DRN-3807616

The complaint

Mr R complains about the suitability of the advice he received from an appointed representative of Neovision Wealth Management Limited trading as Attanta (Attanta) to transfer a Personal Pension Plan (PPP) into a Self Invested Personal Pension (SIPP).

Mr R is being represented by a Claims Management Company (CMC). Any references to Mr R will include submissions by the CMC.

What happened

Mr R signed a client agreement with Harrison Charles Wealth Management Limited, an appointed representative of Attanta, on 18 November 2016. The fact find completed at the time of the advice showed that Mr R was 50 years old; he was employed earning £20,909 per year; he held shares valued at around £20,000; he had an emergency fund of £1,500 and; in addition to his PPP, he was a member of his employer's defined contribution workplace pension making monthly contributions of £9.85.

Mr R said he wanted to retire at age 70. In terms of his objectives, he confirmed he wanted to maximise his pension death benefits and he wanted to move his PPP to a more flexible arrangement which would help shield him from the volatilities of the stock market. Mr R confirmed, in his own words, that he had a 'conservative' attitude towards investment risk.

On 5 January 2017 Mr R's PPP provider confirmed the current value of his pension was £45,987. On 13 January a further quote from the PPP provider confirmed the fund value was now just over £46,000. Mr R was provided with illustrations from his provider showing the potential pension fund at ages starting at 60 and going up to 67.

On 16 January 2017 a Key Features Document (KFD) was provided by the SIPP provider in respect of the transfer and showed that at a potential retirement age of 70, based on the mid-rate of return after price inflation, there would be a growth rate of 2.4% per year. This also showed that the residual fund could be less than the actual transfer value.

On the same day (16 January) a 'Replacement Analysis' (RA) form indicated the initial adviser fee for the transfer would be 3% (£1,379) with a 1% annual fee also being deducted (£459). The RA form also said that whilst the initial and ongoing adviser charges would increase overall costs, Mr R wanted the benefits of having an ongoing service.

On 16 February 2017, Mr R signed the SIPP Application form, nominating his brother and sister as beneficiaries. On 1 March the SIPP commenced. A suitability report (the report) was issued on 7 March. The report confirmed several of the key drivers behind Mr R's wish to transfer from his PPP which included to have more flexibility and control over his pension funds. And to have his pension fund managed by an investment professional.

The report recommended a transfer into a 'Assets: Balanced Portfolio'. However, after the transfer of the PPP funds to the SIPP on 23 March 2017, totalling £46,684, Mr R's monies were invested in a 'Conservative Portfolio'. No breakdown of what types of investments were included in this portfolio, has been received by this service.

Mr R complained about the transfer saying the recommendations made by Attanta were not suitable for him. He said he has made a loss of around £7,891 as a result of its advice. But Attanta said, amongst other things, the DFM was responsible for Mr R's losses.

Our investigator recommended upholding the complaint. In summary, he took the following matters into account when reaching his conclusions:

- *The high initial/ annual fees and the lack of consideration of lower charged options.*
- *The high reduction-in-yield percentage.*
- *Industry standard projections indicated there would be a risk the transferred funds wouldn't grow enough to meet the initial transfer value after nineteen years.*

Attanta disagreed with the investigator's view, reiterating the point about the DFM being responsible for Mr R's losses. It said its involvement was too remote to be responsible for any losses Mr R suffered from being in the SIPP which was managed by the DFM. A subsequent view was issued which made the recommendation about the redress which said that it should use the benchmark of the FTSE UK Private Investors Income Total Return Index.

The investigator also addressed Attanta's point about the DFM being responsible for Mr R's losses. Our investigator said that the regulator (the Financial Conduct Authority previously the Financial Services Authority) issued a pension related industry alert to firms in 2014 (following an earlier alert in 2013) which he considered relevant to this aspect. The alert included the following statement:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable for the customer, then the overall advice is not suitable."

Our investigator said the effect of the above, is that Attanta is responsible for the switch and SIPP it recommended and for the underlying use of the SIPP. He noted that whilst Attanta didn't recommend the underlying investments – the DFM did – it recommended the use of the DFM firm's portfolio/service. And this recommendation extended to how the SIPP should be used and, based on the regulator's view quoted above, our investigator considered Attanta held (and holds) responsibility for the suitability of the DFM service.

Attanta disagreed and asked for an Ombudsman's decision on the matter.

I issued a provisional decision upholding the complaint. Attanta said it hadn't received the original complaint from Mr R but our investigator sent evidence of our service contacting it in 2020 to let it know about the complaint. Further, Attanta did provide answers to Mr R's complaint. The main issue in dispute following the investigator's view was the issue of redress. It did not think the proposed FTSE UK Private Investors Income was an appropriate benchmark as it was much higher risk than the legacy portfolio and risk profile of Mr R. Further, the other issue was that Attanta didn't think it should be held responsible for the actions of the DFM.

So, the matter has been passed back to me to re-consider.

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.

As noted above, the only matter Attanta has raised since the issue of the provisional decision is about not seeing the original complaint. But this position doesn't seem plausible given it has answered the complaint made by Mr R. Further, our investigator has sent evidence to Attanta showing our service sent it the complaint that was made in 2019. The investigator sent evidence of our service contacting Attanta to say a complaint about the mis-sale of the pension had been made saying: *"Please get in touch with* [Mr R] *to confirm that you're looking into his complaint."* This was sent on 9 September 2020.

Since the end of 2020, Attanta has sent its business file to our service. And also has had two views from our investigators' which it has responded to. So, on balance, I'm satisfied it has received Mr R's complaint and has had ample opportunity to answer it and provide evidence to support its case. The reason for my provisional decision was to deal with the redress which hadn't been properly addressed in either investigators' view. Again, as my provisional decision was issued on 24 August 2022, Attanta has had ample opportunity to provide further evidence to support its case if it disagreed with Mr R's complaint.

Given Attanta hasn't added anything more than it did previously in response to the investigators' view, my provisional decision including the redress remains the same. So, as set out in my provisional decision my final decision is as follows:

Attanta has now had a chance to comment on the redress which I've fully taken into account. It has reiterated its view that the DFM is responsible for Mr R's losses and it (Attanta) shouldn't be held responsible. It says its recommendations are too remote from the loss. It also disagrees with the recommended redress. It says the benchmark recommended to use for the calculations was an inappropriate benchmark as it is much higher risk than Mr R's portfolio.

Whilst I've taken into account Attanta's comments I think the matter should be upheld. But I agree the redress needs to be amended. Before I begin my reasoning, it's worth reflecting on the regulatory framework that applies to a pension switch.

The regulator's handbook contains eleven 'Principles for Businesses', which it says are fundamental obligations firms must adhere to. These include Principle 2, which requires a firm to conduct its business with due skill, care and diligence. And Principle 6, which requires a firm to pay due regard to the interests of its customers. 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 like Attanta.

Further, COBS (Conduct of Business Sourcebook) 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

Of particular relevance in this case, is the regulator's pension switching checklist published in 2009. It highlighted four key issues it thought should be focussed on:

- *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?*

- *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.*

- *Risk – has the consumer switched into a pension that doesn't match their recorded attitude to risk and personal circumstances?*

- *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.*

In light of these regulatory requirements, I don't think the switch recommended to Mr R's was in his best interests. I don't think Attanta met the regulatory requirements placed on it in this case. Some of Attanta's failings are as follows:

- *Charges - as outlined in the suitability report, the PPP was relatively low cost. In contrast, the fund switch involved significant charges, including the initial advice fee an ongoing advice fee and a DFM fee. I haven't seen a telling case made as to why these increased costs were in Mr R's best interest particularly when the objectives such as protecting against volatility, seems to have been met by his PPP which was invested in cautious funds.*

- *Existing benefits – Another reason given for the switch was so Mr R could obtain better death benefits. But it was Mr R's financial well-being that should have been the priority. So, even if better death benefits were achievable through the transfer, I don't consider this presented a strong enough reason to risk the long term impact of higher fees on funds that were intended to support Mr R in his retirement.*

- *Risk –*

    - *Mr R's attitude to risk was recorded as 'conservative'. I accept he was invested in a managed fund with the PPP provider, so he was prepared to take some risks. But that risk level seemed adequately met with the PPP funds he was already invested in which matched his 'conservative' attitude to risk. The initial recommendation was that Mr R invest in a portfolio with, what seemed to meet a slightly higher risk profile. However, when the transfer proceeded, he was switched into a 'conservative' fund.*

    - *But whilst Mr R's initial portfolio may have been suitable for him, given the increased costs, there seemed no justifiable reason to incur these greater costs without some persuasive reason to do so given the impact of the higher fees on a cautious fund.*

    - *Mr R was warned about the risks he was taking. For example, the suitability report says: "We have thoroughly discussed your requirements and the additional risks you would invariably be taking on by transferring your pension benefits away from the scheme." However, as Attanta will be aware risk warnings, do not render unsuitable advice, suitable.*

- *Ongoing fund management – it's unclear why Mr R needed to be invested with a DFM arrangement or pay for ongoing adviser fees. He didn't have a substantial pension fund, so the additional charges could've outweighed any potential improved performance. DFM fees and ongoing advice fees were charged, adding an additional layer of costs. Attanta's proposal was over engineered and expensive. And as our investigator said, even with a higher growth illustration for the SIPP fund as against the PPP illustrations with its lower fees, Mr R could have been worse off in retirement even if the growth rate of the SIPP funds had been higher than the PPP over the* *similar period. This seems to be largely down to the impact of the additional costs.*

In addition to these points, as our investigator noted, the regulator made it clear that it wasn't just the vehicle that needed to be considered when recommending a transfer. In this case, Attanta also recommended a DFM service within Mr R's assessed attitude to risk. Whilst I think the new portfolio contained in the SIPP broadly fell within his attitude to risk, I think the extra costs didn't justify the recommendation to transfer. I think Attanta should've recommended Mr R remain with his PPP. And I consider if it had done so, Mr R would've accepted such advice – it's rare for a customer to seek professional input and then act against this.

Finally, in terms of what Attanta has said about the DFM being at fault, what I'm considering here is whether the advice Mr R was provided with was suitable and if it was not, what redress is suitable to put him back into the position he would have been but for the advice he was given. I don't think Attanta can pass on its responsibilities to another regulated firm. It was tasked with providing suitable advice. This is contained in the regulator's handbook, some of which I've set out above. And if it has failed in its requirement, it will need to be held responsible for any losses that has occurred as a result of that unsuitable advice.

I don't accept Attanta reasoning that the losses are too remote as it was the DFM who chose the funds to invest in. It was Attanta's advice that led to Mr R switching his pension to a SIPP and it was this matter which ultimately led to the losses he says he suffered. If he, as I think he should have done, had been recommended to stay in his PPP for the reasons I've set out above, it follows he would not have suffered any losses.

So, for all these reasons I'm upholding the complaint.

Putting things right

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. I take the view that Mr R 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 R's circumstances and objectives when he invested.

What must Neovision Wealth Management Limited trading as Attanta do?

To compensate Mr R fairly, Neovision Wealth Management Limited trading as Attanta must:

- Compare the performance of Mr R'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.
- Neovision Wealth Management Limited trading as Attanta should add interest as set out below:
- If there is a loss, Neovision Wealth Management Limited trading as Attanta should pay into Mr R'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 Neovision Wealth Management Limited trading as Attanta is unable to pay the total amount into Mr R'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 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 isn't a payment of tax to HMRC, so Mr R won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal the current basic rate of tax. However, if Mr R would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Income tax may be payable on any interest paid. If Neovision Wealth Management Limited trading as Attanta deducts income tax from the interest it should tell Mr R how much has been taken off. Neovision Wealth Management Limited trading as Attanta should give Mr R a tax deduction certificate in respect of interest if Mr R asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Curtis Bank SIPP	Still exists and liquid	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mr R's investment had it remained with the previous provider until the end date. Neovision Wealth Management Limited trading as Attanta should request that the previous provider calculate this value.

Any additional sum paid into the Curtis Bank SIPP should be added to the notional value calculation from the point in time when it was actually paid in.

Any withdrawal from the Curtis Bank 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 Neovision Wealth Management Limited trading as Attanta 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, Neovision Wealth Management Limited trading as Attanta will need to determine a fair value for Mr R'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.

This is a different redress benchmark recommended by our investigator in his last view. In my view, this better reflects Mr R's attitude to risk. So, I think this benchmark, if the notional value from the previous provider cannot be obtained, should be used. Further reasons for this are set out below.

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 decided on this method of compensation because:

- Mr R 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 R'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 R into that position. It does not mean that Mr R 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 R could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Neovision Wealth Management Limited trading as Attanta should pay the amount calculated as set out above under 'Putting things right'.

Neovision Wealth Management Limited trading as Attanta should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 December 2022.

Yolande Mcleod
Ombudsman