DRN-3823695

The complaint

Mrs K complains about the suitability of the advice given to her by Insight Financial Associates Limited (Insight) regarding the transfer of her Scottish Widows personal pension to a Self-Invested Personal Pension (SIPP) held with Succession and the subsequent investment of the transferred funds into a deposit based structured product. Mrs K states, through her representatives, that this advice was unsuitable and has caused her financial loss.

What happened

In October 2012, Mrs K met with an adviser from Insight and a fact-finding exercise was completed.

This established Mrs K's circumstances and objectives at that time and the resultant advice was for Mrs K to transfer her personal pension to a Succession SIPP and invest in a structured product – the "Gilliat Multi-Asset Deposit Plus". This product was a deposit-based product with a fixed investment term of six years. The return on the investment would only be payable at the end of the six-year term, and whilst the product was capital protected it had an underlying asset mix of UK and global equities, UK gilts, corporate bonds, and commodities.

Mrs K accepted the advice, transferred her personal pension, and subsequently invested £83,000 into the Gilliat investment. Ongoing regular premiums of £100 per month gross (£80 net) were also to be made into the Succession SIPP with these being initially invested in cash.

At the end of the six-year investment term the Gilliat investment matured. Whilst the initial investment amount had been protected, the investment had not made any profit over the period held. As such, Mrs K complained because she thinks she would have been better off had she not transferred and that the advice that resulted in her investing in Gilliat was unsuitable.

Insight did not uphold the complaint, stating that the advice was suitable. Insight said they had made Mrs K aware of how the Gilliat investment worked and that it was a match to her medium attitude to risk.

Unhappy with the Insight response Mrs K and her representatives referred the complaint to this service.

Following this, Insight said they believed the complaint had been referred to this service too late and as such fell outside of our jurisdiction. I have previously issued a decision regarding our jurisdiction in this case and concluded that the complaint was one which we could look into.

Given this, our investigator went on to consider the merits of the complaint and the suitability of the advice given to Mrs K by Insight.

In summary the investigator noted:

- Mrs K's objectives were recorded as *"keen to explore structured deposits as an investment option"* and *"want to achieve higher medium-term returns than inflation".*

- The fees and charges information included within the advice documentation was unclear. Whilst the charges were included within the report issued to Mrs K, there were contradictory statements stating that the Scottish Widows plan was cheaper overall and that the recommended plan was cheaper than the ceding scheme.

- Given the transferred amount was the bulk of Mrs K's retirement provision, the recommendation to invest £83,000 into the Gilliat investment resulted in a lack of diversification within Mrs K's retirement planning.

- The investigator noted the advice included an ongoing advice charge of 1% per annum and questioned why this was necessary. The bulk of the funds would be held within a six-year structured deposit investment which would need little ongoing servicing with the ongoing regular premiums also being retained in cash.

- Finally, the investigator noted that the existing personal pension was invested in the Scottish Widows Unitised With Profits fund which would be considered broadly a match to Mrs K's attitude to risk and her objectives at the time of advice.

The investigator stated that they considered the advice unsuitable, and that Mrs K's existing personal pension should have been retained. The investigator made redress recommendations intended to put Mrs K as closely as possible into the position she would be in now had the original Scottish Widows pension been retained and recommended Insight pay an additional £300 to Mrs K to compensate her for the distress and inconvenience caused.

Insight have not confirmed whether they are willing to accept the findings issued and as such, as no agreement has been reached, the case has been passed to me.

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.

As above, the jurisdictional issues in this case have already been covered in a previous decision and as such I do not propose to cover those again here.

Regarding the merits of the complaint, overall, I agree with the outcome and redress recommendations made by our investigator. I have explained why below.

As per the investigator's findings I also have concerns with the costs of the recommendation in comparison to the ceding scheme and how these were explained to Mrs K.

The charges on the new scheme were correctly noted as being an annual administration fee of £100, a transfer fee of £50, an annual Wrap charge of 0.35% and an ongoing adviser fee of 1%, whilst the ceding scheme had charges of 0.875%.

In some parts, the paperwork produced at the time of advice states the recommended pension is cheaper, whilst in others the existing scheme is confirmed as having lower costs.

The likely reason for this is that the cost the new pension and underlying investment, taken in isolation, was lower than the existing pension. However, when the additional adviser charges are included, the new pension is more expensive overall.

Whilst the addition of the adviser fee would provide Mrs K with a service she had not been receiving on the existing pension, I'm not convinced she required this level of service in this case. The additional services an advice fee typically pays for - portfolio reviews, annual reviews, portfolio rebalancing etc – would be of limited use in this case given most of the pension was tied up in a six-year fixed term product.

Given this, I consider the most appropriate comparison to make when considering the charges of the two pensions would be to compare the overall cost of the new pension – including the adviser charge – with those applicable to the existing policy.

As such, the new plan was clearly more expensive than the existing one with there being insufficient justification for the increase in costs.

I also note that the inconsistent information regarding the costs associated with the new pension does raise concerns about Mrs K being placed into a fully informed position before agreeing to the advice.

I have noted that the file states Mrs K wanted to consider *"structured deposits as an investment option"* and that *"it is your objective to have an investment strategy that would take away the volatility of being invested directly within the market but that would still allow for potential growth"*.

I accept that the recommended product does appear to meet the objectives noted for Mrs K and also appreciate that the terms and conditions of the product, how it works and the overall level of charges that applied are included within the documentation.

However, the provision of this information is not sufficient to make unsuitable advice suitable.

It is not unreasonable for a consumer to want the potential for growth based on market returns whilst wanting to protect against losses, and I am mindful that this advice was given at a time of market uncertainty in 2012.

However, Mrs K's pension funds were already invested in a unitised with profits fund, so she already had an investment that provided growth potential with an element of downside protection. Additionally, this existing with profits investment was more flexible than the recommended product, as it did not lock Mrs K in for a six-year term.

The existing personal pension also met Mrs K's attitude to risk and her investment objectives at a cheaper overall cost than the plan recommended by Insight.

I have considered the full range of advantages of the new scheme noted by Insight in the suitability letter, however do not believe any of these justify the recommendation to transfer. The charges have already been discussed above, the fact that the new plan gave access to structured products is not considered a strong justification for transfer given the type of investment already held.

Online access would have been of limited use to Mrs K given most of the funds were held in a structured investment that would only show a return at the end of the term. Having all the portfolio in one place has also been noted as an advantage however Mrs K already held all of her pension in one policy, finally the desire for a wide choice of investments - should Mrs K require them in future – is considered a potential future need rather than an immediate advantage that would justify a transfer at that time.

The transparency of the new investment, its value, and the charges applicable has also been given as an advantage of the new scheme over the old. Whilst I would accept the running of with profits investments, their performance and how bonus levels are calculated can be considered opaque, the new investment itself was not a simple one. The Gilliat investment provided returns based on a range of underlying indices with further levels of complexity around the counterparty risk to provide the capital guarantee.

As above, overall, I agree with the outcome reached by our investigator. The advice to transfer is considered unsuitable with Mrs K's existing scheme considered suitable.

Putting things right

My aim is that Mrs K 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 K would have 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 K's circumstances and objectives when she invested.

What must Insight do?

To compensate Mrs K fairly, Insight must:

- Compare the performance of Mrs K's investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Insight should also add any interest set out below to the compensation payable.

- Insight should pay into Mrs K'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 Insight is unable to pay the total amount into Mrs K'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 K won't be able to reclaim any of the reduction after compensation is paid.

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

- It's reasonable to assume that Mrs K is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mrs K would have 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%.

- Pay to Mrs K £300 to compensate for the uncertainty the unsuitable advice has caused her over what was the bulk of her retirement provision. This would likely have caused Mrs K a degree of distress and inconvenience.

Income tax may be payable on any interest paid. If Insight deducts income tax from the interest it should tell Mrs K how much has been taken off. Insight should give Mrs K a tax deduction certificate in respect of interest if Mrs K 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")	Adjustment for additional loss from "end date" to date of settlement.
Succession SIPP	No longer in force	Notional value from previous provider	Date of transfer in.	Date ceased to be held	Any losses should be brought up to date by reference to performance of the pension since transferred to Alliance Trust

Actual value

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

Notional Value

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

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

Any withdrawal from the Succession 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 Insight 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, Insight will need to determine a fair value for Mrs K's investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. 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 K wanted Capital growth with a small risk to her capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to her capital.
- 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.
- I consider that Mrs K's risk profile was in between, in the sense that she was prepared to take a small level of risk to attain her investment objectives. So, the 50/50 combination would reasonably put Mrs K into that position. It does not mean that Mrs K would have invested 50% of her 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 Mrs K could have obtained from investments suited to her objective and risk attitude.
- From the “end date” (the date of transfer to Alliance Trust) any loss should be brought up to date in line with the performance of the investments made within the Alliance Trust pension. Additional contact with Mrs K, her representatives and / or Alliance Trust will be required in order to gather this information.

My final decision

I uphold the complaint. My decision is that Insight Financial Associates Limited should pay the amount calculated as set out above.

Insight Financial Associates Limited should provide details of its calculation to Mrs K in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs K to accept or reject my decision before 7 March 2023.

John Rogowski
Ombudsman