DRN-4149976

The complaint

Mr S has complained about the advice he received from Invest Southwest Ltd (Invest Southwest) in relation to his pension. He feels the advice was unsuitable as it was not in line with his risk profile. He has incurred financial loss which he feels Invest Southwest is responsible for and would like to be compensated accordingly.

What happened

In August 2019 Mr S approached Invest Southwest for advice on a number of his investments, including his pension which is the subject of this complaint. He had previously held his pension with a different provider but after complaining about this provider it was agreed he could transfer his pension away without incurring a penalty.

At the time Mr S was 63 years of age, he was married and owned his own property outright. He and his wife had income through several rental properties and Mr S was engaged as a consultant with additional income. Their joint incomes significantly exceeded their usual monthly outgoings and they held substantial sums on deposit. Mr S held several other investment plans. He also suffered from a rare medical condition that he informed Invest Southwest about.

Invest Southwest recorded that Mr S intended to leave his pension invested as he had no need to access it. However, he said that when he retired he may draw on the tax free cash available from the plan to provide additional tax free income over several years.
Invest Southwest generated a risk profile for Mr S and noted that he was prepared to take some investment risk to increase the chance of getting better returns but protection of capital was very important to him. Mr S agreed with this risk profile.

He was recommended to transfer his pension to a different provider and the following fund allocation was proposed:

- 52% of the fund would be held in two gilts funds.
- 2.5% of the fund would be split between two property funds.
- The remainder would be split between four equity funds (two UK based and two internationally based).

Due to delays caused by the ceding scheme, the switch was only completed in November 2019. During this time Mr S had communicated with Invest Southwest about his concerns over the forthcoming Brexit deal and as a result of this he wanted the funds to be kept in cash until that was concluded. The funds were therefore kept in cash until a further meeting on 28 November 2019, after which the monies were invested using the allocation model Invest Southwest had initially recommended.

In March 2020 Invest Southwest contact Mr S in light of the then market volatility arising from the coronavirus to let him know his investment were being monitored. In July 2020, Mr S met with his adviser and at that point a new allocation model was proposed which would have resulted in 40% of his pension being held in cash. However, Mr S instructed his adviser to move all of his pension into cash again as he was concerned about the political landscapes surrounding the pandemic and Brexit.

Mr S' pension remained in cash until February 2021 when he agreed to discuss with Invest Southwest whether it was time to reinvest. It had contacted Mr S earlier but he had confirmed that he wanted to remain in cash for the time being.

At the meeting Invest Southwest reassessed Mr S' objectives and attitude to risk finding both remained unchanged. It proposed the following investment strategy for his pension:

- 51% in UK gilts (iShares)
- 48% in equities (Baillie Gifford Global Discovery 17% and Baillie Gifford International 18%)
- CFP SDL UK Buffetology 6%
- Liontrust Special Situation 7%.
- 1% in property (Threadneedle UK Property)

Mr S agreed to the recommendation. A few weeks later he contacted Invest Southwest having read an article about bond investments as he was concerned about his holdings but no changes were made to the investment held within the pension at this time. It was agreed this would be reviewed quarterly.

In October 2021, Mr S again contacted his adviser. He was concerned about rising interest rates which would adversely impact government bonds and so, at his request his asset allocation was rebalanced to hold a lower percentage of government bonds. As a consequence, the reductions in the allocation of bonds increased his risk profile as he now held a larger proportion of equities.

In January 2022, Mr S became considerably worried about the performance of his portfolio and voiced his concerns to Invest Southwest Ltd. He was particularly unhappy about his asset allocation. Invest Southwest identified the issues related to two funds managed by Baillie Gifford and to ongoing issues with fixed interest funds. Invest Southwest advised moving some of Mr S' other investment it held with them and said in relation to Baillie Gifford it would investigate alternatives to one of the Baillie Gifford funds that it felt had performed especially poorly.

A few months later this point Mr S decided to move his funds into cash again and to sell the fund pending a decision about its reinvestment.

Following further poor performance Mr S raised a complaint against Invest Southwest questioning the diversification of his pension portfolio as well as the inclusion of the Baillie Gifford funds which he deemed were of a higher risk level than was suitable for him.

Invest Southwest investigated his concerns but did not uphold his complaint. It issued a detailed final response which in summary stated the below:

- Since inception of their professional relationship, the adviser had assessed Mr S' financial situation and objectives continuously to ensure the advice remained suitable. Throughout the many meetings and email discussions, Mr S' attitude to risk (ATR) and capacity for loss were discussed and amended accordingly.

- His financial objective was, and remained throughout, to invest over the long term and the adviser's recommendations were made with this in mind.

- The adviser consistently provided Mr S with detailed information regarding his investments, allowing him to make informed decisions on whether to accept the recommendations.

- Any concerns or queries were always responded to promptly and so Mr S would have been able to raise any concerns regarding his risk profile. He did not do so at any time until raising the complaint.
- The recommendations made by the adviser were therefore suitable and consistently in line with Mr S' ATR and long-term objectives.

Mr S did not agree and brought the complaint to our Service where it was assessed by one of our investigators who felt the complaint should be upheld. In essence, she said the asset allocation, which the adviser recommended in February 2021, was not aligned with Mr S' risk profile and so Invest Southwest should be responsible for any potential financial loss he incurred since then.

Invest Southwest did not agree with the assessment and remained of the view that the advisers' recommendations were suitable throughout. It emphasised its approach to continuously re-assess their clients' objectives, circumstances and risk profiles in order to ensure its advice remained suitable. It felt it had done so with Mr S who had remained a long-term investor throughout whose and whose ATR had been correctly assessed and appropriately amended.

I issued my provisional findings in May 2023 where I explained why I dint think the complaint could be upheld. And extract is set out below and forms part of this final decision:

The main issue of this complaint is the suitability of the advice Mr S was given specifically from 2021 and especially the inclusion of the Baillie Gifford funds which Mr S deemed were far too risky for him.

It is first important to make clear that under performance is not, on its own, an indication that the advice provided was unsuitable. Providing the advice is in line with an investor's attitude to risk, capacity for loss and takes into account the investor's personal and financial situations, a downturn in performance is something that just sometimes happens. This is the risk any investor takes when they decide to invest. And the timing of the Mr S' investments happen to cover a period where the markets fluctuated greatly due to the economic environment impacted by Brexit and the effects of the Coronavirus.

Mr S' pension was a pre-existing one held with a different provider. At that point his pension was made up of international corporate bonds, investment grade corporate bonds, index linked gilts, diversified bonds and global and international equities and alternatives which in themselves had a risk rating of moderate. The initial advice from Invest Southwest was for Mr S' pension portfolio to hold 52% in two gilts funds, 2.5% of the fund would be split between two property funds with the remainder being split between four equity funds (two UK based and two internationally based). In my view this almost mirrored that of the ceding scheme and as Invest Southwest had assessed Mr S' risk tolerance to be at the low end of cautious to medium, it also seems to have been in line with Mr S' risk rating and seems suitable for someone in his position in his financial situation.

Having reviewed the documentation completed at the time of the initial advice it's clear that Invest Southwest provided full details of what it had recorded as Mr S' position financially along with his objectives and taking into account this it provided a targeted asset allocation for the investment aimed at achieving his objectives. Warnings were also provided to Mr S that there was no guarantee the performance of the new portfolio arrangement would achieve the growth he was looking for and noted that its value would go down as well as up *over time highlighting that downturns in the market would affect this.*

The documentation also noted that Mr S' intention was to invest over the long term therefore the advice was based on an investment term of twelve years. It also noted that if that should change it was vital that Invest Southwest was informed and the recommendation would change.

Mr S signed this documentation accepting all of its contents were correct.
Given this I am satisfied that Invest Southwest carried out a full and through analysis of Mr S' financial position and objectives at the outset and worked with him to provide recommendation that met his objectives.

In February 2021 the adviser changed the assets within Mr S' pension but only slightly. This changed to 51% in UK gilts ,48% in equities (including two Baillie Gifford funds) and 1% in property. This was done after discussion with Mr S and not unilaterally and I see no reason why this was out of line with Mr S' tolerance for risk at that point in time.

I know Mr S' main complaint is the inclusion of the Baillie Gifford funds in his portfolio at this time. However, a portfolio must be viewed as a whole rather than each asset held within it. A successful portfolio would typically contain a number of assets across a wide range of the risk spectrum with the lower risked funds balancing out those that are higher risked. And the overall risk level of the portfolio will be dependent upon the proportions of the assets within it. From everything I've seen at this point, the advisers' recommendations were consistent with this approach. The Baillie Gifford funds were indeed towards the higher end of the risk spectrum but this was balanced out by the bonds and gilts which have been traditionally seen to be more towards the lower end of the risk spectrum.

Furthermore, Mr S' concerns, when he initially moved his pension, was that his pension wasn't growing and in fact devaluing after inflation and tax. So the inclusion of an element of higher risk assets would support the objective of capital growth whilst the lower risk assets would help protect the capital.

Therefore, while I appreciate Mr S wasn't happy with the performance of the Baillie Gifford funds for a time and felt they were too risky for him to me it doesn't seem wholly unreasonable that these funds were included - or I should say any funds that were of a similar risk level - because as I said above this should have balanced out the portfolio.
I know that there were points when Invest Southwest recommended Mr S stay with Baillie Gifford, I don't deem to be wholly unreasonable. When looked at in the context of the markets at the time there was no reason for the adviser to think the funds wouldn't regain some value. Also, those investments were for the long term, as Mr S had agreed to, so any "knee jerk" actions born out of the sudden changes in the market would have been unwise. However, it seems also reasonable that the adviser later looked into disinvesting from one of the Baillie Gifford funds at a later date when it probably became obvious the problem was longer term. But I see no reason why Invest Southwest would have known this when the fund started to decline initially.

The assets within the pension portfolio changed again around October 2021, following a review when, Mr S voiced concerns regarding bonds and how they were performing at the time. To ease his concerns, Invest Southwest recommended an asset allocation with reduced exposure to bonds but this increased the level of risk exposure to the lower end of moderate as opposed to cautious to moderate as he initially was assessed. But I can see that Invest Southwest made Mr S aware of this and he confirmed he wanted to continue. The increase in risk was moderate and, in my view, remained in line with Mr S' long term objectives whilst reflecting Mr S' concerns in regards to rising interest rates. Also, I am satisfied the allocation remained diversified and balanced with no notable overexposure.

Overall, therefore, I'm satisfied that Invest Southwest provided Mr S with suitable recommendations throughout, which took into account his long-term objectives and adapted to the shifting economic and political landscapes at the time. Since the beginning, it seems to me that Invest Southwest consistently provided recommendations which included sufficient diversification of assets leading to a balanced risk profile in line with Mr S' attitude to risk. And any increase in risk that the portfolio exposed Mr S to seems to be a result of his own involvement

I've also considered the overall way Invest Southwest has dealt with Mr S to determine whether his objectives were endeavoured to be met and whether Invest Southwest carried out its obligation with the due care and attention I would expect.

From the extensive information provided by both parties I can see that there were clear and regular discussions held with Mr S surrounding his financial objectives and concerns. As mentioned, a full suitability report was carried out initially and its clear Invest Southwest reassessed Mr S' circumstances on a regular basis (and amended his portfolio accordingly when required). As noted above Invest Southwest also made amendments when Mr S requested it due to his various concerns.

Mr S had stated a clear objective initially to invest over the longer term and in my view the strategy recommended was in line with this. Nevertheless, his cash was always available to him had he needed it. Furthermore, while Mr S seems to feel Invest Southwest didn't take account of the serious nature of his medical condition, it appears to me through the paperwork that the medical condition was recorded but there was no mention of it being life threatening. This is the paperwork Mr S signed indicating he had agreed to and accepted its contents. So had Mr S been unhappy with how his health issue had been recorded he could have raised it at the time. Furthermore, if the status of his medical condition changed over the years, then it was up to Mr S up to update Invest Southwest which it looks like he didn't as there would be no benefit in Invest Southwest not recording this significant piece of information.

Mr S clearly had regular communications with his adviser and from what I have seen it looks like whenever Mr S had concerns about his investments his adviser responded to him in clear terms regarding the investment strategy. The adviser also amended the portfolio in line with Mr S' wants and needs as indicated about sometimes changing the asset allocation and sometime moving all funds into to cash when Mr S instructed.

Mr S has told us that he is an inexperienced investor who was entirely reliant on the advice he was given throughout. I am not doubting this is how Mr S feels but having reviewed the communications between Mr S and his adviser, I've noted his clear awareness and knowledge surrounding the potential impact of world events. I appreciate he may not be as experienced with investments as he is with properties, but I think it's reasonable to say that he was proficient enough to understand the adviser recommendations in detail, as well as the risks involved. In fact, it is this kind of knowledge and experience which prompted Mr S to take his investments out of the market on several occasions.

The exchanges between Mr S and his adviser demonstrate a level of comfort where Mr S was able to raise any queries or concerns with ease. This indicates his ability to go against any recommendation he did not feel comfortable with at that time. So I am of the view that Mr S was in a position where he could have questioned challenged and made up his own mind at any point throughout his relationship with Invest Southwest. I therefore don't think Invest Southwest took advantage of him or "blinded" Mr S with technical talk and strategies that he didn't understand.

Overall therefore, from everything I've seen in deciding this complaint, I think Invest Southwest have acted in line with their duty of care to Mr S and consistently provided advice in line with his overall objectives and risk profile. I understand Mr S' concerns and appreciate the losses must have come as a considerable shock. The markets were particularly volatile around that time and many investors found themselves in a similar situation as Mr S'. However, I don't consider that Invest Southwest provided unsuitable advice to Mr S that caused his losses.

Invest Southwest accepted the findings and didn't provide any further comments.

Mr S didn't agree with the provisional findings and provided a very detailed response as to why. I have summarised the main points below (in Mr S' own words):

- *My attitude to risk, and how that should have been interpreted by Invest Southwest, is fundamental to my complaint.*

- *All the decisions regarding the investments I held with Invest Southwest were either suggested by my adviser, or openly supported by my adviser. Not once did I give my adviser an instruction that he did not first suggest, fully support, or agree with. I was always led by my adviser to make decisions that aligned with my risk profile as he purported to be an investment expert; something I am most certainly not.*

- *My concern is not with the broad investment strategy, which I was in tune with, but the funds that my adviser selected when implementing the strategy that he proposed to me in February 2021. Before I raised my complaint with the Financial Ombudsman Service I was advised by experienced financial advisers, and a specialist firm of investment lawyers, that the funds selected by Invest Southwest in February 2021 were totally inappropriate for someone of my risk profile and that invest Southwest was undoubtedly negligent in selecting those funds.*

- *I strongly disagree that it was not wholly unreasonable for Invest Southwest to put my pension into such high-risk funds. These funds were, on any close examination, entirely inappropriate for my very well documented risk profile.*

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.

I've taken into account relevant: law and regulations; regulatory rules; guidance and standards; codes of practice; and (where appropriate) what I consider to have been good industry practice at the relevant time.

Where the evidence is incomplete or inconclusive (as some of it is here) I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened given the available evidence and wider circumstances.

I am aware that Mr S made a Freedom of Information request following receipt of the provisional decision. In response to reviewing the information that I relied upon for that decision Mr S has stated that Invest Southwest has made a number of inaccurate statements which I would have relied upon hence my decision being different to that of the investigator.

I must clarify that I have made my decision on the evidence available to me. A business being complained about has a duty to provide this Service with all and accurate information when a complaint is being investigated.

Therefore, I must take the information in good faith unless it can be proved otherwise. So while Mr S has said the some of the information is inaccurate he hasn't provided me with evidence that allows me to safely conclude this is in fact the case.

It is also important for me to explain that as an ombudsman deciding this case it is incumbent upon me to review the complaint afresh and regardless of the assessment made by an investigator I must reach my own outcome, based on my knowledge and experience.

Having reviewed the information on the complaint file again along with the further comments Mr S has provided I remain of the view that this complaint cannot be upheld.

Mr S must understand that it isn't for me to decide what the *best* advice would have been for him. I am not an advisor, and this isn't the role of this Service when investigating complaints of this nature. What I must do is decide on what I think was broadly suitable for Mr S at the time given his personal and financial circumstances.

Mr S has reiterated that his main concern is the inclusion of the Baillie Gifford funds in his portfolio. He feels that were far too high risk to be included in his portfolio. And that Invest Southwest was negligent in its advice to incorporate them into his investment plans.
I can appreciate Mr S' strength of feeling and I understand he has sought advice about this investment portfolio from other financial advisers and lawyers who all feel the advice was unsuitable. However, I must decide this complaint within the remit of this service, based on what I think is fair and reasonable. That means I must be neutral and objective and take account of both parties to this complaint.

Having done that, I cannot conclude that Invest Southwest provided unsuitable advice to Mr S or that it was negligent in its advice and actions concerning the Baillie Gifford fund. And this is essentially because I am satisfied that Mr S' attitude to risk was met by Invest Southwest's advice and also because while Baillie Gifford didn't perform well at the time I don't think it's reasonable that Invest Southwest would have known this was going to happen. All an adviser can do is advise on what they think is the best course of action at the time. They don't have a crystal ball and a dip in a fund's performance is not always an indicator that the fund will continue to dip. And I have seen nothing that indicates that at the time Invest Southwest gave unsuitable advice or purposely misadvised. There would be no benefit to Invest Southwest doing this.

It is easy to say with hindsight that an adviser got it wrong or didn't do their job well enough. And I think this is the position that Mr S is coming from.

As set out in my provisional findings I do agree that Baillie Gifford were high risk funds but my point is that Mr S' portfolio must be looked at as a whole – it would be wrong to look at each individual investment within it to ascertain whether the level of risk exposure is suitable. Furthermore, Mr S invested his pension because while he wanted to protect it but he also wanted it to grow. Again, I appreciate that capital growth was not his primary objective however some growth was required, otherwise there would be no point in investing. So there had to be some riskier investments to enable this to happen – the risk/reward ratio.

Advisers can only advise and act on their experience and knowledge at the time. I can't comment on if or when the adviser should have moved Mr S out of Baillie Gifford. All I can consider is whether it was suitable for Mr S to invest in these funds initially and whether this remained viable for him throughout the period he stayed with Invest Southwest. And my view is that it was. The portfolio's investments and set up met his objectives and stated needs. Any investment, more often than not, will always been viewed as being intended to have a longer time period invested but Mr S was still able to access his money in the shorter terms had he needed to – but its reasonable that in doing so Mr S would have risked the performance of his overall investment – i.e., not keeping it in for the recommend investment time.

The investment strategy didn't work out for Mr S. Could Invest Southwest have acted sooner in relation to the Baillie Gifford funds, possibly, but at the same time it isn't unreasonable that Invest Southwest employed the strategy that it did.

So despite the downturn in performance of the Baillie Gifford funds their inclusion in the portfolio balanced the risk of the portfolio and was largely suitable for Mr S at the time.

My final decision

My final decision is that I don't uphold this complaint and I make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 March 2024.

Ayshea Khan
Ombudsman