

The complaint

Mr C says the advice given and the arrangements made by Inter-UK Financial Services Limited (IUKFSL) to switch his group personal pensions with Aegon and Aviva into a Forthplus Self-invested Personal Pension (SIPP), through Cornhill Management (London) Ltd (CML) and the resulting portfolio of investments, was unsuitable.

Mr C is represented by his financial adviser.

What happened

Mr C met with a representative of IUKFSL in late 2017 and a fact find was completed. His objectives were recorded in the following terms:

"You have advised us that your main priority at this time is, you are looking to have your pensions investments managed and you would like to amalgamate your pensions.

You would like to take your tax free cash at 55 to allow you to put a deposit down on a property as you are paying £1,625 a month rent and this would free up some funds each month.

You are seeking to save for a retirement fund to provide for you and your family when you retire. You would like to achieve a monthly income in retirement in the region of £5,000. You intend to retire when you reach 55.

You will be solely dependent on the pensions under review and on the state pension and you will need to have a regular pension in retirement."

IUKFSL produced a suitability report for Mr C dated 28 November 2017. It recorded its recommendations in the following terms:

"The outcome of my review is based on the information you provided in our Financial Planning Questionnaire, your identified needs and objectives, and your agreed attitude to risk. Taking all of this into account, my recommendation is that you transfer your existing pension benefits to a SIPP with Forthplus. This will allow you to access Aion Defensive Fund with Cornhill Management which I feel is the most suitable investment strategy based on your circumstances, attitude to risk, and objectives."

Mr C accepted IUKFSL's recommendations. On 16 January 2018 about £169,000 was switched from his Aegon pension into his Forthplus SIPP. And on 1 February 2018 around £13,000 from his Aviva pension was received. On 5 February 2018 £176,000 was moved to CML for investment. And on the same day £5,270 was paid to IUKFSL as adviser fees.

On 3 July 2021 Mr C complained to IUKFSL. He raised several concerns about what had happened to his pension arrangements in 2017. For example, one of his objectives had been to access tax-free cash when he reached 55, but some of his investments were locked in for a longer period. He'd been interested in lowering his costs, but these had increased as a result of its recommendations. He said he hadn't been told the investments were overseas, nor that it could only offer advice restricted to certain products/providers. He also said he was paying for ongoing advice but hadn't received any service.

IUKFSL appears to have failed to respond to Mr C's complaint. Certainly neither he nor his adviser has received such. And there wasn't a final response included in the file it sent to this Service in August 2022 for review.

The Investigator issued his view on 1 September 2022. He upheld Mr C's complaint. He had concerns about the advice IUKFSL provided, in particular in relation to matters such as costs of the new arrangement; the prospects for him to have been better off as a result of the transaction; and the suitability of the arrangements put in place given his knowledge and experience.

IUKFSL failed to respond to the Investigator's findings and conclusions.

As both parties didn't agree with the Investigator's view, Mr C's complaint was passed to me to review afresh and to provide a decision. This is the final stage of this Service's involvement.

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 C's complaint. I'll explain why.

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

The first thing I've considered is the extensive regulation around transactions like those performed by IUKFSL for Mr C. 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 IUKFSL. As such, I need to have regard to them in deciding Mr C'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 C’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 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 cost of the arrangement were explained to the investor in terms they were likely to (or appeared to) understand.

The regulator was clear there was a positive obligation on the adviser to carry out 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'.

Did IUKFSL meet the regulatory obligations it was bound by when advising Mr C?

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

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

IUKFSL recorded that Mr C was 51 at the time of the advice. He was married with two dependent children. He was employed in the construction industry. His net monthly income was said to be around £3,000 and his outgoings about £2800.

Mr C and his family were in rented accommodation. Notes recorded by the adviser indicate he had been a homeowner but had lost his home several years earlier due to the fraudulent activity of another party. He was said to have no investments, savings or assets. The only liability recorded was a modest commitment to a debt management plan.

In terms of pension provision, Mr C had two group personal pension plans, one with Aegon and one with Aviva. Together these had a transfer value of £ 182,000.

Mr C's objectives were recorded as: wanting his pensions consolidated and managed; he was planning to take TFC at 55 so he could put a deposit on a home; and he was targeting a monthly income of £5,000 in retirement.

There are some basic problems with the information IUKFSL has provided. For example, I can't see evidence of modelling carried out which shows how the advice it gave Mr C in 2017, came together to test his income requirements in retirement.

I can't see IUKFSL conducted a full comparison between his existing group personal pensions and the arrangement it was putting in place. And how this contributed to achieving his retirement objectives. I think such analysis would've been important to his being able to take an informed decision about what to do with his personal pensions.

IUKFSL's role wasn't simply to facilitate what Mr C was said to have wanted. Indeed, it must have been clear that his retirement income aspirations couldn't be delivered by his existing provision, and that this position would've worsened upon taking TFC from his funds.

IUKFSL's role was to have analysed, tested, challenged and advised Mr C about what was in *his* best interest for retirement planning. It knew about his circumstances and what was realistic. It knew pension pots built up over many years are to provide for a retirement income.

So, these fundamental problems with IUKFSL's approach undermined the rationale for the switch of Mr C's personal pensions.

IUKFSL recommended Mr C switch his funds into a Forthplus SIPP, through CML to invest in a portfolio of assets that were said to be a match for his risk appetite. There are a number of serious specific weaknesses with its advice.

Charges

One of Mr C's objectives was to reduce the cost of his pensions. His smaller Aviva pension levied charges of 0.8% of fund value per annum and his more significant Aegon plan carried charges of around 1.35% each year.

The charges for Mr C's new pension arrangements were set out in the suitability report. It cost £250 to set-up his SIPP and there were annual fees of 0.5% (capped at £400). CML charged a fee of around 0.4%. And the fund management costs could range up to 1.35% of fund value annually.

IUKFSL set out its own charges in the suitability report. The initial advice cost Mr C 3% of the value of his fund, around £5,200. Its ongoing advice service was charged at 1% of the value of his funds. Leaving aside he contends that he's never received the services he should have for the fees paid, taken together these costs were significant.

So, the charges Mr C faced flowing from IUKFSL's recommendations were actually around 1-2% higher than he incurred under his previous arrangements. That meant in order for the proposed switch to be in his best interest, his new CML portfolio needed a realistic prospect of outperforming his group pension plans – firstly to recoup the higher level of charges and then to deliver better returns to him.

I can't see that Mr C was informed by IUKFSL about how his group personal pensions had been invested, and the fit with his risk appetite. There's nothing about the performance of his pensions over different time horizons. Further, I've not seen that he was provided with information about the yield being targeted by CML's portfolio. And it follows there's no effective comparison between the pensions.

In order to exceed the drag of increased costs and then provide an improved return on investment, there needed to be a reasonable prospect of significant performance improvement under the new arrangements.

IUKFSL hasn't done enough to satisfy me there was a clear potential for Mr C to be better off, compared to his then existing group personal pensions, as a result of its recommendations, given the fees and charges he was incurring and the nature of the investment strategy it was recommending. Based on the information it's provided, the basis for its advice for him to switch was flawed.

Risk

IUKFSL said the following of Mr C's attitude to risk:

"As we informed you during this discussion, based on the answers you gave on the risk profiler, from a possible outcome of between 1 (lowest risk) and 10 (highest risk) you scored 5. This means that your willingness to accept risk is "medium"

"While you are likely to be concerned with not getting as much back from your investments as you put in, you also probably want to make higher returns on your investments. Your preferred investments are likely to be a mix of lower- and medium-risk investments which may include cash, cash-type assets, bonds and UK commercial property, and higher-risk investments such as UK and overseas shares."

“You confirmed with our Client Liaison Team that this result accurately reflects your attitude to investment risk, although you may have a different attitude to risk when considering different priorities.”

Accordingly IUKFSL recommended Mr C invest his money via CML and the Aion Defensive (65%) and Aion Adventurous (35%) funds. He signed a CML *‘Investment Allocation’* form on 7 December 2017, although the copy it provided was blank in terms of the risk assignment and funds to be utilised.

On the face of it, IUKFSL’s recommendations might appear reasonable, given the moderated risk assessment process it had been through. But there are a number of problems.

For example, Mr C’s representative has told us his money was in fact invested in three investments. In addition to the Aion funds, some of his pension was invested in a 5-year debenture issued by Audley Funding PLC sponsored by a company called My Club Betting Ltd. They say this investment was made without his knowledge or approval.

Further, as the Investigator noted, Mr C was an inexperienced retail investor. He had no savings or other investments and his group personal pensions were his only provision for retirement. He had limited capacity for loss – as he himself made clear in his responses to IUKFSL’s risk questionnaire.

I’ve also got concerns about the parties IUKFSL was recommending to Mr C. It hasn’t provided any information about the due diligence that was undertaken into the businesses it was working with.

We know that in April 2021, Audley Funding PLC announced the My Club Betting Ltd bond had been delisted. In October 2021, Forthplus Pensions Limited was put into administration. In December 2021, Mr C’s SIPP was transferred to iPensions Group. Based on information provided by his representative, the SIPP still exists but the Aion funds are suspended and in administration.

Of course, it might reasonably be argued some of these matters are reflections in hindsight. But the point is IUKFSL chose to recommend CML to Mr C to oversee his funds. It must have known it wasn’t regulated by the Financial Conduct Authority (FCA) – I can’t see he was made aware of such. In addition, it seems it recommended funds which had a limited track record and were listed on an unrecognised overseas stock market.

IUKFSL didn’t provide much information about the investments products and providers it was recommending in its Suitability Report. And given Mr C’s limited knowledge and experience of pension and investments I don’t think he would’ve understood these matters of performance and regulatory oversight. So, these factors actually increased his risk exposure. So I don’t think IUKFSL was treating him fairly or acting in his best interest.

Ongoing fund management

Mr C was said to have required management of his pension. The arrangement through CML was introduced by IUKFSL. There was a duty of care on it to make sure the firm 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 CML and IUKFSL respectively. Yet he was paying a lot of money for both services.

IUKFSL has failed to evidence the nature of the arrangement it had with CML. For example, how did it gain assurance its risk assessment for Mr C translated across to the system used

by CML? What oversight did it have of where his funds ended up - why was he invested in a third fund which didn't feature in its suitability report? And how did it provide him with feedback about performance and any actions it recommended he take if things were going off track?

Mr C wasn't a sophisticated investor. His pension provision was modest. IUKFSL hasn't done enough to demonstrate the recommendations it made to him to establish a SIPP, through CML, investing in vehicles he had limited experience of, which also required its ongoing advice service, was suitable.

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

Overall, I've concluded that IUKFSL's advice to Mr C in 2017 was unsuitable.

Putting things right

I'm upholding Mr C'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 Inter-UK Financial Services Limited responsible for.

Mr C can't benefit from double recovery of losses and compensation in respect of substantively the same case. As such, if he accepts this decision, he'll need to give an undertaking to assign any rights he has to take action against other parties and any associated redress, including from the FSCS, over to Inter-UK Financial Services Limited.

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 fair compensation should be calculated as set out below. My decision is Inter-UK Financial Services Limited should pay Mr C 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 Inter-UK Financial Services Limited pays Mr C the balance.

This recommendation is not part of my determination or award. Inter-UK Financial Services Limited doesn't have to do what I recommend. It's unlikely that Mr C 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 Inter-UK Financial Services Limited had provided suitable advice, I don't think Mr C would've switched his group personal pensions into a SIPP. It follows that I don't think he'd have taken on a CML investment portfolio.

So, Inter-UK Financial Services Limited needs to provide redress as follows.

1. Calculate a notional loss Mr C has suffered as a result of making the switch of his personal pensions

In respect of Mr C's former group personal pensions, IUKFSL will need to calculate a notional value for these, as though it hadn't been switched. It should use the FTSE UK Private Investors Income Total Return Index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) as a benchmark. This is made up of a range of indices with different asset classes, mainly UK equities and government bonds.

This is a fair measure for someone who was prepared to take some risk to get a higher return. This doesn't mean Mr C would've invested his funds in some kind of index tracker. 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.

Inter-UK Financial Services Limited should then find the current (*actual*) value of his SIPP, including investments and any cash held. Concerning the valuation here – the approach to be taken is set out in step 2.

I'm not aware if Mr C made further contributions to his SIPP. Nor whether he's taken any benefits from it. After confirming the detailed position, then the value IUKFSL obtains or the calculations it makes should assume these adjustments would still have occurred and on the same dates.

The adjusted, as appropriate, like for like difference between the notional value of Mr C's former personal pensions and the current value of his SIPP will be his basic financial loss that IUKFSL needs to redress.

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

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

If, at the date of settlement, any residual investment is illiquid (meaning it can't be readily sold on the open market), it may be difficult to find the *actual value* of the investment. So, the *actual value* should be assumed to be nil to arrive at fair compensation. IUKFSL 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 Inter-UK Financial Services Limited is unable to purchase the residual investment the *actual value* should be assumed to be nil for the purpose of calculation. It may wish to require Mr C provides an undertaking to pay it any amount he may receive from the investment in the future. This must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. IUKFSL will need to meet any costs in drawing up the undertaking.

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

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

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

If compensation is paid into Mr C'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 scheme.

If paying compensation into Mr C's SIPP would conflict with any existing protection or allowance and / or the plan is closed and IUKFSL takes on his investments, 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 deduction should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age. Neither party has disputed he's likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he would've been able to take a tax-free lump sum, the reduction should only be applied to 75% of the compensation.

Inter-UK Financial Services Limited must pay the compensation within 28 days of the date on which this Service informs it that Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

Income tax may be payable on any interest paid. If IUKFSL considers that it's required by HM Revenue & Customs (HMRC) to deduct income tax, it should tell Mr C 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.

Inter-UK Financial Services Limited should also pay Mr C £500 for the significant disruption to his retirement plans and the worry he's experienced.

Inter-UK Financial Services Limited should provide the details of the calculation to Mr C in a clear, simple format.

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 outlined, I'm upholding Mr C's complaint and I require Inter-UK Financial Services Limited to put things right in the way I've directed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 6 December 2022.

Kevin Williamson

Ombudsman