DRN-5560894

Financial Ombudsman Service

The complaint

Mr P complains about the poor investment returns achieved on his pension fund over a prolonged period of time. He says there has been a complete lack of guidance or direction from Adanac Financial Services Ltd – it has never advised him to make changes and switch to better performing funds or managers. Mr P says the returns are a lot less than Adanac led him to believe he would achieve. Mr P is also unhappy with the fees that Adanac quoted to move his pensions.

What happened

I issued my provisional decision on this complaint on 25 April 2025. The background and circumstances to the complaint and the reasons why I wasn't minded to uphold it were set out in that decision. I've copied the relevant part of it below and it forms part of this final decision.

Copy of relevant part of my provisional decision

Mr P's complaint was considered by one of our investigators. He issued his assessment of it to both parties on 12 July 2024. The background and circumstances to the complaint were set out in that assessment and are known to both parties, so I won't repeat it all again here. However to summarise, Mr P had an existing Self Invested Personal Pension (SIPP) invested with a Discretionary Fund Manager (DFM). Adanac advised Mr P to switch his funds to be managed by a different DFM in May 2013. The SIPP was valued at approximately £365,000 at that time, with another £30,000 due to be paid into the pension as part of a claim for compensation.

Mr P became unhappy with the performance of his pension and complained to Adanac. Adanac didn't uphold his complaint, and he referred the matter to us. Our investigator didn't recommend that Mr P's complaint should be upheld. He said, in summary, that he thought the original advice to switch to the DFM had been suitable, in particular given the size of Mr P's fund, that it resulted in lower costs for Mr P compared to his existing set up, and had been invested in line with his agreed attitude towards investment risk.

The investigator said whilst he thought the investment returns through the DFM had been less than expected, it had only been 1.75% lower than the best performing DFM used by Adanac in its panel of four DFM providers. He didn't think this would have been a significant enough difference for Adanac to have suggested switching DFMs.

The investigator said the DFM operated under a specific investment mandate, so comparing performances between different DFMs was very difficult. He said it was pointed out in the original suitability report that performance could go up and down and wasn't guaranteed, And the investigator said that poor performance in itself wasn't a reason to uphold a complaint.

The investigator also said he thought it was fair for Adanac to charge a fee for Mr P to subsequently move his pension arrangements, and it wasn't excessive given the size of Mr P's pension fund. So overall the investigator didn't recommend that Mr P's complaint should *be upheld.*

Mr P didn't agree with the investigator's findings and raised several points for further consideration. Mr P's complaint was therefore passed to me to decide the matter.

The investigator e-mailed Mr P on my behalf on 5 February 2025. I'd said it appeared that Adanac had provided regular reviews and over a period of time where the performance of the portfolio had been discussed. It seemed that performance had varied over time, but in the review dated 11 September 2018 it was noted that the returns had been 5.72% since inception. I said that wasn't an unreasonable return in the circumstances. The report dated 9 March 2021 said the return was 5%. And the report dated 10 October 2022 said the return had fallen to 2.19%. So it appeared performance had fallen away by October 2022.

I said there were costs for advice to change discretionary fund manager. And without the benefit of hindsight, it wasn't known whether a new manager would provide better performance than the existing manager. I said I didn't think there was a sufficiently prolonged period of poor performance to say that the firm ought to have advised Mr P to switch managers. And that Mr P should let me know at what point he thought Adanac should have advised him to switch.

Mr P said he didn't think the figures provided by Adanac were reliable. He said that for the 5% figures to be believed, his fund must have lost over 22% of its value by October 2022, and he didn't think this was the case.

The investigator contacted the DFM provider. It said that the total return was 39.15% from July 2013 to 9 March 2021, and 31.31% to 10 October 2022.

What I've provisionally 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.

For the reasons explained by the investigator, I'm satisfied that the original advice to move DFM providers was reasonable in the circumstances. Mr P has said however that, despite poor performance and over a period of time, Adanac failed to advise him to switch DFM providers or otherwise make changes to the way his pension was invested. He's said that even using the 1.75% better performance of one of the other DFMs on Adanac's panel would have resulted in an annual return of 4.05%, which would have seen an improvement of 84% or £63,000 in the value of his pension.

Adanac was providing an ongoing service to Mr P and was required to act in his best interests in accordance with the rules set out in the Financial Conduct Authority's rulebook. Its Conduct of Business Sourcebook Rules – (COBS 2.1) provided:

A firm must act honestly, fairly and professionally in accordance with the best interests of its client.

Mr P has referred to Adanac's obligations in regard to the FCA's Consumer Duty. However Mr P's complaint to the firm was made on 8 August 2023. The Consumer Duty only came into force on 31 July 2023 and wasn't retrospective. So I don't think its material to deciding the fair outcome of Mr P's complaint.

Adanac had agreed to regularly review Mr P's situation over time. I think Adanac ought to have identified if there had been poor performance over the long term, and if so discussed *the reasons for it with Mr P and whether changes may be beneficial. However the firm's review records show that it did provide such reviews, that performance was discussed on a number of occasions and Mr P had asked about the performance compared to other DFMs.*

As has been explained, it is not a straightforward matter comparing the performance of different managers. The composition of a portfolio can vary significantly depending on a number of factors – the most obvious being attitude to risk. But different professionals can have different reasonable opinions about the future prices of different asset classes. So even where a portfolio is aligned to a certain risk mandate, there can be a degree of variance in exposure to different assets between fund managers and over time. And this leads to variances in performance.

Mr P considers the 2.19% return was very poor performance over a prolonged period. However I think what's key here is that this was the position by around October 2022. As I said above, Adanac's review dated 9 March 2021 said the return was 5%. But the report dated 10 October 2022 said the return had fallen to 2.19%. The DFM has provided figures for the respective dates – which it said were, in total, a return of 39.15% and 31.31% respectively. This corresponds to annual returns of approximately 4.4% and 3%. So they were different to what was quoted by Adanac in its letters.

I don't think there was a deliberate attempt by Adanac to inflate the figures given that, whilst it said the growth to March 2021 was higher, the figure to October 2022 was much lower than it had provided. However clearly Adanac had a responsibility to provide accurate figures, and it should explain the reason for the difference when responding to this provisional decision.

However, even using the lower 4.4% figure as the actual performance to March 2021, I don't think it's a true reflection of the position to say that Adanac should have identified poor performance over a prolonged period much earlier, because it only fell to the 2.19% figure (as previously understood) between March 2021 and October 2022. It had previously been higher over the longer term (4.4% on the DFM's figures to March 2021). Whilst less than the 5% quoted by Adanac, I don't think the difference is so significant that Mr P would likely have had thoughts to switch DFM provider at that point as that's still not an unreasonable return. It wasn't possible to know that there would be a subsequent significant fall in value due to falls in both equity and bond/gilt prices partly in response to the war in Ukraine and increases in interest rates.

Mr P has said he thinks a meaningful ten-year average return from the stock market is around 8.9% per annum. However I don't think this is an appropriate comparator for returns on his pension. Mr P's fund was only partly invested in equities and had significant exposure to other asset classes – including around 25% to fixed interest assets which historically have been considered safer assets. That is aligned to the degree of risk that Mr P wanted to take along with making income withdrawals.

Mr P has said Adanac promised him returns would hold to about an annual 7% average. Clearly I can't determine with any reasonable degree of certainty exactly what was said in the meetings Mr P had with Adanac. Its records do show that returns around this amount were discussed. And that it thought over the longer term it could achieve such returns. However I can't see that it made any promises or provided guarantees of performance. And it's clear that Mr P took a continued interest in the performance of his pension.

As I've said, the firm's records evidence performance was discussed on a number of occasions and over time. Adanac provided figures for the returns provided over the longer term in a number of the reviews. Mr P was also sent annual investment reports from the DFM which showed the performance over the previous 12-month period. So I think Mr P *ought to have been able to identify that he wasn't obtaining a 7% return, or if there had been significant underperformance earlier that wasn't at an acceptable level to him. As I've said, in my opinion it was only by around October 2022 that performance dipped to such an extent that it raised red flags.*

I understand Mr P's frustration with the matter when he can see that other DFM providers have performed better. However that is only seen with the benefit of hindsight. Investment management isn't an exact science. At any particular point in time nobody can know for certain which way asset prices will move. It is only after the event it can be seen which manager performed better, and switching at any particular point in time doesn't necessarily mean performance will be improved. So the issue has to be considered in that context.

I appreciate that Mr P will be disappointed with my provisional decision. However taking everything into account, for the reasons set out by the investigator and what I have said above, I'm not persuaded that his complaint should be upheld.

My provisional decision

My provisional decision is that I don't uphold Mr P's complaint.

Responses to my provisional decision

Mr P didn't accept the provisional decision. He said, in summary:

- The ombudsman service was saying a ten-year return of 2.19% was acceptable.
- If the DFM figures were correct, they didn't explain the 2,19% average over the same period. This reflected a 22% collapse in the fund value over an 18-month period which the ombudsman service was saying wasn't worthy of compensation. He thought the figures were flawed, however appeared to have been accepted by the Ombudsman.
- The ombudsman service was saying an improved return of over 85% resulting in a substantially larger fund wasn't significant.
- The Consumer Duty may well have been introduced on 31 July 2023, but there must have been some other form of duty of care that applied to Adanac prior to this.
- None of the records sent to him following Adanac's reviews included any comparative data, despite his requests for it, until the letter dated 11 May 2023.

Adanac said it accepted the provisional decision. It said, with regards to the difference in the figures supplied by the DFM, that it would be due to the way that the figures were worked out. However that the figures were never meant to mislead, and were effectively reviewed in meetings where the DFM was present and could be checked against the quarterly reviews provided by the DFM.

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 seen no reason to depart from my provisional decision not to uphold Mr P's complaint.

As I explained in my provisional decision, whilst I don't think the Consumer Duty was material here, Adanac was bound by the rules set out in the Financial Conduct Authority's Handbook, and in particular COBS 2.1 - to act in Mr P's best interests.

Mr P's complaint here is against his financial advisers – Adanac. The DFM was responsible for the underlying performance of the portfolio itself. As I explained in my provisional decision, Adanac had agreed to regularly review Mr P's situation over time, and this ought to have included considering performance and discussing whether any changes needed to be made with Mr P.

The firm's records show it did discuss performance with Mr P on a number of occasions and Mr P had asked about the performance compared to other DFMs. Whilst I accept there's no record of the firm providing comparative figures for other DFMs, I can't say with any reasonable degree of certainty exactly what was said and or provided during discussions. Adanac did provide figures for the returns provided over the longer term in a number of the reviews, and the DFM reports showed the performance over the previous 12-month period. I think the evidence shows that Mr P took an active interest in the performance of his pension over time. And I think Mr P ought to have been able to identify that he wasn't obtaining a 7% return, or if there had been *significant* underperformance earlier that wasn't at an acceptable level to him

I agree that an 85% increase in a fund value would be significant. But this is seen with the benefit of hindsight. The matter has to be considered on a contemporaneous basis, and as I've said, at any particular point in time it wouldn't be known whether a switch to a different DFM would have improved returns or not going forward – Mr P could have switched and then found his existing DFM performed better than the new DFM. What I am considering here is whether the firm ought to have identified that the existing DFM's performance was so poor that any reasonably competent adviser would have recommended that Mr P switch DFMs. For the reasons I've given, I don't think that was the case.

I think it's also worth pointing out that a fall in a fund's value, in itself, doesn't necessarily mean that a fund has been managed inappropriately. Mr P has referred to a 22% fall. But that is a natural risk of investing in these types of risk-based portfolios. For example, as I explained in my provisional decision, gilts prices fell significantly from 2022 (as well as other asset prices). Gilts are historically considered to be lower risk assets. yet some gilt funds lost over 40% of their value. But the fact that the funds lost such significant amounts wouldn't automatically entitle investors in this those funds to compensation if gilts were suitable for them at the time. I realise that Mr P was accepting a more balanced risk – but that exposed him to potentially greater volatility. Advising firms are required to match the asset allocation of the portfolio they recommend with the risks that the investor is able and willing to accept. But beyond that there are no guarantees to performance – as I have said above, different professionals will have different reasonable opinions about the direction of asset prices.

Mr P has again queried the validity of the performance figures that have been provided. The figures provided by the DFM are likely more reliable given they can be obtained from the DFM's systems, whereas the figures provided by Adanac were calculated manually. So I have put more weight on the DFM's figures. I haven't made a finding as to whether 2.19% was 'acceptable' to the Ombudsman Service. Investment returns will vary depending on several factors, and I've seen both better and worse returns over a 10-year period. But ultimately what counts is whether Mr P was satisfied with the performance – and he decided he wasn't when it fell to 2.19% (as understood at that time), and subsequently moved his money.

Clearly Adanac should be providing accurate figures so that its clients can make informed decisions. However the DFM calculated the long-term performance to March 2021 was

4.4%, which Mr P has himself said is reasonable. I don't think the differences were so significantly different that Mr P would likely have made a different decision to leave earlier.

The DFM's figures for March 2021 and October 2022 were 4.4% and 3% respectively and so not consistent with the 22% fall – albeit as I say, it doesn't follow that such a fall would mean Mr P was due compensation in any event. Mr P complained to the firm about performance a few months after Adanac said performance had dropped to 2.19% (albeit as I say I think it's likely it was actually near 3%). Mr P subsequently switched DFMs. And for the reasons I've given, I don't think it's clear that Adanac failed in its regulatory obligations to act in Mr P's best interests by not recommending he switch DFM's earlier.

As I said in my provisional decision, I do understand Mr P's frustration with the matter when he can see that, looking back, other DFM providers have performed better. But I don't think the matter is as clearcut as Mr P thinks, and at any particular point in time an adviser can't know for sure whether performance will be improved by switching managers.

Taking everything into account, for the reasons I've set out above, I'm not persuaded that Mr P's complaint should be upheld.

My final decision

My final decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 June 2025.

David Ashley
Ombudsman