DRN-5561650

The complaint

Mr S says W. Denis Financial Services Limited (WDFS) failed to provide him with adequate advice concerning the sustainability of his retirement funds and the level of risk his investments were exposed to. He says the overall service he received was also lacking.

What happened

Mr S began his relationship with WDFS in 2017 when it provided him with advice about the transfer of his defined benefit pension. His priorities were summarised as providing for inheritance; maximising his tax free-lump sum; to clear his debts; tax efficiency; and taking control of his assets, with advice. He was said to have a moderately cautious/balanced attitude to risk.

Mr S transferred his pension of about £590,000 into a pension investment account with another provider in May 2017. He retained WDFS to provide him with ongoing advice. For this it charged a fee of 0.5% of the value of his invested funds.

In its file notes WDFS records that six days after the transfer had been executed Mr S was taking significant decisions that were at odds with the plans he'd articulated during its advice process. This included drawing on £60,000 from his pot for spending not previously identified. He also decided not to invest £75,000 in a General Investment or Individual Savings Account as planned.

WDFS says originally Mr S hadn't planned to draw any money from his pension until September 2020, when he reached 62. But it points to a pattern that saw him draw on significant funds between May 2017 and February 2020. It also notes he sought to maximise his income drawdown within the higher rate tax band for efficiency.

Despite these departures from his initial plans, matters seemed to progress to Mr S's satisfaction for the first few years. On one of the spreadsheets he produced he noted that by August 2019 his funds after withdrawals had achieved 5.6% net growth per annum, which was in line with his plan.

However, the next few years were turbulent. The effects of major events such as Brexit and the Covid pandemic in 2020, the start of the current conflict in Ukraine in February 2022 and political instability meant markets were volatile. Mr S recognised the impact of such matters on his funds, for example noting that by June 2022 his funds had dropped in value by a total of 21% since Russia's invasion of its neighbour.

WDFS says at an advice meeting in June 2023 it gave Mr S projections showing his funds would be exhausted between 2035 and 2037 depending on a achieving a net growth rate between 4-6% per annum. This is recorded in a summary log of contacts and matters discussed it shared with this Service.

Mr S refutes WDFS raised the sustainability of his funds in June 2023. He says he'd always produced spreadsheets modelling his cash flow based on basic assumptions about investment performance and drawdown requirements. He says the firm never engaged effectively with these.

Mr S says he continued to raise concerns with WDFS about fund performance and its recommended approach on investments. By November 2023 he decided to seek the advice of another financial adviser. He says it found the funds he held at the time, which were supposed to be in a balanced portfolio, appeared to be in products with a higher risk exposure. It found WDFS hadn't done any sustainability modelling leaving him to do this without any support.

In January 2024 Mr S raised a complaint about what had happened. This had three broad elements, Mr S said:

- There'd been a lack of assessment by WDFS about his income sustainability in retirement given the poor performance of his investments and the withdrawals he'd made. His own forecasts had been based on a growth rate of 6% net which the firm had always led him to believe was achievable over the long term. He noted even a small deviation from this assumption changed his forecasts and called into question how realistic his goals had been.
- Despite changes being made to his investments during the previous 6 years he didn't feel WDFS had catered for his specific requirements. And in particular he considered he'd been invested in a portfolio that exposed him to higher risk than his balanced appetite.
- The overall service provided by WDFS had been lacking. For example, he thought it had failed to inform him and his wife about the tax benefits of making more pension contributions; a lack of challenge about the level of withdrawals he was making from his fund and its sustainability; and little exploration of other opportunities he could've taken advantage of such as annuities.

WDFS responded to Mr S in March 2024. It noted how Mr S had departed from his initial plans early on. It said there had been conversations about the sustainability of his portfolio. It provided a detailed breakdown of his investment portfolio and asserted this was appropriate for an investor with a balanced appetite for risk. It also said while there were other products that could've been considered for Mr S, the fact was rather than making additional investments he was taking money out of his pension investment account.

Mr S responded probing WDFS about its file log, where it had recorded that the sustainability of his pension fund had been discussed at a meeting on 12 June 2023. The entry indicated that he'd been informed his fund would be exhausted between 2035-2037. He said this was a complete surprise and that previously the cash flows he'd shared with it had shown that when he reached 80 he'd still have an average of £200,000 in his fund.

WDFS's final response to Mr S in April 2024 said global events had impacted the performance of Mr S's portfolio. It noted the change in his and his wife's circumstances which impacted income requirements and a focus on maximising tax efficiency on income. It observed Mr S had worked in financial services so he understood what he was doing. It noted he'd continued to draw down significant funds even after raising his complaint, the main element of which concerned fund sustainability.

Mr S wasn't satisfied by WDFS's response so he brought his case to this Service. He highlighted the same three broad areas of his complaint. An Investigator considered his case but didn't uphold it. She thought the firm had acted fairly and reasonably throughout. Mr S disagreed.

As both parties couldn't agree to the Investigator's view, Mr S's case has been passed to me to review afresh and to provide a 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr S's complaint. I'll explain why.

I've considered the extensive regulation around the services like those performed by WDFS for Mr S. The FCA Handbook contains twelve Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 2.1.1 R in the FCA Handbook). 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 and treat them fairly.
- 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.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms. As such, I need to have regard to them in deciding Mr S's complaint.

There has been some mention of Mr S's background in financial services in this case. To be clear and to address one of the questions posed by him, I don't think this means WDFS didn't need to treat him as a retail customer. I don't consider he was an expert in pension and investment matters – indeed that is the service he was paying the firm for. But this doesn't absolve Mr S from any personal responsibility in these matters.

Fund sustainability is at the heart of this complaint. When contacting WDFS about his concerns in January 2024 Mr S said:

"I am becoming increasingly concerned over the lack of assessment undertaken and advice provided around income sustainability, in line with my capacity for loss, having seen a reduction in the value of my pension fund over the previous c6 years due to poor performance and withdrawals. I am aware that I have been providing my own forecasts based on my needs and requirements, although little has been done to advise against the risks of drawing down my pension fund at the rate I have been…"

"My own independent forecasts have been based on the growth rate that you feel is achievable over the longer term (6.00% net has been regularly quoted), which I am now in doubt is realistic having sought advice elsewhere. A slight change in this view completely changes my own forecasts and leaves me questioning how realistic my goals are and the longevity of my pension fund…"

WDFS told this Service its records showed:

"…references to income sustainability being discussed on 13/08/18, 10/11/20, 03/03/22, 20/10/22, 12/06/23, 19/07/23. In the last of these (19/07/23), Mr S confirms we had discussed annuities, drawdown requirements, that his requirements will reduce, etc. This email corroborates my handwritten file notes at the restaurant table, portfolio report, updated sustainability calculations, etc."

Mr S refutes this. He said:

"With reference to exhaustion of funds, this came as a complete shock and surprise to me. Nothing had ever been mentioned. I picked up this comment when reading through the file log which I only received on 4.3.24. Entry dated 12.6.23 refers to our review meeting, however the actual meeting date was 2 days later on the 14th June 2023 with the meeting being held in a Leeds restaurant where it was difficult to talk privately."

"The log entry indicates exhaustion dates were discussed, however I can categorically state that this was not the case. Neither my wife nor myself have any recollection of this and had it been discussed, this would have raised immediate alarm bells for me, as all my previous projections have been based on age 80 (12.9.38) where the fund values were always projected at c£200k surplus."

It's clear from the information provided to this Service Mr S was engaged in his investment arrangements, developing his own basic cash flow spreadsheets to discuss with WDFS. I think it's more likely than not he would've realised departing from the initial strategy as early as 2017 in terms of his investment and withdrawal plans would've had an impact on his fund prospects.

I think it's also clear he understood the effect of the major global events which impacted the performance of his investments from 2020. As the Investigator noted in her findings:

"I understand that there was a pause in withdrawals during the pandemic and Mr S placed his holdings into cash but was advised against doing so by W Denis. W Denis has let me know that meetings continued online during the lockdowns including Mr S's cashflow projections planning a strategy that was going to include a downsizing in 2035 to release more capital."

"I can see that the income withdrawals resumed again as Mr S decided not to return to work and additionally included an instruction to pay out £46,570 (Gross) as an ad-hoc withdrawal before the end of the tax year (2021/2022).

W Denis has explained that Mr S began drawing income from the portfolio regularly trying to maximise his income without becoming a higher rate income taxpayer. Mr S's income was increased to £5,185 per month for the remainder of tax year 2022/23 with an emailed instruction of 19/06/2022 to fund the delivery of a new car, along with an offset mortgage he had arranged himself with his banking knowledge…"

I note during his complaint journey, Mr S continued to draw significantly on his funds. He explained his financial commitments had already been built in and he set out substantive actions he's now taken to stabilise his financial plans.

Mr S entered into his relationship with WDFS in 2017. The planning horizon for his retirement fund appears to have been 2038, when he reached the age of 80. I can see his expectation was that based on an assumption that his funds would grow by an average of around 6% net per year, then he'd have a significant residual pot at that time of around £200,000.

Mr S raised his complaint nearly 7 years into his retirement planning horizon of 21 years. He was concerned about the impact of his withdrawals and investment performance on his pot. He stated even a small departure from the growth assumption could have a significant impact on his fund.

While I understand Mr S's concern here, I note that he's effectively speculating on the outcome of a 21 year investment strategy after only a third of the period has elapsed. And he's doing so in the knowledge that he's taken out more money from his pot that he was planning to at the outset. And that his investments have been subject to some very significant turbulence in recent years.

I don't know what Mr S's pot will be worth in 2038, as he knows when investing there are no guarantees. I note he received a report in November 2023 which recorded a loss on his funds at that point of around £39,000. A similar report just 7 months later indicated the loss was £6,000. This demonstrates how investment performance fluctuates. The average net growth rate of 6% needs to be viewed in terms of long-term investment horizons not snap shots in time.

Overall, I've concluded Mr S was or should've been aware when he made significant withdrawals from his pot, outside of the original plans, this would've had the potential to impact the funds available to him at the end of his retirement planning horizon. Similarly, I think he'd have been aware his investments had the potential to rise or fall in value during the period he was in the market and that the world events experienced from 2020 onwards naturally caused substantial turbulence.

Turning to Mr S's concern regarding the risk exposure of his investments. When raising his case with WDFS he said:

"…Having taken a second opinion on my Elevate pension, the view is that my portfolio has been taking a higher degree of risk than what would be deemed appropriate for a Balanced Risk investor. I appreciate there is some disparity between views on risk profile, but I am told that the difference is quite stark and that my portfolio is relatively aggressive in terms of overall investment risk."

As Mr S acknowledges, there are a variety of approaches taken when it comes to methods for assessing risk and building investment portfolios. I've read WDFS's log of contacts with Mr S and can see his attitude to risk, the risk of particular investments and volatility were all matters discussed on a regular basis during their relationship. In 2021 he agreed to a change in his exposure from moderately cautious to balanced risk.

I've reviewed information about Mr S's investment portfolio as it stood when he raised his complaint. It was split between cash (1.3%); fixed income (12.5%); property (25.8%); and equities (60.4%). The majority of equities by value are spread amongst the major stock exchanges. I've not seen any significant holdings in aggressive or speculative investments, for example complex financial products or less established foreign markets.

So, in broad terms Mr S's investment portfolio appears to have been appropriate for his risk appetite at the time.

Mr S's third complaint point concerned the overall level of service provided by WDFS. In bringing his case he said the following to the firm:

"There are areas of financial planning that have been brought to my attention which I have not benefited from. For example, pension contributions for myself and [my wife] to attract tax relief. I was not aware that we had the ability to do this, having both retired, and there is evidently some missed value here."

"Linking into the above, there has been little challenge made around the level of income I have been drawing down from my portfolio with income sustainability in mind. I presume this should fall under your remit as my adviser?"

"Aside from W J Denis actioning my requests to draw funds down from my portfolio and providing advice on investment switches where deemed appropriate, there is little advice to be provided on other matters. From talking with another adviser, I am now aware that there are opportunities [in the] annuity market that could be considered. Whilst I acknowledge that this subject has been discussed loosely in the past, I have not received any proposals for my consideration which may have alleviated some of my concerns regarding the potential for future reductions in my pension fund value."

WDFS responded to Mr S in the following terms:

"There have also been other things that could have been considered, such as Enterprise Investment Schemes, Venture Capital Trusts, Individual Savings Accounts, but you were spending everything you received and borrowing money. A moderately cautious investor who became a balanced risk investor should not be borrowing money to invest, nor would I recommend withdrawing more from a pension fund to repay it back into a pension fund."

"On several occasions we discussed the portfolio sustainability and when it/income would run out. I refer you to the attached log from the previously provided file…"

"Annuities have been referenced and discussed. On 12/06/23, a level annuity, via Scottish Widows, with a 50% widows pension for [your wife] should you die first at £22,316 pa was discounted. These conversations/references are noted in the log."

Having reviewed all the information and argument available to me, and leaving aside matters connected to his other two complaint points and dealt with elsewhere in my decision, I find no substantive grounds for upholding this aspect of Mr S's complaint. It seems that until he raised his complaint in 2024 he'd been largely satisfied with the service he'd received from WDFS.

My final decision

For the reasons I've set out, I'm not upholding Mr S's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 21 June 2025.
Kevin Williamson
Ombudsman