DRN-3327874

The complaint

Mrs R complains about the advice she was given by Wise Pension Group Limited (Wise) in 2016. Wise is now Interestme Financial Planning Limited (IFP). She questions its recommendation to switch her existing JFM pension to The Wise Self-Invested Pension Plan (SIPP). She questions whether the SIPP was suitable for her and why an investment with Strand Capital was recommended when it only had a one year track record and there were 7000 other funds available with much longer track record's?

Mrs R says she was of the understanding she was receiving independent financial advice from Wise and questions whether this is true.

Mrs R also questions whether the risk of her investment with Strand Capital was suitable for her – suggesting it was higher risk than was appropriate.

She also believes that there was a conflict of interest as two shareholders of Wise Pension Group were shareholders in Strand Capital.

Mrs R is unhappy that some of her money was in invested in the 'OWG Bond', which she now believes is worthless. And she asks why her pension funds were subsequently moved from Strand Capital to 'EGR Wealth'.

What happened

I issued a provisional decision on 20 January 2022. I have set out the content of that provisional decision in italics below:

As Wise is now IFP and IFP is responsible for answering this complaint, I will refer to IFP throughout this decision.

Mrs R had an existing JFM stakeholder pension plan which was valued at about £48,000 at the time the advice was given. Mrs R received advice from IFP and a recommendation that she should switch her pension to The Wise SIPP and invest with Strand Capital. Strand Capital was a Discretionary Fund Manager (DFM). Mrs R followed that advice and her pension was switched to The Wise SIPP and invested with the DFM. The DFM later failed. Mrs R complained to IFP on the above basis.

IFP did not uphold Mrs R's complaint. It said that her funds had never been moved to EGR Wealth. It had investigated IFP when it became aware of the issues facing Strand Capital but

it could not take action as Strand Capital ceased to accept transfers out. It said it had been made clear to Mrs R in its Suitability Report dated 20 June 2016 that its financial adviser could only give 'restricted advice'. It said 'like for like' projected values had also been provided in the Suitability Report which provided a comparison between the existing pension and the pension it recommended. IFP said that it had been disclosed that two shareholders of the Wise Pension Group had minority holdings in Strand Capital and they had no involvement in the decision making at Stand Capital.

IFP said that a risk profile of 'Low to Medium' or '4' on a scale of '1 to 10' had been agreed with Mrs R and the Strand Capital portfolio composition was based on that profile. Overall, the *portfolio chosen matched the risk profile agreed upon. It said it was not responsible for the exit penalties that Strand Capital had placed on her investment. It also said it had acted in Mrs R's best interests and made recommendations that it believes were appropriate for her. It said it had no knowledge that some of her money would be invested in the OWG Bond and that was not included on the Strand Capital investment factsheet when it made the recommendation to switch.*

Mrs R referred her complaint to this service and it was considered by an investigator. He believed the complaint should be upheld.

In summary he said that:

- *In his view the difference in charges applicable to the existing pension plan and that recommended by IFP had been misrepresented. The new plan was described as "slightly more expensive" than the existing plan but the charges in the new plan were about double those of the existing plan.*
- *These extra charges, plus an initial advice charge, would have a significant impact on future investment growth.*
- *Given that Mrs R was recorded as seeking out pension advice, "to look at the possibility of switching your pension to a contract with lower costs", the recommendation was not appropriate.*
- *The projections of future performance included in IFP's Suitability Report gave the impression that Mrs R would be much better off by switching but this was not an accurate 'like for like' comparison and the future returns were based on a very limited amount of data. Using a future assumed growth rate of about 9% a year for the new scheme distorted any comparison and Mrs R was not therefore able to make an informed decision. There was no guarantee the new pension would outperform the old pension.*
- *There was no rationale as to why all of Mrs R's pension was to be invested in Strand Capital Balanced Portfolio when there was access to over 7,000 funds within the new pension. There was no diversification. So one of the purported advantages of switching – having access to a very large number of funds, was not utilized.*
- *Mrs R was not a sophisticated investor and only had very modest funds to invest. He was not persuaded that she needed what was a relatively complex arrangement with the extra charges that incurred.*
- *He did not believe it was made clear to Mrs R that she was receiving 'restricted' (i.e. not whole of market') advice, or what the 'restrictions' meant in practice.*
- *Mrs R's fund had never been transferred to EGR wealth.*
- *He thought IFP's liability should be 'capped' as at 10 July 2019 as this was the date when Mrs R dispensed with IFP's services.*
- *Redress should be calculated by comparing the position with that if Mrs R had not switched her pension. Plus a sum should be supplied in respect the of the trouble and upset she had been caused.*

IFP then made an offer in settlement of the complaint. It set out that it had made this offer on the basis suggested by the investigator, using the benchmark suggested by the investigator for comparison purposes. This used the starting vale of the money switched out of the original pension but deducting the amount invested in the OWG Bond. It said this resulted in a compensation payment of about £3,700.

Mrs R did not accept that offer and commented that the redress had not been calculated as the investigator had proposed. She said that the actual amount switched from the existing pension was about £55,000, not the (approximately) £48,000 IFP had used. If the OWG value was deducted from this it would result in a figure of about £50,000, not the (approximately) £44,000 used.

The investigator then reviewed the complaint. In summary he said:

- *The redress had not been calculated as set out in his previous assessment.*
- *IFP had accounted for charges (an Initial Advice Charge, an Ongoing Advice Charge and a Platform Charge) when carrying out the redress calculation. The investigator had not set out that any such deduction or allowance could be made. And he confirmed that they should not be made.*
- *He did not believe another case being considered by this service that IFP had referred to had any relevance here. He did not believe that IFP should deduct the value of the OWG Bond from any redress calculation. If IFP had not given the advice then Mrs R's money would not had been placed with Strand Capital and therefore in the OWG Bond. Therefore it should be taken into account in the redress calculation. He did not believe that Mrs R should be required to make a claim to FSCS for the OWG Bond.*
- *The £300 he had suggested for the 'trouble and upset' caused had been 'netted down' in the redress calculation as if it were to be placed in her SIPP. The investigator pointed out that this was a separate award that should be paid direct to Mrs R and without deduction.*
- *If IFP had not given the advice to switch then Mrs R would still be in her existing scheme and therefore IFP should compensate her on this basis. This did not include applying its charges or those incurred by switching to to the new pension. He reiterated how the redress should be calculated.*

We did not receive any further submissions from IFP or indication that it would calculate the redress as the investigator suggested. Therefore the complaint has been passed to me for review.

What I've provisionally 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.

Mrs R was a self-employed caterer earing about £2,000 a month, with two dependent adult children. It was recorded that Mrs R's pension was worth about £48,000. Her money in that pension was mainly invested in the 'JFM Tracker Pension Fund' and 'JFM Corporate Bond Fund'. The Tracker fund was an equity fund investing in listed companies on the FTSE All Share index. The Corporate Bond Fund invested in the bonds of various UK and overseas businesses.

A Suitability Report dated 20 June 2016 was completed. This set out Mrs R's objectives and the recommendations by IFP.

The report set out that IFP recommended a switch from her existing pension to 'The Wise SIPP'. It said the main reason was performance. It was set out that Mrs R's existing pension had a very small choice of funds and,

"by switching you will benefit from investment into a multi-asset portfolio, selected from a universe of around 7,000 funds.."

And:

"The simulated returns for this fund indicate that, over the longer-term, the strategy offers the opportunity for higher annualised returns than benchmarked for your chosen risk profile." After setting out that the annual management charge on the existing pension was, "around 1%", it was commented that:

"Our recommended solution is slightly more expensive than both your current pension and

alternative choices such as stakeholder pensions. Although this is a disadvantage, the reason that I am happy to recommend a more expensive solution is that the agreed main objective is performance and the Wise SIPP gives you greater investment choice, including access to the recommended portfolio. The portfolio is not available to either personal pensions or stakeholder pensions and I have explained how the asset allocation, short-term performance and long term performance simulations justify the small additional cost."

At this point in the report it was set out that the fees incurred would include a:

- *3% upfront advice fee.*
- *0.75% ongoing servicing fee.*

It should be noted that the fees or charges for the chosen investment or investments were not set out at this point.

Mrs R's "Objectives" were also listed:

"You do not know as much as you would like to about your pension.

You have never had a review and would like to speak with an adviser.

You have not considered planning for your retirement before and want to understand your potential position, any shortfalls that may exist and what actions you can take to improve your position.

You believe a combination of positive long-term investment returns and making ongoing contributions play an equally important role in growing your pension.

You would be happy to look at the possibility of switching your pension to a contract with lower costs.

We discussed these objectives, and considered them within the context of your target income, risk profile and capacity for loss. Following this discussion, we agreed that the following objective carried the most important weighting at this stage of your retirement planning:

Improved performance"

It was also set out that Mrs R's risk profile was, "Lower to Medium" and this would involve some fluctuations in value.

This risk profile was defined as:

"A person with a lower to medium attitude to risk would generally be relatively cautious with their investments.

They want to try to achieve a reasonable return, and are prepared to accept some risk in doing so. They understand your portfolio will exhibit relatively modest yet frequent fluctuation in value."

In the "Income Shortfall Assessment" it was recorded that the value at retirement of the pension at her retirement was projected to be £111,000. I assume this was taken from the 'Mid' rate on the JFM Stakeholder Pension Illustration dated April 2016. The future growth rates used on that illustration were based on those allowed by the regulator – The Financial Conduct Authority. It was set out that this was a 'stakeholder' pension with a total annual charge of 1%. On a 'like for like' basis it was said that the Wise SIPP was projected to yield £105,000.

It was then set out that the projected value of "my recommendation" - the Strand Balanced Portfolio - was £228,000. It seems that this was based on an extrapolation of returns based on annual return of over 9%. It is commented that this is not guaranteed.

What is notable is this return was set out as being based on a:

“5 year annualised performance of 9.4%”

But:

“As Strand Capital Limited have only been running the portfolios for 1 year, the 5 year performance ***has been back-tested on a simulated basis.****” (my emphasis)*

So IFP was projecting forward based on an extremely short term, one-year historical performance figure. This was clearly inappropriate.

The quoting of a future pension value based on short term performance of The Strand Balanced Portfolio was in my view likely to mislead Mrs R. As the investigator said, this creates the impression that over double the return will be achieved by switching when that is far from guaranteed. The subsequent comment that this was not guaranteed does not adequately address this. It is simply the case that using a projection of the existing pension based on standardised and approved growth rates but then using a non-standard growth rate chosen by the adviser was inappropriate and likely to mislead Mrs R. It is for that reason that the regulator stipulates standard rates for comparisons. What should have been highlighted was that on a ‘like for like’ basis IFP was setting out that the Wise SIPP was projected to yield less.

Having a greater choice of funds is an advantage and Mrs R’s existing funds were constrained. Setting that out was not inappropriate. But what was not appropriate was to create the impression that far greater returns would be likely obtained.

It was also set out that:

“Why is it in your interest to transfer?

Based on what you have told me and my analysis of your situation, for the scheme(s) we have identified as suitable to switch I recommend that you transfer your benefits to The Wise SIPP. The reasons for this are as follows:

Following our discussion on Friday 17th June, I am recommending that you switch to the Wise SIPP. The main reason for this is performance. Your current pension has a small choice and by switching you will benefit from investment into a multi-asset portfolio, selected from a universe of around 7,000 funds, monitored daily. The simulated returns for this fund indicate that, over the longer-term, the strategy offers the opportunity for higher annualised returns than benchmarked for your chosen risk profile.

When we analysed your current pension, we identified the following reasons to support this recommendation:

The plan does not contain any penalties.

The plan does not contain any guarantees, either for the funds or in the form of an income you can buy at your retirement age.

The plan has access to just one alternative fund to switch into (excluding current fund choice). This would make building a diversified portfolio very difficult. The annual management charge is around 1%.

Our recommended solution is slightly more expensive than both your current pension and alternative choices such as stakeholder pensions. Although this is a disadvantage, the reason that I am happy to recommend a more expensive solution is that the agreed main objective is performance and the Wise SIPP gives you greater investment choice, including access to the recommended portfolio. The portfolio is not available to either personal pensions or stakeholder pensions and I have explained how the asset allocation, short-term performance and long term performance simulations justify the small additional cost.”

It was stated, factually, after the recommendation that there were plan charges:

"Pension wrapper charge £114 per annum Investment management charge 0.84% Dealing charge 0.42%"

But the total charges vis-a-vie the existing pension were not set out in plain English. As set out, it was commented that the new pension would only be, "slightly more expensive". As the investigator said, The Wise SIPP, when taking into account the investment fund charges was not "slightly more expensive" but about double the cost of her existing pension.

And Mrs R was given an unrealistic picture of the returns she would obtain by switching. These are both material issues and Mrs R would not have proceeded in an informed position.

Furthermore Mrs R was not making use of the fund choices from the new scheme, which was a material reason for recommending the switch. It is not clear why, with such a wide choice of funds, the adviser recommended that Mrs R invest all her money in one fund provided by Strand Capital – a DFM with a very limited track record. That placed 'all her eggs in one basket' – a risk that was demonstrated when Strand Capital subsequently failed after only a comparatively short period of time. I do not believe it was suitable to recommend that to Mrs R in her circumstances and with only very modest resources.

Mrs R has said that if she had been correctly informed she would not have switched and would have simply remained with her existing pension scheme. I am persuaded by her comments. Therefore I uphold the complaint.

Fair compensation

My view as to how redress should be calculated differs somewhat from the investigator's. I believe that, as Mrs R has confirmed, but for the advice, she would not have switched and would have remained with her existing scheme. So, the redress comparison would be to compare the current transfer value of her pension with the transfer value her JFM pension would have achieved.

In addition, I do not believe that the comparison should end in 2019. It should be performed to the date of my final decision. It is my understanding that Mrs R remains (essentially) invested in the same way as recommended by IFP (notwithstanding any necessary arrangements made on the failure of Strand Capital). And it would not appear that Mrs R could have made any material changes in any event in 2019, as Strand Capital was being wound up.

Furthermore I see no reason why the effect of investment in the 'OWG Bond' should be removed from the calculation. The DFM IFP recommended had a very wide investment mandate and it was entirely foreseeable that it could have invested in such an investment. In any event Mrs R's money would not have been invested in the OWG Bond were it not for IFP's recommendation. So it is reasonable for IFP to make good the effect of that.

In addition, IFP should not make any reduction for charges. If IFP had not given its unsuitable advice, then Mrs R would not have incurred those charges. And it is not reasonable to deduct advice charges for advice that was inappropriate.

IFP should therefore calculate fair compensation by comparing the current position to the position Mrs R would be in if she had not transferred from her existing pension.

In summary, IFP should:

1. *Calculate the loss Mrs R has suffered as a result of making the switch.*

2. *Take ownership of any illiquid investments if possible.*

3. *Pay compensation for the loss into Mrs R's pension. If that is not possible pay*

compensation for the loss to Mrs R direct. In either case the payment should take into account necessary adjustments set out below.

4. *Pay £500 for the trouble and upset caused.*

I'll explain how IFP should carry out the calculation set out at 1-3 above in further detail below:

1. Calculate the loss Mrs R has suffered as a result of making the transfer

To do this, IFP should work out the likely value of Mrs R's pension as at the date of my final decision, had she left it where it was instead of switching to the Wise SIPP.

IFP should ask Mrs R's former pension provider to calculate the current notional transfer value(s) had she not switched her pension. If there are any difficulties in obtaining a notional valuation, then the return of the funds Mrs R was invested in prior to the switch can be used for comparison.

The notional transfer value should be compared to the transfer value of the SIPP at the date of my final decision and this will show the loss Mrs R has suffered. Any illiquid investments or investments that cannot currently be sold should be assumed to have no value.

2. Take ownership of any illiquid investments

If IFP is unable to take ownership of any illiquid investments then they should remain in the SIPP. However, it would not be fair for Mrs R to have any ongoing fees to pay in relation to the SIPP. So, in the event IFP is unable to take ownership of any illiquid investments (and they can't otherwise be removed from the SIPP), it should pay a sum to Mrs R equivalent to the next five years SIPP fees. This should allow sufficient time for such issues to be resolved and the SIPP closed.

If the SIPP can be closed and all investments sold then this will not be an issue.

3. Pay compensation to Mrs R for loss she has suffered calculated in (1).

Since the loss Mrs R has suffered is within his pension it is right that I try to restore the value of her pension provision if that is possible. So if possible the compensation for the loss should be paid into the pension. The compensation shouldn't be paid into the pension if it would conflict with any existing protection or allowance. Payment into the pension should allow for the effect of charges and any available tax relief. This may mean the compensation should be increased to cover the charges and reduced to notionally allow for the income tax relief Mrs R could claim. The notional allowance should be calculated using Mrs R's marginal rate of tax.

On the other hand, Mrs R may not be able to pay the compensation into a pension. If so compensation for the loss should be paid to Mrs R direct. But had it been possible to pay the compensation into the pension, it would have provided a taxable income. Therefore, the compensation for the loss paid to Mrs R should be reduced to notionally allow for any income tax that would otherwise have been paid. The notional allowance should be calculated using Mrs R's marginal rate of tax in retirement. For example, if Mrs R is likely to be a basic rate taxpayer in retirement, the notional allowance would equate to a reduction in the total amount equivalent to the current basic rate of tax. However, if Mrs R would have been able to take a tax free lump sum, the notional allowance should be applied to 75% of the total amount.

4. Pay £300 for the trouble and upset caused.

Mrs R has been caused some distress and upset by the loss of her pension benefits. This is money Mrs R cannot afford to lose and its loss has undoubtedly caused her distress. I consider that a payment of £300 is appropriate to compensate for that. As the investigator said, *this is not an investment loss and should be paid direct to Mrs R.*

Interest

The compensation must be paid as set out above within 28 days of the date IFP receives notification of Mrs R's acceptance of my final decision. Interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement if the compensation is not paid within 28 days.

If IFP considers that it is legally required to deduct income tax from the interest, it must send a tax deduction certificate with the payment. Mrs R can reclaim the tax from HM Revenue and Customs if appropriate.

I would highlight that Mrs R will need to provide authority to IFP so that it can obtain information about the value of her JFM pension so that it can calculate the redress accurately.

My provisional decision

I currently intend to uphold the complaint and award compensation as set out above.

IFP and Mrs R have confirmed that they have nothing further to add in response to the provisional 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.

Having reconsidered matters, I remain of the view set out in my provisional decision. So, as I have no further submissions to consider, I uphold the complaint on the basis set out in the provisional decision.

Putting things right

I set out how fair compensation should be calculated in the provisional decision, as detailed above. IFP should now calculate and pay compensation as set out in the provisional decision.

My final decision

I uphold the complaint and order Interestme Financial Planning Limited to calculate and pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 22 March 2022.
David Bird
Ombudsman