

## The complaint

Mr B complains that AFH Independent Financial Services Limited (AFH) didn't inform him of changes to the management of his Self-Invested Personal Pension (SIPP).

## What happened

In 2017, Mr B was advised by his Independent Financial Adviser (IFA) to transfer several of his personal pensions into a SIPP. The SIPP was held by one provider. But a Discretionary Fund Management (DFM) service was provided by a different company. An annual fee of 0.36% was charged for the provision of the DFM service.

In 2018, the IFA's firm was bought by AFH. Mr B's IFA transferred over to AFH in January 2018. Mr B was offered AFH's Interim Advisory Service. And was told that his IFA would provide him with further details of AFH's available service propositions. The service was to have an ongoing adviser charge of 0.5% each year.

Mr B was told several times that there would be no change to the services that were provided through AFH due to the change in ownership of the IFA firm. So he felt that he'd still benefit from the DFM service.

However, this wasn't correct. The company which provided the SIPP said that the company which had provided the DFM service had been removed due to the substitution of a new contract for an old one. The SIPP provider didn't inform AFH of this. And AFH didn't inform Mr B of this change.

Mr B particularly valued the service provided by the DFM. They regularly reviewed his SIPP, buying and selling assets to maintain a consistent risk profile. When his IFA transferred to AFH, Mr B had been told nothing would change. So Mr B still thought that his SIPP was being managed by the DFM. But in reality, his SIPP funds weren't being rebalanced and his investment strategy wasn't being reviewed.

Between February 2018 and July 2019, AFH sent a number of emails to Mr B. None of these emails ever noted that Mr B no longer had access to the DFM service he thought he still had. During this time, there were discussions about Mr B moving to AFH's preferred DFM, but no formal advice was issued. Nor did AFH tell Mr B that there was no longer a DFM service attached to his SIPP. Mr B raised concerns over the performance of his SIPP on more than one occasion over this period. But AFH still didn't notice that his SIPP was no longer being managed in the way he expected.

In February 2020, Mr B found out from the SIPP provider that the company which had provided the DFM service hadn't been providing that service since February/March 2018. He asked AFH to explain what'd happened. AFH confirmed that his DFM had ceased to provide services to him in 2018. The IFA said: *"this was as a result of [the DFM] ceasing offering its services and is nothing to do with myself joining AFH"*. The IFA went on to note that since he'd moved to AFH he'd recommended that Mr B should move to the alternative DFM services provided by AFH. But that Mr B hadn't decided to do that.

In March 2020 Mr B complained to AFH. He said that his IFA should've known what had happened. AFH didn't uphold the complaint. They said that the SIPP provider had removed Mr B's DFM from his account without informing them. They felt that AFH had fulfilled their obligations as set out in the Interim Client Agreement. They recognised that an error had occurred. But held the SIPP provider responsible for it.

Mr B didn't agree. So he brought his complaint to this service.

Our investigator felt that his complaint should be upheld. He felt that AFH had provided a poor service by not informing Mr B of the change. Or contacting the SIPP provider and asking whether things would remain in place after the acquisition. He felt that AFH had caused Mr B distress and inconvenience and that they should give him £250 compensation. AFH agreed with our investigator.

Mr B didn't agree. He said he didn't believe that AFH had provided the service he'd paid for. He said that despite several discussions, at no stage did his IFA investigate or discover that his fund was no longer being managed. He felt that at the very least AFH should fully refund the fees he'd paid since the DFM had been removed from his account.

Mr B also said that if he'd been told that his DFM would be removed he'd have moved his SIPP. He said that he'd always believed that his SIPP was still being managed by his DFM, as his IFA had told him that "*nothing would change*".

So this complaint has come to me for review.

Mr B confirmed to this service in September 2021 that his SIPP is still held with the same provider. But that he removed AFH as his financial advisers in February 2021.

I issued my provisional decision on 21 September 2021. It said:

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

*I intend to uphold this complaint. But I intend to recommend a different resolution to that put forward by our investigator. I'll explain why.*

*There's no dispute that AFH didn't tell Mr B that his DFM provider had been removed from his SIPP account.*

*What is in dispute is whether or not AFH should've known. And should've told him. If I find that AFH should've known and told Mr B, it follows that they'll need to put him back, as closely as possible, to the position he would've been in had they told him that his DFM provider had been removed from his SIPP account as soon as they should've known.*

*AFH agree that there was an error. But have said that the SIPP provider is responsible for it. Based on the evidence I've seen, I consider that AFH should also have known. I'll explain why.*

*From the correspondence both Mr B and AFH have shared with us, it's clear that Mr B's IFA didn't know that DFM services were no longer being provided. I've included extracts from communications between Mr B and AFH to evidence this point below:*

- 6 February 2018 Mr B's IFA told him that the move to AFH would be: "*Business as usual*"

- 25 April 2018 AFH told Mr B: “[The DFM] do automatically adjust the funds to achieve better returns for your investment”
- 30 April 2018 Mr B’s IFA told him: “You will not be affected in any way” by the move to AFH. He also said: “Their [the DFM] intention is always to achieve good returns and if necessary they will alter the funds automatically”
- 10 August 2018 Mr B told his IFA: “I am concerned about my pension fund and its performance during the last year I thought that with management by [the DFM] and [the SIPP provider] I would have had better results”
- 6 September 2018 Mr B had a meeting with his IFA where he said the removal of the DFM wasn’t mentioned
- 14 January 2019 Mr B told his IFA: “We are looking forward to receiving information to support your recommendations to move my pension fund from [the SIPP provider] and [the DFM] to AFH. together with any additional costs that will be incurred, as discussed at our last meeting”.
- 9 May 2019 Mr B told his IFA: “Following our meeting and as we asked in January, we are looking forward to receiving evidence to support your recommendation to move my pension fund manager from [the DFM] to AFH, together with information on any additional costs that would be incurred”.
- 31 May 2019 Mr B told his IFA: “I said at our last meeting that I was concerned that I couldn’t see any active management of my funds with [the SIPP provider], although I understood that [the DFM] were managing the fund. Your response was to move the management to AFH which we requested back-up information for”.
- 4 July 2019 Mr B’s IFA provided research on various options and associated costs of moving from [the DFM]
- 19 February 20 Mr B told his IFA: “I have just spoken to [the SIPP provider] and was shocked to discover that the last payment to [the DFM] was made in February 2018. Needless to say, I am surprised and extremely disappointed to find this out, especially as you said that your move to AFH would not affect our investment in any way”.
- 26/2/20 Mr B’s IFA confirmed that the DFM stopped providing services to Mr B in 2018.

*From the above, it’s clear that there were a number of occasions when Mr B was told his DFM was still in place. So it’s not surprising that when Mr B became concerned by the performance of his SIPP, he thought that his DFM wasn’t doing a good job. In fact, he had no DFM associated with his SIPP.*

*Even when Mr B queried the performance, AFH didn’t find out that he no longer had a DFM. And when he repeatedly asked them for supporting evidence for their recommendation to move to AFH’s replacement DFM, it took months and several reminders from Mr B for that to be provided.*

*I also think that it should’ve been obvious to his IFA during any review of Mr B’s SIPP account that he was no longer being charged the 0.36% annual fee for the DFM service. And that the SIPP itself was no longer being rebalanced. Nor was the investment strategy being changed in any way. So I don’t agree with AFH’s view that the SIPP provider was*

responsible for the situation Mr B found himself in 2 years after the change of IFA firm.

*I acknowledge that AFH said that Mr B's valuations from the SIPP provider stated: "Discretionary Manager". But I still consider that AFH should've done more to confirm that there really would be no changes to Mr B's SIPP arrangements if he agreed to join their Interim Advisory Service. AFH were charging 0.5% per year for their ongoing advice. And I consider that they should've known they didn't have access to the DFM through the SIPP provider.*

*Having looked at all the evidence, I'm persuaded that AFH should've known that the DFM wouldn't be available to Mr B. And that they should've told him so that he could make an informed decision on what to do next.*

*Given this, I consider that AFH should put Mr B back, as closely as possible, to the position he would've been in had they told him that his DFM provider would be removed from his SIPP account.*

*So I need to decide what I consider Mr B would've chosen to do if he'd been told about the removal of his DFM before accepting AFH's Interim Advisory Service. I'll address fair compensation later in my decision.*

*In addition, I intend to ask AFH to compensate Mr B for the trouble and upset they've caused him. Despite him expressing performance concerns on a number of occasions, AFH didn't realise that a fundamental aspect of Mr B's SIPP management had been removed. It must've caused Mr B considerable distress when he eventually found out what'd happened, some two years after the event. So I agree with our investigator that £250 is reasonable compensation under the circumstances.*

*But I don't think it would be fair or reasonable to also direct AFH to refund the fees it's collected. The above redress proposal is designed to put Mr B, as closely as possible, in the position he would've been had no errors been made. And that would've included payment of adviser fees.*

*To sum up, I intend to uphold Mr B's complaint. I intend to ask AFH to put Mr B, as closely as possible, back to the position he would've been in if he'd known the DFM would be removed from his SIPP. And I intend to ask them to pay him £250 compensation for the trouble and upset they've caused him.*

### **Fair compensation**

*My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.*

*I think Mr B would've invested differently. It's not possible to say precisely what he would've done, but I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.*

### **What should AFH do?**

*To compensate Mr B fairly, AFH must:*

- *Compare the performance of Mr B's investment with that of the benchmark shown. 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. AFH should add interest as set out below.*

*If there is a loss, AFH should pay into Mr B's pension plan to increase its value by the 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 AFH is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.*

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

*For example, if Mr B 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 B would've been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.*

- *Pay Mr B £250 for the trouble and upset they've caused him.*

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

<i>investment name</i>	<i>status</i>	<i>benchmark</i>	<i>from ("start date")</i>	<i>to ("end date")</i>	<i>additional interest</i>
<i>SIPP</i>	<i>still exists</i>	<i>for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds</i>	<i>date DFM was removed from Mr B's account</i>	<i>date of any final decision</i>	<i>8% simple per year from date of any final decision to date of settlement (if compensation is not paid within 28 days of the business being notified of acceptance)</i>

### **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, AFH 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 that Mr B paid into the investment should be added to the fair value calculation at the point it was actually paid in.*

*Any withdrawal, income or other distribution out of the investment 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 AFH totals all those payments and deducts that figure at the end instead of deducting periodically.*

### **Why is this remedy suitable?**

*I've chosen this method of compensation because:*

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

### **Response to my provisional decision**

AFH agreed with my proposed decision for the most part. But disagreed with the end date of the calculation. They said that Mr B was aware at the point he complained to them that his funds hadn't been managed. And that the replacement adviser he'd requested, and they'd arranged for him, had outlined the various options open to him. So they considered that the end date of the calculation should be the date they'd received Mr B's original complaint. They said that at this point, he'd been aware of the issue but didn't take any further action.

I carefully considered what AFH said. And I can see why they don't agree that the end date I proposed was fair under the circumstances. But I don't quite agree that we should use the date Mr B originally complained to AFH as the end date for the calculation. Instead, I consider that we should use the date AFH sent Mr B their final response letter to that complaint, 7 May 2020.

My rationale for this is that AFH now largely accepts my proposed decision, which indicates that they agree that they did something wrong. They could've reached this conclusion in their final response letter. So I feel that a fair end date for the calculation should be linked to that.

I acknowledge that Mr B knew what had happened – and therefore could've taken mitigating steps – from February 2020 when he first discovered that there was no longer a DFM service attached to his SIPP. But I consider that it was reasonable for Mr B to have first complained to AFH to see what they would do to put things right, before deciding what steps to take himself. I say this because Mr B would've needed to be clear about exactly what had happened, before he was in a position to take mitigating steps.

I asked both Mr B and AFH if they accepted 7 May 2020 as the end date for the calculation. They both agreed.

AFH proposed that if Mr B agreed, they intended to issue the redress directly.

### **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.

Both parties have agreed to an amended end date of 7 May 2020 for the redress calculation I proposed in my provisional decision. So I remain of the view I set out in my provisional decision, except for the amended end date.

### **Putting things right**

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think Mr B would've invested differently. It's not possible to say precisely what he would've done, but I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested.

### **What should AFH do?**

To compensate Mr B fairly, AFH must:

- Compare the performance of Mr B's investment with that of the benchmark shown. 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. AFH should add interest as set out below.

If there is a loss, AFH should pay into Mr B's pension plan to increase its value by the 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 AFH is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've provided a taxable income. Therefore the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid.

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

For example, if Mr B 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 B would've been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay Mr B £250 for the trouble and upset they've caused him.

Income tax may be payable on any interest paid. If AFH deducts income tax from the interest, it should tell Mr B how much has been taken off. AFH should give Mr B 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
SIPP	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 DFM was removed from Mr B's account	7 May 2020	8% simple per year from date of my final 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, AFH 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 that Mr B paid into the investment should be added to the fair value calculation at the point it was actually paid in.

Any withdrawal, income or other distribution out of the investment 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 AFH totals all those payments and deducts that figure at the end instead of deducting periodically.

### Why is this remedy suitable?

I've chosen this method of compensation because:

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

### **My final decision**

For the reasons given above, I uphold this complaint. I require AFH Independent Financial Services Limited to take the action detailed in the “Putting things right” section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 21 March 2022.

Jo Occleshaw  
**Ombudsman**