also, and perhaps mainly, in terms of what was in her best interest; and the latter should ensure fair treatment of the stated objectives in relation to suitability of the recommended pension switch.

At the point of advice, Ms T was around 15 years away from her planned retirement age and she had three pension arrangements. With no disrespect intended, it is fair to say they all had relatively modest values – the two PPs had a combined value of around £55,000 around the time of fact-finding and her workplace pension's value at the time was £14,000. There is relevance in this, as I explain later.

Her answers in the knowledge and experience assessment essentially confirmed she was an inexperienced investor. She had no experience in 12 of the 13 products listed in the assessment, the only exception being a premium based pension (which stood to reason, given that she held three pensions). She confirmed having always taken advice, no experience in execution only transactions and no professional related knowledge or experience of investments.

The report says Ms T's objectives were to consolidate her pensions, have an arrangement with more flexibility regarding benefits, have access to wider investment options and to have an OAS. My initial observations on these, in the circumstances of her case and regardless of whether (or not) they were truly her objectives, are as follows –

- *I agree with her representative's point that pension consolidation was not achieved, only two of the three pensions were combined;*
- *there is no evidence she instructed that her workplace pension should be excluded, there seems to have been no reason not to properly consider it for consolidation (or to consider it as a destination for the recommended switch), DTE should have done this, and I have not seen evidence to explain why the report did not do so;*
- *the report itself confirmed that the GPP and FRP had access to over 330 funds, but it gave no reason(s) why Ms T, an inexperienced investor who had no history of self-investment and clearly had no intention to self-invest (in its strict meaning) her pension, would personally seek access to more than 330 funds;*
- *the report also shows that both pensions were already suitably invested in balanced profiles that matched her moderate risk profile;*
- *information about both pensions confirms they already offered flexibility in terms of benefits – after all, the FRP's title was defined by flexibility – but the report gave no reason(s) why more flexibility was sought and, if so, what additional flexibility was desired;*
- *both pensions were already invested in managed funds, which arguably did away with a need for an OAS, I do not say or suggest that no independent advice should have been taken for them, but that could have been approached by Ms T at her discretion over time, as opposed to a fixed and costly OAS;*
- *as such the OAS objective was not borne of the existing circumstances, instead it was essentially created, and it only became necessary because of the move to the SIPP where the pension had to be self-invested, which Ms T could not have done*

without an OAS;

- *for this reason, it seems unlikely Ms T entered the pension review asking for an OAS, she did not need one for the GPP and FRP, and it seems more likely (than not) that an OAS was sold to her as being a necessary part of the SIPP recommendation.*

The total combined ongoing cost of the GPP and FRP was roughly 1% of their combined value. Following the recommended pension switch Ms T faced the following costs – 3% IAF (or 0.2% per year, if spread over the 15 years term used in DTE's advice) for DTE's initial advice work and its work in implementing the pension switch; 1% per year OAF for the OAS, and 1.10% per year for the SIPP product.

The total cost to her, on an ongoing basis, therefore became – 0.2% + 1% + 1.10% = 2.30%. SL's illustration document appears to confirm the same figure. Her total annual costs more than doubled. It is unsurprising that the report reflected the need, over the term, for the SIPP to outperform the previous two pensions by up to 1.24% per year, just to break even and provide her with the funds they would have produced for her, but for the switch. SL's illustration document refers to a slightly higher outperformance requirement – 1.6% per year.

In other words, discounting the adviser's findings on the prospects of better performance in the SIPP – which I treat later – Ms T's starting point with the SIPP was a position worse than she previously had with the PPs. She had to rely on unguaranteed outperformance just to match what she previously had, with the need for even more such outperformance to make the switch worthwhile (and to give her more than she previously had). For added context, she would be paying more than double her previous ongoing costs to be in this position. Yet the entire affair was unrequired, given that, as I summarised above, none of the stated objectives made it necessary for her to be in this position. Based on the same analysis and the flaws noted above, I do not even consider that any of the stated objectives presented a desire, if not a necessity, for her to be in this position.

The regulator's Principles for Businesses, at Principle 6, required the partner to pay due regard to Miss C's interests and treat her fairly. The same responsibility was echoed in the regulator's Conduct of Business ('COBS') rules at COBS 2.1.1R, which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and in relation to designated investment business carried on for a retail client. Ms T was such a client, so she was owed an advisory service in which, overall, the advice had to be in her best interests.

Furthermore, remaining with the need to uphold her best interests, the regulator's 2016 guidance on 'assessing suitability' confirmed an expectation upon firms to objectively consider their clients' needs and objectives. Therefore, as I said above, even if the stated objectives were initiated by Ms T – which she disputes – DTE retained the duty to advise objectively on them, including on whether (or not) any of them was in her best interest.

In 2009, the regulator produced a checklist for pension switching, which highlighted four key issues that advising firms were expected to consider. One of the four considerations was 'charges' and the question to address was – is the consumer being switched to a pension that is more expensive than the existing one(s) or a stakeholder pension without good reason?

In 2012 further guidance from the regulator, on the same matter, included the following –

"Replacement business

2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to *consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*

2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.

2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation."

The suitability report was clear about the additional costs of the SIPP recommendation and on the impact of that in terms of outperformance required in the SIPP, so I do not consider DTE did anything wrong in relation to the concerns the regulator addressed in paragraph 2.11 above.

With regards to the concerns expressed in paragraph 2.12 above, the adviser appears to have applied notable effort, over around two and half pages of the report, to set out a strategy for achieving the required outperformance (and possibly more).

I am mindful that the data used in this respect is in dispute, Ms T and her representative have given reasons why they consider the data and the adviser's claims to be unreliable and misleading. I am not persuaded there is a need to determine this.

Based on the report, I can find that the adviser made effort to demonstrate, to Ms T, why he expected improved performance to be more likely in the new SIPP investment. Whether (or not) his claims and the data used for them were credible, is indeed important and in another case, depending on the circumstances, I could find cause to look into this. In the present case, my focus remains on the flaws identified in the initial observations I summarised above, on the unnecessary and avoidable increased costs to Ms T and on the unnecessary and unsuitable nature of the position the switch placed her in whereby her SIPP had to chase outperformance just to match the PPs she was advised to drop and had to chase even more outperformance just to make the switch worthwhile.

These are sufficient considerations to outweigh the adviser's claims about the prospects of outperformance. There were no guarantees with those claims, so, at best, they were hopeful (whether (or not) the data underlying them was credible). Therefore, the step Ms T was advised to take in the switch was somewhat of a gamble based on such hopeful prospects of better performance – not, for the reasons I have already addressed, based on meeting any pre-existing objective.

I have considered her overall profile, in order to take a view on whether (or not) it lent itself to her taking such an approach.

She had a moderate risk profile, so she was prepared to take some risks, but the report notes that she essentially had no capacity for loss. Her pension had a modest value, there was no arrangement to make additional contributions into it, she had no savings and no emergency fund, there is no evidence that she had surplus income and she has reported in the complaint that contrary to what the report says, she had liabilities at the time.

She had a 15 years investment horizon, over which DTE might argue there would be ample time for recovery of losses. However, the above circumstances remained relevant. They meant, especially with regards to pension value of around £50,000, periods of losses could, over time, potentially deplete much of the pension before it had any opportunity to recover. Of course, the same could have happened in the GPP and FRP, but they were not chasing outperformance to cover a more than doubling of costs. The SIPP had to chase such outperformance for such reason. In this context, the extra costs amounted to fixed and ongoing added erosions of capital in the pension, and any investment losses on top of that would have compounded the impact on the pension – wherein lay the potential for losses, over time and against the backdrop of zero capacity for loss, that would probably be significantly more difficult to recover form than would have been the case in the GPP and FRP.

All the above meant Ms T's profile did not lend itself to the aforementioned approach.

Overall, on balance and for all the above reasons, I consider that every important indicator at the time of advice showed that the pension switch was unsuitable. Ms T should not have been advised to switch her pensions, instead she should have been advised to maintain the existing GPP and FRP as they were. As someone who usually took advice for her financial arrangements, it is more likely (than not) that she would have retained the PPs if advised to do so. She had held them for quite a long time – the GPP since 2000 and the FRP since 2007 – and they appear to have been suitably invested to match her profile, so she seems to have been satisfied with them and would probably have continued with them, but for DTE's unsuitable pension switch advice.

Even if DTE took a view on the benefits of an OAS as being something potentially of value to Ms T, I consider that it should have concluded that it was not needed and not in her best interests at the time and in her circumstances. The higher costs, modest pension value, suitability of her existing arrangement (without an OAS) and investment outcome uncertainties, amongst the other factors treated above, should have led to this conclusion.

The OAS

In very brief terms, I am satisfied with DTE's concession in this matter. It accepts its failure to conduct the annual reviews in November 2021 and November 2022, and it has offered a refund of the OAF charged for both years. I endorse this and will make an order in my draft redress provisions below in this respect.

The goodwill payment added to the offer is a matter for DTE's discretion. I do not have the power to order such a payment. DTE is invited to stand by the goodwill offer, but I accept it is free to withdraw it.

However, I have the power to address the trouble and inconvenience the complaint matter has caused Ms T. Our service's guidance on how we approach awards for trouble, distress and inconvenience can be found on our website, at the following link – https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-for-distress-or-inconvenience. Under this guidance, awards up to £750 can be considered where a firm's wrongdoing has caused a complainant considerable distress, upset and worry, and where it has caused significant disruption.

In the present case, I consider that there has been an impact upon Ms T in terms the trouble, upset and distress caused by not receiving the missed reviews, and, initially, by being led into a pension switch that was unnecessary and not in her best interest. The non-financial effect on her of losing what she previously had in the PPs is evident from her *complaint submissions and is, I consider, considerable. The unsuitable switch has also caused disruption to her pension plans. For these reasons I will award her £750 in compensation for trouble and distress*."

The PD also shared, with the parties, draft redress provisions.

Ms T's representative confirmed her acceptance of the PD, and provided clarification that she "… *transferred the monies away from the SIPP DTE had set up for her on November 22nd 2023 & the value transferred out was £53519.66*". DTE also confirmed its acceptance of the PD and the draft redress provisions.

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, and given both parties' acceptance of the PD, I retain the findings and conclusions in the PD and I incorporate them into this decision.

I have also based my redress orders below *mainly* on the draft redress provisions I shared in the PD, with an amendment required to reflect the SIPP switch in November 2023 that has been confirmed.

Furthermore, I said the following in the PD –

"*Where Ms T stands on the SIPP in relation to the previous GPP and FRP seems unclear. I do not know if she wishes to return her pension to the GPP and FRP, or if that is even possible. I request that she uses her response to this PD to confirm her position. If she wishes to switch from the SIPP back to the GPP and FRP, she and her representative also need to enquire, through SL (the provider for all three), whether (or not) this is possible and confirm the outcome in her response to this PD. For present purposes, I will assume in the draft below that Ms T wishes to switch back and that it is possible to do so*."

In light of confirmation that Ms T has switched away from the SIPP recommended by DTE, the assumption I refer to in the quote above will not apply.

Putting things right

fair compensation

My aim is that Ms T should be put as closely as possible into the position she would probably now be in if she had been given suitable advice in October 2018. As I have found, suitable advice should have recommended that she remained with and retained the GPP and FRP as they were.

To achieve this, I have used the notional values of the GPP and FRP as the natural redress benchmark, which they are, given my finding that they would have been retained but for DTE's unsuitable pension switch advice. In the event that these notional values cannot be obtained, I have also referred to an alternative redress benchmark below.

I am satisfied that what I have set out below, including provision for the alternative benchmark (based on Ms T's balanced/moderate risk profile at the time of advice) if the notional values cannot be obtained, is fair and reasonable redress for her.

The start date for the calculation of redress is the date the pension switch recommended by

DTE was executed. The redress calculation, overall, will be brought up to the date of settlement. However, as set out in the orders below, there will be a calculation up to the initial end date of the November 2023 switch (away from the SIPP recommended by DTE), then there will be an additional payment calculation from then and up to the date of settlement.

Any calculated loss up to the initial end date will be relevant to Ms T's pension thereafter. But for DTE's unsuitable pension switch recommendation, such lost value, as of the end date, is value that would have existed in her previous pensions (which are the benchmarks) on that date, and that would thereafter have had the same performance as the rest of the pensions. If that performance (after the end date) has been positive the lost value would have experienced growth. Therefore, and irrespective of how her new pension (since the end date) has performed, any such lost value is distinct. If it has missed out on growth Ms T is entitled to compensation for any such lost performance/growth, from the end date to the date of settlement.

what must DTE do?

To compensate Ms T fairly, DTE must:

- Compare the performance of the investment in the table below with the notional values benchmark in the table below. If the actual value is greater than the combined/total notional value, no compensation is payable. If the combined/total notional value is greater than the actual value, there is a loss and the difference is the compensation payable to Ms T.

- Pay the compensation into Ms T'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 DTE is unable to pay the total amount into the pension plan, it should pay that amount direct to Ms T. 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 is not a payment of tax to HMRC, so Ms T would not be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using her actual or expected marginal rate of tax at her selected retirement age. If she would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to Ms T in a clear and simple format.

- Pay Ms T a full total refund of the OAF charged for the two years covering the missed November 2021 review and the missed November 2022 review. Provide her with a detailed, clear and simple calculation of this too.

- Pay Ms T £750 for trouble and inconvenience.

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

Investment	Status	Benchmark	From ("start date")	To ("end date")	Additional payment
The SL SIPP	No longer exists	Notional values for the GPP and the FRP; or alternative benchmark stated below.	Date of the pension switch recommended by DTE	22 November 2023 (date of switch away from the SIPP recommended by DTE	Calculate if and how any total financial loss as of the end date would have performed/grown from the end date to the date of settlement using the same benchmark.

actual value

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

notional [fair] value

This is the value of the investment, based on the notional performance of the GPP and FRP Ms T previously held, had they remained in place from the start date and until the end date. DTE should request that SL assist in calculating this value(s), if there are costs involved in doing so DTE must undertake such costs.

Any withdrawal from the investment should be deducted from the notional values 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 will accept if DTE totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If SL is unable to assist in calculating the notional value(s), DTE will need to determine a fair value for the investment instead, using this alternative benchmark (and applying the same adjustments stated above) – the FTSE UK Private Investors Income Total Return Index.

why is this remedy suitable?

- If SL is unable to assist in calculating the notional value(s), then I consider the measure below is appropriate.

- 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 Ms T's moderate risk profile can be reflected in this benchmark, in the sense that she was prepared to take some risk to achieve growth in her pension. It does not mean that she would have invested in some kind of index tracker investment. Rather, I consider this a reasonable benchmark that should broadly reflect the sort of return she could have obtained from the investments in the GPP and FRP (based on the same profile), but for the unsuitable pension switch.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £170,000, £190,000, £195,000, £350,000, £355,000, £375,000, £415,000 or £430,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Ms T's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2023 but before 1 April 2024, so the applicable compensation limit would be £190,000.

My final decision

For the reasons given above and in the PD I uphold Ms T's complaint. I order DTE Risk and Financial Management Limited trading as DTE Financial Planning to calculate and pay her redress and compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 16 April 2025.

Roy Kuku
Ombudsman