DRN-3590365

The complaint

Mrs J says the advice given and the arrangements made by Pi Financial Ltd (PFL), to switch her personal pension into an Intelligent Money Self-invested Personal Pension (SIPP), with a discretionary fund management (DFM) arrangement with Mayfair Capital Ltd (MCL) and the resulting investments, was unsuitable.

Mrs J is represented by CP Financial Claims (CPFC).

Pi Financial is represented by Reynolds Porter Chamberlain LLP (RPC).

What happened

Mrs J received advice from a firm called M&S Financial Solutions Limited. At the time of the events complained about it was an appointed representative (AR) of PFL. As principal, PFL is responsible for the acts and omissions of its agent. To keep things simple, I'll just refer to PFL in my decision.

Mrs J says she was introduced to PFL after it had provided advice to her husband about his pension arrangements. She said she had a few small pots and wanted them consolidated. During March 2017 it gathered information about her objectives, circumstances and attitude to risk. It also made contact with her then personal pension provider to gather data on her existing provision.

Mrs J's objectives were recorded in the following terms:

- *"When discussing your financial needs, aims and goals, we identified that you had not kept track of your pensions and would now like to know how they are invested, opportunities in the market today in terms of diversifying how your pension assets are held. You wanted to invest some monies in more exciting asset classes.*
- *We also considered the importance of having my ongoing service commitment and keeping your pension on track to meet your needs, aims and goals which is a fundamental part of the service we provide.*
- *You have no plans to pay into your pension, however, you do have a company final salary pension which should be of significance.*
- *You are looking to retire on a minimum income of £1,200 in your bank a month. As it stands, even with state pension at age 67, your pot will quickly run out, most likely in your mid-70s. The good news is given that you hold other investments and with your other pension this gives you scope to be more adventurous with the new pension scheme in hope for a better return.*
- *Your husband has completed a similar exercise and you wish to pursue the idea of investing via a broker. Although the pension pot is not large you wish to "give it a good shot to make some decent returns" You were not previously aware this sort of service would be available to you."*

PFL produced a suitability report for Mrs J dated 7 August 2017. In summary it recommended she should:

- Switch her existing Old Mutual Wealth (OMW) personal pension into an Intelligent Money SIPP.
- Invest the funds in line with her assessed balanced attitude to risk through a DFM arrangement with MCL.

Mrs J accepted PFL's recommendations and the switch went ahead, with about £40,700 moving from her OMW plan into her new SIPP on 5 October 2017. PFL were paid fees of around £1,930 for the initial advice and the first year of its ongoing service on 6 October 2017. Aside from SIPP fees, the balance was paid to MCL on 13 October 2017 for investing.

In September 2020, on behalf of Mrs J, CPFC raised several concerns with PFL about what had happened to her pension arrangements in 2017. It said the advice to move from her existing pension had been unsuitable. She had a low appetite for risk and capacity for loss. It said the investments made with her pension funds had been inappropriate. It said Mrs J had incurred unnecessary costs as a result of the transaction. And that she had suffered significant financial detriment as a result of its actions.

PFL refuted Mrs J's complaint. It said her former pension provided poor performance and service; the contract lacked flexibility. It said given her knowledge, experience and appetite for risk, the switch to the SIPP with an active management arrangement had been suitable. It noted that as she was a member of a defined benefit (DB) scheme and had other assets, using her personal pension fund in the way it recommended was appropriate.

The Investigator reviewed Mrs J's complaint and upheld it. She had concerns about the advice PFL provided, in particular in relation to matters such as costs of the new arrangement and disclosure of these; the risk appetite assessment; and fund management.

PFL disagreed with the Investigator's findings and conclusions. It maintained its advice had been suitable. It also said MCL had a direct relationship with Mrs J and that it was responsible for all investment advice given to her. It noted her accusation that her funds had been placed in in unregulated and high-risk investments and that these were now valueless. It argues in this situation the chain of causation had been broken by MCL failing to adhere to the original agreement between the parties.

As both parties didn't agree with the Investigator's view, Mrs J's complaint was passed to me to review afresh. I issued my provisional decision in June. PFL, through its representative, provided further evidence and arguments in support of its case. I'm grateful for its submission which I've carefully considered. Where new material issues have been raised, I've dealt with them in this final decision.

What I've decided – and why

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

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

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

I'm upholding Mrs J's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mrs J's case?

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

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3 - which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.
- Principle 7 - which requires a firm to pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

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

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

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

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

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

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

- *Charges* - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?
- *Existing benefits* - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.

- *Risk* - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?
- *Ongoing fund management* - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in April 2014 it issued an industry alert which said:

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

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

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

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

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

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

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

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

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

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

What instructions did the adviser give the DFM on the attitude to risk or model portfolio to use? Did the adviser effectively give the fund manager freedom to do as it thought appropriate? If this has happened the adviser will have a responsibility for what subsequently – particularly given their obligations to act in the client's best interests.

Was the DFM's initial asset selection broadly consistent with its mandate? What due diligence did the adviser carry out at the beginning? Did the DFM fail to get the asset allocation right from the outset, or did things gradually wander off course?

If the DFM departed from the mandate, did the adviser react to this? Regulatory guidance and industry best practice required the adviser to monitor the DFM's ongoing performance, having agreed a schedule for information to be exchanged between them. Could any losses caused by the DFM have been avoided by the adviser's actions?

Did PFL meet the regulatory obligations it was bound by when advising Mrs J?

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

There are several documents relating to PFL's transaction with Mrs J that are important to my consideration, these include the fact-find, risk appetite questionnaire, pension replacement contract form and the suitability report.

PFL recorded that Mrs J was 51 at the time of the advice. She was married and had one dependent child. She worked full time as a financial controller earning £30,000. Her husband earned around £17,000. Details of their monthly household expenditure was scant – with the record suggesting this was £800.

No liabilities were recorded for Mrs and Mr J. They owned their home, which was said to be worth £180,000. She also had £30,000 in an ISA. Mrs J was said to have some experience of investments but that her knowledge was limited. She'd never previously received financial advice.

Mrs J anticipated retiring at 65. Her OMW personal pension had a transfer value of around £40,700. She wasn't totally dependent on this provision. For example, she was a member of a DB scheme – although details about how significant this was to her retirement planning wasn't captured. It's also recorded that she thought a net monthly pension of about £1,200 would be required.

There are some basic problems here with the information PFL has provided. For example, the suitability report seems to imply the £1,200 pension income requirement is for Mrs J. But there is an adviser file note which suggests it's a household target. There's output from a retirement modeller which indicates the £1,200 figure was gross not net. The adviser's note also suggests he was working to a retirement age for her of 67, not 65. These inconsistencies cause obvious problems.

At a basic level, I can't see evidence of modelling carried out by PFL which shows how the advice it gave Mrs J in 2017, came together to deliver her income requirements in retirement.

What was the value of her deferred defined DB pension likely to be when she retired? In responding to my provisional decision, RPC says she'd been asked to obtain that information but had never done so. It needed the information in order to deliver robust advice, so why didn't it seek her authority to liaise with her DB provider? Why did it go ahead without this information? RPC's response on these matters is inadequate.

We asked Mrs J about her DB pension. She told us:

"I have no problem sharing details of my employers salary scheme, but want to stress that at the time this was arranged I didn't have many details on it myself, so it had absolutely no bearing on this as the IFA and pension people had no details on it."

"It is calculated on length of service and salary, and I have recently found out that I can draw it at aged 60 if I'm still employed (obviously with a reduction for reduced service). If I leave the business I cannot draw until I am 65 (again with a reduction for reduced service). At the moment the amount I will receive at aged 60 (if I retire early) will be around £16k per annum.

PFL didn't have the information it needed to understand what returns Mrs J needed to achieve with her personal pension, in order to meet the stated objective for her / her household's income in retirement. Indeed, it seems possible that her DB benefits together with her state pension entitlement would've already been sufficient to meet her retirement income requirements (as recorded by PFL).

This seems to be confirmed by a statement Mrs J chose on the risk assessment questionnaire she completed. From four statements describing her other pension provisions, she selected the one which said she had sufficient pension and savings to provide an income equivalent to two thirds of her anticipated pre-retirement salary. I should make clear however, such a limited tick box exercise based on her own perception of the situation is clearly not a substitute for rigorous financial and retirement planning.

I think such analysis would've been important to her being able to take an informed decision about what to do with her personal pension. Instead PFL seems to have focussed on this element of her provision and when it might run out, in isolation from her other pensions.

PFL's role wasn't simply to facilitate what Mrs J wanted. She may've wanted to invest in more *exciting* or *interesting* assets. But of course planning for an income in retirement is a serious, complicated and some might say mundane matter. She may've been attracted to using a DFM arrangement because that's what her husband was doing. But PFL knew his circumstances, experience and needs were different to hers. She may've wanted to improve the growth prospects of her personal pension. But did she need to, given her retirement income objective, and what exactly was the prospect on offer?

PFL was in a good position to have analysed, tested, challenged and advised Mrs J about what was in *her* best interest for retirement planning. It knew pension pots built up over many years are to provide for a retirement income.

So, these fundamental problems with PFL's approach undermined any rationale for the switch of Mrs J's personal pension.

PFL recommended Mrs J switch her OMW personal pension into an Intelligent Money SIPP, with a DFM arrangement with MCL and to invest in balanced risk assets. There are a number of other significant weaknesses with its advice.

Charges

PFL charged Mrs J £1,546 for its initial advice, that was 4% of her fund value.

In its suitability report dated 7 August 2017, PFL noted the charges for her SIPP and the underlying funds were *likely* to be higher than those Mrs J was being charged by OMW but that *she believed* these would be recovered by higher growth. PFL needed to be clear about the costs. I thought it was being ambiguous.

In responding to my provisional decision RPC argues PFL was clear in its suitability report and the Pension Replacement Contract form what charges Mrs J would incur. I disagree. While the cost to switch appears reasonably clear, arguably the more important analysis of what ongoing costs would be, and the effect of these on any returns her new arrangements might achieve, wasn't transparent.

Mrs J was being charged a total of about £100 a year (0.25% of her fund value) by OMW. The new arrangement would mean she'd pay about £536 each year (including ongoing advice fees, a service it said was appropriate in her situation). This is a substantial uplift and doesn't even include costs related to the DFM's activities.

RPC says Mrs J opted for the arrangements recommended by PFL because she wanted the opportunity to improve the performance of her pension funds. But it wasn't for her to be the judge in terms of the prospects for improved investment returns under MCL's management – PFL needed to provide its assessment.

PFL provided analysis showing the performance of Mrs J's existing personal pensions. Over the previous five years her OMW plan had achieved growth of 24%. Over the previous three years growth was 8.4%. In order to exceed the drag of increased costs and then provide an improved return on investment, there needed to be a reasonable prospect of significant performance improvement under the new arrangements.

But I've not seen what yield PFL was targeting with its recommendation. Indeed, the fund manager it proposed was only established in 2016 and became regulated in April 2017. So, it seems there couldn't have been any historical performance data to show whether any projections available were realistic.

PFL hasn't done enough to satisfy me there was a clear potential for Mrs J to be better off, compared to her then existing personal pension, as a result of its recommendations, given the fees and charges she was incurring and the nature of the investment strategy it was recommending.

Risk

Mrs J completed a risk appetite assessment. PFL said she was a balanced investor. It went on to describe this in the following terms:

"Balanced investors typically have moderate levels of knowledge about investment matters and will pay some attention to keeping up to date with investment matters. They

may have some experience of investment, including investing in products containing riskier assets such as equities and bonds."

"In general, balanced investors understand that they have to take investment risk in order to be able to meet their long-term goals. They are likely to be willing to take risk with part of their available assets."

"Balanced investors will usually be able to make up their minds on investment matters relatively quickly, but do still suffer from some feelings of regret when their investment decisions turn out badly."

"With the other assets in the background, you said your capacity for loss on this investment is about a third and if it was higher than this then you would retire later and rely more upon your husband. You have sufficient accessible funds in case of an emergency. You are accepting of risk and realise you have to take risk to achieve potential growth."

I'd start by noting that Mrs J's existing OMW personal pension as invested was assessed as being in line with her balanced appetite for risk. So, PFL wasn't proposing a change in exposure in terms of overall investment risk.

I think the assessment PFL conducted of Mrs J's risk appetite was a reasonable starting point. Mrs J wasn't a novice in investment matters and she understood that to gain better returns she had to take some risks. She wanted to take some risk. She had a 15 year horizon. She wanted returns in excess of inflation over the medium term.

In responding to my provisional decision, RPC advanced a case that suggested Mrs J had significant experience of investments. It said:

"…the Mayfair Capital application to open a SIPP (signed by Mrs J on 11 October 2017) provides that Mrs J traded between 3 to 40 collective investments, bonds and Major Shares each year, with an average trade size of £5,000, by an advisory service for 10 years…Mrs J also had shares (such as Alternative Investment Market shares and mall Cap Shares, Illiquid Shares & Equity Placings), which she traded less than 3 times a year with an average trade size of £5,000. Mrs J therefore had previous investment experience…"

"The SIPP application also provided that there were not any type of products, investment or markets that Mrs J did not want to invest in, and that she understood the risks associated with her choice of products. She also stated that she did not have a limit (i) to the maximum monetary value that she was prepared to risk on any individual trade, (ii) the maximum number of Advisory Only trades with Mayfair on a monthly basis and (iii) the maximum number of Discretionary Only trades with Mayfair on a monthly basis."

The information gathered by PFL about her knowledge and experience presents a somewhat different picture. From 13 products that were set out for her, she identified experience of using a building society account; a regular savings vehicle such as an endowment or friendly society bonds; and regular/single premium personal pension contracts.

She went on to detail that she had £30,000 savings in her building society. That she paid £30 a month into an endowment policy. And that she'd made regular contributions to a pension, and then had moved her accumulated contributions as a single premium.

The Investigator asked Mrs J to explain the contradictions between what she'd told PFL at the outset about her investment experience and what had later been recorded on her SIPP application. She is adamant that the PFL fact-find was accurate. She couldn't explain how

MCL had captured the information shown on her application, but did note she'd been asked to sign a number of forms and couldn't recall all details.

I've thought carefully about this matter. Firstly, I note that the MCL application asked Mrs J about her overall understanding of general financial and economic affairs. The options were none; limited; good; and extensive. Mrs J recorded she had limited understanding.

Further, I place more weight on the information PFL gathered in preparation for its advice, than the information gathered by MCL after the switch of her funds had been given effect. That's because the information captured by PFL was itemised and clear. Mrs J also went on to provide details about the products she'd used. On the other hand, the information as presented from the MCL form brigades products together. It's not clear exactly what she was confirming about her experience.

On balance, I don't think Mrs J was particularly knowledgeable about investment and pension matters. Of course, that's why she sought professional advice from PFL. In this context I note certain of her responses to the risk questionnaire that are at odds with the assessment it made.

For example, given the choice between four portfolios, with one being the most stable and four being the most volatile, Mrs J selected number two. She also said she'd be concerned if the value of her investments fell by more than 10% in a year. And that she'd ask the adviser to shift assets into less volatile investments. While she'd consider increasing her risk exposure to secure higher returns, she'd only do so with 25% of her fund.

I would've expected PFL to have got to the bottom of some of the tensions between Mrs J's responses to different questions. I can't see that happened. Rather, it appears to have relied on a number that dropped out of the assessment without further scrutiny. In doing so it wasn't treating her with due care and skill.

In its suitability report, PFL explained to Mrs J that her funds would be invested in a balanced portfolio. It set out the typical assets that she might hold in this, including global equities (48%), government bonds (20%), corporate bonds (15%), smaller equities (15%) and cash (2%). It said:

"This is a guideline to which Mayfair Capital Ltd will invest within, an exact portfolio will be drafted upon a discussion with yourself to gain an understanding of your current financial situation and investment objectives before working with you to maximise performance within the boundaries of your appetite for risk. There could be additional costs as this will depend on the underlying investments."

It's a problem for PFL that it didn't have a handle on the investments Mrs J would be making in her new SIPP. The regulator required that it took a close interest in where Mrs J's funds would be placed. Generic descriptions about the sort of investments her pension might make wasn't sufficient. If the underlying investment wasn't suitable, then the advice wasn't suitable.

PFL said it chose MCL as fund manager for Mrs J because:

"At Mayfair Capital Ltd they recognise that each of their clients' requirements are different, which is why they allocate a dedicated Investment Manager to be your personal point of contact. Your manager will seek to gain an understanding of your current financial situation and investment objectives before working with you to maximise performance within the boundaries of your appetite for risk.

It doesn't appear as though PFL told Mrs J about the lack of performance data for MCL, given it was a relatively new entrant to the market. This added more risk into the mix. It should've been more fulsome about this. It should've set out why using this DFM was a better option than more established fund managers.

Mrs J wasn't investing all her pension assets. Her deferred membership of her DB scheme would remain intact. And it seems her husband had a reasonable pension provision, although there's nothing on her file about this. So, I do think she had some capacity for loss given her overall financial circumstances and how long she had to go until retirement. But this wasn't unbounded.

The problem for PFL, as I've mentioned previously, is that we don't know how important her personal pension funds were with respect to achieving her objectives. Did she really need to expose her funds to the increased costs she was taking on in order to meet her retirement income objective? And the fund management arrangements really don't appear appropriate for her situation, as I'll now explore in more detail.

Ongoing fund management

Mrs J is said to have wanted her funds to be spread across a range of investment choices. She wanted her funds actively managed by an expert. I'd note that the OMW personal pension she had was an actively managed portfolio. It's not clear she would've appreciated this from the suitability report PFL provided. Nor that she could've chosen up to 100 funds from the 500 it had available. It's not clear these matters were explored effectively with her.

Mrs J hadn't used an adviser service before. And she hadn't been in a DFM arrangement previously. The concept was introduced by PFL. There was a duty of care on it to make sure the firm it was recommending was appropriate for her. But it's not clear to me she would've had a clear idea about the added value being provided by MCL and PFL respectively. Yet she was paying a lot of money for both services.

PFL said of MCL:

"At Mayfair Capital Ltd they have a different approach to investment services. Rather than slotting you into someone else's financial model, they custom build a service around you. The type of service you choose will be determined by how actively involved you want to be in the management of your investments and how confident you are with monitoring the balance of risk and reward yourself."

"Their approach is to listen to our clients' needs then tailor an investment strategy that fits their investment objectives, knowledge, experience and financial resources. Inherent within our culture is the belief that an approachable and dependable relationship with all their clients will surpass their expectations for service and value. This is achieved by allocating each individual client their own qualified personal investment manager who centres the service around them."

It's difficult to understand how PFL could recommend MCL based on its different approach to investment services. I say this because MCL was registered with the FCA in April 2017, only a few months before PFL recommended it to Mrs J.

PFL has said its compliance director carried out due diligence into MCL. And that following the exercise it was accepted as one of its permitted investment houses.

A key element of PFL's recommendation for Mrs J to switch her personal pension into the Intelligent Money SIPP appears to have been the expectation the DFM investment portfolio would perform better than her existing plan. If that's the case then it begs the question, on what that expectation was based upon?

MCL was a newly registered business. It had no track record of investment performance. Whilst past performance can't be relied upon, it can provide an indication of the degree of success the DFM might have in future. If it didn't have a track record this would reasonably have increased the enquiries PFL should've made.

Mrs J had limited investment experience, but she wasn't a sophisticated investor. She had a modest personal pension fund of around £40,700 which she'd built up over several years.

PFL hasn't done enough to demonstrate that the recommendations it made to Mrs J to establish a SIPP, with a DFM facility, investing in vehicles she had no experience of, in a company with little track record, which also required its ongoing advice service, was suitable.

The arrangements PFL put in place were over-engineered, complicated, untested, relatively expensive and it wasn't clear they were reasonably likely to be able to produce better returns than her personal pension.

Where does PFL's liability end and MCL's begin?

In responding to the Investigator's view PFL said:

"Mayfair Capital ("MC") had a direct relationship with [Mrs J] and are responsible for all investment advice given to [Mrs J].2

"CPF Claims brought to the FOS [Mrs J's] original complaint "I was advised to invest in an unsuitable portfolio by the DFM Firm, Mayfair Capital Ltd, which consisted of unregulated, high risk investments. These investment assets are now valueless". The complaint relates to the investment and should therefore correctly be directed to MC under DISP 1.7."

"You may seek to evoke causation in placing total responsibility with this Firm but the causation chain has clearly been broken by MC failing to perform as originally agreed by all parties."

Firstly, I'd note that Mrs J's complaint was made in much broader terms than PFL implies. Nevertheless, I've considered the point it makes carefully.

Where a firm concludes that it may be jointly liable along with another firm for the investor's loss then *generally* the firm that gave the first advice should review the whole period (including the period after the other firm became involved) and then seek to obtain redress from the other entity, as appropriate. But where a firm believes the causal link between the advice it gave and any ongoing loss has been broken, then the first firm *may* need only consider the period up to the second advice.

I've already highlighted some failings in the approach PFL took with Mrs J given her circumstances and objectives. These are around basic rationale, charging, risk appetite assessment and fund management arrangements and therefore the overall proposition to switch.

Regarding the role of the DFM it recommended, PFL has provided more information to show it undertook due diligence on MCL. But given it was a new provider, without a track record, it's not clear why it recommended such a firm to Mrs J who had no experience of DFMs. And it hasn't done enough to show why she even needed such an arrangement given the size of her personal pension pot.

PFL didn't obtain a current detailed breakdown of assets to understand how Mrs J's funds would be invested. I can't see it was aware of how its assessment of risk mapped to MCL's approach. More generally, it's not clear how the seemingly separate information gathering, assessments and processes of PFL and MCL were reconciled and areas of difference and contradiction examined.

Mrs J had signed up to an ongoing service from PFL for which it charged her 1% of the value of her fund in advance. In return it said she would receive an offer of an annual review and a 6-month interim desk-top review. It said this would encompass an assessment of her circumstances; a review of her objectives; a review of investment performance and holdings; valuations and investment commentary; and reassessment of risk profile and asset allocation. I think this makes clear it needed to be across MCL's approach and performance.

Indeed, PFL has provided a copy of one review that it carried out for Mrs J from around June 2018. In the letter it sent her it confirmed that the purpose of the review was to ensure that its recommendations remained fit for purpose. It noted what MCL had said about her portfolio performance to date:

"There are two of eight positions on [Mrs J's] portfolio that are proving troublesome. Fresnillo, the mining company, is offside by some 17%, which in the grand scheme of things is not so worrying, and we have seen it start recovering a little over the past few weeks. We are not overly concerned about this position, as it is a long term play, therefore the short- term fluctuations we tend not to pay a significant amount of attention to. The other position which doesn't look good on the account is Equatorial Mining & Exploration plc. This is one of our high risk equities, which in the past three weeks has suspended trading and has displayed a share price of close to zero, i.e. a 100% loss on that position. However, this is for a very simple reason and should not cause the client concern. A separate company, ARQ Minerals Limited, has come in and bought 500,000,000 shares in an initial investment, being made to coincide with the heads of terms which will develop into an investment agreement during the course of the next 30 days. Until the discussions have taken place, the suspension of trading will remain, and if all goes as well as we are anticipating, this position on [Mrs J's] account could prove to be a high performer…"

Aside from confirming Mrs J's risk appetite remained balanced, PFL concluded in the following terms:

"Based on the above, we do not see the need to make any changes to your current set up with Mayfair at this stage and will of course keep the existing portfolio under review going forward."

PFL needed to understand how Mrs J's SIPP funds would be invested from the outset. It was supposed to be regularly reviewing the DFM's approach and performance. From the documents available it's clear it endorsed the investment strategy again in July 2018. And the pattern of investments appears consistent over time, with the last information available to me showing a breakdown of assets in July 2021.

So, given PFL's initial and ongoing role which has seen Mrs J switch her personal pension into a SIPP with her funds being invested through a DFM in funds that were said to be a match for her risk appetite, it's fair and reasonable for it to provide compensation for any losses arising in this case.

Of course, it is a matter for PFL if it wishes to pursue MCL for any acts and omissions which it believes gave rise to any element of the redress costs it now faces.

Putting things right

RPC says it's unclear whether Mrs J is pursuing a complaint against MCL. I agree that she can't benefit from double recovery of losses and compensation in respect of substantively the same case. As such, if Mrs J accepts this decision, she'll need to give an undertaking to assign any rights she has to take action against MCL and any redress from it over to PFL.

I'm upholding Mrs J's case. So, she needs to be returned to the position she would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Pi Financial Ltd responsible for.

If PFL had provided suitable advice, I don't think Mrs J would've switched her personal pensions into a SIPP, nor taken on a DFM facility which invested her funds according to the arrangement it had agreed. I think it's most likely her OMW plan would've remained invested with the same asset mix.

So, Pi Financial Ltd needs to provide redress as follows.

1. Calculate a notional loss Mrs J has suffered as a result of making the switch of her personal pension

PFL should obtain the notional value of Mrs J's previous personal pension with OMW, as at the date of calculation. So, as if it hadn't been transferred to the Intelligent Money SIPP. It will need to obtain the value of the plan as previously invested.

PFL should then find the current (*actual*) value of her SIPP, including investments and any cash held. Concerning the valuation here – the approach to be taken is set out in step 2.

The information I've seen from July 2021 shows the value of her pot as about £33,800, with around £26,500 of this held in cash.

I'm not aware Mrs J has made further contributions to her SIPP. Nor whether she's taken any benefits from it. After confirming the detailed position, then the value PFL obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mrs J's former personal pension and the current value of her SIPP will be her basic financial loss that PFL needs to redress.

2.Pay a commercial value to buy any investments which cannot currently be redeemed

To close Mrs J's SIPP and avoid ongoing fees, the investments need to be crystallised.

If, at the date of settlement, any residual investment is illiquid (meaning it can't be readily sold on the open market), it may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. PFL should take ownership of the illiquid investment by paying a commercial value acceptable to the pension provider. This amount should be deducted from the compensation and the balance paid as above.

If PFL is unable to purchase the residual investment the *actual value* should be assumed to be nil for the purpose of calculation. It may wish to require that Mrs J provides an undertaking to pay it any amount she 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. PFL will need to meet any costs in drawing up the undertaking.

Had PFL done what it ought to have done then there wouldn't have been a SIPP. So, it wouldn't be fair if Mrs J continued to have to pay SIPP fees because of illiquid holdings preventing it from being closed. Ideally, PFL would take over any illiquid holdings, thus allowing the SIPP to be closed. But third parties are involved, and I can't tell them what to do.

So, to give certainty to all parties, if there are illiquid holdings and PFL is unable to buy them from the SIPP, then it's fair that it should pay Mrs J an upfront lump sum equivalent to five years of SIPP fees (calculated using the previous year's fees). This gives a reasonable period to arrange for the SIPP to be closed.

3. Pay an amount into Mrs J's pension pot so the value is increased by the loss calculated (resulting from 1 and 2) or pay her an equivalent cash sum notionally adjusted for tax.

If compensation is paid into Mrs J's SIPP, payment should allow for the effect of charges and any available tax relief, so that she is in the same position as if she'd stayed in her original personal pension scheme.

If paying compensation into Mrs J's SIPP would conflict with any existing protection or allowance and / or the plan is closed and PFL takes on her investments, then it should pay her compensation as a cash sum. In doing so it should make a notional deduction to allow for income tax that would otherwise have been paid.

If Mrs J hasn't yet taken any tax-free cash from her plan, 25% of the loss would be tax-free and 75% would've been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this. If Mrs J is a higher rate taxpayer, the notional allowance would reduce the amount payable accordingly.

PFL must pay the compensation within 28 days of the date on which this Service informs it that Mrs J accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Income tax may be payable on any interest paid. If PFL considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mrs J how much has been taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HMRC if appropriate.

Further information

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

My final decision

For the reasons I've already set out, I'm upholding Mrs J's complaint, and I require Pi Financial Ltd to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 19 September 2022.
Kevin Williamson
Ombudsman