DRN-3736726

The complaint

Mrs G complains that Chase de Vere Independent Financial Advisers limited (Chase) gave her unsuitable advice to transfer her two Personal Pension Plans (PPPs) from one provider to a Self-Invested Personal Pension (SIPP) with another. She says there was no benefit to the transfer.

Mrs G is represented in her complaint by a Claims Management Company (CMC), but I'll only refer to her in my decision.

What happened

Mrs G had a long-term financial adviser through Chase. He had previously advised her while working for another business. He provided regular advice on her PPPs.

Mrs G said that on 28 October 2019 her adviser recommended that she transfer her existing

PPPs to the Select Portfolio Management Service managed by Chase through a Deferred SIPP with a different provider. And that he had previously advised her to transfer from another provider to her PPP, for which he'd also charged a commission.

At the time of the advice, Mrs G was 54 years old, and planned to retire at age 65. The advice cost 3% of the amount transferred, which was around £2,600. Mrs G said she was told that this cost would be covered by the better growth she'd get under the new arrangement.

Mrs G's adviser assessed her attitude to risk, and also produced a Suitability Report for the October 2019 advice. This recorded the following:

- Mrs G was personally paying £120 each month into one of her existing PPPs. Her employer was contributing £805.40 each month into the other.
- She had a total of around £86,000 invested in the two PPPs.
- She was married, had no debts and approximately £7,000 in savings
- She was employed and was earning around £48,000 each year.
- She had no financial dependants and was a higher rate taxpayer.

Mrs G signed the instruction to proceed with the advice to transfer her PPPs on 5 December 2019.

Mrs G complained to Chase in January 2021 through a CMC, about the suitability of the 2019 advice. They made the following points:

- The adviser didn't explain the implications of transferring to a SIPP, including the difference in charges, structure and investment spread, to Mrs G.

- £86,000 wasn't enough to justify the transfer to a SIPP.

- The total fees were higher than those attached to the existing PPPs.

- The option of transferring funds within the existing PPPs wasn't discussed as an option.

They felt that the recommended SIPP provided no additional benefits.

Chase issued their final response to the complaint in February 2021. They didn't consider the advice was unsuitable. They felt that the Suitability Report had clearly shown that, after discussions with her adviser, Mrs G had felt that she would benefit from using a discretionary investment service. They said that her existing PPP provider didn't offer this service. And that Mrs G had agreed to move her PPPs in order to facilitate that option. Chase said that the new arrangement was a deferred SIPP, not a full SIPP, so the amount invested - £86,000 – was appropriate. And that it had a similar charging structure to a PPP. They also felt that a full comparison of charges for the existing and the recommended arrangements had been clearly shown in the report. So they felt that Mrs G was fully aware of the difference when she signed to accept the advice.

Mrs G made further points to Chase through her CMC. These were:

- The recommended deferred SIPP was the same as a PPP with the option of becoming a SIPP in future. So, in effect, Mrs G had transferred her existing PPPs to a PPP with a new provider at a cost of 3% of the transfer value.

- The reason Chase had given for Mrs G agreeing to the transfer was to take advantage of a discretionary investment service. But she had no interest in being actively involved in the management of her pension or any intention of taking advantage the self-investment option in the deferred SIPP now or in the future.

- The existing PPPs offered all funds on a discretionary basis. So Mrs G had previously had the option of switching into Managed Funds to reflect her attitude to risk, free of charge. There was no advantage for Mrs G to transfer her funds at a cost of 3% commission.

- Mrs G's adviser had selected the funds within the existing PPPs in line with her attitude to risk, which he considered to be Cautious to Balanced. If he'd no longer been happy with the funds he'd selected he could've recommended that Mrs G switched funds free of charge within her existing PPPs. Overall, she felt that the advice had been commission-driven rather than in her own best interests.

Mrs G brought her complaint to this service, through her CMC, in April 2021. She wanted compensation for financial losses and charges.

I understand that Mrs G moved her pension on 23 April 2021, on a non-advised basis, from the provider recommended in October 2019 to a different provider.

Our investigator felt that the advice was unsuitable and that the complaint should be upheld. He felt that there were no documented reasons about why Mrs G had wanted to review her existing PPPs. He felt that the Suitability Report contained no discussion about what Mrs G had really been looking to achieve, what she was on track to achieve and how the recommended transfer would specifically benefit her. He also considered that the Suitability Report didn't include any evidence of an impartial discussion about the differences between the recommended deferred SIPP and Mrs G's existing portfolio.

Chase didn't agree with our investigator. They felt that the Suitability Report had shown that the annual charges on the new arrangement were the same as existing one, but that the new arrangement allowed Mrs G to benefit from a Discretionary Fund Manager. And that she'd acknowledged that she would prefer such a service. They said such a service wasn't available with the existing PPPs. And that the costs, fees and charges were clearly documented, so Mrs G had made her decision to transfer on the basis of having the clear facts. Chase also provided evidence that the deferred SIPP had outperformed the original PPPs during the period it was in place.

To put things right, our investigator wanted Chase to put Mrs G as close as possible back to the position she would probably now be in if she had been given suitable advice. He also felt that they should pay her £300 compensation for the distress they'd caused.

As agreement couldn't be reached, the complaint came to me for a review.

I issued my provisional decision on 12 September 2022. It said:

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

Having done so, I intend going to uphold it. I agree with our investigator that the advice was unsuitable. But I've made a slightly different recommendation about how to put things right. This is because I consider that Mrs G should also be compensated for the investment return she would've got on any additional pension funds she would've transferred to her current provider in 2021. I'll explain the reasons for my decision.

Suitability of advice to switch

There were various options that Chase needed to consider in deciding what was most suitable for Mrs G. These included:

- *leaving her PPPs where they were, invested in the same or different funds;*
- *moving to a stakeholder pension or other PPP that may've offered lower charges;*
- *moving to a SIPP.*

Chase's Suitability Report doesn't appear to give any consideration to Mrs G remaining where she was, despite stating on page 3 that her current arrangement continued to meet her stated needs and objectives. Neither does the report consider other potential investments in the existing arrangement.

The Suitability Report doesn't consider the option of moving to a stakeholder pension. The only mention I can find of a stakeholder pension is on page 13, where recommended retirement vehicles were discussed. The adviser recommended the deferred SIPP. But then stated:

I am recommending this in favour of a Stakeholder or standard Personal Pension, as it offers a greater fund choice than a Stakeholder and a comparable charging structure to both.

But there's no evidence in the report that research had been conducted on such alternatives. Instead, the report favours the deferred SIPP option on the basis that Mrs G's pension would then be managed on a discretionary basis using Chase's Select Managed Portfolio Service.

As our investigator also noted, I've seen no evidence in the report of an impartial discussion *about what Mrs G understood Discretionary Management meant. Or the differences between the recommendation and her existing PPPs. I've also seen no evidence that Mrs G had previously had to make any decisions with her existing portfolio that using a Discretionary Management service would've solved.*

There was certainly no comparison to help Mrs G understand how much more expensive the recommendation was than a stakeholder pension. Nor was there any explanation of what a stakeholder pension was. There was also no mention that stakeholder pensions charges are capped, which is a requirement.

The report noted that Mrs G had: "felt that moving to discretionary service was more suited to [her] needs as [she] would prefer to pass over full control of investment decisions to [Chase] without having to inform and seek agreement when changes are required".

The report further stated that such an approach would enable Chase to provide: "an even more proactive investment service to [Mrs G] without having to increase [their] costs as Select incurs a flat fee". The report also noted that Chase's Select Portfolio Management Service wasn't available with Mrs G's existing provider.

The report doesn't go into any detail about why Mrs G was suddenly interested in a discretionary service. I've seen no evidence that she reasonably needed such a service. I'm of the view that it would've been more appropriate for the adviser to have put Mrs G at ease that her current service was reasonable rather than facilitating such a costly switch. I say this because I can't reasonably say that there was potential for Mrs G to be better off.

From what I've seen, the main advantage Chase used to recommend the transfer was so Mrs G could pass on full control of investment decisions to them. But from what I've seen, Mrs G was effectively doing that already. And therefore I don't consider that she would've benefited much, if at all, from such a service. As there was no obvious benefit to Mrs G of such a service, I'm not persuaded that the transfer was worth the 3% initial charge. I'm also not persuaded that the transfer should've been recommended on the basis that the "Select" service wasn't available within the existing arrangement. In order for the advice to be suitable, Chase needed to justify their recommendation against other possible options.

The Suitability Report also said: "the overall costs, when factoring in the additional charges I would have to make when making changes to your portfolio, are likely to be lower". I'm not persuaded by this statement. I've seen no evidence that Mrs G was an active investor who made many changes to her portfolio. And therefore I consider it extremely unlikely that charges overall would likely be lower under the new arrangement, especially when considering the 3% initial charge.

I also note that on page 10 of the Suitability Report, consolidation of Mrs G's PPPs was listed as a benefit. The report noted that she was currently paying different charges for the two existing PPPs. The report went on to state that: "The switch of your plans to [SIPP provider] will allow both contributions to be paid into one pension account with one set of charges.

I've seen no evidence that the adviser investigated or tried to explain why Mrs G was paying much higher charges for the smaller plan, into which her own contributions were being paid, than the bigger one, into which her employer was contributing. In my view, before he could reasonably list consolidation as a benefit of his recommendation, he should've questioned whether it was possible to consolidate the existing arrangements into a single, cheaper plan.

The Suitability Report covered charges on page 16. It showed that the smaller of the two existing plans had annual charges totalling 2.8%, against the recommended plan's charges *of 2.298%. And the bigger of the two plans had charges totalling 1.9%.*

The report didn't show the weighted average of the charges by fund size. I consider that this was unhelpful. Based on the information in the Suitability Report, I've assessed the weighted average annual charges in the existing PPPs to be 2.11%. This is lower than the recommended alternative.

In the "Charges" section, the report stated:

I feel that the potential benefits achieved, namely ensuring your pension investments remain in line with your objectives and attitude to risk, justify this increase.

This suggests that staying in the existing arrangement wouldn't have ensured that Mrs G's pension investments remained in line with her objectives and attitude to risk. But the adviser had already confirmed on page 3 of the report that Mrs G's current arrangement continued to meet her stated needs and objectives.

And on page 17, under the heading "Future Performance", there's a table showing projected fund values at retirement in the existing arrangement and the recommended one. The projection showed that the existing arrangement would be slightly better than the recommendation if low growth was assumed. And that it would be no different if either medium or high growth were assumed. I acknowledge that this projection takes no account of the potential benefits of the Discretionary Management service. But as I noted earlier, I'm not persuaded that there were any particular benefits for Mrs G of such a service.

Page 18 of the report stated:

The recommended new funds will have to outperform your existing funds in order to 'break even', due to the initial charges. There is no guarantee that the new funds will outperform your existing investments to any degree.

I agree with this statement. I consider that it provides evidence that the recommendation was unlikely to be in Mrs G's best interests. The information within the report showed that the ongoing charges would be higher under the recommended arrangement. In addition, Mrs G would be charged a 3% initial fee. In order for the recommendation to "break even", Mrs G's funds would have to outperform her existing arrangement. But her attitude to risk was unchanged.

Chase should've provided Mrs G with enough information for her to be able to understand and decide whether to accept their recommendation. But, from what I've seen, they didn't provide her with a proper comparison or her existing arrangement and their recommendation. Despite that, they still recommended that the switch was suitable on the basis that she would have access to a Discretionary Management service, which I've seen no evidence she needed. Overall, I'm not persuaded that the recommendation to transfer to a SIPP was in Mrs G's best interests.

Overall, I'm satisfied that the advice to transfer Mrs G's existing PPPs to Deferred SIPP was unsuitable. Therefore I intend to uphold the complaint. I also consider that the unsuitable advice, and the impact it has had on Mrs G's retirement planning, has caused her distress. Therefore I consider that Chase should also pay Mrs G £300 compensation for the distress the unsuitable advice caused.

Response to my provisional decision

Mrs G accepted my provisional decision.

Chase said that the benefit of the advice was the consolidation of plans and active management through a discretionary model. They felt that non-discretionary plans could have various funds within them with respective fund managers, but that the asset allocation would remain within the parameters of that fund manager. Whereas a discretionary fund manager would move between different funds (and fund managers) in the potential best interests of the clients invested within it.

Chase didn't agree that Mrs G could've received the same level of service/monitoring by staying in her existing arrangement, as it wasn't a discretionary model.

Chase also said that it wouldn't be possible to get the same level of management as a discretionary service through financial reviews with an adviser in a non-discretionary model. And that there would also be a cost of such an option.

What I've decided – and why

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

Having carefully considered Chase's points, I'm not persuaded to change my opinion. I remain of the view I set out in my provisional decision. I'll explain why.

I first considered Chase's point that the benefit of the advice was the consolidation of the plans and the active management through a discretionary model. As I stated in my provisional decision, Chase stated on page 3 of their report that Mrs G's current arrangement continued to meet her stated needs and objectives. Therefore they would need to give strong reasons for recommending a costly change. From what I've seen, such reasons weren't evidenced in their report. I also note that the report didn't consider other potential investments in the existing arrangement.

I also already noted that although Chase stated consolidation as a benefit of the advice, they didn't investigate or try to explain why Mrs G was paying much higher charges on one of her existing plans. As I said, before Chase could reasonably list consolidation as a benefit, I consider they should've questioned whether it was possible to consolidate the existing arrangements into a single, cheaper plan.

I next considered Chase's point that Mrs G couldn't have received the same level of service by staying in her existing arrangement.

As I noted in my provisional decision, I've seen no evidence that Mrs G had previously had to make any decisions with her existing portfolio that using discretionary management service would've solved. And I've seen no evidence of an impartial discussion about what Mrs G understood discretionary management meant. Or the differences between the recommendation and her existing PPPs. Therefore, regardless of whether Chase considered the level of service was better in the new arrangement than the old one, I've seen no evidence that the new service was suitable for Mrs G.

Finally, I agree with Chase that it wouldn't be possible to get the same level of management as a discretionary service through financial reviews with an adviser in a non-discretionary model without charge. But I don't consider that this was a strong enough reason to recommend this option to Mrs G. As I stated above, Chase accepted that Mrs G's current arrangement continued to meet her stated needs and objectives. And I'm not persuaded that she needed the level of management a discretionary service might have provided.

No new information has come to light to change my opinion. So I remain of the view I set out in my provisional decision.

Putting things right

Fair compensation

My aim is that Mrs G should be put as closely as possible into the position she would probably now be in if she had been given suitable advice.

I take the view that Mrs G would've remained with her previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mrs G's circumstances and objectives when she invested.

I understand that Mrs G chose to pay the initial advice fees and ongoing charges through her investments. Therefore the redress I've outlined below will automatically allow for the charges to be refunded if the calculation shows a loss.

What must Chase do?

To compensate Mrs G fairly, Chase must:

- Compare the performance of Mrs G's investment with the notional value if it had remained with the previous provider up to the point Mrs G transferred out. 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 is a loss and compensation is payable.

- Chase should add interest as set out below:

- I understand that Mrs G transferred out of the Deferred SIPP to another provider in 2021. If there is a loss, the compensation calculated above should be adjusted to allow for the investment performance Mrs G actually achieved with her current provider between the date of transfer to Mrs G's current provider and the date of any final decision.

- Chase should pay into Mrs G's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Chase is unable to pay the total amount into Mrs G's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs G won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mrs G's actual or expected marginal rate of tax at her selected retirement age.

- For example, if Mrs G is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mrs G would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mrs G £300 for the distress the unsuitable advice caused.

Income tax may be payable on any interest paid. If Chase deducts income tax from the interest it should tell Mrs G how much has been taken off. Chase should give Mrs G a tax deduction certificate in respect of interest if Mrs G asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Deferred SIPP	No longer in force	Notional value from previous provider	Date of investment (believed to be 24/12/2019)	Date ceased to be held (believed to be 23/4/2021)	8% simple per year from my final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mrs G's investment had it remained with the previous provider until the end date. Chase should request that the previous provider calculate this value.

Any additional sum paid into the SIPP should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal paid to Mrs G from the 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 Chase totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Chase will need to determine a fair value for Mrs G's investment instead, using this benchmark: FTSE UK Private Investors 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 in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mrs G wanted Capital growth and was willing to accept some investment risk. I consider this index is a reasonable comparison.

- If the previous provider is unable to calculate a notional value, or if the current provider is unable to provide the investment performance Mrs G actually achieved between the date of transfer to her current provider and the date of any final decision, then I consider the measure below is appropriate.

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

Although it is called 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 Mrs G's circumstances and risk attitude.

My final decision

For the reasons given above, I uphold this complaint. I require Chase de Vere Independent Financial Advisers limited to pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 4 November 2022.

Jo Occleshaw
Ombudsman