DRN-3313406

The complaint

Mr C complains that he was given unsuitable advice by M&S Financial Solutions to switch his Self-Invested Personal Pension ('SIPP') and invest his funds through an investment manager firm ('IM').

M&S Financial Solutions was an appointed representative of Pi Financial Ltd at the time of the advice, so Pi are responsible for M&S's actions and this complaint. I'll refer to Pi throughout this decision for ease of reading.

What happened

In May 2017, Pi recommended Mr C to switch his existing SIPP, which was invested in cash and worth around £32,000, into another SIPP and invest through Mayfair Capital ('Mayfair'). Mr C followed the recommendation and opened the SIPP and a trading account with Mayfair. Mayfair took Mr C on as a client and offered him an advisory service.

In 2019, Mr C raised a complaint against Mayfair. He didn't think his funds had been invested in line with his cautious attitude to risk and he had lost out financially as a result. He also was unhappy he was being constantly asked to make decisions how to invest when he didn't really have the necessary knowledge to make those decisions.

Mayfair rejected his complaint and so Mr C referred it to this Service. Mayfair had pointed out in their response that Mr C had received financial advice from Pi, so our investigator initially asked for Pi's business file. When the evidence showed they had provided a recommendation to use Mayfair, he informed Mr C that it might be appropriate to complain to Pi as well to investigate the advice given to him and whether it was suitable. This was in line with DISP 3.5.2 G. It would then allow the investigator to consider the involvement of both parties. Mr C agreed and complained to Pi about their advice and recommendation to use Mayfair.

Pi rejected the complaint. They said Mr C's attitude to risk was assessed as adventurous and he was seeking high returns. He was prepared to take high risk in order to achieve his desired growth. Pi said there was a direct contractual relationship between Mayfair and Mr C and it was Mayfair who was responsible for ensuring his portfolio was and remained suitable. Pi felt the complaint should solely be directed at Mayfair.

Our investigator upheld the complaint against Pi. He didn't think Mr C was an adventurous investor or had the capacity for loss to take such risks with his pension. He also didn't think recommending him to use Mayfair's services was suitable in Mr C's circumstances and so without Pi's advice he likely wouldn't have ended up with Mayfair and suffered the losses he did. He asked them to put Mr C back in the position he likely would have been in if had been given suitable advice.
Pi disagreed, so the complaint was passed to me for a decision.

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.

In considering what is fair and reasonable, I've taken into account relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and where appropriate what I consider to have been good industry practice at the time.

Pi gave Mr C advice on his pension so they had to take reasonable steps to ensure their recommendation was suitable for Mr C (COBS 9.2.1R).

Was Pi's advice suitable?

Mr C was invested in a SIPP which was invested in cash, so I think it was reasonable to review this pension. Pi completed a fact find with Mr C as well as an attitude to risk assessment.

At the time of the advice Mr C was 41, married and earning £45,000 per year. His home had a value of £235,000 with an outstanding mortgage of £180,000. He had other liabilities of £20,000. He had two pensions totalling £65,000 in value and no other savings or investments.

Pi issued a suitability report which set out a variety of reasons why Mr C should change to a different SIPP including the option to take his pension flexibly, have access to a wider range of investments and the possibility to leave his wife with a lump sum payment. However, given that Mr C was already in a SIPP, I think he would have had all these benefits in his existing plan. So these weren't in my view reasons to move his pension to another SIPP.

I then considered Pi's advice on how Mr C should invest once transferred. In their financial planning report on 4 May 2017 Pi recommended Mr C to invest through Mayfair with a risk rating of an adventurous investor.

I've considered the attitude to risk assessment Pi completed as well as their questionnaire on Mr C's investment knowledge and experience. I think it's clear that Mr C had very limited knowledge and experience when it came to investments. The questionnaire confirmed he only ever had savings accounts and his two pensions. One of which was invested in cash and had been taken out after receiving financial advice and one was an occupational pension. I can't see that he had any direct investment experience at all. The financial planning report did state Mr C confirmed he had very little knowledge and experience of financial products and investments.

Mr C's attitude to risk assessment was a fairly basic, generic questionnaire with multiple choice answers. In response to the question which statement best described his investment objective, Mr C chose:

'I want to achieve higher long-term returns than cash. I could cope with infrequent periods where my investments might fall in value.'

Out of five options this was the second most cautious answer.

Somewhat contrary to this when given a choice of sample portfolios with possible gains and losses, he chose a portfolio which could fall by 23%. He also said that he would be concerned if his pension fell by more than 20% in a one year period which again would be slightly contradictory to the portfolio he chose in the previous question.

I haven't seen any evidence how this assessment was discussed with Mr C and that contradictions were clarified. Attitude to risk questionnaires are unfamiliar to inexperienced investors and an outcome from a questionnaire should be discussed and tested. A questionnaire should not be viewed in isolation. Mr C gave conflicting answers and his experience and existing assets did not support an adventurous attitude to risk. I can't see that Pi properly assessed his attitude to risk and took his circumstances into account. Mr C was categorised as an Adventurous Investor which was defined as follows:

Adventurous investors typically have high levels of investment knowledge and keep up to date on investment issues. They will usually be experienced investors, who have used a range on investment products in the past, and who may take an active approach to managing their investments. In general, Adventurous investors are happy to take investment risk and understand that this is crucial in terms of generating long-term return. They are willing to take risk with most of their available assets. Adventurous investors will usually be able to make up their minds on investment matters quickly. While they can suffer from regret when their investment decisions turn out badly, they are able to accept that occasional poor outcomes are a necessary part of long-term investment.

Given Mr C's very limited investment experience this classification doesn't seem to fit in my view. I don't doubt that Mr C wanted to improve on cash returns. However, based on the evidence I've seen I'm not persuaded he had an adventurous attitude to risk.

Even if I'm wrong about this, I don't think he had the necessary capacity for loss to take such risk with his pension. Pi said in their report Mr C had a high capacity for loss, however I disagree. This pension made up half of his overall pension provisions and other than his home on which he was planning to pay off the mortgage by the age of 60 and a small emergency fund, he had no other assets. Given that he was still many years from retirement I think he could reasonably take *some* risk with his pension. However, I don't think he could reasonably afford any significant losses.

I'm also not persuaded using an investment manager who actively involved him in making investment decisions was a suitable proposition for Mr C.

Mr C's pension funds were modest (just over £30,000) and he was an inexperienced investor. Mayfair charged 1.5% dealing commission as well as additional charges which depended on how Mr C's funds would be invested. Pi was also providing an ongoing advice service for Mr C which according to their client agreement included the review of investment performance and holdings as well as the reassessment of risk profile and asset allocation. He paid another 1% per year for this service which essentially was duplicating some of the services Mayfair was meant to provide.

I can't see that the impact of these charges was properly explained to Mr C. The arrangement with Mayfair added a layer of complexity and cost that Mr C, in my view, didn't need. I don't think he had the necessary experience and knowledge to understand the bespoke investment propositions Mayfair would give to him and he was paying a premium charge for this.

I can't see that a wider range of funds or a bespoke investment portfolio was necessary to meet Mr C's objective of receiving higher returns than cash. There was no reason why he couldn't have invested in a more standard portfolio which could have been reviewed by Pi regularly during their ongoing service to make sure it was in line with his attitude to risk and meet his requirements.

I haven't seen evidence that simpler and cheaper investment options without an IM, such as managed funds, were explored. So I don't think it was made clear that he was paying a premium for a service that wasn't a necessity.

Overall, I don't think such an arrangement was in Mr C's best interest and the additional costs weren't justified in his circumstances.

Pi also had a duty to ensure the recommended DFM was appropriate and do their due diligence on the firm they were recommending.

The Financial Services Authority (FSA) issued guidance in July 2012 about the recommendation of DFMs *('Assessing suitability: Replacement business and centralised investment propositions').* And the Personal Finance Society build on this in February 2015 with a good practice guide for advisers to help them develop their approach on due diligence into investment firms.

Both regulatory and industry guidance made it clear that advisers needed to do some due diligence before recommending IM services which included for example research into a firm's reputation and financial standing as well as the types of underlying assets the IM would invest in and their approach to investing. The good practice guide said advisers needed to *'get under the bonnet'* of an IM's *'marketing blurb'* and were required to question and challenge information that was provided to them. Given that Mayfair had only recently been established in 2016 and authorised only around a month before Pi recommended their services to Mr C, particular care should have been taken.

Pi provided evidence to show they considered Mayfair's accounts, checked that they had insurance and looked into the people involved at the firm. I can also see that they asked Mayfair to confirm they weren't investing in Unregulated Collective Investment Schemes (UCIS) or non-mainstream pooled investment vehicles (NMPI). So I'm satisfied they did some due diligence. However, I haven't seen persuasive evidence that Pi really understood how Mayfair would invest and what kind of investments they would consider before they recommended Mr C to invest through them.

Based on valuations I've seen it looks like Mr C ended up in investments which were higher risk than was suitable for him. And I think the risk of him ending up in this situation could have been reasonably foreseen and avoided by Pi. I don't consider recommending Mayfair and then relying on them providing suitable advice without doing any proper due diligence into the a newly authorised firm and their investment strategy beforehand was sufficient.

I've seen the application to open a trading account for Mayfair and their terms of business. They refer to investments in AIM and penny shares and companies trading on the NEX Exchange. And in their financial planning report Pi advertised one of the benefits to be that Mr C would be able to receive free advice and have one account for shares, bonds and CFDs (the latter being high risk and complex investments which Mr C clearly didn't have the necessary knowledge or experience to understand).

Mr C completed an updated application form a few months later. It asked clients to complete their preferred product classes and how much they would like to invest into different assets. Following the form in line with a balanced portfolio 15% would be invested into high risk and speculative investments. In an adventurous portfolio this would be 20%. These were described as Global Small Equities (e.g. AIM) & Non-Investment Grade Corporate bonds (High Yield Bonds). I think Pi should have found out and queried such an asset strategy further, asked for more information about what sorts of bonds Mayfair would usually consider in here and what due diligence they would do on the investments.

Overall, I don't think Pi gave Mr C suitable advice.

Responsibility for investment losses

Pi says Mayfair was responsible for the suitability of the investments and so they are the ones who should be held to account here.

I appreciate that Mr C became a direct client of Mayfair and that Mayfair are regulated and had their own responsibilities towards Mr C. Mayfair had confirmed to Pi in January 2017 that they would be responsible for the suitability of the investments. And I acknowledge that their actions might have also caused Mr C's losses by recommending investments to him that were too high risk. So I understand that Pi thinks it's unfair that they are the only ones held to account.

However, I'm deciding the complaint against Pi and I'm satisfied that without their unsuitable advice Mr C's losses could have been avoided.

As I explained above, I don't think Pi assessed Mr C's attitude to risk and capacity for loss appropriately and gave unsuitable advice when recommending Mr C to invest through Mayfair. It was too complex requiring Mr C to take investment decisions he didn't understand and the arrangement was expensive given he didn't really require this service and which would affect returns particularly on such a small portfolio. So with suitable advice Mr C wouldn't have ended up with them and in the position he is in now.

In addition, from what I've seen Pi failed to do proper due diligence on Mayfair to ensure they fully understood their investment strategy and whether it was appropriate for Mr C's circumstances. If they had done so, I think they ought to have realised that Mayfair's investment strategy included speculative investments which likely weren't suitable for Mr C.

So in the circumstances of this case I consider it fair and reasonable that Pi compensates Mr C for all his losses. If Pi feels Mayfair is also at fault here, they are free to pursue them directly after they have compensated Mr C in full.

Putting things right

My aim is that Mr C 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 C 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 C's circumstances and objectives when he invested.

What must Pi do?

To compensate Mr C fairly, Pi must:

- Compare the performance of Mr C'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.

  Pi should add interest as set out below.

- Pi should pay into Mr C'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 Pi is unable to pay the total amount into Mr C'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 C won't be able to reclaim any of the reduction after compensation is paid.

  The notional allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age. Generally, 25% of the funds would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

- Income tax may be payable on any interest paid. If Pi deducts income tax from the interest it should tell Mr C how much has been taken off. Pi should give Mr C a tax deduction certificate in respect of interest if Mr C 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")	Additional interest
SIPP	Still exists	FTSE UK Private Investors Income Total Return Index	Date of transfer	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.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market). This might be the case here. Pi should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Pi pays should be included in the actual value before compensation is calculated.

If Pi is unable to purchase illiquid assets, their value should be assumed to be nil for the purpose of calculating the *actual value*. Pi may require that Mr C provides an undertaking to pay Pi any amount he may receive from the illiquid assets in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Pi will need to meet any costs in drawing up the undertaking.

Fair value

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

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 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 Pi 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 C wanted Capital growth and was willing to accept some investment risk. I think a reasonable assumption is that he was a balanced investor.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr C's circumstances and risk attitude.

My final decision

I uphold the complaint and require Pi Financial Ltd to pay Mr C compensation as calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 19 December 2022.
Nina Walter
Ombudsman