DRN-3597789

The complaint

Mr L complains about advice given InterestMe Financial Planning Limited (InterestMe) to switch his existing personal pension plan to a self invested personal pension (SIPP).

The advice was given in 2016 by Wise Pension Group Limited which is now InterestMe. For ease, I've just referred to InterestMe below.

What happened

A fact find summary records that, at the time of the advice, Mr L was 52, married with three dependent children. He was employed full time and earning around £2,000 pm. He owned his own home, subject to a mortgage. He had a personal pension to which he was contributing £160 pm (£200 pm after tax relief). The fund value was £114,667.60 and the transfer value £123,174.37. It was invested in two with profits funds and a balanced fund. There was an annual charge of 1%. Mr L's retirement age was 65 and his target income was £1,000 pm. His objectives included that he hadn't had a review for a while and he wanted to see how his pension was performing, understand his potential position, any shortfalls that might exist and what actions he could take to improve his position. So the drivers were advice and performance.

InterestMe issued a suitability report on 1 July 2016, recommending that Mr L switch his existing personal pension to a SIPP. The reason given was greater performance prospects and lower product costs. The report said there was no penalty for switching and the transfer value included a final bonus of £8,507. It also said the plan was partially (just over 50% of the fund value) invested in the with profits fund and there was a fund guarantee of 4% pa. But InterestMe's research indicated that its recommended fund choice would deliver higher returns over the longer term. Mr L's existing plan offered around 90 alternative funds which '*may be sufficient to build a diversified portfolio'*. But it didn't have the facility to access benefits flexibly from age 55 which the recommended solution did.

InterestMe's estimated charges for the new arrangement – a SIPP and investment via a Discretionary Fund Manager (DFM), although not referred to as such, in its Balanced Portfolio – were set out. There was a 3% initial advice and implementation fee (around £3,695) and an ongoing service fee of 3% pa (around £896 pa).

It was noted (and contrary to what the fact find summary said) that Mr L was a member of his company pension scheme. No further details were set out. The report said Mr L had over twelve years to retirement and he didn't expect to be solely reliant on the pension under discussion. There was an extremely low probability he'd have an income shortfall in retirement. From what he'd said, the answers he'd given and based on his objectives and capacity for loss, his risk profile was lower to medium.

The report contained an assessment of Mr L's existing pension plan. The projected fund value at age 65 was £222,300. On a like-for-like basis, the SIPP had a projected fund value of £225,000. The projected value of the recommended fund, the DFM's Balanced Portfolio, was £320,000. That calculation used a back tested five year annualized performance figure of 9.4% pa. Initial and ongoing fees had been deducted. The projected figure wasn't guaranteed. As the DFM had only been running the Balanced Portfolio for one year, the five year performance had been '*back-tested on a simulated basis'*. The report said the recommended solution wasn't cheaper than a standard stakeholder arrangement but it was cheaper than Mr L's existing provider. A copy of the fund fact sheet was included.

Mr L accepted the recommendations. A transfer value of £128,441.57 was paid on 28 July 2016 and invested in the DFM's Balanced Portfolio. The DFM entered administration in May 2017.

Mr L, via a legal representative, complained to InterestMe in April 2021 that the advice had been unsuitable. Amongst other things, the suitability report was confusing, didn't include a fair comparison with Mr L's existing plan and didn't explain the charges properly. The report had said the charges would be lower but they were more than double the existing plan's annual costs. Mr L should've been advised to remain with his existing provider. It offered over 90 alternative funds and Mr L could've switched to lower risk funds if so advised. His capacity for loss was low and a DFM wasn't appropriate as he wasn't a high net worth or a sophisticated investor. It was unclear if Mr L had received restricted advice.

The current (as at 2 March 2021) SIPP values were set out. Several of the companies in which the SIPP had invested had gone into liquidation and it appeared those investments had no value. It was suggested that Mr L's losses were £49,137.92 plus initial and ongoing advice fees

InterestMe didn't uphold the complaint. It said the reports clearly detailed Mr L's existing plan versus the recommended arrangement with a comparison of the charges and outlined the rationale for the recommendation. InterestMe accepted the switch meant the annual charges increased but said that was fully disclosed in the suitability report and verbally before Mr L agreed to switch. The charges weren't disproportionate given the work involved. InterestMe offered a restricted service and that was fully discussed and disclosed and evidenced by the documentation, including the suitability report which clearly stated the nature and type of advice being provided. InterestMe maintained the recommendations were suitable.

Mr L remained dissatisfied and his complaint was referred to us. Our investigator looked into what had happened and upheld the complaint. In summary her findings were:

- COBS (Conduct of Business Sourcebook) 2.1.1R and 9.2.1R were relevant. As was the regulator's 2009 pension switching report and checklist. It highlighted four key issues: charges – had the consumer been switched to a pension that was more expensive than their existing pension; had the consumer lost benefits in the switch without good reason; risk – had the consumer switched into a pension that matched their attitude to risk and personal circumstances; and ongoing fund management charges – had the consumer switched to a pension with a need for ongoing investment reviews which wasn't explained, offered or put in place.
- Mr L's existing plan had an annual management charge of 1%. The combined charges for the new plan came to 2.01% pa plus a pension wrapper charge of £114 pa. That was over twice what Mr L had been paying. The difference in charges was misrepresented and the switch didn't result in lower costs. The extra charges, plus the 3% initial advice fee, would have a significant effect on future investment growth.
- The asset allocation of the DFM's Balanced Portfolio appeared in line with Mr L's attitude to risk. But the Portfolio was relatively new and had very limited investment history. The regulator's growth rates at the time were 2%, 5% and 8%. The recommendation was made on the basis that Mr L could expect greater returns but it wasn't reasonable to expect that. The projected fund value at age 65 for Mr L's existing plan was £222,300. For the SIPP it was higher at £225,000. But that didn't take into account the initial 3% advice fee and it was unclear if the ongoing advice

charges had been factored in. If the initial advice fee was taken into account, the expected fund value for the SIPP was £201,000 and so lower than the projection for the existing plan.
- The projected SIPP fund value at retirement was £320,000. But the projected returns were based on an extremely short, one year, historical performance figure and the growth rate of 9.4% exceeded the regulator's highest projection rate. Given Mr L's attitude to risk, that was unrealistic. The impression given was that he'd be much better off by switching but that was misleading.
- The suitability report said that, after switching, Mr L would benefit from a range of 7,000 funds. But the recommendation was to invest in a relatively new Portfolio with a limited track record.
- Mr L was twelve years away from his proposed retirement age and so being able to access his benefits flexibly wasn't relevant. Had a need arisen that could've been looked into then instead of exposing his fund to the higher charges in the interim for a benefit he didn't need.
- The client agreement (signed by Mr L on 23 March 2016) explained that restricted advice was offered. But any recommendation still had to be suitable for the client.
- The DFM had gone into liquidation. Mr L's SIPP fund included several failed or illiquid investments. The overall recommendation to switch was unsuitable. Mr L wasn't a sophisticated investor and he didn't have significant funds to invest. He didn't require a relatively complex arrangement with the extra charges that entailed. The added cost of the DFM was disproportionately high. There was some evidence that InterestMe had undertaken some research into the DFM, but the model portfolios hadn't been active for long and so projected performance and assumed volatility was based on very limited data.
- Mr L had approached InterestMe to review his existing pension. If he'd been properly informed about the costs of the new arrangement and whether it was realistically likely that it would outperform his current plan, he'd have opted to remain with his existing provider.
- The investigator set out how InterestMe needed to compensate Mr L.

InterestMe didn't accept the investigator's view. It said it had taken specialist legal advice as to the respective responsibilities of InterestMe as advisers and the DFM in relation to each of the individual investments in Mr L's portfolio. InterestMe said it was responsible for the suitability of the recommendation of the content of the model portfolio at the outset and for ongoing review of the portfolio and its overall composition. The DFM was responsible for constructing the portfolio and managing it to the mandate by exercising discretion to take decisions to trade only in investments there were suitable for the portfolio – both in isolation and as part of a portfolio that remained suitable overall for investors who'd signed up to that mandate and risk level. InterestMe could only assess the suitability of investments within the portfolio of which it was aware.

InterestMe said the DFM had a strong focus on risk management. The primary aim was to preserve capital during adverse market conditions. The secondary aim was to capture growth during buoyant economic conditions, using data driven algorithms, the key features of which were total flexibility between debt and equities in adverse market conditions, regular (monthly) reallocation of portfolio weightings, and use of collective funds. The DFM used asset backed corporate bonds to build a predictable element into portfolio investments. The return isn't influenced by market sentiment, central bank decisions, fiscal changes and exchange rates but there's a risk the issuer may default. The DFM took steps to manage that risk by ongoing due diligence of the corporate bonds to ensure continuing good governance and lending against good quality assets.

InterestMe was unaware that the DFM had exercised its discretion and taken decisions to trade and invest in bonds issued by its parent company, Optima Worldwide Group (OWG). That was in breach of the DFM's regulatory obligations as to suitability and disclosure. The DFM had failed in its duties to Mr L as a retail client and to InterestMe as the adviser. The DFM tried to resolve the situation with OWG in 2020 but in February 2021 InterestMe found out that the DFM had gone into liquidation. As the DFM should never have made the investment into OWG, any resulting loss wasn't InterestMe's responsibility and a claim should be made to the Financial Services Compensation Scheme (FSCS).

InterestMe also said the DFM was responsible for any losses in connection with Vernon Property plc, now in administration, as the DFM hadn't picked up, as part of its ongoing due diligence, liquidity issues. Again Mr L should make a claim to FSCS.

With regard to Minerva Lending plc, although its accounts were overdue and it had been classified as 'suspended', the underlying company and loans were still actively trading and interest distributions were up to date (as at 28 February 2022). InterestMe didn't see any reason why the carry value wasn't correct at the par value plus accrued interest. InterestMe said similar about Meredith Property Group plc. All interest distributions had been paid up to 31 December 2021. The next expected coupon date was January 2023. A review had concluded there was a strong likelihood the company should be able to pay the principal sum on maturity and up to date accounts had been filed.

InterestMe said it couldn't be held responsible for the losses in connection with the OWG and Vernon Property plc investments – I understand the amounts initially invested were £12,400 and £12,101 respectively. It believed the other bond investments retained considerable value. But, in the interests of settling the matter, it would be prepared to value those at 90% of their current value.

The investigator considered the points made by InterestMe but she wasn't persuaded to alter her view She said the advice to switch to the SIPP and invest in the DFM wasn't suitable in the first place. Had suitable advice been given Mr L wouldn't have been invested with the DFM when it subsequently failed.

The investigator said the complaint would be referred to an ombudsman.

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.

In reaching my conclusions and deciding what's fair and reasonable in all the circumstances of the complaint, I've taken into account, as I'm required to do, relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms. PRIN 2 ('*A firm must conduct its business with due skill, care and diligence*'); PRIN 6 ('*A firm must pay due regard to the interests of its customers and treat them fairly'*); and PRIN 9 ('*A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment'*) are in my view particularly relevant.

The COBS rules also apply. The investigator pointed to COBS 2.1.1R which requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and applies in relation to designated investment business carried on for a retail client. And COBS 9 is relevant too. It sets out a firm's obligations in assessing the suitability of investments and the information the firm must obtain - about the client's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives. A firm must have a reasonable basis for believing that what's recommended meets the client's investment objectives; that the client is able financially to bear any related investment risks consistent with his investment objectives; and that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

Like the investigator, I've also taken into account the report published in 2009 (which is still relevant today) about pension switching and the four main areas where consumers may have lost out.

And, in 2013 and 2014 the regulator published alerts aimed at reminding advisers that, when advising on pension switches, the provision of suitable advice generally required consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments. The earlier alert was aimed at where investments in unregulated schemes were intended. But the later alert confirmed that giving suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments and whether or not such investments are regulated products.

I've also borne in mind the general legal position, including the law relating to causation, foreseeability and remoteness of losses.

I agree with the investigator and for the reasons that she gave that InterestMe's advice to switch to a SIPP and invest via a DFM wasn't suitable for Mr L.

First, the new arrangement was more expensive than Mr L's existing pension. In response to Mr L's complaint, InterestMe accepted that the switch meant the annual charges increased but said that was fully disclosed in the suitability report and verbally before Mr L agreed to switch. But the executive summary at the start of the suitability report said the reason for the recommendation to switch was greater performance prospects along with the additional benefit of lower product costs. That was repeated in the next section of the report. And elsewhere – for example in the features summary on page ten of the report. The pension wrapper charge was £114 pa. But in addition Mr L would be paying investment management and dealing charges plus initial and ongoing advice fees. So, overall, the new arrangement was much more expensive.

Secondly, the switch meant that Mr L gave up a guaranteed rate of return of 4% pa on part (just over 50%) of his fund which was invested in with profits. The fund guarantee was mentioned in the suitability report. It also said that a final bonus of £8,507 was included in the transfer value. It's unclear if any market value adjustment (MVA) had been applied. The report said the recommended fund choice – the DFM's Balanced Portfolio - would deliver higher returns over the longer term. But I don't think that was realistic or based on reliable performance data or assumptions.

The projected fund value was based on what was termed a back tested five year annualised performance figure of 9.4% pa, which was net of InterestMe's initial and ongoing advice fees. It was in my view inappropriate to use a projection based on extrapolated returns from very short term (one year) historical performance figures. Particularly when performance appeared to be the main driver for the switch.

Although the report did say the estimated values weren't guaranteed, I think the projection was likely to mislead Mr L. I think he'd have found the estimated projected value that the new arrangement could achieve (a fund value of £320,000 compared to £222,300 if he stayed with his existing provider) very attractive. I don't think he was given a realistic picture of how the SIPP would likely perform and the returns which could reasonably be expected to be achieved. Like the investigator, I think the regulator's standard growth rates at the time for use in illustrations - 2%, 5% and 8% for low, medium and high returns respectively – put things in some context. Mr L's fund would need to achieve year on year returns in excess of the higher rate and when he was only prepared to take a lower to medium level of risk.

The new arrangement did offer more flexibility as to how Mr L could access his benefits. But, as the investigator pointed out, he was some twelve years away from retirement and so he'd be paying for a feature he didn't need. If, in the interim, a need arose that could've been addressed then.

I agree with the investigator that switching to a SIPP wasn't suitable for Mr L.

And I don't see that he had any need to invest via a DFM. The suitability report doesn't make it clear that a DFM is involved. Nor does it set out the reasons why a DFM is recommended and considered suitable for Mr L. The DFM added another layer of costs and Mr L's fund was modest. He wasn't a knowledgeable or experienced investor and I don't think he had any need for other than a relatively basic pension arrangement. His existing pension offered a wide choice of funds and so, if InterestMe's review had highlighted that fund changes were appropriate, internal fund switches could've been arranged.

I've considered the points made by InterestMe in response to the investigator's view. I note what InterestMe says about what it understood to be the DFM's approach, the focus on risk management and the use of asset backed corporate bonds. And why, in particular, the investment in OWG bonds shouldn't have happened. But, and despite any failings on the DFM's part, I still think InterestMe is responsible for Mr L's losses.

First, the recommendation to switch to the SIPP was unsuitable. But for InterestMe's unsuitable advice, I think Mr L would've remained with his existing provider.

Further, InterestMe recommended that Mr L use the services of the DFM and invest in its Balanced Portfolio. As I've said above, in recommending a switch to a SIPP, InterestMe had to take into account the proposed underlying investment. Mr L's pension money was held by the DFM and invested by the DFM in its Balanced Portfolio as a direct result of InterestMe's recommendation. The advice to switch to a SIPP and use a DFM wasn't suitable.

I recognise that it wasn't InterestMe's fault that the DFM went into administration. But Mr L is in the position he's in because of InterestMe's unsuitable advice – but for that he wouldn't have had a SIPP or a DFM and so the DFM's failure wouldn't have impacted on him. I think the root cause of any losses Mr L has suffered in consequence of the DFM's failure goes back to InterestMe's unsuitable advice.

The DFM was regulated and might have some responsibility for some of Mr L's losses. But although the DFM was responsible for managing Mr L's pension fund following the switch, that arrangement only existed by virtue of InterestMe's unsuitable recommendation. I'm only considering a complaint against InterestMe. For the reasons I've given, I think it's fair and reasonable, and notwithstanding any shortcomings on the DFM's part, to hold InterestMe fully responsible for any losses Mr L has suffered in consequence of InterestMe's unsuitable advice to switch to a SIPP and invest via the DFM.

Although it seems InterestMe accepts that no value will be returned from the investments in OWG and Vernon Property plc, InterestMe suggests the Minerva Lending plc and Meredith Property Group plc investments have retained their values. But the test will be if they can be sold. The redress I've set out below is aimed at putting Mr L back in the position he'd be in but for InterestMe's unsuitable advice. That includes being able to sell the investments in the SIPP so that it can be wound up if Mr L wants and so he can transfer to a more suitable pension arrangement. I've said that if any of the assets are illiquid and can't readily be sold on the open market, a nil value should be assumed.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr L as close as possible to the position he'd probably now be in if he'd been given suitable advice. I think Mr L would've remained with his previous provider. I'm satisfied what I've set out below is fair and reasonable in this situation. It follows what the investigator suggested.

To compensate Mr L fairly InterestMe Financial Planning Limited should:

- Compare the performance of Mr L's investment with the notional value if it had remained with the previous provider. 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's a loss and compensation is payable.

- If there's a loss, InterestMe Financial Planning Limited should pay into Mr L'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. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

- If InterestMe Financial Planning Limited is unable to pay the compensation into Mr L's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've 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 Mr L's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr L would've been able to take a lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- In addition, InterestMe Financial Planning Limited should pay Mr L £300 for the distress caused by the loss of the investments, which were a direct result of switch and investment recommendation. This would've caused him concern for his future pension provision. His pension was important to him and the prospect of losing money will have been worrying and stressful.

- Details of the calculation should be provided to Mr L in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Wise SIPP	Still exists some assets liquid/some illiquid	Notional value from previous provider	Date of transfer	Date of settlement	Not applicable

actual value

This means the actual amount payable from the investment at the end date.

If, at the end date, the portfolio or some of the assets are illiquid (meaning they cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio/asset. So, the actual value should be assumed to be nil to arrive at fair compensation. InterestMe Financial Planning Limited should take ownership of the illiquid portfolio/asset by paying a commercial value acceptable to the pension provider. This amount paid should be included in the actual value before compensation is calculated. If InterestMe Financial Planning Limited is unable to purchase the portfolio/asset the actual value should be assumed to be nil for the purpose of calculation.

InterestMe Financial Planning Limited may wish to require that Mr L provides an undertaking to pay it any amount he may receive from the portfolio/asset in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. InterestMe Financial Planning Limited will need to meet any costs in drawing up the undertaking.

notional value

This is the value of Mr L's investment had it remained with the previous provider until the end date. InterestMe Financial Planning Limited should request that the previous provider calculates this value.

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

Any withdrawal from the Wise SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on.

If there is a large number of regular payments, to keep calculations simpler, I'll accept if all the payments are totaled and that figure deducted at the end to determine the notional value instead of deducting periodically.

For the Wise SIPP to be closed and further fees avoided, the illiquid assets need to be removed. I've set out above how that might be achieved. But, if InterestMe Financial Planning Limited is unable to take ownership of any illiquid investments (and they can't otherwise be removed from the SIPP), they'll remain in the SIPP. I don't think it would be fair for Mr L to have to pay ongoing SIPP fees when the SIPP only exists because of unsuitable advice. If the SIPP can't be closed InterestMe Financial Planning Limited should pay Mr L a lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). That's a reasonable period to arrange for the SIPP to be closed.

My final decision

I uphold the complaint. InterestMe Financial Planning Limited must calculate and pay redress to Mr L as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 20 December 2022.
Lesley Stead
Ombudsman