DRN-3515826

The complaint

Mr S complains that The Tavistock Partnership Limited (TTP) gave him unsuitable advice to switch from a Personal Pension Plan (PPP) to a self-invested personal pension (SIPP), with a portfolio managed by a fund manager. Mr S argues that he suffered a loss in the value of his pension fund because of this unsuitable advice.

What happened

Mr S had a PPP that had been invested in a with-profits fund for a number of years. He was no longer making contributions. And was unlikely to make contributions in the future as he was unemployed and caring for an elderly relative.

Mr S explains that he was approached by an unregulated introducer in early 2016 who suggested a review of his pension arrangements. Mr S was put in touch with an adviser, who TTP explain were an Appointed Representative (AR) of the Tavistock Financial Network at the time. TTP accept responsibility for the advice given to Mr S in 2016 so for simplicity in this decision I will refer to the activities as having been done by TTP.

TTP completed a fact-find with Mr S and established that:

- He was 56;
- He had an income of £3,229 a year from a carers allowance. But was otherwise unemployed;
- He had a PPP with a transfer value around £54,000 that was invested across two with-profits funds;
- His income and expenditure indicated he had less than £50 a month surplus income;
- He had no other pensions or investments and had £500 in his current account.

TTP recommended that Mr S switch his PPP to a SIPP and invest his funds in the Organic High Yield Portfolio that was managed by a discretionary fund manager (DFM) – Organic Investment Management Ltd (OIM).

Mr S followed TTP's recommendation and in May 2016 his pension was switched.

In July 2019 Mr S complained to TTP, via a claims management company, that he'd been given unsuitable advice to switch pensions. He said that the investments weren't appropriate for his attitude to risk and capacity for loss. And the investments weren't easily realisable. He explained that he'd suffered financial loss to his pension fund because of that advice.

TTP responded in September 2019 rejecting Mr S's complaint. In summary it said:

- It wasn't responsible for investment losses as fund performance was outside of its control;
- The investment term of the corporate bond investments weren't unsuitable, as Mr S didn't intend to access his pension until the earliest age of 60, and then only the pension commencement lump sum (PCLS);
- The existing PPP didn't have access to the recommended DFM;

- The PPP didn't allow drawdown so a transfer would have been necessary at some point;
- The investments in the Organic Bond Fund were suitable;
- The risk assessment of 5 out of 10 (balanced) was agreed with Mr S.

Mr S's complaint was referred to our service and an investigator considered what had happened. He concluded that TTP had given Mr S unsuitable advice to switch his pension. He thought that Mr S's PPP already offered suitable fund choices, and that the recommendation offered a product with combined higher fees. Which he said wasn't justified. He didn't think that Mr S needed an investment managed in the way that TTP recommended and explained that the recommended investment wasn't suitable for Mr S's attitude to risk and capacity for loss.

TTP offered to do a loss calculation, but calculated Mr S's loss to 2017 when it said its liability for what happened ended. Which was contrary to the view given by our investigator. So this complaint has been referred for an ombudsman decision.

I issued a provisional decision to both parties to explain my thoughts and provide them with the opportunity to respond.

Both parties acknowledged receipt of my provisional decision but had no further comment on the outcome I'd reached.

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.

Neither party has raised any issues with the provisional decision I reached, so having considered all of the evidence, my final decision is the same as that provisional decision. I still think that Mr S's complaint should be upheld for the following reasons.

Mr S was 56 at the point that TTP reviewed his pension arrangements. This meant that he was already able to access his pension benefits if he needed or wanted to. The fact-find that TTP undertook indicated that he had no immediate need to access his benefits. He was living in his family home so had no rent or mortgage commitments. His income was modest, but so too were his outgoings. So I think it's likely that Mr S wasn't considering immediate access to his pension.

The fact-find indicated a retirement age of 66. Which was Mr S's state pension age. But it recognised the potential that Mr S may wish to access a PCLS from his pension at age 60. Which I think TTP ought to have considered quite likely. TTP identified no other savings or investments for Mr S. Put simply, his PPP was his only access to funds for emergencies and to supplement his modest income until reaching state retirement age when his income would seemingly improve.

Mr S's capacity for loss on this pension, his only source of savings or future income, was actually very low. He was not working so appeared unlikely to be able to contribute further to a pension. Which TTP's fact-find identified. He had little surplus income and no identified assets.

TTP assessed Mr S as having a balanced attitude to risk. It used a questionnaire which it says provided a score of 5 out of 10. But I don't think that was enough for TTP to consider that Mr S ought to have been invested in that way. As I've said, I don't think that Mr S had the capacity to suffer much loss at all on this pension. Overall, I think that TTP ought to have prioritised ensuring easy access to his benefits and the security of his investment.

It is understandable that Mr S wanted investment growth, which would be an objective for most consumers. But it was the job of TTP to consider Mr S's specific circumstances to determine if he ought really to take on a level of risk to achieve higher returns than he could already achieve in his PPP. I say this because TTP were aware that Mr S's PPP had guaranteed investment returns.

The ceding pension scheme informed TTP that Mr S's PPP had guarantees that the fund would grow by at least 4% a year, before charges. Which was highlighted by the ceding scheme as a valuable benefit. Which I think was fair. It was a policy benefit that was no longer available to new customers and the PPP no longer accepted contributions on those terms. It would be lost on transferring, which introduced the possibility that Mr S's pension could instead achieve negative returns and lose money. The reasons for transferring at that point needed to be more persuasive in light of this lost guarantee.

TTP's suitability report recommended that Mr S transfer to a SIPP in order to be able to pursue its recommended investment strategy. It seems to be the only reason provided to justify the switch. And was the same reason that TTP discounted an alternative personal pension or a cheaper stakeholder pension. I've seen no evidence that investing in the OIM High Yield fund was something Mr S wanted to do prior to TTP's advice. The investment recommendation was a key part of TTP's rationale. So I've considered if TTP's investment recommendation warranted this switch.

TTP considered that Mr S would be better served by investing in one of the investment portfolios offered by OIM. TTP were aware that OIM offered a number of portfolios. These were listed in an independently conducted 'Risk Tolerance Score Mapping' as:

- Cautious/Defensive
- Conservative/Moderate
- Balanced
- Ambitious/Progressive
- Adventurous/Aggressive
- High Yield

The score mapping showed these portfolios as having escalating levels of risk, with the 'High Yield' as the highest risk portfolio. Against a risk score of 100 it was stated that it was a best fit for risk 63 to 77.

TTP offered little explanation in its recommendation to explain why it considered this portfolio to best fit Mr S's objectives. But I can't see that it was an appropriate recommendation for a balanced risk investor. And for the reasons I've already given, I think Mr S's capacity for loss meant he ought really to have been dealt with as a more defensive investor. So the investment choice that TTP recommended wasn't suitable for Mr S.

The suitability report identified that the costs associated with switching to the SIPP may be greater than his existing PPP or other options. But the recommendation asserted that the potential for greater investment returns compensated for the increase in charges.

TTP has shared the information that it received from OIM as part of its due diligence checks. This highlighted that OIM had only been incorporated since July 2014 and advising on investments since January 2015. TTP's questionnaire asked OIM for a benchmark based on peer group performance. And were told by OIM "*No, we don't have 12 months plus of profit and loss*". TTP were therefore unable to assess the actual performance of OIM as a fund manager. Which I think made this recommendation even more speculative. And certainly made it unreasonable to confidently state that the expected future performance would be such that Mr S would improve his returns in spite of the increased charges he would face.

Given that TTP's recommendation to switch from his PPP was based entirely on being able to access this unsuitable investment fund, I don't think that the recommendation to switch was suitable either. TTP shouldn't have recommended that Mr S switch his pension in order to invest it in the way it did.

I've considered whether Mr S would have switched his pension at that point anyway. But I'm not persuaded that he would have. I think that the PPP he had, most likely met his objectives. He wasn't able to take a lot of investment risk with this pension. And the guaranteed returns he had with his existing funds meant it was probably not in his interests to transfer.

I understand that TTP weren't directly responsible for the way in which OIM went on to manage the Organic High Yield portfolio. If its recommendation to switch pensions and invest in that way had been suitable for Mr S's circumstances, then its argument that it was not responsible for subsequent investment losses may have had merit. But I've explained why I don't think TTP's recommendation was suitable. Mr S only ended up invested in the portfolio that he did as a result of TTP's advice. So TTP are directly responsible for the consequences of his pension being invested in that unsuitable portfolio.

I've considered TTP's argument that its liability ended when a new principal became responsible for the ongoing advice that the AR provided. But I don't think that's fair. A big issue that made TTP's recommendation unsuitable was that it caused him the irreversible loss of his guaranteed investment returns. Whilst a subsequent adviser may have been able to match Mr S to investments that were more appropriate to his attitude to risk, they couldn't have returned him to the PPP that he should have remained in. So I think it's fair and reasonable for me to hold TTP responsible for the entirety of Mr S's losses. If it considers that there is shared responsibility with another firm, it's entitled to pursue the matter with that firm to recover its share of any redress.

Putting things right

My aim in awarding fair compensation is to put Mr S back into the position he would likely have been in, had it not been for TTP's error. I think this would have meant Mr S remained in the with-profits funds in his ceding scheme.

Any loss Mr S has suffered should be determined by obtaining the notional value of the pension from the ceding scheme on the basis that it remained invested as it was and subtracting the current value of the current SIPP from this notional value (account should be taken of any withdrawals Mr S has made from his SIPP). If the answer is negative, there's a gain and no redress is payable.

If there is a loss, that amount is the compensation figure. The compensation amount should if possible be paid into Mr S's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum. I've considered whether Mr S was likely to have paid income tax on future income from his pension. His income requirements have been modest, and after taking a tax free lump sum I think his remaining pension could have been taken in a way that would not have exceeded his personal allowance, even when in receipt of his state pension. So I’m making no notional reduction, for future income tax that would otherwise have been paid.

TTP must pay the compensation within 28 days of the date on which we tell it Mr S accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

My final decision

I uphold the complaint. My decision is that The Tavistock Partnership Limited should pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 6 July 2022.

Gary Lane
Ombudsman