DRN-3673238

The complaint

Mr J says the advice given and the arrangements made by Facet Investment Management Ltd (FIM), to switch his Self-invested Personal Pension (SIPP) with Standard Life into a platform SIPP with the same provider, with a discretionary fund management (DFM) arrangement and make the recommended investments, was unsuitable.

What happened

Mr J became a client of Berkeley Financial Partners (BFP) in December 2016. He signed a client agreement at that time to receive an ongoing advice service. BFP was an appointed representative (AR) of FIM. As the principal firm, FIM was responsible for any acts and omissions of its agent. So, to keep things simple, I'll refer to FIM throughout my decision.

FIM gathered information about Mr J's objectives, circumstances and attitude to risk. Mr J's objectives were recorded in the following terms:

- *"You have confirmed that you intend to retire earlier than your state retirement age of 67, possibly at aged 60 indicating you would have a term to retirement of some 6 years; however you are also aware that you can draw benefits from some of your pension arrangements from the age of 55.*
- *Naturally the ability to be able to retire early will depend on what your existing arrangements will be able to pay you at such a time.*
- *The recent volatility in the investment markets has led you to have some concerns about your Standard Life Pension, how it is invested, your risk profile and current strategy. You also said that going forward, you do not wish to take any unnecessary risks with your pension plan as it has taken a long time to build up. You said you would specifically like to start undergoing annual reviews to check on the performance of the pension and understand what options are available to you…"*

FIM produced a suitability report for Mr J dated 4 January 2017. In summary it recommended he should:

- Switch his existing Standard Life SIPP into a platform SIPP with the same provider.
- Invest the funds in line with his assessed low/medium attitude to risk through a DFM arrangement with Facet.

Mr J accepted FIM's recommendations and the switch went ahead, with about £153,000 moving into his new SIPP on 10 January 2017.

In December 2020, Mr J raised several concerns with FIM about what had happened to his pension pot. He thought the portfolios it had recommended had been mis-sold, with his monies being placed in vehicles that weren't appropriate for his risk appetite. He considered it had failed to conduct due diligence or ongoing risk and liquidity monitoring. And he thought FIM had failed in its responsibility as his financial adviser by not keeping his portfolio under review in light of his changing goals and risk appetite.

FIM issued its final response to Mr J on 21 January 2021. It rejected his complaint. It said Mr J's investments had been appropriate for his assessed attitude to risk. It said there was no way of foreseeing that his funds would be suspended, nor any action it could've taken to alter the situation. And it said his risk profile had remained consistent over the period.

Mr J brought his case to this Service. The Investigator who reviewed it recommended it be upheld. She had concerns about the advice FIM provided, in particular in relation to matters such as costs of the new arrangement; the increased risk he was being exposed to and absence of a compelling rationale for the recommendations made.

FIM disagreed with the Investigator's findings and conclusions. In summarising its position it said:

"In conclusion, the advice to transfer the pension and the associated investment solution were suitable…On a proper reflection, whilst the funds being suspended is unfortunate, it does not mean the pension transfer or the investment solution was not suitable. At the time of the advice, and up to suspension of the funds, there was no reason to think the portfolio was not suitable. The risk of the portfolio was suitable for [Mr J]."

As both parties didn't agree with the Investigator's view, Mr J's complaint was passed to me to review the case afresh. I issued a provisional decision earlier this month. Neither party has provided material new evidence or arguments and so I see no reason to depart from my initial findings and conclusions.

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 Mr J's complaint. I'll explain why.

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

The first thing I've considered is the extensive regulation around transactions like those performed by FIM for Mr 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 FIM. As such, I need to have regard to them in deciding Mr 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 Mr J's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between his 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 discretionary fund management (DFM) arrangement, 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 happened – 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 FIM meet the regulatory obligations it was bound by when advising Mr J?

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

There are several documents relating to FIM's transaction with Mr J that are important to my consideration, these include the fact-find, risk appetite questionnaire, pension and portfolio comparators and the suitability report.

FIM's fact-find wasn't very detailed. It recorded that Mr J was 54 at the time of the advice. He was married with no financial dependents. He was employed as a project manager, with annual earnings of £50,000. No details of household expenditure and liabilities was captured. I don't know what his household monthly disposable income was.

Mr and Mrs J owned their home, which was said to be worth £340,000. I don't know if there was an outstanding mortgage. They had around £60,000 in savings. Both he and his wife were said to be in good health.

Mr J had two personal pensions. One was a withdrawal fund with Aegon. At the time it was said to have a value of £66,000. He also had a Standard Life SIPP with a recorded value of about £148,000. He was entitled to a state pension from the age of 67. He was said to want to retire at 60, in around 6 years. Mr J's wife was entitled to a pension from a former employer, but no details were recorded.

At a basic level, I can't see evidence of modelling carried out by FIM which shows how the advice it gave Mr J in 2017 came together to deliver his income requirements in retirement. Indeed, what level of income was he targeting? And so, what did he need to achieve with his personal pensions in order to secure this? And how did the wider household position impact on these considerations? How did his existing provision and what was being proposed measure up against these metrics?

I think this analysis would've been important to Mr J being able to take an informed decision about what to do with his personal pension. But there's nothing in the suitability report or fact find to speak to these matters. This is a fundamental weakness.

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

FIM recommended Mr J switch his existing SIPP into a different Standard Life SIPP, using a DFM arrangement and to invest in line with his assessed attitude to risk. I find there are several further problems with its advice.

Charges

FIM set out the ongoing charges Mr J would incur if he agreed to its recommendations. As follows:

"Ongoing fund charge (the cost to FACET of managing the fund (i.e. buying and selling various assets from time to time in line with the fund manager's requirements) 0.60%

Total adviser remuneration 0.50%

Portfolio manager fee (the charge made by FACET for running the fund - includes VAT at the standard rate) 0.60%

Platform charge (the charge made by Standard Life for the use of the platform) 0.35%

Product administration charge (the charge made by Standard Life specifically for the establishment and running of the product in question) 0.05%

Total Annual Charge 2.10%"

The way FIM set out these charges appeared clear. It helpfully broke down the constituent elements and enabled Mr J to understand what each party was charging for the services it was providing. It also acknowledged the costs would be higher than his existing arrangements. In summarising this section of the suitability report, it said (bolding is my emphasis):

"Upon analysis, therefore, ***the annual ongoing charge*** *under the proposed new platform SIPP* ***is only marginally higher than under the present arrangements****, even allowing for the discretionary fund management approach."*

Unfortunately, there are two significant problems with the basic information FIM provided:

- Firstly, the illustration produced by Standard Life on 19 December 2016 indicated that the average yearly costs associated with the recommendations were higher than it had told Mr J at 2.4%. FIM's suitability report seems to have underestimated the ongoing fund charge and omitted the SIPP provider's cash management administration charge.

- Secondly, while FIM said in its last submission the costs associated with his previous arrangement amounted to around 1.42% of his fund value, it didn't set this out anywhere in the suitability report. It didn't provide a direct comparison with the charges that its recommended arrangements would give rise to.

Rather than being only marginally higher, the costs associated with FIM's recommendations represented an increase of nearly 60%. There's no analysis provided in the suitability report about the drag effect of these higher costs on his funds. How much more would his new SIPP investments needed to have returned simply to negate these? This would've been important for Mr J to understand.

Further, I don't think the suitability report was sufficiently clear when comparing the performance of Mr J's existing funds with the proposed new arrangement. It provided an analysis of performance of his existing four individual funds, but no weighted cumulative data. So, when separately in the report it provided an analysis of the historic performance of the funds its was proposing he couldn't have carried out a like with like comparison.

Instead narrative FIM provided at the end of the recommendations section was as follows:

"The performance differential between the discretionary managed fund and your existing Standard Life Portfolio is quite varied with a slight improvement of your current plan over the 1 year period, but with a slight improvement of the discretionary managed fund over your current portfolio over the 3 and 5 year periods…"

And later in the section referring to the higher costs and charges for its new arrangement, FIM told Mr J (bolding is my emphasis):

“Charges, of course, are not necessarily the “be all and end all” of the matter. The greatest impact upon the eventual value of your pension fund will be the net investment growth rate experienced (i.e. after charges) and ***my considered opinion…is that your growth prospects will be significantly enhanced by the utilization of the FACET discretionary management service****.”*

I don’t think the way FIM dealt with this analysis was clear, I think it was misleading. I say this because its own analysis, which I can’t see was shared with Mr J painted quite a different picture:

	Weighted Average Growth – 1 year	Weighted Average Growth – 3 years	Weighted Average Growth – 5 years
Existing funds	8.50%	16.37%	48.66%
Proposed funds	5.64%	22.69%	48.28%

These figures suggest Mr J’s existing funds had a reasonable chance of outperforming the proposal it was recommending. And this was before the drag of higher charges was being factored in. I don’t think Mr J would’ve got this impression from the suitability report.

FIM hasn’t done enough to satisfy me there was a reasonable prospect for Mr J to be better off as a result of its recommendations, given the fees and charges he was incurring and the nature of the investment strategy it was recommending.

Risk

Mr J completed a risk appetite assessment. FIM said he was a low/medium risk investor (three out of six on the scale it used). This was defined in the following terms:

A Low Medium Risk investor is looking for an investment where the return should be higher than that available from a high street deposit account over the medium to long term and accept that the value of the investment could fall as well as rise. They would feel uncomfortable however if their investments were to rise and fall in value very rapidly, and whilst they are prepared to accept some equity exposure, are unwilling to invest the bulk of their assets in equities. Their investment objective is to generate limited growth with an emphasis on capital preservation over the medium term.”

It’s also of note that FIM made the following observation about Mr J’s existing investments stance:

“We would equate the degree in which your current portfolio invests in equities to that of someone who has a High Medium Risk which is 2 places higher than your preferred level. You appreciate that over the last 5 years your overall portfolio has performed well, but because you are mindful of volatility, you would like to consolidate those gains. On a cautionary note we should also bear in mind that it is the opinion of FACET’S discretionary fund managers that in the current economic climate equities appear to be overpriced.

The risk questionnaire Mr J completed also identifies his capacity for loss. He indicated an intention to use his pension funds in the following 5-10 years. When asked how much of his funds he could afford to lose without a significant impact on his future standard of living, he indicated 0-5% capacity i.e. none or very little.

I also note that Mr J’s objectives were similarly cautiously couched – he’d said he didn’t want to take any unnecessary risks with his pension plan as it had taken a long time to build up.

He wanted annual reviews to check on the performance of his pension and understand what options were available.

Taken together, we have a picture of someone who didn't want to take unnecessary risks, Mr J felt he couldn't afford to do so. And it seems his only other provision was another smaller personal pension pot. His SIPP portfolio in 2017 seems to have been invested above his appetite for risk, so some change in approach was appropriate. He was thinking ahead to his retirement, which was 6 years away. His main priority was preserving the value of his pot until that time.

An important first question was whether FIM's proposals resulted in Mr J's exposure to risk being reduced. It hasn't provided sufficient evidence to this Service that this was the case. While it seems Mr J's pension was invested in a blend of its EF FACET Cautious and Balanced portfolios, it hasn't provided a breakdown of how much was placed in each vehicle and how the proportions changed over time.

So, I tend to agree with the Investigator when she found that Mr J was being exposed to different risks that weren't clear to him. The fact-sheet for the EF FACET Cautious portfolio from 2019 said the following:

"The Fund will be actively managed and invested in multiple asset classes with a portfolio of transferrable securities which may include investment trusts, collective investment schemes, deposits, money market instruments, commodity and property funds. The investment manager has the discretion to weight the portfolio towards the investment type, or geographical region, at any time provided it is compatible with the investment objective, risk parameters and policy of the Fund as a whole."

As the Investigator noted, the agreement he'd entered into with the DFM gave it significant discretion to act on his behalf. And in its agreement it pointed to risks that weren't really drawn out in the suitability report, including:

- Foreign currency risk.
- Investing in Unregulated Collective Investment Schemes, which weren't covered under the UK regulatory regime.
- The use of complex investment instruments such as warrants and derivatives.
- Foreign market risk.
- Contingent Liability Investment Transactions.

Some of these risks were touched on in the risk assessment model FIM used, but these weren't covered in the low/medium definition it ascribed to Mr J.

There's nothing to suggest Mr J was particularly knowledgeable about investment and pension matters. Of course, that's why he sought professional advice from FIM. It's not clear he would've understood how some of the potential investment vehicles would've worked. Nor what some of the different risks he was being exposed to were.

Further, the Investigator asked FIM what research it had done into how funds available under Mr J's then existing SIPP could've been utilised to manage his risk exposure. It responded in the following terms:

"Given [Mr J's] requirements of potentially higher returns via a more targeted and consistent investment approach, this would not have been possible via the existing Personal Pension due to a restricted offering in terms of fund selection. The investment universe was far greater via the 'wrap platform SIPP' and, as mentioned above, the DFM service would also

not have been available. Together these formed a significant part of the overall solution recommended to fulfil [Mr J's] requirements.

I don't find FIM's response compelling. I think it should've provided Mr J with more information about how he could remain within his existing SIPP and select alternative funds which had a better match with his risk appetite. Would these have offered comparable performance to the arrangements recommended? And even if projections were somewhat lower, this would've been consistent with his desire to de-risk his portfolio. It is highly likely that the costs to Mr J would've been lower. As would've been the risks he was being exposed to.

Ongoing fund management

Mr J hadn't used a DFM arrangement previously. The concept was introduced by FIM. There was a duty of care on it to make sure what it was recommending was appropriate for him. But it's not clear to me he would've had a clear idea about the added value being provided by the arrangement. Yet he was paying a lot of money for it.

I can't see that FIM searched the market for alternative DFM providers. Nor explored the different sorts of services available nor whether the options it had suggested was competitive in terms of fees. It's not clear to me he would've appreciated the difference between the services it was providing as opposed to the DFM.

This Service has not had sight of evidence which shows how the DFM adhered or otherwise to the original mandate. And there's no evidence which shows how asset allocation over time was consistent with Mr J's risk appetite. Regulatory guidance required FIM to monitor the DFM's ongoing performance and take corrective action as appropriate.

Mr J wasn't a sophisticated investor. He had a modest pension pot which he'd built up over many years. FIM hasn't done enough to demonstrate that the recommendations it made to him to take on a DFM facility, was suitable. Rather the arrangement it put in place was overengineered, complicated, expensive and it wasn't clear it was likely to be able to produce better returns than his previous pension.

Overall, FIM hasn't done enough to demonstrate that the switch of Mr J's Standard Life pension into a new SIPP with the same provider, with the addition of a DFM arrangement was clearly in his best interests.

Putting things right

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

In order for FIM to be able to make proper calculations Mr J will need to cooperate so that it has access to necessary information such as current investment valuations. So, he may need to provide it with a letter of authority to enable it to make contact with appropriate third parties to gather such data.

It is also the case that Mr J can't benefit from double recovery in respect of the same substantive complaint.

For example, I understand one of the holdings within a terminated fund (one of the illiquid holdings) is currently in the process of being sold. This means all clients invested within this fund will be receiving a portion of this, expected to be in Q4 2022. As further sales are made of other holdings, further distributions can be expected. As a terminated fund cannot be sold or transferred, it is reasonable for FIM's settlement to be conditional on receiving an undertaking from Mr J that any sums received are paid to it, given the redress he will already have received.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £160,000, plus any interest and/or costs/ interest on costs that I think are appropriate. If I think that fair compensation is more than £160,000, I may recommend that the business pays the balance.

Decision and award: I uphold the complaint. I think that fair compensation should be calculated as set out below. My decision is Facet Investment Management Ltd should pay Mr J the amount produced by that calculation – up to a maximum of £160,000.

Recommendation: If the amount produced by the calculation of fair compensation is more than £160,000, I recommend that Facet Investment Management Ltd pays Mr J the balance.

This recommendation is not part of my determination or award. Facet Investment Management Ltd doesn't have to do what I recommend. It's unlikely that Mr J can accept my decision and go to court to ask for the balance. He may want to get independent legal advice before deciding whether to accept this decision.

If FIM had provided suitable advice, I think it would've recommended Mr J make some switches to his investments within his existing Standard Life SIPP, to bring them into line with his risk appetite and retirement objectives.

So, Facet Investment Management Ltd needs to provide redress as follows.

1. Calculate a notional loss Mr J has suffered as a result of making the switch of his pension funds from his original Standard Life SIPP

Facet Investment Management Ltd should calculate a notional value for Mr J's previous personal pension plan, had switches been effected to ensure his portfolio was in keeping with his risk appetite, as at the date of calculation. So, as if it hadn't been switched to his new SIPP and DFM arrangement.

To do this, FIM should use a hybrid benchmark, using a 50/50 split of (i) the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income Total Return Index) and (ii) the average rate from fixed rate bonds. I'm satisfied this is a reasonable proxy for the type of return that could've been achieved if Mr J's pension had been invested in accordance with his risk outlook.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, FIM should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. And apply those rates to the investment on an annually compounded basis.

I consider Mr J was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr J into that position. It does not mean he would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return he could've obtained from investments suited to his objective and risk attitude.

2. Calculate the current value of Mr J's SIPP. And pay a commercial value to buy any investments which cannot currently be redeemed

Facet Investment Management Ltd should then find the current value of Mr J's SIPP, including investments and any cash held.

I'm not aware of the detailed position regarding any additional contributions that Mr J made to his SIPP. But I understand he has been taking benefits from his pension. After confirming the detailed position, then the value FIM obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

If, any investment remains illiquid (meaning it cannot 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. FIM 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 FIM is unwilling or unable to purchase the illiquid investments, the value should be assumed to be nil for the purposes of the loss calculation. In this instance, where it has compensated Mr J fully in line with my assessment, then it may ask him to provide an undertaking to account to it for the net amount of any payment the SIPP may receive from the investments.

Any undertaking should allow for the effect of any tax and charges on the amount Mr J may receive from the investment and any eventual sums he would be able to access from the SIPP. FIM will need to meet any costs in drawing up this undertaking.

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

The adjusted, as appropriate, like for like difference between the notional value of Mr J's former personal pension and the equivalent current value of his SIPP will be his basic financial loss that Facet Investment Management Ltd needs to redress.

If FIM pays compensation into Mr J's SIPP, payment should allow for the effect of charges and any available tax relief, so that he is in the same position as if he'd stayed in his original personal pension plan.

If paying compensation into Mr J 's SIPP would conflict with any existing protection or allowance and/or the plan is closed and FIM takes on his investment, then it should pay his 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.

The *notional* allowance should be calculated using Mr J 's actual or expected marginal rate of tax at his selected retirement age. For example, if Mr J is a basic rate taxpayer, the reduction would equal the current basic rate of tax. However, if he would've been able to take TFC, the reduction should only be applied to 75% of the compensation.

FIM should also pay interest on the loss calculated from the date of calculation to the date of payment at 8% simple. Income tax may be due on this interest. If FIM deducts tax it should provide Mr J with a tax certificate.

If FIM considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mr J how much has been taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HMRC if appropriate.

FIM should also provide details of its calculations to Mr J in a clear format.

Distress and inconvenience

I also think Mr J has been caused trouble and upset because of Facet Investment Management Ltd failings. His retirement planning has been disrupted. In recognition of this it should pay him a further £500.

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 Mr J's complaint. As such, I require Facet Investment Management Ltd to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 28 September 2022.
Kevin Williamson
Ombudsman