DRN-3342072

The complaint

Mr M says Abbey Financial Services (N.I.) Ltd (AFS), is responsible for unsuitable advice he received to switch his Standard Life Self-invested Personal Pension (SIPP) into two SIPPs with Intelligent Money (IM) and Lifetime, with the funds being invested through discretionary fund management (DFM) arrangements. He says this has caused him financial detriment.

What happened

Mr M had received services from AFS since 2009. He says when it was dealing with his mother's will in 2016, he mentioned he was going to review his retirement plans. AFS said it could do this review for him.

Mr M said he had a heart attack in May 2016 and during his recovery he became concerned about whether he could return to work. He wanted to organise his financial affairs accordingly. He had several discussions with AFS at his home and in its office.

Mr M already had a SIPP with Standard Life. This had been established in 2010 and had a transfer value of nearly £539,000.

A fact-find of Mr M's circumstances, objectives and risk appetite was conducted in August 2016. At the time it's recorded Mr M:

- Was 52 years old, married with no financial dependents. He was in good health (although this appears at odds with the heart attack he'd recently suffered).
- Was managing director of an engineering company. He earned around £140,000 a year and received rental income of around £5,000 per annum. Household net monthly income was around £6,800 and outgoings about £4,800.
- Had a home valued at £300,000 and a rental property valued at £100,000. Both were unencumbered. He had invested £250,000 in the Helix Investment Bond and was about to place £250,000 into a Prudential Investment Bond. He had no liabilities.
- Mr M was planning to retire between age 55 and 65. He was receiving employer pension contributions of around £40,000 a year. And he wanted a monthly income in retirement of £4,000-£5,000.

On 23 August 2016, AFS issued a suitability report to Mr M. It noted his primary objective was:

"…to create a pension fund which may be used to provide you and your dependants with a flexible income in retirement."

AFS recorded that Mr M's aspiration and goal was to review his existing SIPP and that he felt that his fund should be managed on a more active basis to attain better returns. It assessed Mr M as having a balanced attitude to risk. This was defined in the following terms:

"The Balanced investor may be somewhat concerned with short-term losses and may shift to a more stable option in the event of significant losses. The safeties of investment and return

are typically of equal importance to the Balanced investor. What this means: If you hold the investment for over 5 years there is an 80% chance of getting a positive return."

In its report, AFS recommended Mr M switch his Standard Life SIPP funds into an IM SIPP. It said he should also make his employer contributions into this new arrangement. AFS went on to note:

"[we] did not provide you with any advice in relation to fund selection as you are going to use the services of a discretionary fund manager when your money is transferred to the Intelligent Money SIPP."

Of its recommendation to use an IM SIPP, AFS said:

"There are alternatives to SIPPs, such as a Stakeholder Pension which may have low charges, a low minimum contribution level and no penalties if contributions stop or funds are moved to a new provider. In your case, however, I am recommending this SIPP instead as it is more suitable in your circumstances because it offers investment choice that suits your attitude to risk and can be managed by a discretionary fund manager (DFM)."

The fees and charges related to Mr M's existing Standard Life SIPP for administration and transactions etc were not detailed in AFS's suitability letter.

For the new arrangement it noted there was an initial adviser charge of £1,000 and an ongoing fee of 0.25% of the fund value. The IM SIPP had an annual administration charge of £150 per annum. There would also be annual management charges – although no figures were provided. There was an annual platform fee of 0.17% and an off-platform investment charge of £75. There was also an investment portfolio charge of 1% per annum.

Ultimately Mr M was persuaded to accept AFS's recommendations. A signed application was sent to IM SIPP on the same date of its suitability report. The DFM recorded on the application form was Monument Global (MG) and this also showed the firm had a connection with Strand Capital Limited (SCL).

Mr M's Standard Life funds were switched to the new IM SIPP on 30 August 2016.

On 9 September 2016, AFS provided another suitability report for Mr M. This time it recommended setting up a Lifetime SIPP and to transfer £100,000 from his recently established IM SIPP. The reason for this was to be able to access a particular investment fund.

The Lifetime SIPP had an annual administration charge of £500 per annum and an annual investment portfolio charge of 1%. AFS sent the signed application to The Lifetime SIPP on the same date of its latest suitability report. The same DFM was recorded as the investment adviser.

Unfortunately, there were problems with the DFM arrangement AFS put in place for Mr M. So, in February 2017 it appointed Investec Wealth & Investment (IW&I) as the new DFM on the IM SIPP. It also requested a return of Mr M's funds from the Lifetime SIPP into the IM SIPP of £100,000. The IW&I account was opened in May 2017.

On 2 May 2017 Monument Global Limited's registration with the Financial Conduct Authority (FCA) ceased. Its status at Companies House is 'dissolved'.

On 18 May 2017 SCL entered special administration. According to Companies House, the last accounts filed were made up to 30 June 2016.

On 30 September 2019 The Lifetime SIPP Company Limited went into liquidation. According to Companies House, the last accounts filed were made up to 31 January 2017.

Mr M had several concerns about what had happened to him in 2016. For example, he said that in recommending the switch of his pension funds into two new SIPPs with a DFM facility, AFS hadn't exhibited due care, skill and diligence in the advice it gave him and the arrangements made. He said:

"What cannot be disputed is that over a period of less than 3 years, because of financial transactions implemented through or related to my relationship with Abbey Financial Services (NI) Ltd and its directors, I have lost a significant amount of capital. I have also suffered the opportunity cost of not being in suitable investments for the duration of the period under consideration."

AFS refuted Mr M's complaint. It maintained that the service it provided was appropriate and its advice suitable.

The Investigator upheld Mr M's complaint. She thought AFS's recommendation for him to switch away from his Standard Life SIPP, into two new SIPP's with a DFM arrangement had been unsuitable. AFS disagreed with her findings.

So, Mr M's complaint was passed to me for review as the final stage of our process. I issued my provisional decision in February and am grateful to both parties for their new evidence, which in particular has helped to shape the appropriate redress in this case. I'll also address any additional arguments in this final 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.

Where there's conflicting information about the events complained about and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr M's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr M's case?

The first thing I consider is the extensive regulation around transactions like those performed by AFS for Mr M. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3 - which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.

- Principle 7 – which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like AFS. As such, I need to have regard to them in deciding Mr M's complaint.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

When I consider a case where someone has switched their pension funds, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch?

Each case is different, but I'd expect the switch to be in Mr M's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his former pensions and the recommended new arrangement.

In 2009 the FCA, then the Financial Services Authority (FSA), published a checklist for pension switching that I think is still helpful today. It highlighted four key issues it thought should be focussed on:

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.
- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in January 2013 it issued an industry alert which said:

"Financial advisers…under the mistaken impression…they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect."

"The [regulator's] view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPPs and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes. It should be particularly clear to financial advisers that, where a customer seeks advice on a pension transfer in

implementing a wider investment strategy, the advice on the pension transfer must take account of the overall investment strategy the customer is contemplating (…)"

When considering the use of a DFM, the regulator has also made clear that amongst other matters, firms need to take into account issues such as:

- Likely cost: do the overall costs justify the potential for improved performance?
- Size of funds under management: once a consumer has a moderately-sized fund, they may benefit from a model portfolio which is rebalanced automatically by a DFM.
- Investor's knowledge and experience: FCA has said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments the DFM might make.
- Level of disclosure: whether the benefits vs cost of the arrangement was explained to the investor in terms they were likely to (or appeared to) understand.

It's also relevant to consider whether a particular DFM was appropriate. The approach each firm takes to managing funds and interacting with the adviser and investor is different. So different DFM's might be suitable for clients in different situations.

Two factors are particularly relevant in this case.

Firstly, the conduct of proper due diligence. If an adviser relied only on prepared literature, weaknesses in the DFM's operations may have been overlooked. Features that an adviser should consider in their due diligence include:

- Variation in cost structures between DFM's - some charge per transaction they make, in addition to an annual charge.
- What was the DFM's typical investment philosophy (in terms of assets they preferred), whether this was a model portfolio or not? Would those assets be appropriate?
- Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries the adviser should have made.

The regulator was clear there was a positive obligation on the adviser to carry out this research, rather than supplying the DFM with a risk rating and hoping 'all will be right in the end'. If they were recommending DFM as a solution to their client's needs, that meant they needed to 'look under the bonnet'.

Secondly, how the DFM will specifically invest this investor's funds. Did the adviser obtain a current breakdown of assets in any proposed model portfolio, and the DFM's guidelines as to how it manages those assets? How did the adviser ensure that its attitude to risk scale mapped appropriately across to the DFM's? And if the DFM's mandate wasn't sufficiently limited, did it agree appropriate restrictions on what it was and wasn't allowed to invest in?

If there was no specific agreement between the adviser and the DFM, how could it be sure that the DFM had accepted responsibility for risk-mapping the adviser's score to its portfolios?

Did AFS meet the regulatory obligations it was bound by when advising Mr M?

There are several documents relating to AFS's transaction with Mr M that are important to my consideration, these include the fact-finds, the suitability reports and email communications between the parties involved.

I don't think AFS met the requirements placed on it in this case. I'll explain why.

Mr M had a heart attack in May 2016 and during his recovery he became concerned about whether he could return to work. He wanted to organise his financial affairs accordingly. He had several discussions and meetings with an adviser from AFS.

Mr M's prime objective was to create a pension fund which could be used to provide him and his dependants with a flexible income in retirement. His target income in retirement was said to be between £4,000-£5,000 a month. At the time, Mr M was 52 and he wanted to be able to retire from 55 onwards. So, it's possible he only had three years until retirement.

But I can't see any evidence of modelling carried out by AFS which shows how all the advice it gave him in 2016, including that covered by this complaint, came together to deliver what he required. I think this would've been important to his being able to take an informed decision about what to do with his Standard Life SIPP.

Mr M had held his Standard Life SIPP for around six years at the point of advice in 2016. The information available suggests he had shares in two 'blue-chip' companies. These were worth around £330,000. Given his SIPP was worth over £530,000, presumably the balance was held in other funds, and/or cash.

While it's possible to understand that his SIPP investment strategy prior to the switch was flawed – he had significant exposure to equities in just two firms - neither party has confirmed what his other holdings at the time were. So, this risk may've been offset by how the balance of his money was invested.

Nevertheless, it seems Mr M was unsatisfied with the performance of his SIPP and so wanted to make changes. But I haven't seen any serious record of how the options open to him were explored. For example, if he was looking to adjust his risk exposure and improve performance, why not access different funds available within his existing Standard Life SIPP?

AFS was in a good position to have analysed, tested, challenged and advised Mr M about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for a retirement income.

AFS recommended the switch from Mr M's Standard Life SIPP funds into IM and Lifetime SIPPs, with the provision of a DFM arrangement. There are several problems with its advice.

Charges

It isn't possible to discern from AFS's suitability reports what fees and charges Mr M was incurring in his new SIPP's with IM and Lifetime, when compared to his Standard Life SIPP. And there were ambiguities in those details that were set out. For example, in its report of 23 August 2016, one of the fees listed was an IM annual management charge – the cost wasn't provided, it was simply stated this would depend on the size of his pot.

Given that the recommended arrangements came with ongoing advice fees and a new DFM arrangement, it seems highly likely Mr M's costs were substantially higher than what went before. AFS needed to have provided him with a transparent comparison of costs. And it needed to provide him with a clear rationale, based on evidence about why it was in his interests to incur these costs.

Presumably, the case AFS would've made was that his new investment approach would deliver significant performance improvements. But there was no analysis of what this improvement needed to be in order to justify the changes being made. I can't see that the benefits vs cost of the DFM were explained to Mr M in a meaningful way. It needed to have been.

Further, there's evidence on file of confusion surrounding the charging regime for Mr M's new pension arrangements. In February 2017 he wrote to AFS saying:

"I would like to go ahead and exit the Strand Platform and return the funds to IM. I would also request that the 1% up front fee deduction by Monument be returned as part of the process since I was not informed of this at the outset, only the 0.7% Strand Fee."

Neither of the suitability reports produced for Mr M in respect of the new SIPPs being put in place detailed an upfront fee of 1% to be levied by MG. Indeed, both indicated there would be no initial charges related to his investment portfolio.

AFS didn't provide Mr M with clear and fair information about the fees and charges associated with its recommendations.

Risk

In responding to my provisional decision AFS said:

"… We would ask you to bear in mind that [Mr M] was/is a CEO of a large firm. He carried out multi-million-pound transactions on behalf of his firm and was an experienced and sophisticated investor who had been running his SIPP worth more than £500,000 for several years before 2016. He is a client who was/is very experienced in carrying out due diligence on transactions in many aspects of his life. He also communicated on a regular basis by phone and email with the DFM discussing and agreeing on investments without any referral to ourselves.

I note AFS's suitability letter of 23 August 2016 was a little more circumspect. At the time of the advice it said the following about his experience:

"We discussed your understanding of financial services products, with reference to previous experience of advice received and products purchased, and established that you have a reasonable knowledge of investments, as you already have used your existing Sipp to purchase shares in BP and the Bank of Ireland which you have now sold."

It's clear Mr M wasn't a novice investor, but I've not seen any evidence to suggest he was an experienced or sophisticated investor. Similarly, there's nothing to suggest he was knowledgeable about pension matters. Of course, that's why he sought professional advice from AFS.

Mr M understood that to gain better returns he had to take some risks. I think the risk assessment conducted by AFS which concluded he had a moderate or balanced appetite was about right. He also appeared to have some capacity for loss, given the other assets available to him.

I've also reviewed MG's prospectus, which set out its investment approach as follows:

"Monument Global Private Client is dedicated to providing clients with ongoing risk-adjusted returns on their investments through a strategic long-short strategy with a focus on US equities, ETF's and equity derivatives."

"We intend to capture alpha (profits) through absolute return and Options arbitrage investment strategies within the largest and most liquid US exchange traded equities and derivatives. Monument Global Private Client investment methodology uses various technical and fundamental indicators to determine market trends and mispricing within securities and their related derivative instruments. The fact that all positions will be within highly liquid instruments will allow for scalability as and when necessary."

"We specialise in actively managed strategies, we primarily aim to add value by identifying opportunities in both undervalued assets to purchase and overvalued assets to sell. We then utilise equity Options for the purposes of both managing risk and enhancing returns."

"Our edge is our use of Options within our strategies. We use Options for both hedging purposes and to increase returns. The use of Options adds another dimension to the trading opportunities on offer when compared to other trading instruments, affording us the opportunity to make money in both sideward moving and falling markets with low volatility."

I note on file there are communications from MG about how Mr M's funds might be invested. These are variously between the DFM and AFS and Mr M. I've seen references to the potential for moving funds into an 'adventurous' Strand Model portfolio. I've seen reference to allocating his funds equally between cautious, balanced and growth funds. And there are references to proposals for an 'in-house' strategy to trade exclusively in UK equities.

The investment approach of MG may or may not have been appropriate for Mr M. Some of the fund proposals on file may or may not have been suitable. The problem is that the suitability reports AFS produced didn't show how these approaches and options mapped to Mr M's risk appetite.

It's a problem for AFS that it didn't have a handle on the investments Mr M would be making in his new SIPPs. It says it didn't provide him with investment advice, and that is what the DFM arrangement was for. But the regulator required that it took a close interest in where Mr M's funds would be placed. In 2014 the regulator issued another alert on this matter, it said:

"Where a financial adviser recommends a SIPP knowing that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. If the underlying investment is not suitable (…), then the overall advice is not suitable.

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer (…) at all as it will not be able to assess suitability of the transaction as a whole."

AFS had a duty to act honestly, fairly and professionally in the best interests of Mr M. And to take reasonable steps to ensure the advice it gave was appropriate. It couldn't do this without considering the suitability of the investments being proposed.

Ongoing fund management

I note that Mr M hadn't used a DFM arrangement previously. He says it was a concept introduced by AFS.

As I've already set out, AFS needed to have conducted proper due diligence in respect of the DFM's it was recommending.

The Investigator asked AFS to explain what due diligence it had done on GM. It provided a brochure which set out matters such as its investment approach. AFS said:

"*Although Monument Global were a comparatively new player in the DFM market in 2016 we had done our homework on their CEO… We were aware that he had had over ten years' experience working within the DFM world with six of those years working his way up through the ranks in Brewin Dolphin becoming a private client investment manager with them…Given this level of experience and expertise we trusted him to successfully look after Mr M's portfolio".*

AFS hasn't done enough to satisfy me the it acted with due care and skill in this matter. For example, I can't see how it considered different DFM's and options available in terms of investment philosophy and cost structures.

A key element of AFS's recommendation for Mr M to switch from his Standard Life SIPP appears to have been the expectation that the DFM investment portfolio would perform better than his existing plan. If that is the case then it begs the question, what was that expectation based upon?

MG was a new business which had traded for less than a year at the time of advice. It had no track record of investment performance. Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries the adviser should have made.

It is not disputed that Mr M had some investment experience with a balanced attitude to risk, but he wasn't a sophisticated investor. Given this, I don't understand why AFS considered Mr M's best option was to take his personal pension funds of over £500,000, which he'd built up over his working life, and place these with a firm which had an approach to investment based on complicated financial instruments, and which had no proven record.

It's arguable an expectation of Mr M achieving better returns, especially when considering the substantial increased fees and charges in his new pension arrangements, was based on speculation. Certainly, there's an absence of rigorous analysis and insight on file to justify the use of MG's services.

MG ultimately failed as a business. As did the investment fund it recommended to Mr M. AFS might argue these matters of fact shouldn't be used in hindsight. And that he was afforded certain protections, such as access to the Financial Services Compensation Scheme (FSCS). But I think this would be to miss the point. Had it done more effective due diligence I think it's more likely than not it wouldn't have advised Mr M's use of MG.

As an aside, I note in the file AFS provided this Service, in February and March 2017 the issue of the return of Mr M's funds from SCL seems to have caused some debate about the respective responsibilities of the firms involved. For example, there are exchanges between AFS, Mr M and MG which shows there was confusion about which firm should be instructing the SIPP provider.

There should've been a clear contractual agreement between the firms about which would be responsible for what on behalf of Mr M. And Mr M should've been clear about what the respective responsibilities were – after all, he was paying a lot for the services being provided.

Relationship with AFS adviser (Mr Z)

Finally, Mr M also complained about how a particular employee (Mr Z) at AFS interacted with him. He says Mr Z led him to believe it was him who was providing the advice. I can see from the records he was a key contact at the firm for Mr M. And I understand the point he's making.

AFS noted that there'd been issues when it had dealt with Mr M in 2009 and 2010. So, when he approached it for advice in 2016 the adviser (Mr Y) spoke to Mr Z about how to handle the relationship. It told us:

"[Mr Z] had a personal relationship of sorts with [Mr M]. We agreed that [Mr Z] would act as administrator on the case and deal with [Mr M] at the face-to-face meetings but on the understanding that I would always give any relevant advice. As I have alluded to earlier, I trusted [Mr Z] as an experienced person within the industry to know where his role started and stopped in the process. I knew that he would communicate this to the client, as he did."

The parties disagree about the role Mr Z played. I note it was Mr Y who signed all three suitability reports that Mr M received in 2016.

Ultimately, whether or not Mr Z's role was properly understood by Mr M, properly conducted by Mr Z and had proper oversight by AFS, I must consider the acts and omissions of AFS as a firm. And do so in the context of the complaint raised about the advice given by it for Mr M to switch his SIPP into a new arrangement.

I'm upholding Mr M's complaint against AFS in respect of the failings I've already set out.

In summary

In its response to my provisional decision AFS noted that Mr M had shown on numerous occasions he was willing to take his own investment decisions despite advice to the contrary. I note the example it provided about his investments in two blue-chip companies in his Standard Life SIPP.

I've thought carefully about the point it makes. But I think AFS needed to have provided Mr M with more comprehensive retirement planning, which considered more effectively than it did the options available to him, with specific regard to achieving his prime objective. Had it done this, I think it's more likely than not it would've recommended he remain with his existing SIPP provider, but utilising available funds so that his investments were consistent with his balanced attitude to risk.

If AFS had given Mr M appropriate advice, I think it's more likely than not he wouldn't have gone ahead with the switch to two different SIPP providers and the DFM arrangement. I say this because it's unusual for a lay person to seek professional advice and then go against the recommendations received. My view here is strengthened by his particular circumstances and objectives in 2016, which were an important backdrop to his decision making at the time.

Had AFS advised him appropriately and then he'd insisted on a different course of action it would've been clear this had been against its recommendations and it's unlikely it would now be facing a viable claim for redress.

Instead AFS proceeded to recommend an IM SIPP, without sufficient regard to the underlying investments. It placed too high a reliance on a DFM arrangement which Mr M had no experience of, and with a firm that had no track record. This arrangement itself led directly to the need to establish a second SIPP with Lifetime to receive a portion of his pension pot, because his IM SIPP couldn't access funds the DFM considered appropriate for Mr M.

I think the solution AFS recommended for Mr M was over-engineered for his requirements, complicated, risky (because of certain of the parties being engaged with) and expensive.

To conclude I don't think the switch of Mr M's SIPP funds could sensibly be regarded as fair to him. As such I think AFS failed to meet the regulatory requirements when providing him with advice and making the arrangements. So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against AFS and for it to put things right.

Putting things right

I'm upholding Mr M's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Abbey Financial Services (N.I.) Ltd responsible for. This should be the governing principle for AFS to follow in delivering redress.

If AFS had done everything it should've, I don't think Mr M would've switched out of his Standard Life SIPP into the IM and then Lifetime SIPPs, nor taken on a DFM facility. I think it's most likely he would've left his pension with Standard Life, but he would've invested his funds in accordance with his balanced risk outlook.

Mr M removed AFS from servicing his pension, but his IM SIPP remains open. He is still receiving DFM services from Investec, but only for a portion of his fund; and the mandate it continues to operate for him is based on a balanced appetite for risk.

Mr M has confirmed he hasn't taken a regular income from his SIPP. And he hasn't taken TFC or other benefits from his pension. He's told us that he continued to make contributions, so these need to be taken into account in the calculations *insofar as they relate to the period when AFS was looking after his arrangements*. I'm not aware of any unusual issues with access to his holdings or of valuation uncertainty.

Mr M has also now confirmed that he has received payments from the FSCS in relation to the investment he made through the defunct Strand Capital. He's told us that he's received £441,000 between May 2018 and June 2021 – the value of Strand at the point of administration. Mr M has assessed the shortfall between the *relevant* capital investments made and compensation as around £14,000. Any evidenced shortfall should be taken into account in the redress AFS pays.

Mr M understands if the FSCS had made an award in respect of the issues covered by this decision, it would usually seek to reclaim any compensation he'd received from third parties covering the same. Mr M can't benefit from double recovery.

However, if Mr M has received compensation from the FSCS, in addition to any compensation paid by AFS for the matters covered by my decision, and the FSCS didn't seek to recover the award he'd been paid, Mr M should provide an undertaking to repay AFS any compensation he's received (in combination from both) over and above his total losses as calculated by the method I've outlined.

I note however, Mr M has confirmed he is only seeking to recover lost investment returns and any shortfall in capital. Funds received via the FSCS from the Strand Capital Administrator have only been in respect of capital. And he is content to sign an undertaking setting out the situation if required by AFS.

Mr M and his representative have now provided detailed information which I note AFS has acknowledged. But if AFS requires more detailed information, where this is reasonable insofar as it relates directly to matters covered by my decision and the calculation of redress, they will need to cooperate. Any period of days where AFS is waiting for information from Mr M in this regard, will not incur the relevant interest award I've provided for in my redress provisions.

As well as restoring any shortfall of capital to Mr M for the relevant period, as set out already, the main focus of the loss calculations from here is on redressing lost investment returns, and the cost differential between his original pension arrangement and the new arrangements put in place by AFS.

I've considered what index should be used for elements of the redress required. Mr M wanted capital growth and was willing to accept some investment risk.

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 M's circumstances and risk attitude.

Where using the index, AFS will need to compare the performance of Mr M's investment with that of the index. If the *fair value* (what the investment would've been worth at the relevant calculation dates had it produced a return using the index) is greater than the *actual value* (the amount payable from the investment at the relevant calculation dates), there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

AFS is responsible for any loss of investment returns, using the stated index, from when it initiated the switch of his previous arrangements, until funds were released and/or compensation was provided through the FSCS and there was an opportunity to invest those funds in accordance with the established risk mandate, or until AFS no longer had agency for servicing Mr M's pension, whichever date was later.

To the sums derived from these calculations, it is fair for AFS to assume these would've enjoyed the same rate of return from the stated index for each relevant calculation end date until settlement. That's because the investment returns he's due should also have been working for him. To be clear, this award is not related to the capital sums Mr M had control over that he left in cash, such as the returns from the FSCS.

Mr M has confirmed his Investec Wealth arrangement has continued to be invested in line with the original balanced risk mandate. So, redress proposed would simply be to understand the difference between the performance of the value of that element of his pension fund, against what would've been achieved against the index identified as a proxy in the event it had remained with Standard Life.

If however Mr M diverged from AFS's advice into a lower or higher risk portfolio of funds, following his departure from its agency, then any loss calculated should be from the point of the initial switch, until the parting of ways between the parties.

AFS should pay into Mr M'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 AFS is unable to pay the total amount into Mr M'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. So, 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 HM Revenue & Customs (HMRC), so Mr M won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr M's expected marginal rate in retirement. Here we're looking at his likely position when he's fully retired and drawing out his pension as income – rather than what his marginal rate of tax is now while he's working.

Mr M has confirmed he's expecting to retire later this year. He and his adviser have reviewed his financial position and confirm he will become at basic rate tax-payer at that point. This is broadly consistent with the target income he confirmed during the advice process with AFS. So, it's reasonable to work on this basis.

The notional reduction would equal the current basic rate of tax. However, if Mr M is able to take TFC, the reduction should only be applied to 75% of the compensation.

Separately, Abbey Financial Services (N.I.) Ltd should refund Mr M any fees or charges paid on the Lifetime SIPP.

Abbey Financial Services (N.I.) Ltd should provide the details of its calculations to Mr M in a clear, simple format.

Abbey Financial Services (N.I.) Ltd must pay the compensation within 28 days of the date on which this Service informs it that Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Income tax may be payable on any interest paid. If AFS considers it is required by HMRC to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

Distress and inconvenience

In addition, Abbey Financial Services (N.I.) Ltd should pay Mr M £300 for the trouble and upset caused by the disruption to his retirement planning.

Further information

There is guidance on how to carry out calculations available on our website, which can be found by typing 'compensation for investment complaints' into the search bar at: www.financial-ombudsman.org.uk.

My final decision

For the reasons I've already stated, I'm upholding Mr M's complaint. I now require Abbey Financial Services (N.I.) Ltd to put matters right in the way I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 June 2022.

Kevin Williamson
Ombudsman