

The complaint

Mr O complains that the advice InterestMe Financial Planning Limited (“InterestMe”) gave to him in October 2017 about the consolidation and investment of his pension savings was unsuitable.

What happened

Mr O has been assisted in making his complaint by a claims management company (CMC). But in this decision, for ease, I will generally refer to all communication as having been with, and from, Mr O himself.

I issued a provisional decision on this complaint earlier this month. In that decision I explained why I thought the complaint should be upheld and what InterestMe needed to do to put things right. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr O held pension saving with four different firms. In 2017 he sought advice from InterestMe regarding the consolidation, and subsequent investment, of those pension savings. InterestMe gathered information from Mr O about his circumstances and future plans before recommending that he consolidate his pension savings into a new Self-Invested Pension Plan (SIPP). And it advised him to engage a third-party investment manager for the future investment of the transferred monies. Mr O accepted InterestMe’s advice, and the funds were transferred into the new SIPP in November 2017. Mr O paid InterestMe a one-off fee of 3% of the transferred monies for the advice he’d been given. And he has paid an annual servicing fee of 0.75% per annum to InterestMe.

Mr O’s complaint has been assessed by one of our investigators. He didn’t think that InterestMe’s recommendation was suitable for Mr O’s circumstances. He thought that without that recommendation Mr O would have invested his pension monies differently. So he asked InterestMe to pay Mr O some compensation.

InterestMe accepted our investigators assessment and calculated the compensation it thought was due to Mr O. But Mr O asked for some further information on that calculation, particularly in relation to the fees that had been deducted from the projected investment returns, and how the current value of his SIPP had been calculated as he thought some of the assets were illiquid.

I too have independently reviewed the advice it [InterestMe] provided to Mr O and agree with our investigator’s conclusions, for entirely the same reasons. It doesn’t seem to me that it was necessary for Mr O to transfer his investments to the SIPP, or for him to engage the services of the third-party investment manager. I’m not persuaded that the assessment InterestMe made of Mr O’s appetite for risk was entirely appropriate.

So what is left for me to decide is what InterestMe should do in order to put things right for Mr O. And below I will set out the steps that I propose InterestMe should take

in order to compensate Mr O. But before I do that, I think it would be helpful for me to address, and seek clarification, on some of the questions that Mr O has raised in response to our investigator's proposals.

It seems to me that Mr O has paid two types of fee to InterestMe. He paid a fee of 3% of his transferred pension savings in relation to the advice that he was originally given. And he has then paid a subsequent annual fee of 0.75% of his pension savings. So I have considered whether those fees should form part of the compensation that I am directing.

I have looked carefully at the fee agreement that Mr O signed. It seems to me that the initial advice fee would have been payable whether or not he accepted the recommendation that InterestMe made – or even if that recommendation had been to leave his pension savings with the existing providers. So I don't think it would be reasonable for me to direct that fee to be refunded. However I'm not persuaded that Mr O would have continued to pay an annual servicing fee to InterestMe had its advice been to not transfer the pension savings. So I do think those fees should form part of the compensation that is paid to Mr O.

Given InterestMe's lack of response to our investigator's questions I cannot be sure how Mr O's pension savings are currently invested. Mr O says that some of the investments he currently holds are illiquid, and so getting a true market valuation is difficult. So in the redress I am proposing below I have made provision for what should be done if his pension savings do comprise some illiquid investments (that is investments that cannot be easily sold on the open market, and so do not have a fair market value available).

I would encourage InterestMe, as part of its response to this provisional decision, to provide further information about the investments Mr O holds, and how it might value those investments when calculating the compensation that is due to him.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Mr O has accepted my provisional decision, however he has sought clarification as to how any further disputes about InterestMe's calculations would be resolved. And InterestMe has provided some further information in relation to the questions our investigator had asked before I issued my decision.

InterestMe says that it doesn't consider any of the investments in Mr O's pension plan to be illiquid. It says that the investments are still paying the agreed interest distributions and that it has no concerns about the carry value of the investments being correct. It says that a secondary market exists for the sale of those investments. And it has said that the redress it previously calculated contained deductions for three types of fee – its initial advice charge of 1.5%, its ongoing annual advice charge of 0.75%, and an estimated annual management charge that would have been levied by the ceding schemes of 1%.

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.

It seems to me that both parties have largely accepted the method of redress that I set out in my provisional decision. But, to try and resolve any issues before they arise, there are a couple of matters that would benefit from some further commentary.

I have no powers to enforce the payment of any redress that has been directed. Enforcement of that redress would fall to InterestMe's regulator, the Financial Conduct Authority, and ultimately to the Courts. However I hope that will be unnecessary and InterestMe will be able to provide sufficient information to Mr O to show that it has complied with my directions below.

I also wish to provide some further clarification about the fees that it would be appropriate to deduct from the compensation InterestMe calculates is due to Mr O. In my provisional decision I explained that I thought it would be reasonable to direct that the initial advice fee Mr O had paid should be deducted from the compensation that was due. But I explicitly said that I didn't think the annual servicing fees should be payable. So InterestMe will need to amend its compensation calculations to exclude those fees.

I provided two means by which InterestMe could calculate the notional value of Mr O's pension savings had they not been transferred. The most accurate method of assessing that value would be to gather the information directly from his previous providers. And doing so would most likely take account of any annual management charges he would have needed to pay. But I provided an alternative method of calculation if InterestMe was unable, or unwilling, to get a valuation from Mr O's previous providers. That method used a benchmark to provide an estimate of what his pension savings would be worth. Since that is naturally only an estimate I don't think it reasonable for an arbitrary estimate of annual management charges to be deducted from those returns.

So in terms of fees, the only deduction that I think it appropriate for InterestMe to make itself to any redress calculation, particularly since it appears to be using the benchmark method, would be the 3% fee it initially received for the advice it gave to Mr O in 2017. I note that in its response to my provisional decision InterestMe described that fee as being 1.5%. I assume that to be a typographical error given the paperwork from the time clearly shows the fee as being 3%.

Putting things right

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

It is possible Mr O might have combined his pension savings into a single pension plan. But in assessing fair compensation I think it is reasonable to work on the basis that Mr O would have remained with his previous providers. However I cannot be certain that a value will be obtainable for what the previous policies would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr O's circumstances and objectives when his pension savings were transferred.

What must InterestMe do?

To compensate Mr O fairly, InterestMe must:

- Compare the performance of Mr O's investment with the notional value if it had remained with the previous providers. 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 O's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If InterestMe is unable to pay the compensation into Mr O's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation 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 O won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr O's actual or expected marginal rate of tax at his selected retirement age. I have reached a reasonable assumption, that hasn't been queried by either party that Mr O is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr O would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- InterestMe should set out its calculations for Mr O in a clear and easily understandable format, including details of the basis on which it has valued his current pension investments.

Income tax may be payable on any additional interest paid. If InterestMe deducts income tax from the interest, it should tell Mr O how much has been taken off. InterestMe should give Mr O a tax deduction certificate in respect of interest if Mr O 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
Existing SIPP	Potentially some liquid / some illiquid	Notional values from previous providers less the initial advice fee	Date of transfer	Date of this final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance

Actual value

This means the actual value of the SIPP at the end date.

It may be difficult to find the *actual* value of some of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as might be the case here.

If any assets are illiquid InterestMe should take ownership of them by paying a commercial value acceptable to the pension provider. The amount InterestMe pays should be included in the actual value before compensation is calculated.

If InterestMe is unable to purchase the portfolio the *actual value* should be assumed to be nil for the purpose of calculation. InterestMe may require that Mr O provides an undertaking to pay InterestMe any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan.

InterestMe will need to meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr O's investments had they remained with the previous providers until the end date, less an allowance for the initial advice fee that was payable shared proportionately across each pension provider. InterestMe should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, InterestMe will need to determine a fair value for Mr O'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 chosen this method of compensation because:

- Mr O wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The FTSE UK Private Investors 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 O's circumstances and risk attitude.

My final decision

My final decision is that I uphold Mr O's complaint and direct InterestMe Financial Planning Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 26 April 2022.

Paul Reilly
Ombudsman