DRN-3473686

The complaint

Ms B has complained about the advice Insight Financial Associates Limited ("Insight") gave her to switch her pensions in 2011, and about the way the pension was subsequently invested over time. She's said she is extremely dissatisfied with her pension plan and feels it didn't meet her objectives.

What happened

I issued my provisional decision on this complaint on 21 September 2021. The circumstances of the complaint and the reasons why I was provisionally minded to uphold it were set out in that decision. I've reproduced part of that provisional decision here, and it forms part of this final decision.

"Ms B has said that she contacted Insight on a friend's recommendation as she was interested in amalgamating her pension funds.

The firm completed a Confidential Financial Review for Ms B in January 2011. This recorded that she was in her mid-forties; she was planning to retire around the age of 65, and her income was £25,000 per year. It also said she had £8,000 on deposit; £37,000 in an ISA; 3/4,000 shares in a high street bank through a save as you earn scheme (SAYE), and she had preserved final salary benefits in an occupational pension scheme. She had three group personal pension plans (GPPs) with different pension providers. The total transfer value of all three was approximately £48,000. Her attitude to risk was recorded as 'medium-high'.

Insight recommended that the three GPPs should be switched to a Self-Invested Personal Pension (SIPP) and invested it in an 'Adventurous' fund through a Discretionary Fund Manager (DFM). The risk of the fund was described as 'High' in the Financial Planning Report sent to Ms B on 14 April 2011. Ms B selected the Financial Planning Service which was described as:

- *We will provide you with an Investment Portfolio*
- *You will receive regular reviews and updates (at least 6 monthly)*
- *Your portfolio will be rebalanced*
- *You will have the opportunity for an annual review*

Insight received 3% initial commission and 1% ongoing commission.

In March 2012 Insight recommended that Ms B switch out of the discretionary managed portfolio and re-invest 25% of the proceeds in an Investec kick-out plan, 70% in a Gilliat structured product, and 5% in cash. The new portfolio was described as low to medium risk.

The report said:

"Although you have agreed that your overall attitude to risk is as above, you would prefer to adopt a more cautious approach in respect of your retirement because you want to reduce the risk due to uncertainty in the stock market, giving your overall attitude to risk as Low to Medium."

A Fact Find was competed in May 2013.This recorded that Ms B's attitude to risk was still medium to high. My understanding is that the Investec plan had 'kicked out', and the proceeds had been invested in a further similar Investec product.

In mid-2015 a portfolio report was produced showing that the Investec plan had matured. Ms B signed a switch instruction in order to invest around £13,000 into the Mansard Principal Asset Allocation fund. No Fact Find or Suitability Report has been provided recording the reasons for the switch. I understand that the Gilliat product matured in November 2017, and proceeds of over £30,000 were paid to the SIPP account. It remained in cash and no advice was provided in relation to re-investment of this sum.

A portfolio report was sent to Ms B in February 2018 showing that the pension was worth £43,208 at that point. Insight wrote to Ms B in October 2018 saying the performance of the Mansard fund had been poor. It recommended that she switch from that fund to the Miton Cautious Multi Asset fund. It didn't say anything about the proceeds of the Gilliat maturity. The letter said, 'I can confirm that the overall risk of the new investment strategy is Low-Medium, although this is lower that [sic] your attitude to risk you were happy to proceed.'

Ms B says she recalls receiving this letter, however she was moving house at the time and didn't respond. She also moved jobs, and subsequently spoke to a firm that was providing advice on her new employer's pension scheme. That firm obtained details of her plan history, explained that the value of her plan had fallen over the previous ten years, and suggested that this wasn't right. This prompted her to complain in October 2019.

Insight responded to say that, although Ms B's attitude to risk had been medium to high, she had wanted to invest more cautiously. It said that regular reviews had taken place. And it said that when it had advised her regarding a fund switch in 2018 she hadn't responded. Ms B referred the complaint to this service. One of our investigator's considered the complaint. He thought it should be upheld. He didn't think Ms B had been given suitable advice to transfer her pensions in 2011.

Insight didn't agree with the investigator's findings, and therefore the case has been passed to me to consider.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Like the investigator, I'm not persuaded the advice to switch the three GPPs to the SIPP was suitable in the circumstances. In the Financial Planning Report the adviser provided a comparison of potential returns from the three GPPs compared with those from the SIPP. I'm not entirely sure where the figures are derived from, however they show the new plan was estimated to provide a fund of £83,000 at a 5% growth rate, compared to the total of the three GPPs being £80,050.

These figures aren't consistent with the other information on file. The Consolidated Pension Review dated 18 January 2011 showed that at all three assumed growth rates the projected fund values from the GPPs at age 60 were all significantly higher than the plan recommended – by just over 20% in total. It said the new plan would need to outperform the current plans by 1.8% per annum to match the old plans' returns. This is consistent with the figure referred to in the adviser's Financial Planning Report – which also said that the new plan was a "slightly higher charged contract" when taking all the charges into account. It said *it would need to outperform the GPPs by 1.8% per year to match the return on them. So this suggests the projected pension figures in the Consolidated Pension Review were the correct figures, which painted a very different picture to those in the Financial Planning Report.*

The Consolidated Pension Review considered the position with each GPP separately. It noted:

The SIPP was estimated to provide benefits 28/29% less than the GPP at age 60 – and required 2.6% additional growth to match it.

The SIPP was estimated to provide benefits 24/26% less than GPP2– and required 2.2% additional growth to match it.

The SIPP was estimated to provide benefits 62-72% less than GPP 3 – and required 6% additional growth to match it.

I'm not clear how the average projected fund value for the SIPP was only 20/21% less than all three GPPs combined when, compared to each GPP individually, they were all more than the 20/21% reduction. I accept that it's not always straightforward to ensure a like for like comparison, and there may be some margin for error in the calculations. However even taking this into account, I think it was clear that the new plan needed to work hard in terms of additional investment performance in order to offset the additional charges on switching and match what the original GPPs would otherwise have provided.

In addition, GPP 1 had protected tax-free cash equating to 42% in 2011. The impact of this wasn't explained in the Financial Planning Report, and no figures were provided to compare the GPP benefits with the new arrangement taking this into account. There was no explanation of what increase on the return for the SIPP needed to be to offset this loss of tax-free cash, and the resultant extra income tax payable on it (as well as the additional charges).

I accept that charges aren't the only factor to take into account when switching. But the charges on the new plan were significantly higher for GPP 1, in particular when taking into account the loss of the extra tax-free cash available through it. In my view the costs of the transfer outweighed the potential benefits from it.

The comparison for GPP 3 showed that its projected benefits were significantly in excess of those for the new arrangement – with an additional 6% growth required on it. Again, I don't think the additional costs of the switch outweighed the potential benefits.

Ms B was recorded as having a medium to high attitude to risk in the fact find and suitability report. However she was then recommended to invest through a DFM in a fund that was described as 'Adventurous' and 'High' risk. So I also don't think the fund was aligned to the degree of risk that Ms B had agreed to take.

In March 2012 Ms B was advised to switch out of the discretionary managed portfolio and reinvest in two structured products following a review of her pension. These products nominally had five-year terms (and just over). The remainder of the SIPP – 5% - stayed in cash. This new portfolio was described as low to medium risk, and it was recorded the reason for the switch was Ms B wanted a more cautious approach in respect of her retirement and reduce risk due to uncertainty in the stock market.

Ms B's overall attitude to risk was recorded as medium to high. But I don't think it was unreasonable for the firm to recommend that Ms B switch to lower risk funds taking her *circumstances into account. In my view Ms B didn't have unlimited capacity for risk. Although she did have other final salary benefits to fall back on so was able to take some risks with this pension, in the context of her overall provision, the amount invested in the SIPP was significant. And whilst an investor might in principle be willing to take a medium-high degree of risk, actual exposure to those risks and the potential to lose a significant amount of money presents its own worries and anxieties.*

So I don't think it was unreasonable to take steps to mitigate the risks that Ms B was taking. And it seems to me that Ms B ought reasonably to have been aware from the information that the firm provided to her in March 2012 that it was intending to invest the SIPP in line with a low-medium risk mandate.

However, as I have said, Ms B had a medium to high attitude to risk overall. Investing 25% in a medium risk product, 70% low risk and 5% cash meant she was at the lower end of a low-medium risk profile. This this was effectively intended to be for a five-year term, and leaving little flexibility to re-balance her funds given overall she had a medium-high preference for risk. So although I think recommending to switch to a low-medium risk profile was reasonable, I don't think it was suitable to recommend a product with a 5-year term.

My understanding is that one of the structured products 'kicked-out', and the money from it was re-invested into the same product. However when around £30,000 matured from the other structured product in November 2017, no advice was given about re-investment and it remained in cash.

When Insight wrote to Ms B in October 2018 recommending a switch from the Mansard fund to another fund it said:

"I can confirm that the overall risk of the new investment strategy is Low-Medium, although this is lower that [sic] your attitude to risk you were happy to proceed.'

Insight didn't consider or provide any advice about the £30,000 that had been paid out from the maturity of the structured product, and it remained in cash. Ms B had selected the Financial Planning Service, which included portfolio re-balancing. I think Insight was obliged to give Ms B advice on the re-investment of the £30,000 to 're-balance' the portfolio; In my view the portfolio wasn't balanced in line with Ms B's attitude to risk, even accepting it was low-medium risk by this point around 75% of it was in cash.

Ms B has said that she recalls receiving the October 2018 letter, however due to having other pressing issues she didn't reply to it. Whilst I understand that may have been the case, I think Ms B ought reasonably to have responded to the firm's recommendation, and I have taken this into account in deciding what I think is fair compensation below under 'Actual Value'.

Ms B has acknowledged that she approached the firm as she thought consolidating the pensions into one plan was a good idea. However the firm was the expert in the matter, and its role was to assess all the advantages and disadvantages of the transaction and provide suitable advice. For the reasons I have set out above, I don't think the advice to switch the GPPs was suitable in the particular circumstances of the case. In my view the additional overall costs of transferring outweighed the potential benefits from it. And the portfolio wasn't invested in line with the agreed degree of risk – which I think had changed over time."

For these reasons, I said that my provisional decision was to uphold the complaint. I went on to set out how I thought Insight Financial Associates Limited should calculate and pay compensation to Ms B.

I asked both parties to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Ms B said she was pleased that I was upholding her complaint. She said, in brief, that financial advisers often overlooked that the average client didn't have the same level of knowledge or investment experience as they did, and she was paying an ongoing 1% adviser fee to ensure her investments remained suitable to her circumstances. However this hadn't been the case.

Insight said it was prepared to make an offer of settlement to Ms B in line with the recommendations outlined in my provisional decision.

Ms B subsequently accepted my provisional decision on 1 November 2021. And her acceptance was forwarded onto Insight on 3 November 2021.

Insight made an offer to Ms B in January 2022. However it wasn't in line with the recommendations outlined in the provisional decision. Insight said it was happy to revisit its calculations, albeit didn't have immediate access to some of the necessary historical indices data. It said it was having to obtain a licence for it which was proving to be a long process, but that it would treat the matter with urgency. To date, no revised offer has been made. The complaint has therefore been passed back to me to consider for a final decision. We asked Insight if it wanted to provide any further evidence or arguments for consideration before I made my final decision. However no further submissions were received.

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've seen no reason to depart from the conclusions set out in my provisional decision to uphold Ms B's complaint.

Putting things right

Fair compensation

In assessing what would be fair compensation, my aim is to put Ms B as close as possible to the position that she would probably now be in if she had been given suitable advice.
I don't think Ms B would have transferred if suitable advice had been given. However I think Ms B would have invested differently. It is not possible to say *precisely* what she would have done, but I'm satisfied that what I have set out below is fair and reasonable given Ms B's circumstances and objectives when she invested.

What should you do?

To compensate Ms B fairly, I intend to order that Insight Financial Associates Limited:

- Compares the performance of Ms B's investment with that of the benchmarks shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

- Insight Financial Associates Limited should also pay any interest set out below.

If there is a loss, Insight Financial Associates Limited should pay into Ms B's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Insight Financial Associates Limited shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Insight Financial Associates Limited is unable to pay the compensation into Ms B's pension plan, it should pay that amount direct to her. 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.

The *notional* allowance should be calculated using Ms B's actual or expected marginal rate of tax at her selected retirement age. I think Ms B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, if Ms B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

Investment name	Status	Benchmark	From/to dates	Additional interest
SIPP	still exists	1 - The FTSE UK Private Investors Growth total return index……. Then 2 - for half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Benchmark 1 should be used from the date of the original switch to the date that the investments were switched to the Structured product (around March 2012) Benchmark 2 should be used from the date that the investments were switched to the Structured product (around March 2012), to the date of my final decision	8% simple a year from date of decision to date of settlement if settlement isn't made within 28 days of Insight Financial Associates Limited being notified of Ms B's acceptance of this decision

- In addition, Insight Financial Associates Limited should pay Ms B £200 for the distress and inconvenience I'm satisfied the matter has caused her through the reduction in her pension fund values.

- Provide the details of the calculation to Ms B in a clear, simple format. Income tax may be payable on any interest paid. If Insight considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms B how much it has taken off. It should also give Ms B a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Actual value

This means the transfer value of the SIPP at the end date. However, Insight can adjust the actual value to take into account any increase in value that would have resulted if that part of the SIPP invested in the Mansard fund had been switched as recommended in October 2018. It should assume the switch as at the day after the date of its letter.

Fair value

This is what the total sum transferred to the SIPP would have been worth at the end date had it grown in line with the benchmarks. In order to account for protected tax-free cash as set out below, the notional value for that GPP will need to be calculated separately.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in. Any withdrawal, income or other distribution out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

Protected tax-free cash

If Insight Financial Associates Limited pays redress to a pension plan, it should separately pay Ms B a sum equivalent to the additional tax due on the notional value of GPP 1 resulting from the loss of protected tax-free cash, calculated at basic rate.

If Insight Financial Associates Limited pays redress direct to Ms B, it should account for the protected tax-free cash in the tax deduction. In other words, the deduction should take into account the higher tax-free cash that would otherwise have been payable from that GPP had Ms B not switched away from it.

Why is this remedy suitable?

I've chosen this method of compensation because:

- I think it was initially agreed that Ms B wanted capital growth and was willing to accept medium to high investment risk.

- The FTSE UK Private Investors Growth total return index (prior to 1 March 2017, the FTSE WMA Stock Market Growth total return index) is made up of a range of indices with different asset classes, mainly UK and global equities. It's a fair measure for someone who was prepared to take medium to high risk to get a higher return.

- From March 2012 I think Ms B ought reasonably to have been aware that the intention was for the SIPP to be invested in line with a low to medium degree of risk. However I don't think Ms B should have been advised to invest in products with 5-year terms given her overall attitude to risk was medium-high. Ms B was paying 1% for an ongoing review and re-balancing of her portfolio. I think suitable advice would have been for Ms B to have invested in a combination of low-medium risk funds that could be switched at any time. I think it's likely that further switches would have taken place given the poor performance of the Gilliat investment (had it been possible to switch). Ms B ought reasonably to have been aware that she was invested in a low-medium risk mandate, so I think it's reasonable to assume she would have continued to invest in line with that low-medium degree of risk (but not low risk). It's not possible to say exactly when she would have re-invested or in what funds. I therefore think the 50 /50 index provides a reasonable proxy in the circumstances.

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to their capital.

- 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.

I consider that the low to medium risk profile was in between these two, and the 50/50 combination would reasonably reflect a low to medium risk mandate. It doesn't mean that Ms B would have invested 50% in some kind of index tracker investment. Rather I consider this is a reasonable compromise that broadly reflects the sort of return Ms B could have obtained from investments aligned to a low to medium attitude to risk.

My final decision

My final decision is that I uphold Ms B's complaint.

I order Insight Financial Associates Limited to calculate and pay compensation to Ms B as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 21 June 2022.

David Ashley
Ombudsman