

The complaint

Mr H complains that he was given unsuitable advice by Wise Pension Group Limited to switch his personal pension plans (PPPs) to a self invested personal pension (SIPP).

Wise Pension Group is now InterestMe Financial Planning Limited (InterestMe). For ease, I've referred to InterestMe throughout.

What happened

Mr H sought advice from InterestMe about his two PPPs held with the same provider. At the time Mr H was 43. He was self employed and owned his own home subject to a mortgage. InterestMe sent Mr H a suitability report in September 2016 recommending that he switch his PPPs to a SIPP. The report said Mr H's pension would be invested in the Growth Portfolio fund, managed by the Discretionary Fund Manager (DFM) named, although not referred to as a DFM. A factsheet for the Growth Portfolio was attached. Mr H accepted the advice. The combined amount transferred from his PPPs and invested in the DFM's Growth Portfolio was £36,579.13. The DFM went into administration in 2017.

In early 2019 Mr H, through his representative, complained to InterestMe. It didn't uphold the complaint and it was referred to us. Initially our investigator didn't uphold the complaint. But he revised his view following comments from Mr H's representative. In summary the investigator said:

- A SIPP wouldn't be the right choice for all pension investors. The investigator set out some examples of where a SIPP might be required. But Mr H wasn't an experienced investor, he had a very small pension pot and, although performance was the driving force behind his decision to switch, there was nothing to suggest he was comfortable with higher risk investments necessary to justify the higher charges of the new arrangement.
- Mr H had access to a DFM but that was costly and other lower cost alternatives could've been recommended.
- Mr H did want to access his pension via drawdown but he was still over twenty years away from retirement.
- Mr H's attitude to risk was noted in the suitability report as medium to higher. Although it was unclear how that had been arrived at, Mr H didn't question it at the time. But he didn't have prior investment experience and he was relying on his PPPs and his state pension in retirement.
- Higher projected returns, although not guaranteed, had been used to justify the costs of the more expensive solution. Mr H was given a comparison of his PPPs with InterestMe's recommendation. The PPPs had projected values of £24,900 and £32,700 at age 65. And that, on a like-for-like basis, the switch to the recommended SIPP would result in lower projected values - £21,600 and £32,100 respectively and which reflected the higher charges. But InterestMe still recommended the switch, for increased performance and better product flexibility.
- InterestMe provided a further projection of £124,000 in the suitability report for the new arrangement. It seems that was based on a five year annualised performance of 11.44% a year for the recommended portfolio. That would've looked very attractive to

Mr H. But the investigator didn't think that was a fair projection and when the DFM had had only been running the portfolio for a year.

- The investigator also noted the charge for the recommended arrangement:
Initial Advice & Implementation 3% (around £1,097)
Ongoing Servicing 0.75% pa (around £266 pa)
Pension wrapper charge £114 pa
Investment management charge 0.84% pa
Dealing charge 0.42%
Mr H's fund was small and the impact of charges was significant. Mr H's objectives included looking at switching to a contract with lower costs. But the new arrangement was more expensive.
- The suitability report identified that Mr H hadn't ever had a review and wanted to see how his pension was performing. Mr H wouldn't have switched to a SIPP but for InterestMe's recommendation. That recommendation was unsuitable. Had InterestMe provided suitable advice, the investment with the DFM wouldn't have been possible. And Mr H didn't need the services of a DFM and the charges that were incurred.
- The investigator set out what InterestMe needed to do to put things right for Mr H.

InterestMe asked for further time to respond to the investigator's view. We extended the time more than once but we didn't get any further substantive comments although InterestMe said it didn't accept the investigator's view and so the complaint should be referred to an ombudsman. InterestMe also referred to the bonds which I understand were included in the Growth Portfolio. InterestMe said it would set out its position on that aspect. But we haven't received anything further.

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 in 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 Conduct of Business Sourcebook (COBS) rules also apply. COBS 2.1.1R 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. COBS 9 deals with suitability and sets out the obligations on firms 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 their investment objectives; and that they have the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of their portfolio.

I've also considered the report published in 2009 (which is still relevant today) by the then regulator about pension switching. It identified four main areas where consumers may have

lost out: switching to a more expensive pension without good reason; losing benefits in the switch without good reason; switching to a pension that didn't match their recorded attitude to risk and personal circumstances; switching into a pension where there was a need for ongoing investment reviews but this wasn't explained, offered or put in place.

And, in 2013 and 2014, the regulator published alerts reminding advisers, when advising on pension switches, that 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 further alert clarified that consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (whether or not such investments are regulated products) was required.

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 that the advice to switch to a SIPP wasn't suitable for Mr H. In reaching that conclusion on I've borne in mind the 2009 report I've mentioned above. I don't think the switch meant that Mr H lost benefits – such as guaranteed annuity rates. But he did incur a penalty of £1,392 on switching one of his PPPs. InterestMe said that wouldn't affect Mr H longer term, given the projected performance of the recommended investment solution. As I've explained below, I don't agree with that.

The new arrangement was more expensive than Mr H's existing PPPs. The switch involved an initial advice and implementation fee and annual servicing, wrapper and investment management and dealing charges. Mr H's fund was modest and the charges would have a significant impact. The suitability letter did say it was important for Mr H to be aware the recommended solution was more expensive than his current PPPs and alternatives such as stakeholder pensions but the returns justified the costs. As I've said, I don't agree.

The projected value at age 65 for the new arrangement – the DFM's Growth Portfolio – was £124,000 as opposed to £57,600 for the two PPPs. The suitability letter said, in bold, that the figure of £124,000 was based on the projected performance of the DFM's Balanced Portfolio, using a back-tested five year annualised performance of 11.4% pa. It was noted that the DFM's Growth Portfolio had a five year annualised performance of 12.28%. And that, as the DFM had been running the Portfolios for one year, the five year performance had been back-tested on a simulated basis.

I think those figures were questionable to say the least. 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. The report did say the estimated values weren't guaranteed and the like-for-like comparisons showed the SIPP would return a lower value. But I think the projection was likely to mislead Mr H. He was an inexperienced investor. I think he'd have found the estimated values for the new arrangement very attractive. I don't think he was given a realistic picture of how the SIPP would likely perform and the returns which would likely be achieved. The switch was recommended on the basis that performance would be improved. But I don't see that was based on reasonable expectations.

The new arrangement offered more flexibility – for example, flexi access drawdown. But, even if that might be useful in the future, at the time Mr H was more than twenty years away from his intended retirement date. So, in the interim, he'd be paying for a feature he didn't need and couldn't use.

The suitability report recorded that Mr H's attitude to risk was medium to high. I'm not sure that assessment was credible. Some of Mr H's recorded objectives weren't consistent with that. For example, the suitability letter recorded that Mr H had said he'd prefer his pension savings returns to be guaranteed. But, in any event, I don't see Mr H had any real capacity for loss. The fact find recorded that he wasn't a member of a workplace pension (he was self employed) and that, aside from the two PPPs InterestMe was advising about, he had no other pension arrangements. So the two PPPs represented his entire pension provision, aside from his state entitlement, and he'd be reliant on them in retirement. Taking that into account and his financial circumstances generally, I think InterestMe's recommendations exposed Mr H to more risk than he should've been advised to take.

I don't think the recommendation to switch to a SIPP was suitable. Nor do I see there was any good reason for Mr H to engage the services of a DFM and incur those additional costs. As I've said, his fund was modest and the DFM's fees added an additional layer of costs. Any potential improved performance could've been outweighed by the extra charges. Even if investment choices with his existing provider were limited, I'm not persuaded that access to specialist and sophisticated investment funds and/or services (for which he'd be paying) was necessary for Mr H and when he wasn't a knowledgeable or experienced investor.

All in all I think with suitable advice Mr H would've retained his existing PPPs. The suitability letter records that Mr H had never had a review and he'd like to speak to an adviser. I think if Mr H had been advised not to switch he would've accepted that advice.

As I've noted above, InterestMe said it would make further representations about the bonds which were included in the DFM's Growth portfolio. We haven't received anything. But I've seen submissions made on other cases. I think InterestMe's point is that it shouldn't be held responsible for some of the investments in the DFM's Growth Portfolio and for any losses suffered in connection with those investments. I think there may be arguments around the high risk nature of some of the bonds and if the DFM complied with its due diligence, disclosure and other requirements.

My starting point is that the recommendation to switch to the SIPP was unsuitable. But for InterestMe's unsuitable advice, I think Mr H would've remained with his existing provider. Further InterestMe also recommended that Mr H use the services of the DFM and invest in its Growth Portfolio. As I've said above, in recommending a switch to a SIPP, InterestMe had to take into account the proposed underlying investment. Mr H's pension money was held by the DFM and invested by the DFM in its Growth Portfolio as a direct result of InterestMe's recommendation and when, as I've said, the advice to switch to a SIPP and use a DFM wasn't suitable.

I recognise it wasn't InterestMe's fault the DFM went into administration. But Mr H is in the position he's in because of InterestMe's unsuitable advice – but for that he wouldn't have 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 H 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 H's losses. But although the DFM was responsible for managing Mr H's pension fund following the switches, that arrangement only existed by virtue of InterestMe's unsuitable recommendation. I'm only considering a complaint against InterestMe. I think it's fair and reasonable to hold InterestMe fully responsible for any losses Mr H has suffered in consequence of InterestMe's unsuitable advice to switch to a SIPP and invest via the DFM.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr H as close as possible

to the position he'd probably now be in if he'd been given suitable advice. I think Mr H would've remained with his previous provider. I'm satisfied what I've set out below is fair and reasonable, taking this into account and given Mr H's circumstances and objectives when he invested. What I've said follows what the investigator suggested. As the investigator noted, we don't know if it will be possible for the previous provider to provide notional values for the PPPs had Mr H retained them. So an alternative method of ascertaining a notional value for the PPPs is included.

To compensate Mr H fairly InterestMe Financial Planning Limited must:

- Compare the performance of Mr H's investment with the notional value if the PPPs 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, it should be paid into Mr H'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 the compensation can't be paid into Mr H's pension plan, it should be paid direct to Mr H. But, had it been possible to pay into the plan, it would've provided a taxable income. So 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 H's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. If Mr H would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

InterestMe Financial Planning Limited should also pay Mr H £250 for the distress he's experienced. 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 H in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Wise SIPP	Some liquid/some illiquid	Notional value from previous provider	Date of investment	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 assets in it are illiquid (meaning they can't be readily sold on the open market), it may be difficult to find the actual value of the portfolio or asset. So, the actual value of the portfolio or asset should be assumed to be nil to arrive at fair compensation. InterestMe Financial Planning Limited should take ownership of the illiquid portfolio or 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 or all assets the actual value(s) should be assumed to be nil for the purpose of the calculation. InterestMe Financial Planning Limited may wish to require that Mr H provides an undertaking to pay it

any amount he may receive from the portfolio or asset(s) 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 H'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's a large number of regular payments, to keep calculations simpler, all those payments can be totalled and that figure deducted at end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, InterestMe Financial Planning Limited should determine a fair value for Mr H's investment using a benchmark – the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, FTSE WMA Stock Market Income Total Return index). The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value to calculate redress.

I've selected that benchmark as I think Mr H was in a position to accept some investment risk. The benchmark is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return. Although it's called an income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr H's circumstances and risk attitude.

In order for the SIPP to be closed and further fees avoided, the illiquid investments 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 H to have to pay ongoing SIPP fees when the SIPP was only established following unsuitable advice. So, if the SIPP can't be closed, InterestMe Financial Planning Limited should pay Mr H a lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). That gives 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 compensation to Mr H as I've set out above.

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

Lesley Stead

Ombudsman