DRN-3363716

The complaint

Mr K complains that Interestme Financial Planning Limited (Interestme) gave him unsuitable advice to transfer his Personal Pension (PP) from his existing provider – provider A – to a Self-Invested Personal Pension (SIPP) with another provider - provider B.

In 2019, I understand that the SIPP with provider B was moved to another provider – provider C, at Interestme's suggestion.

Mr K is represented in his complaint by a Claims Management Company (CMC). But I'll only refer to him in my decision.

What happened

Mr K had a PP with provider A which had started in 1991. I understand that Mr K was initially contacted by a third party in 2017. They put him in touch with Interestme - who at the time traded under a different name – in order to have a pension review.

At that time, Mr K's PP with provider A was valued at £33,025.86. And he wasn't contributing to it. It was invested in two funds that were rated as medium to high and high risk. And had an Annual Management Charge (AMC) of 1.1%.

Mr K also had an occupational pension. But he didn't discuss this with Interestme. And I have very little information about it.

Interestme carried out a fact find in March 2017. They also produced a Suitability Report dated 2 June 2017. This recorded the following information about Mr K:

- he was 45 at the time, divorced and had two dependent children.
- he was employed. And earned a regular monthly income of around £2,900.
- He wanted to retire by age 65 and to be mortgage-free.
- No specific savings or investments were recorded. But the report stated that Mr K had other sources of income in retirement.
- His Attitude To Risk (ATR) was recorded as "Lower to medium risk".

The adviser recommended that Mr K transferred his existing PP to a SIPP with provider B. He recommended he invested in the Defensive Portfolio managed by another provider.

The adviser acknowledged in the Suitability Report that Mr K's existing pension plans had produced positive returns, but said that these had been attained under favourable economic conditions. He felt Mr K would benefit from an investment manager who would manage his pension in a way that would avoid it losing value. And who had the ability to react to market events and de-risk his pension when appropriate.

The Suitability Report gave the following reasons that the adviser had recommended that Mr

K switched his PP to a SIPP with provider B and chose a new investment strategy:

- Mr K wouldn't incur any penalties on switching from his existing provider
- He wouldn't lose any guarantees from his existing provider
- He would have a wider fund choice and greater flexibility when he eventually took his retirement benefits.

The report stated that the recommended solution was move expensive than Mr K's existing PP. But felt that the potential returns and investment strategy recommended justified the increased costs.

The Suitability Report listed the charges for the adviser's recommendation as follows:

- Initial advice and implementation charge of 3% of the transfer
- Pension wrapper charge of £114 each year
- 0.66% Investment management charge
- 0.15% dealing charge

Additionally, there would be an ongoing service charge of 1.00% each year.

The fact find listed the drivers for Mr K's objectives as: "Advice", "Performance" and "Lower Cost".

The Suitability Report gave more detail on those objectives:

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

You believe positive long-term investment returns play the most important role in growing your pension.

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

Mr K completed an application form to open the recommended SIPP on 30 June 2017. The funds were transferred from his existing provider and invested in line with the investment manager's Total Return Defensive portfolio.

I understand that in February 2019, Interestme reviewed the SIPP and recommended it be moved to provider C. They said that the annual pension wrapper charge would increase from £114 to £150. Mr K followed this recommendation and his SIPP moved to provider C in late March 2019.

Mr K complained to Interestme through his CMC in March 2021. They made the following complaint points:

- Interestme had been negligent in the advice they'd given Mr K. And this had led to a financial loss of approximately £4,287.38. Mr K wanted to be put back to the position he would've been in if he'd not received the advice to transfer
- Interestme had told Mr K that he would make more money by making the transfer

than his current pension would provide.

- They said Interestme had failed to demonstrate that they'd undertaken an adequate assessment of Mr K's expertise, experience and knowledge.

- They said Interestme had failed to demonstrate that they'd undertaken an adequate assessment of Mr K's financial situation or his ATR.

- They said Interestme had failed to properly assess Mr K's needs and objectives.

- They said Interestme had failed to advise on the overall costs of their recommendation.

The CMC also felt that Interestme hadn't complied with the Conduct of Business Sourcebook ("COBS") rules.

Interestme issued their final response to the complaint on 3 June 2021. They didn't think they'd done anything wrong.

Interestme said they'd also written to the CMC on 23 March 2021 to detail the incorrect information they felt a number of complaints they'd recently received through them had contained. Interestme felt that the CMC had been cold calling potential complainants and telling them they'd been mis-sold without any evidence.

Interestme said there were a number of errors in the complaint letter from the CMC, as follows:

- They felt the CMC had incorrectly stated that Mr K's salary at the time of the advice was too low for him to be suitable for the SIPP. Interestme felt that a SIPP could be suitable for any individual regardless of their level of income.

- They felt it was incorrect to state that Mr K had no previous investment experience, as he had held pension monies for many years.

- They also felt that the CMC had incorrectly stated that Mr K had a low ATR. They felt the risk profile they'd agreed with him was Lower to Medium.

Interestme felt each of the points the CMC had made were generic, with little evidence to suggest that they'd even assessed the client file.

Interestme didn't agree that their recommendation had been unsuitable for Mr K. Or that they'd failed to assess his financial situation. They said that Mr K had been taken through a thorough fact-finding process before they'd made their recommendation.

Interestme said that their adviser had held detailed conversations with Mr K about his risk profile. They said that they'd also considered Mr K's capacity for loss as part of their recommendation. They also denied that their adviser had promised Mr K greater growth if he transferred. Interestme also felt that they'd complied with the COBS rules.

Mr K didn't agree with Interestme. So he brought his complaint to this service.

Our investigator felt that the complaint should be upheld. He didn't think the advice to switch Mr K's pension into a SIPP with low risk funds which had limited scope for long term growth was suitable. He considered that Interestme should put Mr K back as close as possible to the position he'd be in now if he'd not been given the unsuitable advice in 2017. And that they should pay him £150 for the distress the unsuitable advice had caused.

As agreement couldn't be reached, the complaint has come to me for a review.

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 done so, I'm going to uphold the complaint. I'll explain why.

The three drivers Interestme recorded for Mr K in the fact find were "Advice", "Performance" and "Lower Cost". I need to decide whether Interestme gave Mr K suitable advice which fairly considered these drivers.

In 2009 the Financial Services Authority (now the FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason

- They had lost benefits in the pension 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 at an earlier than normal retirement age

- They had switched into a pension that does not match their recorded ATR and personal circumstances

- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

I've considered Mr K's drivers, and these areas, where relevant, in my decision below.

I first considered whether Mr K actually wanted a pension review. Based on what I've seen, I consider that he did want to review his existing arrangements. And as there were no penalties, and no guarantees would be lost if he moved away from his existing PP, I'm satisfied it was reasonable to consider moving to another provider.

I next considered Mr K's ATR and his capacity for loss.

ATR and capacity for loss

The regulator also said that if a consumer had switched into a pension that didn't match their recorded ATR and personal circumstances, this would likely indicate that the advice was unsuitable.

Interestme said that their adviser had held detailed conversations with Mr K about his risk profile. But they haven't provided any documentary evidence that they'd undertaken a full assessment of Mr K's ATR.

However, during the initial fact find with Mr K, I can see that Interestme recorded that he was:

"*prepared to take more risk with [his] pension savings to achieve greater reward*".

And they also recorded that he had stated that he was:

"*somewhat cautious and not comfortable taking on a great deal of investment risk with [his] pension funds. When asked [for his] risk profile, from a choice of five answers, [he] stated lower to medium risk as this best described [his] underlying appetite for risk*".

Based on the information Interestme gathered during the fact find, they assessed his risk profile as lower to medium. They defined this as an investor who:

"*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*".

The Suitability Report also recorded that Mr K was in an occupational pension scheme. Although the fact find states: "*we are not aware of any current workplace pension arrangement that you are a member of*". This inconsistency shows that Interestme's fact find wasn't as detailed as it could've been.

However, Mr K has confirmed to this service that he did also have a pension with his employer. So his PP wasn't his only means of providing income in retirement, and he was able to expose it to some level of capital risk. The Suitability Report didn't record other savings or investments, but Mr K was employed and his only debt was his mortgage. Therefore, as he had twenty years until he reached his desired retirement age of 65, I consider that he had the capacity to ride out any short-term fluctuations to his fund. Therefore I'm satisfied that Mr K could reasonably accept investments up to a medium level of risk.

Although I've not seen any detail on how the adviser assessed Mr K's ATR, on the face of it, the recommended investment appears to meet Mr K's recorded ATR to some degree. I say this because the investment the adviser recommended in the new SIPP was rated as a risk level of 2 out of 5, with 5 being the highest risk. This is consistent with a lower to medium level of risk.

Mr K's existing SIPP was invested in two funds that were rated as medium to high and high risk. On the face of it, this seems to be out of line with his recorded ATR.

I next considered the performance aspect of Mr K's objectives.

Did Interestme fairly consider Mr K's performance objective?

As noted earlier, Mr K's performance objective was recorded in the Suitability Report as:

You believe positive long-term investment returns play the most important role in growing your pension.

As I noted earlier, Mr K wasn't invested in line with his recorded ATR in his existing PP. So I went on to consider whether the adviser should have recommended a change in investments within his existing pension arrangements instead of recommending the switch. I would expect to see reasonable potential for Mr K to be better off to make the advice to move his pension suitable, especially given the cost of such a switch.

Interestme compared, on a like-for-like basis, the projected values at age 65 for the existing PP with their recommended SIPP. Page 9 of the Suitability Report stated that the projected value at age 65 for the existing PP was £43,700. And that the projected value of the recommended SIPP based on the recommended investment was £43,200. The report noted that as the projections assumed the same growth rate, the only reason for the recommended SIPP having a lower projected value was because it was more expensive than the existing PP.

The Suitability Report explored the projected values further, stating:

"During our conversation we also discussed what could happen in the real world, looking at the impact of actual fund performance and advice costs. The purpose of this was to give you a more realistic expectation of what your pension could grow to, using a medium risk fund (Balanced)".

The report went on to state that the recommended portfolio had a five-year annualised performance of 7.06%. But then stated that as the investment provider had only been running the portfolio for one year, the five-year performance had been based produced by being: "*back-tested on a simulated basis*". The total projected value on this basis was £93,435.

Interestme have denied that their adviser promised Mr K greater growth if he transferred. I agree that he didn't promise Mr K anything. But I'm of the view that the wording in the Suitability Report suggests that Mr K could expect to achieve a much better outcome at age 65 if he transferred, despite the costs of the recommended SIPP being higher than that of his existing PP. I say this because I consider that when the Suitability Report stated that the £93,435 projection was a "*real world*", "*more realistic*" expectation of what his pension could grow to, he could reasonably have expected that the transfer would lead to a greater value at age 65.

Overall, I'm not persuaded that the adviser demonstrated that there was reasonable potential for Mr K to be better off. I say this because the like-for-like projections showed that it was likely that Mr K would be slightly worse off at age 65, due to the increased costs of the recommended SIPP.

I acknowledge that the report gave much higher projected values based on the annualised performance of the recommended portfolio. But I don't think the report was completely clear that there was only one year of actual performance history to base the projections on. And I don't consider that it was fair or reasonable to base a long-term projection on a single year of actual fund performance.

Overall, I don't consider that the projections fairly demonstrated that Mr K would be better off. Therefore, in this regard, I don't consider that the advice was suitable.

From what I've seen, I'm not persuaded that Mr K needed access to the additional funds the recommended investment gave him. I'm also not persuaded that Mr K needed access to a Discretionary Fund Manager (DFM). His existing PP offered access to a further funds already. Mr K wasn't an experienced or knowledgeable investor, so he had no reason to look for specialist or sophisticated investments, which would've been more costly. I'm also not persuaded that the existing fund selection was fully explored before the adviser recommended the transfer.

While I acknowledge that the adviser assessed Mr K's ATR as lower than was evident from his investments in provider A, I'm not persuaded that the adviser made Mr K aware that moving his pension funds from higher risk investments to lower risk investments was likely to result in lower returns over the long term. I've seen no evidence that the adviser tried to explain that if Mr K followed his investment recommendations he would be likely to see worsened performance over time. As one of Mr K's main objectives was to improve long-term investment returns, I'm satisfied that the adviser's recommendation was very unlikely to achieve this.

Part of Mr K's complaint is that Interestme didn't meet the COBS rules. Section 4.2 of the COBS rules states that any communication with a client must be "*clear, fair and not misleading*". I don't consider that the Suitability Report even attempted to explain to Mr K that moving to a defensive portfolio was very likely to result in reduced performance in the long run. And the projections that were included in the Suitability Report which showed how his pension might perform at age 65 don't appear to have been placed into any sort of context for him. I'm of the view that the adviser should've explained that the lower risk fund being recommended was more likely to achieve the returns at the lower rate over the long term. If this had been done, I consider that Mr K wouldn't have taken up the recommendation.

I'm satisfied that Interestme should've told Mr K that his investment objective wouldn't be met if he moved to a lower risk fund. And they should've told him that, as he had other sources of pension, he could still invest in medium risk funds, rather than lower to medium risk ones. This would've led to a recommendation which met both Mr K's performance objective and his ATR.

I next considered the costs aspect of Mr K's objectives.

Did Interestme fairly consider Mr K's costs objective?

As noted earlier, Mr K's costs objective was recorded in the Suitability Report as:

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

The report noted the recommended solution was: *"more expensive than your existing pension and alternatives such as stakeholder pensions".* The like-for-like projections at age 65 showed this to be the case.

The adviser's recommendation also had an initial charge of 3% and an ongoing service charge of 1% each year. So Mr K's costs objective was clearly not being met with this recommendation.

The "*real world*" projections that were included in the Suitability Report stated that Mr K could expect to achieve a fund of £93,435 at age 65 if he followed the adviser's recommendations, despite the increased costs. The report noted:

"*This [the projection] is higher than the previous amounts and supports our view that using a financial planner should grow your pension beyond the expected levels set by the FCA over the longer-term despite the higher associated costs*".

At no point in the report did the adviser make Mr K aware that the recommended investments, which were lower risk then his existing investments, coupled with the higher charges, would mean that Mr K's investments would have to perform much better than expected to simply keep up with his existing investments.

From what I've seen, there was no obvious benefit for Mr K to invest in a SIPP in a more complicated investment type. Nor was there any benefit for him of paying for regular reviews.

I've not seen any evidence that Mr K was in need of regular ongoing advice. And I've not seen any evidence that he asked for any ongoing advice over the years, despite the fact that he'd been paying for them. Therefore I'm not persuaded that the additional ongoing charges would've provided him with a better outcome.

As our investigator noted, it's hard to see why a SIPP would be more appropriate than if the adviser had simply recommended Mr K moved his investments to an appropriate medium risk fund.

I also considered the other reasons that were given in the Suitability Report for the recommendation.

Other reasons Interestme said the recommendation was made

I listed the reasons Interestme gave to support their recommendation earlier in my decision. Although these reasons might all be correct, it was the adviser's responsibility to give Mr K suitable advice. And even though the recommended SIPP would provide him with the opportunity to drawdown his retirement benefits, which his existing PP didn't, Mr K was around 20 years away from his retirement age, and around ten years away from being allowed to withdraw money from his pension, at the time of the advice. Therefore I'm satisfied that there was no need to make the switch at the time of the advice in order to have a drawdown option many years later. Mr K could've waited until he was approaching retirement age. And he could've switched when he was much closer to his retirement so that he would've known exactly what he wanted.

As noted above, the regulator outlined what should be considered when advising on a pension switch. They said that if additional costs were involved with the advice to switch, or if the client ended up paying for services they were unlikely to use, this is likely to indicate that the advice was unsuitable.

From what I've seen, only one of Mr K's three main objectives was met – he was given advice. But his performance objective was clearly not met when the adviser recommended he moved to funds with limited potential for growth. And as the costs were higher in the recommended SIPP, Mr K's third main objective was also not met.

Overall, I'm satisfied that the advice to transfer Mr K's existing PP to provider B was unsuitable. I also consider that the investment advice Mr K received was inappropriate. And that the advice required him to pay unnecessary fees throughout the switching and investment process. Therefore I intend to uphold the complaint. I also consider that the unsuitable advice, and the impact it has had on Mr K's retirement planning, has caused him distress. Therefore I consider that Interestme should also pay Mr K £150 compensation for the distress the unsuitable advice caused.

Putting things right

My aim is that Mr K 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 K would've remained with his previous provider, however I cannot be certain that values will be obtainable for what the previous plan would've been worth.

Mr K's pension was moved to a new SIPP platform with provider C in 2019. This was an in-specie transfer, instigated by Interestme, which only resulted in a change of wrapper and slight increase in annual charge. As such, I'm satisfied that it should be included as a continuation of the original advice.

What must Interestme do?

To compensate Mr K fairly, Interestme must:

- Compare the performance of Mr K's investment with the notional value if it had remained with the provider A. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Interestme should add interest as set out below.

- If there is a loss, Interestme should pay into Mr K'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 Interestme is unable to pay the total amount into Mr K's pension plan, they 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 K won't be able to reclaim any of the reduction after compensation is paid.

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

- For example, as Mr K 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 K would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- If the adviser's fees were paid independently of the pension transfers, and not taken from the transferred funds, Interestme must also repay those fees, together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the actual value and the notional value can be offset against the fees with interest.

- In addition, Interestme should pay Mr K £150 for the distress caused by the unsuitable advice and the impact on his retirement planning.

- Provide the details of the calculation to Mr K in a clear, simple format.

Income tax may be payable on any interest paid. If Interestme deduct income tax from the interest it should tell Mr K how much has been taken off. Interestme should give Mr K a tax deduction certificate in respect of interest if he 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 with provider C	Still exists and liquid	Notional value from provider A	Date of investment	Date of my final decision	8% simple per year from my 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.

Notional Value

This is the value of Mr K's investment had it remained with the provider A until the end date. Interestme should request that provider A calculates this value.

Any additional sum paid into the SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the *notional 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 are a large number of regular payments, to keep calculations simpler, I'll accept the total of those payments being deducted at the end to determine the *notional value* instead of deducting periodically.

If provider A is unable to calculate a notional value, Interestme will need to determine a fair value for Mr K's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr K wanted Capital growth and was willing to accept some investment risk.
- If provider A is unable to calculate a notional value, then I consider the measure below is appropriate:
  - 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.
  - 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 K's circumstances and risk attitude.

My final decision

For the reasons given above, I uphold this complaint. I require INTERESTME FINANCIAL PLANNING LIMITED to pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 5 December 2022.

Jo Occleshaw
Ombudsman