DRN-3396725

The complaint

Mr B complains that Tilney Financial Planning Limited previously trading as Edward Jones Limited gave him unsuitable advice to transfer his pensions to a Self Invested Personal Pension ('SIPP').

All references to 'Tilney' will include information provided by, and actions of, Edward Jones. Further, Mr B is being represented by a Claims Management Company.

All references to Mr B will include information and submissions provided by his representative.

What happened

Mr B established a SIPP with Suffolk Life in 2008. Two SIPPs, both with Suffolk Life, were set up at that time as legislation didn't allow for protected and non-protected rights to be held together. The two plans were merged in January 2019 following legislative changes.

The SIPPs were set up following advice from Tilney which started in on around June 2007. At the time of the advice, Mr B held an Occupational Pension Scheme ('OPS') (non-protected) and two personal pension plans with Standard Life, one of which was non-protected ('SL1') and the other had protected benefits ('SL2'). Collectively I'll refer to these as the 'SL plans''. The total transfer value of all the pension plans held by Mr B, was estimated to be around £84,000.

The Tilney adviser (the 'adviser') completed a number of documents including a 'fact find', an attitude to risk questionnaire and suitability letters dated 17 December 2007 and 8 January 2008.

The adviser recorded Mr B's circumstances as follows:

- He was 43 years old and employed.
- He was married with three children who were all financially dependent on him.
- His annual income was £50,000 before tax.
- He was in good health.
- He home was valued of £350,000 with a mortgage of £155,000.
- He had cash of £7,000 for emergency purposes.
- He had pensions valued at around £84,000.

The adviser set out Mr B's responses to his attitude to risk, which included the following:

- *"Reducing potential losses is more important than achieving high returns."* From the options of strongly agree, agree, somewhat disagree and disagree, Mr B answered he 'agreed'.
- *"How comfortable are you with risk."* Mr B said he was 'moderate risk, moderate return'.

- Mr B chose the following statement to describe his investment philosophy: *"I don't mind periodic fluctuation in the value of my portfolio, but I would prefer to avoid a portfolio that has the potential to generate big losses."*
- In answer to what the most appropriate portfolio for him would be, Mr B said he wanted one which was focused on growth.

The adviser categorised Mr B's attitude to risk as 'medium', which he said meant he (Mr B), was prepared to accept some risk of financial loss of his pension funds in order to have the potential to receive a higher pension. And he was prepared to have a substantial proportion of his investments and retirement funds invested in equities.

The adviser said Mr B's main objective was to provide for his retirement at age 60 and he wanted to invest for growth. And that Mr B placed particular importance on the following:

- Greater flexibility and control of choosing from a wide range of investments.
- Consolidating his pensions into a single pension plan.
- The ability to invest his retirement funds in a tax-efficient manner.
- To grow his investments to meet his income needs.
- To appoint a Financial Adviser to help with the management of his pension funds.

The adviser noted that given Mr B's annual income and his expenditure, he (Mr B) wasn't intending to make any further contributions towards his retirement savings. The information from the OPS said Mr B was a preserved member and confirmed he wasn't making any contributions. The adviser said his advice to Mr B was that he should contribute into his existing occupation pension scheme as these may provide added options.

The adviser noted that Mr B wanted to retire at age 60 with a yearly income of £45,690 net of tax. The adviser said assuming Mr B retired in seventeen years (from 2007/ 2008), the annual shortfall in income with his current OPS, SL1 and SL2 arrangements, was likely to be around £23,348 per year.

The adviser said Mr B's current arrangements didn't meet his needs and priorities because: *"Your current policy offers eleven different funds to choose from. However, it does not offer direct investment into equities, corporate bonds, gilts and property. I understand that you wish to take an active role in managing your pensions by building a portfolio of investments in relation to your risk tolerance by your financial adviser."* The adviser also said Mr B wanted to consolidate his pensions into a single pension plan.

The adviser also noted that: *"It is important to recognise that fund performance is never guaranteed. For this reason,* [Tilney] *does not recommend that clients transfer solely on the basis of performance."*

The adviser recommended Mr B switch his pension plans to a Suffolk Life "MasterSIPP" (the 'SIPP') The adviser said the SIPP met with Mr B's medium risk tolerance. The adviser went on to explain that a SIPP would allow Mr B to make his own investment decisions such as equities, mutual funds, gilts, and corporate bonds. He also noted that upon retirement, up to 25% of the accumulated pension fund could be taken as a tax-free cash lump sum.

The adviser said Mr B's OPS allowed him a tax-free cash entitlement of £11,609 based on a fund value of £43,005. The adviser went on to say (bold Tilney's emphasis): *"This represents 26.99%.* ***This excess entitlement is protected under your current plan and will be lost should you decide to transfer out of your current scheme."***

The adviser also noted: *"As part of our transfer analysis we typically compare the projected fund values of your current policy with those which might be achieved under an alternative policy."* The adviser went on to say that because the OPS charged £300 to produce projections, it was unable to obtain this information for comparison purposes. The adviser noted however, that the OPS didn't have an administration fee or fund management charge for scheme members. The only charges paid were the annual fund management charges.

The adviser gave Mr B information about the different types of pension arrangements he could transfer into which were a stakeholder pension, personal pension, or a SIPP. But in the case of the first two options, the adviser noted that whilst they had lower fees, Mr B would not have as much investment choice as a SIPP. The adviser said that as this was Mr B's main objective, he (the adviser) wasn't recommending the first two options. The adviser also noted that when considering transferring, Mr B would lose his entitlement to the excess tax-free cash which he was entitled to under his OPS.

The adviser made the following investment recommendations:

- Invesco Perpetual Monthly Income Plus - £14,000
- Invesco Perpetual High Income - £12,000
- Standard Life UK Equity High Income – £10,000
- Mellon Newton High Income - £7,000
- Capital International European Equity - £7,000
- Fidelity Inv European - £8,000
- Standard Life UK Equity Growth - £8,000
- Standard Life European Equity Growth - £5,000
- Resolutions Pacific Growth – £4,000
- Threadneedle European Smaller Companies - £4,000
- Threadneedle Latin America - £4,000
- Cash on Deposit - £2,000

In terms of the charges that applied to the SIPP the adviser noted that: *"Charges for a SIPP are generally more expensive than other investment products or personal pensions."* Mr B was provided with details of the fees that applied to the SIPP.

The adviser provided Mr B with illustrations which set out what Mr B could receive at age 60 depending on particular rates of growth. The illustrations also set out information about the fees and the impact of these on the growth of the funds. It should be noted that the illustrations were based on a total transfer value of £85,700 whereas Mr B's total transfer value by the time he transferred was £81,829. As Mr B's plans were being split into two SIPPs to hold the non-protected benefits (OPS and SL1) and the protected benefits (SL2), an illustration was provided for each SIPP. I've combined these totals in the tables below:

Investment growth	**5% per year (£)**	**7% per year (£)**	**9% per year (£)**
Estimated total value of funds	140,000	192,000	262,700
Providing a pension annuity of	6,260	11,110	18,820
Or			
Total tax-free cash lump sum	34,900	48,100	65,700
and a reduced pension annuity of	4,700	8,330	14,170

Amongst other charges, the illustration showed the SIPP would be subject to the following:

- 0.25% (plus VAT) annual service fee payable to Tilney – this was capped at £1,000.
- Establishment fee to Tilney of £100.
- Annual administration fee of £240.

- Initial transaction fees of £2,323 (for both SIPPs).
- 1.5% payable on mutual funds of which 0.5% is paid to Tilney.

The transfer into the SIPP was follows (total £81,829):

- SL1 - £5,916 (non-protected rights)
- SL2 - £30,520 (net) (protected rights)
- OPS - £45,393 (protected rights)

By the time of Mr B's complaint in 2019, the SIPPs value was £127,032. Amongst other things, Mr B made the following points in his complaint to Tilney:

- The adviser told Mr B that he (Mr B) would make more money by transferring. He has actually suffered losses as a result of the advice.
- He was told he'd be investing in low risk investments and he should not worry as his returns that were likely to be really high.
- Tilney's advice was negligent for a number of reasons including that it hadn't adequately assessed Mr B's attitude to risk and it hadn't provided him with sufficient information about the risks he would be taking with his pension funds.
- The investments chosen for Mr B were only for more sophisticated investors.
- He wasn't fully told about the charges that applied.

Tilney rejected the complaint and in summary, it made the following points:

- The allegations it had been negligent was unfounded.
- There's no evidence Mr B suffered a loss as a result of its advice.
- The fact find shows Tilney took sufficient steps to establish Mr B's full circumstances before providing him with advice and when assessing his attitude to risk.
- Mr B was correctly categorised a medium risk investor based on his responses to its questions about his investment experience.
- There's no evidence that its adviser had told Mr B he would make more money if he transferred. Or that he was told he would be investing in low risk investments.
- Its illustrations made it clear the level of investment growth wasn't guaranteed.
- Mr B was told his retirement income would depend on, amongst other things, investment growth.
- Tilney was 'astounded' that Mr B could suggest the SIPP was only suitable for sophisticated investors. It said the funds and investments recommended were suitable for Mr B.
- In terms of the charges Mr B was provided with a full list of the charges.

Our investigator recommended upholding the complaint. In terms of the SL plans, she noted that part of this came with valuable guarantees. From information provided by Standard Life this showed that prior to the transfer, Mr B was invested in the following funds:

- Pension With-Profits Fund ('Pension WP fund')
- Standard Life Managed Pension Fund
- Pension Millennium With-Profits Fund ('Millennium WP fund')

The Pension WP fund was guaranteed to grow by at least 4% a year before charges. The Millennium WP fund had a guarantee that it would not fall. Standard Life aimed to increase it over time by adding bonuses therefore increasing its value.

Our investigator said these guarantees weren't mentioned in the suitability letters, and there was no justification given as to why the transfer was suitable by giving these up. She also didn't think Mr B was given sufficient information to make an informed choice about whether to transfer his OPS plan. She thought it was likely that Mr B would not have transferred from these plans if his attention had been drawn to their respective benefits. Our investigator recommended that Tilney carry out a loss assessment based on the notional values of the previous pension plans. And that it should pay Mr B £200 for the distress and inconvenience it caused to his pension planning.

Tilney disagreed and asked for an ombudsman's decision. In summary, it said:

- Its advice was suitable as it met with Mr B's objectives, particularly in respect of the income he was seeking to reach by age 60.
- When Mr B transferred he was mostly invested in equities and Tilney considers he was happy to with this level of risk, which it classified at medium, because he would helped him to make up some or all of the £23,000 per annum shortfall in his desired future retirement income.
- Mr B had approximately £30,000 (35%) of his total pension fund split between the Pension WP fund (£20,000) and the Millennium WP fund (£10,000). Information from the provider of the SL plans shows that at time of the advice, Mr B would've been aware the Pension WP fund had provided growth of 4% for the preceding three years. And the Millennium WP fund 3.25%, 2.5% and 2% over the same period. This meant the performance of both funds were below the lowest regulatory illustrative figure of 5%. So, it looked very unlikely if Mr B remained invested in these WP funds he would be able to reach his desired amount of retirement income. This was a very strong reason for Mr B accepting it's advice.
- By also combining the OPS funds and investing in accordance with a medium attitude to risk, Mr B had more chance of meeting his target retirement income.

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 upholding the complaint. Before I explain my reasoning, I understand that all the parties involved in this complaint, have raised a number of points during their contact with this service. Although I may not mention every point they've raised, I've considered everything the parties have said but limited my findings to the areas which impact on the outcome of the case.

At the time of the advice, the relevant regulations under COBS (Conduct of Business Sourcebook) 9.2.1 (R) said that when assessing suitability the firm needed to…*" take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client."* Firms were also required to make sure the information provided to clients was clear, fair and not misleading.

The main concern I have in terms of Tilney's advice, is the lack of comparative analysis between the recommended SIPP and the pension benefits Mr B would be giving up. For example, in terms of the OPS he wasn't told about the potential projections for this pension because it would cost £300 to get this information from the OPS administrators. But given he was being told that moving to a more expensive plan was suitable for him, I think this information was critical to deciding whether the transfer was in his best interests. It was also important as it would have helped Mr B make an informed choice.

Whilst the OPS wasn't a defined benefit scheme, Mr B did give up an enhanced tax-free cash element by transferring. As our investigator said, the suitability report doesn't really say why this was worth giving up. In terms of the SL plans, these contained valuable guarantees that applied to around £30,000 of Mr B's pension funds. Around £20,000 of this was guaranteed to grow by at least 4% a year. In respect of around £10,000, it was guaranteed not to fall and bonuses were added to ensure this didn't decrease in value. From what I can see, these guarantees weren't discussed in any of the suitability letters.

According to Tilney Mr B would've been aware of the growth that had happened in the three years prior to the advice. It's unclear how much Mr B knew about these guarantees as no record was made of discussions around this. It also doesn't explain why the adviser didn't include this as part of the advice. I think the adviser needed to give Mr B sufficient information such that it allowed him to make an informed choice. The adviser also needed to ensure the recommendation was based on *all* of the significant advantages/ disadvantages of transferring. I consider giving up guarantees at whatever level, was a clear disadvantage that needed to be considered before deciding the transfer was suitable for Mr B.

It should be borne in mind that by transferring, Mr B was increasing the costs involved in managing his pension plans. Mr B was provided with clear guidance as to what these fees were, and the impact on the investment through the illustration documents provided to him. But there was no comparison made of the impact of the (lower) fees if he'd stayed with his previous providers. So, I don't think there was sufficient information to show there were clear benefits to Mr B transferring from his lower cost pension plans to the higher cost SIPP.

I consider before making the recommendation to transfer, the reasons for switching needed to be sound. So, amongst other things, the potential to be better off had to be enough to more than compensate for the risks that Mr B might end up worse off. Given the lack of comparison with Mr B's current arrangements, the advice he was given doesn't strike me as being a particularly comprehensive assessment of the options available to him.

Tilney points out the returns from the WP funds were performing below the lowest regulatory illustrative figure of 5%. So, in its view, it looked very unlikely that if Mr B had remained invested in these funds, he would've been able to reach his desired retirement income. But as the adviser said at the time of the advice: *"It is important to recognise that fund performance is never guaranteed. For this reason,* [Tilney] *does not recommend that clients transfer solely on the basis of performance."*

Further, even with the highest illustrative figure, it was unlikely Mr B would've reached his desired yearly retirement income of £45,690 net. None of the illustrations provided to him showed that his income with the SIPP, would reach anywhere near this figure. I accept the illustrations didn't take into account what Mr B would have received in state pension benefits, but as Tilney has said, whichever option Mr B had chosen, there would have been a shortfall. And as it also said, the returns in its illustrations weren't guaranteed. So, I'm not persuaded that transferring was the best option for him particularly taking into account the higher fees and increased risks.

In terms of the risks, Mr B was categorised as a medium risk investor. The adviser said this meant Mr B was prepared to: *"…have a substantial proportion of* [his] *investment and retirement funds invested in equities."* But I think he was on the cautious end of the medium risk category. Mr B had very little investment experience. And he didn't have much of a capacity for loss. His total pension savings at age 43 was around £82,000 and he was unable to make any further contributions to his pension. His only other assets were his family home and £7,000 in cash for emergencies. Given his circumstances, I don't think Mr B could afford to take the increased risks that came with having a 'substantial proportion' of his retirement funds invested in equities.

I’ve considered whether the other objectives as set out in the suitability report, made the recommendation suitable for Mr B. His main objectives were that he wanted to consolidate his pension plans and also have more choice in the types of investments he could access. Tilney says by combining the pension funds and investing in accordance with a medium attitude to risk, Mr B had more chance of meeting his target retirement income.

However, I don’t think having a wider range of investment choices made the recommendation suitable. I don’t consider this objective outweighed the benefits of having guaranteed returns. And whilst transferring to the SIPP gave Mr B a wider range of investments to choose from, it also came with increased risks.

That said, I can see Mr B’s SIPP did consist of a mix of equities and funds that invested in bonds/ gilts. I don’t agree these were only suitable for more ‘sophisticated investors’ as Mr B says. But moving to a SIPP involved increased costs compared with his previous plans. As I’ve said, I don’t think it’s clear this increase in costs outweighed the loss of the guarantees and/ or the loss of an OPS that had a selection of at least eleven funds.

Whilst Tilney says Mr B was satisfied with the objectives in the suitability letters and had agreed to them, I think it’s the adviser’s responsibility to give the consumer suitable advice. Just because Mr B was attracted to the features of the SIPP when he was told about them, doesn’t mean he needed it – or should’ve been recommended it. Looking at Mr B’s past investment experience, which seems to be mostly through his pension plans, I’m not persuaded that having access to a wider range of investments was a priority for him.

In terms of the consolidating objective, the adviser gave no clear reasoning as to the benefits of this for Mr B. This is particularly the case, given the protected and non-protected rights had to be split into two separate SIPPs. Whilst they were with the same provider, I can’t see what tangible benefit it was to Mr B to have his pension plans with one provider.

Turning now to what Mr B would have done if he’d been properly advised, from what I can see Mr B was simply taking the opportunity to take advice about his pension policies. There didn’t appear to be any particular urgency to transfer. He first sought advice in June 2007, but he only transferred the following year.

As I’ve said, I can’t see that Mr B had much in the way of investment experience, so I think this made him particularly reliant on the advice of the adviser. Overall, I think if Mr B had been given a suitable recommendation along with all the information about the respective advantages/ disadvantages of transferring as I’ve set out above, I think it’s more likely than not he would have followed the advice to stay with his current provider.

Putting things right

My aim is that Mr B should be put as closely as possible into the position he would probably now be in if he had been given suitable advice. I take the view that Mr B would have remained with his previous providers. I’m satisfied that what I have set out below is fair and reasonable in this situation.

What must Tilney Financial Planning Limited do?

To compensate Mr B fairly, Tilney Financial Planning Limited must:

- Compare the performance of Mr B'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.

- If the notional values of the previous provider(s) are not available for any reason, then the benchmark to be used is for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds.
- Tilney Financial Planning Limited should add interest as set out below.
- Tilney Financial Planning Limited should pay into Mr B'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 Tilney Financial Planning Limited is unable to pay the total amount into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would 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 B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B 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%.
- Pay Mr B £200 for the distress and inconvenience to his retirement planning.

Income tax may be payable on any interest paid. If Tilney Financial Planning Limited deducts income tax from the interest it should tell Mr B how much has been taken off. Tilney Financial Planning Limited should give Mr B 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
The Suffolk Life MasterSIPP	Still exists and liquid	Notional value from previous providers	Date of investment	Date of my 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 amount payable from the investments at the end date.

Notional Value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Tilney Financial Planning Limited should request that the previous provider calculate this value. As set out above, if the notional values of the previous providers are not available for any reason, then the benchmark to be used is for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds

Any withdrawal from the Suffolk Life MasterSIPP 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 is a large number of regular payments, to keep calculations simpler, I'll accept if Tilney Financial Planning Limited totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

My final decision

I uphold the complaint. My decision is that Tilney Financial Planning Limited should pay the amount calculated as set out above. Tilney Financial Planning Limited should provide details of its calculation to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr B either to accept or reject my decision before 28 April 2022.

Yolande Mcleod
Ombudsman