Financial Ombudsman Service

The complaint

Mr F complains that Neovision Wealth Management Limited (Neovision) gave him unsuitable advice to switch his personal pensions to a Self-Invested Personal Pension (SIPP). He is also unhappy with the investments recommended within the SIPP.

What happened

As part of her recommendation our investigator set out the background to this complaint. There has been no dispute to the facts relating to this case, so I have set out an amended and updated version of this below.

In February 2018, Mr F was advised by Plutus Partnership to switch his existing pensions with Aviva and Standard Life to a James Hay Self Invested Personal Pension (SIPP) and invest in the TJM bespoke portfolio.

A fact find was completed which confirmed Mr F had 50% ownership of his property which was mortgage free and cash savings of £5,000. In the notes section it was recorded that Mr F's main reason for looking at pension consolidation was convenience, performance and the potential release of tax-free cash.

As well as the fact find, a risk profile report was completed and a suitability letter dated 9 February 2018 was provided to Mr F. This recommended he take £40,000 Tax-Free Cash (TFC) and invest the remainder (approx £205,000) into TJM via the James Hay's SIPP.

Mr F's existing pensions consisted of two Aviva personal pensions (approx £154,000) and a Standard Life pension (approx £104,000). The Standard Life pension was invested into two with-profits funds and one of these benefitted from a guarantee (growth of 4% before charges).

An application form was submitted, on behalf of Mr F dated 7 February 2018, for James Hay's modular SIPP and an application for the TJM SIPP trading account (aka TJM portfolio) was made.

Further advice was provided nine months later (November 2018) and due to the poor performance of Mr F's investments a recommendation was made to change investment strategy and invest in the Tatton balanced portfolio.

In April 2019 Mr F switched to a new adviser and in October 2019, Mr F closed his SIPP with James Hay and transferred £190,138.52 to a new SIPP arrangement.

Through professional representatives Mr F complained to Neovision on 30 June 2022 about the unsuitable advice provided and again on 13 January 2023 to Attanta Limited (formerly known as Neovision).

Whilst the initial complaint was acknowledged and an update was provided in August 2022, no proper response was ever received.

This service has also attempted to contact Neovision but it has not responded. And I've seen

that the FCA has rescinded its permissions.

On 16 February 2024, Mr F confirmed that he used the TFC in 2018 to pay for his daughter's wedding and pay for home improvements. Mr F also confirmed that he retired in June 2021 and his pension has remained invested.

The investigator looked into matters and recommended the complaint be upheld. She said that no comparison of charges was made but the new arrangement was more expensive. One of the policies held, had a with-profits guaranteed growth rate built into and another policy had a guarantee it wouldn't decrease in value before charges. And there was no reason to give up the guarantees in relation to the more expensive arrangement Mr F was entering into. Especially as the new arrangement was at a higher level of risk than Mr F ought to have been exposed to. She also noted that the director of Neovision and the director of the Discretionary Fund Management firm Mr F's fund were placed in was the same person. So there was a conflict of interest here and this raised questions as to whether Neovision was acting in its clients best interests.

Mr F's representatives accepted the view. We received no response from Neovision.

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 have reached the same conclusions as our investigator and for broadly the same reasons. I'll set out the key reasons for my decision below:

- In 2009 the regulator published a report and checklist for pension switching. That checklist identified four main areas where consumers had been poorly advised. And I think three of those areas are apparent in this case.

- Mr F was placed into an arrangement that was more expensive than his previous arrangements and I can see no good reason for this. The additional charges will have impacted the performance of his portfolio – and he wasn't provided with a comparison of the charges to make an informed decision.

- Mr F within his existing pensions had guarantees within the with-profit funds that protected their value. In the new arrangement he had no such thing, all his money was put at risk of investment performance. Given the new arrangement was also more expensive, I don't think Mr F should've been advised to give up the guarantees present in his existing long running policies.

- Mr F's risk profile was described as High Medium by Neovision and this formed the basis of his investment strategy within the DFM which went on to perform poorly. He had limited investment experience and previously only been invested in with-profits and UK equities. He was also only three years away from his intended retirement age and so I don't think it was a suitable recommendation to increase his exposure to risk. Especially in relation to his only other source of income in retirement alongside the state pension. The recommendation to carry out a pension switch to invest in a DFM with a High Medium targeted investment strategy was unsuitable for Mr F's circumstances.

- Mr F was advised to transfer to access 25% tax-free cash in a flexible way, allowing his remaining funds to continue to be invested until he wished to retire at age 63. The tax-free cash taken came to about £40,000 but it was recorded Mr F only required about £10,000 at the time for home improvements, which was the recorded reason for taking

the tax-free cash. Mr F has since told us this was just a nice to have and not essential. So Mr F likely could've forgone this need until his planned retirement date or he could've transferred only one of his policies and used the tax-free cash from it to fund his home improvements.

Putting things right

Fair compensation

My aim is that Mr F 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 F would have invested differently. It's not possible to say *precisely* what he would have done but Mr F was looking to retire at 63 and wanted to access his benefits flexibly. So, I don't think its likely he would have retained his previous policies to date. But I'm satisfied that what I've set out below is fair and reasonable given Mr F's circumstances and objectives when he invested.

What must Neovision do?

To compensate Mr F fairly, Neovision must:

- Compare the performance of Mr F's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- Neovision should also add any interest set out below to the compensation payable.

- Increase the value of Mr F's pension plan 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.

- However, Neovision should instead pay this amount direct to Mr F as there are ongoing issues with his current pension arrangements. 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 F won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr F's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr F is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. If Mr F would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay Mr F £300 for the stress caused due to being taken out of a stable long standing and relatively safe investment environment. And instead placed into a high cost, higher risk and specialised arrangement that required latter further switches and changes to the investment approach due to poor performance. I think this will

have caused Mr F distress alongside the losses that occurred at the time.

Income tax may be payable on any interest paid. If Neovision deducts income tax from the interest it should tell Mr F how much has been taken off. Neovision should give Mr F a tax deduction certificate in respect of interest if Mr F asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Loss adjusted to the date of settlement in line with benchmark below
James Hay SIPP	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of transfer to SIPP	30 April 2019 – This date has been selected as Mr F sought new advice around this date. The loss at this date should then be brought up to date in line with the next column	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds

Actual value

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

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Neovision should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the James Hay SIPP should be deducted from the fair 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 totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I’ve decided on this method of compensation because:

- Mr F wanted Capital growth with a small risk to his capital.

- 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 F'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 F into that position. It does not mean that Mr F 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 F 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 should pay the amount calculated as set out above.

Neovision Wealth Management Limited should provide details of its calculation to Mr F in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr F to accept or reject my decision before 4 April 2024.

Simon Hollingshead
Ombudsman