Financial Ombudsman Service

complaint

Mr F complains about the management of his qualified recognised overseas pension scheme ("QROPS") by deVere and Partners (UK) Limited. He says the value has gone down and he's now being asked to pay annual fees of £1,000. When he asked about withdrawing the investment, he was told there would be penalty charges.

background

Mr F transferred two existing pension plans into a QROPS in 2010 following advice from another business based in Cyprus. He continued to receive advice from that business until around 2013 when responsibility was passed to the UK. Mr F moved back to the UK in 2014. When the QROPS was set up, it was valued at around £61,000 but Mr F complains that by 2014 it had lost around £12,000 in value.

In April 2014, Mr F met with deVere UK and its adviser recommended selling all of the investments and reinvesting in a structured note and four funds.

In January 2018, deVere told Mr F its minimum fee would be increasing to £1,000 a year. Mr F complained, saying he was unhappy with the performance of his investment and wasn't prepared to lose any more of his pension through paying fees. He said he wanted to move to another provider, but says he was told he would have to pay fees of around £14,000 to do so.

Our investigator said we couldn't consider anything the business in Cyprus had, or hadn't, done because it wasn't regulated by the Financial Conduct Authority ("FCA") and it didn't carry on its activities in the UK. But he did investigate the recommendation to switch investments in April 2014 and concluded Mr F should be compensated. He thought the recommended investment wasn't suitable for Mr F given his circumstances and attitude to risk and recommended compensation based on a benchmark of 50% FTSE UK Private Investors Income Total Return Index and 50% average rate from fixed rate bonds.

deVere didn't agree saying, in summary, that:

- It is a matter of opinion where a portfolio falls on the risk scale.
- deVere met its obligations because it assessed Mr F's attitude to risk, carried out appropriate research, explained why its recommendations met Mr F's needs, and gave appropriate risk warnings.
- The GAM star cautious fund was well suited to a level 5 investor and formed the largest part of the portfolio.
- The Schroders High Income fund and JPM Multi Asset Income funds had a lower than average risk and were suitable for a level 5 investor.
- The JM Natural Resources fund was higher risk, but formed a low proportion of the overall investment, so the risk exposure overall wasn't inappropriate.
- The structured note had a defensive outlook and was included to diversity the portfolio which helped to manage the risk.

- Mr F expressed his satisfaction with the UK adviser and his complaint is about the losses made before responsibility was passed to deVere UK.

Mr F said, in summary, that:

- He wasn't told the Cyprus business wasn't regulated.
- deVere won't now help him because he won't pay its £1,000 a year fee. And it will charge him to transfer his pension elsewhere, so he feels trapped.
- He wants the money back that he's lost and doesn't want to pay any fees for moving to a new provider.
- He was told at the outset that he wouldn't be charged any fees. He says any fee should be charged as a percentage of profit made.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

2010 to 2013

The advice to set up a QROPS was provided by a business based in Cyprus. We can only look at a complaint if it is about the activities a business carried on from an establishment in the UK. The business that gave Mr F advice until around 2013 was based outside of the UK. So I can't consider his complaint about the advice to invest in a QROPS or the performance of his investment during this period.

Mr F says he didn't realise the business wasn't regulated. But, as a financial services business operating in the EU, its activities *will* have been regulated – but not by the FCA in the UK.

2014 onwards

deVere says Mr F hasn't complain about the advice he received since deVere UK took responsibility for the management of his pension investment. And I agree it's possible Mr F wouldn't have complained if it wasn't for the losses his investment made before responsibility was passed to deVere UK. But Mr F has raised a complaint about the fees he's being asked to pay and as part of that complaint, he has raised concerns that his investment isn't making any profit. So it's right for us to consider whether the advice he received from April 2014 onwards was suitable.

annual management charges

deVere has provided a service agreement, signed by Mr F, dated 13 April 2016. It's not clear what was in place before this agreement was completed. But from April 2016 Mr F chose the "Portfolio Management Service" and it was reasonably clear from the agreement that he would be charged "*1% Annual Management charge based on the value of your funds under deVere Management*". So I find that Mr F was aware of, and agreed to, the annual charge. deVere recently told us it actually has no record of this fee being collected.

In January 2018, deVere told Mr F it was introducing a minimum annual management charge of £1,000. Mr F hasn't agreed to this charge and deVere hasn't collected it. As it currently stands, I think deVere has given Mr F reasonably notice of the increased charge and he has a number of choices. He can either to choose to pay it and continue to receive the portfolio managed service; or he can move to either a limited or a reactive service, with lower fees; or he can choose not to continue with deVere's services at all.

withdrawal charges

I understand Mr F feels he's in a "no win" situation – he will have to pay a higher annual charge than he originally agreed if he stays with deVere and he will have to pay fees if he withdraws his investment from the pension. But the trustee's exit charge will have been agreed when Mr F set up the QROPS which, as noted earlier, is not something this service can consider.

Mr F's attitude to risk

Before being able to give Mr F investment recommendations which were suitable for his circumstances, deVere needed to establish his attitude to risk ("ATR").

deVere provided us with an unsigned and undated ATR questionnaire, which it later told us was a "*red herring and should be ignored*". But it also told us that this ATR was the starting point for further discussion before the actual risk appetite was agreed.

The report sent following the April 2014 meeting says:

"*We discussed at some length your attitude to risk (ATR) and in particular the relationship between risk and reward. Having completed an attitude to risk questionnaire with you, on the 30th April, your risk profile is summarised as follows………."*

So it seems likely that the ATR questionnaire provided is the one that was completed during the meeting. The answers to the various risk questions resulted in Mr F being assessed as having a "*Cautious to Low Moderate*" attitude to risk – a "3" on deVere's 1-10 risk scale.

I don't agree, as deVere has suggested, that this questionnaire should be ignored. It is deVere's agreed way of analysing its clients' investment risk appetite. I accept there may be some discussion around the answers, particularly where the outcome doesn't seem to reflect the attitude expressed by the client during conversations. But I haven't seen evidence to show why deVere's changed Mr F's ATR from 3, as agreed on the questionnaire, to 5 – "Low Moderate" when it wrote to him to confirm its recommendations.

The suitability letter is very short and doesn't explore Mr F's circumstances. For example what his intended retirement date was. There is also no discussion about risk or Mr F's investment objectives. On the other hand the ATR questionnaire asks Mr F 14 detailed questions about investments and his willingness to take risks. Because of this I consider that the questionnaire is the more reliable guide to the level of risk that Mr F was prepared to take.

Mr F was given the opportunity to challenge this if he didn't agree. But it's understandable that he may not have realised the ATR was higher than that he'd originally agreed. There's no evidence that Mr F had other investments so I don't think he was experienced or had an in-depth understanding of the investment and ATR process.

I've taken into account Mr F's circumstances at the time. As noted above, he didn't have any other investments, his pension investment was relatively modest and he was unemployed since moving back to the UK. He'd also reacted strongly in the past to losses in his investment, showing that he was very uncomfortable with any loss in value of his investment.

So, overall, considering his circumstances and the answers he gave to the ATR questions, I conclude Mr F's attitude to risk was more cautious that "5 Low Moderate".

suitability of investment recommendations

deVere recommended Mr F sell his existing investment and reinvest in a structured note and four funds. deVere has explained why it thinks this recommendation was in line with Mr F's ATR. But as I have concluded his actual ATR was more cautious, it follows that the recommendation wasn't suitable for his circumstances.

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 differently. 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.

The suitability letter said there would be an advice fee of £1,222. I would expect deVere to refund this fee, plus interest, as part of the compensation due to Mr F. But deVere says this fee wasn't charged and Mr F agrees – so there's no fee to refund.

what should deVere do?

To compensate Mr F fairly, deVere must:

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

deVere should add interest as set out below.

If there is a loss, deVere should pay into Mr F'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 deVere is unable to pay the total amount into Mr F'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.

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

For example, if Mr F is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr F 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 deVere deducts income tax from the interest it should tell Mr F how much has been taken off. deVere should give Mr F a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

investment name	status	benchmark	from ("start date")	to ("end date")	additional interest
QROP	still exists	for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	date of investment	date of my decision	8% simple per year from date of decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)

actual value

This means the actual amount payable 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, deVere should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity 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 withdrawal, income or other distribution out of the investment should be deducted from the *fair value* 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 deVere totals all those payments and deducts that figure at the end 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.

deVere and Partners (UK) Limited should provide details of its calculation to Mr F in a clear, simple format.

my final decision

My final decision is that I uphold this complaint. deVere and Partners (UK) Limited should pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 28 December 2018.

Elizabeth Dawes
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