

## **The complaint**

Mr M complains about the advice he received from Hood Financial Planning Limited (Hood) to transfer two existing paid-up pension plans to a new personal pension plan, to make a lump sum contribution, and set up a regular monthly contribution.

Mr M complains that he lost a significant amount of the money he paid into the plan and says he wasn't informed of the risk it posed. He also says he was pressured into taking out the plan.

Mr M also complains that when he decided to cash in the pension plan, he received less than the valuation figure he had previously been given. In addition, Mr M complains about the service he received from Hood and points out that it asked him to sign documents after the event.

## **What happened**

Mr M met with an adviser on 26 November 2019 and a fact find was completed.

On 17 December 2019 Hood issued a suitability letter to Mr M setting out its recommendations.

On 9 January 2020 Hood sent Mr M a fee and service agreement and an invoice for work carried out.

There was then a series of emails between Mr M and Hood in January 2020 relating to the fees payable for the work carried out by Hood. This resulted in an invoice being issued to Mr M's limited company for £1,000.

On 14 January 2020 an application was made for the new personal pension plan.

On 15 January 2020 Hood contacted Mr M and forwarded its attitude to risk questionnaire results for him to sign. As it said it had omitted to ask for his signature at the relevant time.

On 28 February 2020 and 10 March 2020 Hood sent investment updates to Mr M, acknowledging there was volatility in the markets but advising that he should wait for them to recover and settle down, and that he should maintain his investments to avoid crystallising any loss.

On 16 March 2020 Mr M gave instructions for the sale of the funds in his personal pension plan. On the same day Hood confirmed it had given instructions to the provider for the sale of Mr M's pension portfolio to be placed into cash.

The funds in the pension plan were then sold. The proceeds received by Mr M were less than the value quoted on 16 March 2020.

On 1 June 2020 Mr M complained to Hood. In summary he said that:

- He hadn't been supplied with all the documentation he had requested.
- He had dealt with Hood primarily in his capacity as director of his limited company, but Hood had dealt with him in a personal capacity.
- The financial planning fact find document was unsigned and referred to the company financial year end of 31 March, which Mr M said was significant.
- He said for tax reasons, it was critical to the company and to Mr M personally, that pension advice was received in order that decisions could be taken, and payments made, prior to 31 March 2020.
- He said the attitude to risk questionnaire was not signed by him, or seen until 15 January 2020, by which time the lump sum contribution had been made by the company. He said that document had no authenticity or validity.
- The recommendations report was sent to Mr M on 17 December 2019 but was sent to him personally rather than to his company and no formal retainer agreement had been provided to him or to the company.
- A fee and services agreement wasn't sent until 9 January 2020 with an incorrect invoice addressed to Mr M personally, rather than to his company. Mr M said the amount was incorrect and those documents were sent too late.
- Mr M referred to a series of emails between himself and Hood from 10 January to 13 January. He complained about the tone and content of the emails from Hood and said it should have terminated any relationship between them. Because he said Hood had failed to comply with its regulatory duties and obligations and compliance and data requirements.
- Mr M said Hood's actions and statements had caused him distress and undermined his ability to make informed, rational, and safe decisions about his and his company's finances. He also said the information and data contained in the report wasn't accurate or reliable or obtained in a compliant manner.
- Mr M said he shouldn't have made the payment into the pension plan and the reason he did so was that he felt rushed, undermined, and belittled. He said the only way he and his company could take advantage of the time limited tax advantages was to follow Hood's recommendation.
- Mr M said he became concerned when the global pandemic started to impact the markets. He understood that the pension fund he had been recommended was relatively low risk. Mr M said he made several calls to the pension provider and he realised the value of his pension was rapidly diminishing which he found very distressing.
- Mr M said he realised he needed to cut his losses and take stock, so he instructed Hood to transfer the funds in his pension to cash.
- Mr M said he received far less than the consideration value confirmed by Hood on 16 March 2020. He said the sale of the pension funds took place by way of automated systems well after the agreed time and date.
- He reiterated that Hood hadn't complied with its own regulatory and compliance standards. He said that Hood hadn't responded properly to his data subject access

request and had not acted in respect of its data breach.

- Mr M said the conduct of Hood resulted in him feeling pressured, distressed and without any option other than to follow the recommendation.
- Mr M said that the advice he received wasn't impartial as Hood had explained it had a good relationship with the provider.
- Mr M said as a result of Hood's actions he had lost around £25,000 from the value of his contributions initially and then a further £7,000 due to the handling of the sale of his funds to cash. He said if he had been informed that the sale of the funds would take place by way of an automated process, he wouldn't have taken out the plan with that provider.
- He said his company had paid for advice that wasn't compliant and wasn't independent.

Hood didn't uphold Mr M's complaint. It responded to the data subject access request and breach of data complaints and then considered the pension advice it had provided to Mr M and the discussions around the agreement between them and the advice charge.

Hood said Mr M wanted to build upon his retirement provision and utilise company profits in a tax efficient way. It said it had assessed his risk tolerance based on discussions at the initial meeting and the answers to a risk questionnaire.

Hood noted that Mr M was in his mid-fifties and looking to retire at 65 and intended to access his pension using flexi access drawdown, so it would be a long-term investment. It said Mr M understood there were also risks involved with cash which could be eroded by inflation.

Hood said it thought a moderate (3 out of 5) level of risk was reasonable for Mr M and in line with his answers to the questionnaire.

Hood said that it had provided Mr M with its terms of business at the outset and those terms included information about the cost of services with examples.

It noted that ensuring the attitude to risk questionnaire was signed wasn't a regulatory requirement.

Hood said it was Mr M's decision to sell the funds in his pension plan which was against the advice it had given to remain invested and wait for the markets to settle.

Hood also said that Mr M had been in contact with the provider to ask for valuations so he could have instructed the provider directly to arrange the switch to cash. However, he had instead instructed Hood to contact the provider with instructions to sell.

Hood said it had no control over the sale process and had confirmed in an email, at the relevant time, that the process could take two to three days.

It also said it didn't agree that Mr M wouldn't have otherwise proceeded with the switch if he had been aware the valuation provided on 16 March wasn't guaranteed. Because it said Mr M had been keen to switch to cash and had done so against its advice.

Mr M disagreed and referred his complaint to our service with broadly the same points of complaint.

Our investigator considered Mr M's complaint but didn't think it should be upheld.

The investigator considered guidance from the regulator in relation to switching pensions. He noted the costs on the new pension plan were cheaper than for a stakeholder alternative. The investigator compared the costs of the existing pension plans and new plan, disregarding the charge for ongoing advice in order to make the comparison fair and noting that Mr M had cancelled this feature of the plan shortly after the plan commenced. He considered the cost of the new pension plan was broadly in line with the existing schemes. The investigator also noted that no advice fee had been charged in relation to the pension switches.

The investigator considered the underlying investment fund for the new plan. He noted the FE Invest Hybrid Fund was in the IA Mixed Investment 40-85% shares sector. He felt that was in line with the risk assessment conducted by Hood prior to issuing its advice, where it assessed Mr M as having a moderate risk profile. He didn't think it was unsuitable for Mr M considering his level of investment experience and financial circumstances.

The investigator acknowledged that the risk profile questions were unsigned but noted this was not a regulatory requirement and pointed out that Mr M hadn't said that the answers recorded were inaccurate.

The investigator felt the recommendation met Mr M's objectives and didn't think on balance that the recommendation to switch from the pre-existing pensions was unsuitable. He said it was unfortunate that shortly after the transfers had been made, investment markets fell sharply in response to the global pandemic. However, he said those falls couldn't have been predicted at the time of the advice and Mr M's existing plans would've been similarly impacted if they had still been in place.

The investigator also didn't consider the recommendations to make a single contribution of £60,000 and regular monthly contributions of £1,000 to be unsuitable. He noted the tax efficiency of the lump sum was determined in conjunction with Mr M's accountant and the monthly contributions appeared affordable. He also noted the underlying investment fund was the same and he didn't think on balance that it posed too much risk for Mr M.

The investigator considered the advice charge for the single contribution which he said was initially 2% of the value and was then subsequently reduced to £1,000. He said advice fees of between 3-5% were not uncommon, so he didn't consider the charge to be unreasonable.

The investigator also considered the service provided by Hood to Mr M. He noted there had been a disagreement or misunderstanding between the parties within email exchanges in January 2020. But he considered they had both agreed to move forward with the recommended course of action.

The investigator wasn't persuaded that any pressure had been applied to Mr M during the advice process. He said that, while the year-end date of 31 March 2020 was approaching, there were still ten weeks remaining for Mr M to find another adviser should he have wished to do so.

He noted that the issues surrounding the encashment of Mr M's plan and the value he had received were being covered under a separate complaint.

The investigator also noted that in his original complaint to Hood, Mr M had complained about its response to his data subject access request but that he hadn't included that issue in the complaint made to our service. He said, in any event, that was a matter which was

regulated by the Information Commissioner's Office, so he didn't address that issue further.

Overall, the investigator didn't consider the advice provided to Mr M was unsuitable and he didn't think the service provided by Hood had been impacted by any disagreement between the parties.

The investigator acknowledged the losses Mr M had incurred on his pension investments but considered those occurred as a result of wider market conditions.

Mr M disagreed with the investigator's conclusions and said he had failed to address the detailed submissions he had made in his complaint, in particular in respect of the documentation provided by Hood and the issue of risk.

As no agreement could be reached Mr M's complaint was referred to me for review.

I issued a provisional decision where I concluded that the complaint should be upheld in part as I considered the advice to switch *one* of Mr M's existing pension plans was unsuitable.

I concluded that redress should be calculated based on a comparison between the notional value of the existing plan and the notional value of the corresponding proportion of the new plan, at the date of any final decision. I didn't think the rest of the advice provided to Mr M was unsuitable.

An extract from my provisional decision is reproduced below and forms part of this decision.

*What I've provisionally 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.*

*I should highlight at the outset that this is an informal dispute resolution service and it is within that background and context that my decision is formulated. Mr M has provided detailed points of complaint to Hood and reiterated those to our service. I have carefully considered all the points he has raised but, in my decision, I have focused on what I consider to be the key issues which impact the outcome of the complaint. So, I haven't addressed all of those points in detail.*

*I should also make it clear that our service is concerned with the resolution of individual complaints and doesn't have a regulatory role - that is the role of the Financial Conduct Authority.*

*As set out above, Mr M met with an adviser in November 2019 and a fact find was completed which recorded his circumstances and objectives.*

*The fact find recorded he was in his fifties, married and both he and his partner jointly owned a limited company. Mr M received a consultancy income from that company which meant he was a higher rate taxpayer. Mr M and his partner owned their own property with a mortgage that was due to run until Mr M was 65. Mr M also intended to retire at the same age.*

*I note the fact find was not signed by Mr M however he has referred to his company's end of financial year date, contained within it, as being significant. Because it, in effect, set a deadline for completion of any action taken, in order to take advantage of any tax benefits.*

*The notes recorded that Mr M wanted to "start meaningful pension contributions from his limited company. He has earmarked £60,000 plus a monthly contribution of £1,000 pm."*

*Mr M also had two paid up personal pension plans valued at approximately £86,000 and £17,000 respectively. The recommendation from Hood was to transfer those plans and invest those amounts and for his company to make a single lump sum contribution and a regular contribution, all into a new personal pension plan.*

*So, I have to consider whether those recommendations were unsuitable for Mr M taking into account his objectives and circumstances at the time. Mr M says the recommended plan posed too much risk and the advice was not compliant and not independent as Hood had said it had a "good relationship" with the provider. I've also noted that Mr M has said he felt pressured into following the recommendation, as he only had until 31 March 2020 to take out a new plan, and also as a result of the content and tone of the emails sent to him by Hood in January 2020.*

*After the fact find was completed an attitude to risk report was then issued dated 2 December 2019. It said that Mr M was expecting to invest over a long term of 15 years plus and placed him as a moderate investor which was three out of a possible five on its level of risk, with one being cautious and five being adventurous.*

*Mr M has pointed out that he didn't sign that document and the first time he saw it was in January 2020, when Hood asked him to sign it. I agree that asking Mr M to sign the document at the time it was completed would have been a more comprehensive way of ensuring that Mr M understood and agreed with its contents. However, that doesn't necessarily mean that an incorrect assessment of his attitude to risk was made by Hood and I note that attitude to risk was considered in the recommendations letter issued on 17 December 2019, which I will come back to later in this decision.*

*I consider the recommendations report was an important document because it represented a summary of the discussions that had taken place and set out the reasons for the recommendations.*

*Mr M acknowledges that he received that report but says it should have been addressed to his company rather than to him personally. However, I note that the two existing paid-up pension plans were personal plans, so I consider, there was at least, a mixture of entities involved here. So, while I think Hood could have specified that the advice was being sought and paid for by the limited company, I don't think the fact the recommendations report was addressed to Mr M personally, the director and joint-owner of that company, detracted from its content.*

*The recommendations letter noted Mr M's objectives. It said:*

*"You would like to boost your retirement provision via employer pension contributions, and wish to review your older pension plans to see if they are suitable to retain and accept the new money, or whether we would recommend a suitable new pension plan that will accept the proposed contributions."*

*It was recorded that Mr M's business had recently received a substantial fee, so he was looking to make a pension contribution from his business and utilise tax reliefs and allowances available to him and Mr M has acknowledged that was the case.*

*Further objectives were recorded in the report as follows:*

- 3. You are looking for your employer contributions to be invested in a modern, flexible arrangement with a wide range of investment options.*
- 4. You also wanted to review your older existing pension plans and look at whether they*

are competitively charged and if they are invested in line with your aims and attitude to risk, with a view to transferring them into a modern, flexible pension arrangement that:

- a. Has a wider investment choice than your existing pension arrangements.
- b. Allows you to take advantage of on-going investment advice, with regular reviews of your investment selection in order to provide potential for greater investment growth and ensure your retirement objectives remain on track.
- c. Offers greater flexibility of options for your eventual retirement in the next 8 years

It was also noted that Mr M required flexibility in the new plan “to be able to make further ad hoc single company contributions, as and when they are affordable.”

Was the advice to transfer his existing paid-up pension plans unsuitable?

I am satisfied that Mr M was looking to review his existing pension plans. However, I have to consider whether there were any advantages in transferring these plans to the recommended plan and whether conversely, there were any disadvantages which outweighed those.

I consider Mr M was looking for the potential for investment growth, investment choice and flexibility in his retirement provisions. He owned his own company and it was recorded that he was looking for a greater flexibility of options at retirement.

I can see that the historic performance chart included with the recommendations report showed the recommended fund had outperformed the funds in the existing plans. I consider that is a factor that, it is more likely than not, would have appealed to Mr M and would have been an important factor in his decision making. Although, of course, past performance doesn't guarantee future performance.

The older of the two paid-up plans, which had a larger value, had been paid-up for several years with the last contribution being made in 2006. It didn't offer flexibility in accessing retirement benefits and while there were alternative funds, the range wasn't as comprehensive as the new plan, so there was less investment choice.

It was recorded that:

“You are likely to require flexi access drawdown in retirement. Aviva PPP (XXX) does not provide the facility to draw benefits from your pension fund in a flexible manner to suit your needs, circumstances and tax position. Although the Aviva PPP (XXX) plan does, the ongoing charges are uncompetitive, and the recommended investment strategy is not facilitated so we would not look to consolidate into this plan.”

I note the recommended plan had several options at retirement. The key features document indicated the following options were available:

“– take all of your pension pot as a cash lump sum. Up to 25% will be paid tax free, but you will pay tax at your marginal rate on the rest.

– take up to 25% of your pension pot tax free as a lump sum and/or as a regular income, and then take the remaining pension pot as and when you need it through income drawdown whilst continuing to manage the investments within your pension pot.

- use your entire pension pot to purchase an Annuity
- take up to 25% of your pension pot tax free and use the remaining pension pot to purchase a smaller annuity.

*If you choose to take an income through drawdown, you have the choice of single drawdown or phased drawdown:”*

*However, I also have to consider how charges for the existing plans compared to the charges for the recommended plan, because charges would have an impact on any investment return.*

*I agree with the investigator that I should disregard the ongoing adviser charge, so that a fair comparison is made between the plans on a like for like basis. And also, because Mr M cancelled that service shortly after he took out the new plan.*

*Mr M wasn't charged an initial adviser fee in relation to the transfer of his existing plans. However, there were ongoing charges payable with the existing and new plans. The larger existing plan had charges of 0.62 percent compared with 0.99 percent with the new plan.*

*I consider the new recommended plan provided the potential for greater investment growth and investment choice and met Mr M's objective around flexibility. So, I think that the arguments as to whether the larger value paid-up plan should have been transferred are quite finely balanced. The higher charge would mean that the fund would need to perform proportionately better to achieve the same overall result. And whilst flexibility in taking retirement benefits would have been an advantage, this could have been addressed at retirement, through transferring to a flexi drawdown plan if required.*

*I think the difference in fees, in respect of the larger existing plan, was significant enough so as to outweigh the advantages of transferring. I also note that Mr M could've switched to another fund or funds within that existing plan. So overall, I am not persuaded the recommendation to transfer this plan was suitable.*

#### *Small existing paid-up pension plan*

*In respect of the second, smaller plan there was a good choice of investment funds and flexibility. However, the costs were significantly higher than the new recommended plan at 1.27 percent, so I think the rationale for transferring was more straightforward.*

*I consider the recommendation to transfer to the new plan would have been made with the aim of achieving a higher investment return, taking into account historic performance, and the lower charges which would've had a lower impact on that investment return. So, I think that recommendation would've met all of Mr M's objectives.*

*I also note there were no exit or transfer fees, which would have been a disadvantage of transferring the plan, and neither of the existing plans contained any valuable guaranteed benefits.*

*So, overall, on balance, I don't think it was unsuitable advice to transfer the smaller existing paid-up plan to the new plan.*

*In addition, I can see that consideration was given by the adviser to Mr M taking out a stakeholder plan, but the new plan was recommended because of the potential for better investment fund growth, the more extensive fund range and the flexibility of options in retirement. I note, as the investigator has explained, that the costs were comparable with*

those of a stakeholder plan which has a cap on costs of 1.5% a year for the first ten years and 1% thereafter.

I note that Mr M believes the advice provided by Hood wasn't impartial because he says it told him that it had a good relationship with the new provider. However, I'm not persuaded that, of itself, meant its advice wasn't impartial and I note from the point of sale documentation that Hood carried out research into a number of plans with different providers.

So overall, I consider only the advice to transfer the first (larger) paid-up plan into the new plan was unsuitable, taking into account Mr M's circumstances and objectives.

Was the advice to make a lump sum and regular contribution unsuitable?

As I have said, I consider the new plan met Mr M's objectives around the potential for investment growth, investment choice and flexibility.

The recommendations report recorded that the new recommended provider was financially strong and well experienced in the marketplace and that the charges were competitive. It was also recorded that:

*"The plan offers a wide variety of investment opportunities (over 3,000) to suit different risk profiles should we need to change your investment strategy in the future."*

I am also satisfied that Mr M was looking for his company to make a lump sum pension contribution as the capital was available and there was a tax benefit in doing so. Hence the significance of the 31 March date. It also appears from what is recorded at the time of sale in relation to the money held in the business account and Mr M's monthly consultancy fee, that the monthly pension contribution was affordable

Was the recommended plan compatible with Mr M's attitude to risk?

Hood recommended that Mr M invest in the FE Invest Hybrid Fund. This fund is described as risk level 3 and a long-term investment - and it falls within the IA Mixed Investment 40-85% Shares sector.

The investment objective for the fund was set out in the recommendations report and described as follows:

*"The portfolio is designed for an investor prepared to take on a moderate amount of risk in the hope of making a positive return on their initial outlay. Capital preservation is less important than in a cautious portfolio, meaning significant periods of loss are possible and the investor should be prepared to commit their money for a significant period to minimise the effects of such occurrences.*

*"A significant proportion of the portfolio is invested in equities based in the world's more developed economies, as these offer good prospects for growth over the long term. A smaller amount is held in the stocks of smaller companies, which is considered a higher-risk area but is also one that offers higher growth potential.*

*There is no exposure to emerging markets, which are deemed to be too high a risk for this portfolio.*

*An allocation to bonds adds some stability. Although these typically provide lower returns than equities they do provide protection during times of market stress and therefore play an*

*important role when it comes to risk control.*

*There is limited exposure to property, which helps to add important diversification benefits by spreading the risk across asset classes.*

*The portfolio is expected to show strong growth in rising markets but may experience large dips when they fall due to its high weighting to equities.”*

*Mr M has said that his pension plan lost about £25,000 in value and Hood didn't explain to him that he could lose such a significant amount.*

*I think the first thing to note is that Mr M's pension plan was taken out shortly before markets began to be severely impacted by the global pandemic.*

*I note that Mr M has pointed out that he didn't see the attitude to risk questionnaire before making the lump sum contribution to the new plan and clearly, he didn't sign that document. Nonetheless, I think there was some discussion about his attitude to risk and I consider he was asked some questions in relation to risk because this is set out in the recommendations report under a section entitled "Attitude to risk and capacity for loss.”*

*It was recorded that:*

*“When it comes to investing for income and growth your attitude to risk is Moderate and can be described as follows.*

*Moderate investors are prepared to take a moderate amount of investment risk in order to increase the chance of achieving a positive return. Capital protection is less important to you than achieving a better return on the investment.*

*A typical Moderate investor will usually invest in a variety of assets to obtain diversification and therefore reduce risk. Equities and property, which can boost longer term returns but are associated with more risk, would often account for a higher proportion of assets than fixed interest gilts and bonds or cash. At shorter investment terms the proportion of higher risk assets is usually reduced. The range of asset types helps reduce the overall risks while increasing the chance of better returns.*

*Based on my analysis, our conversations, and the questionnaire completed we have agreed that you have a medium capacity for loss. The two transferring pensions and ongoing single and regular contributions are important to you, and form the majority of your personal retirement provision, and you have a further 11 years until your expected retirement age to build up your pension funds for retirement. In the short to medium term you could afford for the pension money to reduce in value slightly, provided it recovers well in the long term.*

***Please contact me immediately if you do not completely understand the potential risks associated with your risk profile or you do not believe it accurately reflects your attitude to risk and capacity for loss as this may affect my advice.”***

*So, I am satisfied Mr M was made aware that there was a risk of fluctuations in value and the loss of capital in the short to medium term and I note the recommendations report was issued about a month before his application was made, so I think there was sufficient time to reflect on its contents. Unfortunately, I think that inherent risk was exacerbated by the events that took place during that particular time period. In addition, by selling the funds in his pension plan shortly after it had been taken out, there wasn't sufficient time for matters to improve.*

*But I've also taken into account Mr M's circumstances at the time, his objectives and investment experience to assess whether or not the recommended investment fund posed too much risk for him.*

*Mr M didn't have any investments as such, but he did have two pension plans which were invested in funds that posed some risk. The larger existing plan was invested as follows: 46% Aviva Mixed Investment (40-85% Shares), 33% Aviva Property, 12% Aviva Mixed Investment (0-35% Shares), and 9% Aviva UK Equity Income. So, I consider it was made up of assets that put capital at moderate risk, for example equities, and it didn't have any guarantees. Similarly, the smaller plan was invested in the Aviva Mixed Investment (20-60% Shares) which, as the name suggests, meant it could be made up of up to 60% shares. Mr M was in his fifties when the recommendation was made, and he intended to retire at 65.*

*So, I am satisfied that Mr M was looking to invest for the long-term and therefore any risk would be mitigated by the ability to hold the plan for that term and ride out any short-term fluctuations.*

*I also consider Mr M's position was financially stable, with a healthy income, so there was no indication he would need to access that money prior to his intended retirement age. I think Mr M was willing to take this level of risk in order to try to achieve enhanced investment returns, as described in the investment objectives of the fund, contained with the recommendation report and as seen in the historic performance data for the fund provided.*

*I don't consider, therefore, on balance that the level of risk posed by the recommended plan was unsuitable for Mr M over the long-term.*

*As I have outlined, I think that the difficulty here was that Mr M only held the fund in the very short term, during an unusual period of large fluctuations in value, and as Mr M cashed in the fund during that time the loss was crystallised.*

#### *Time pressure*

*Mr M first met with an adviser from Hood in November 2019 which was several months before the end-year date. I also note that the recommendations report was issued on 17 December 2019, which was more than three months before the 31 March deadline. So, if Mr M wasn't happy with the recommendations made by Hood, I think he still had time to seek other advice.*

*I appreciate that Mr M and Hood disagreed on the fee that was payable for the advice provided by Hood. Mr M indicated in one of the emails he sent in January that he understood the cost of the advice would be between £750 and £1,000. Hood had said the advice fee was £1,200. I understand Mr M's point that the details of the fee agreement weren't formally provided to him until January 2020, after the recommendations report had been issued. But I think it is more likely than not that some discussion did take place prior to that about the cost of the advice.*

*I note that the recommendations report did include details of the advice fee at page 15 in a section entitled "Cost of advice and services." It indicated that the initial charge for pension advice was £1,200 and that there was also an annual advice charge which was calculated*

as a percentage of the fund value.

*In any event, I think the fee issue was eventually resolved. I consider there was a meeting of minds with Mr M agreeing for his company to pay £1,000 for the advice. Given the value of the pension contribution involved, that isn't outside the sort of amounts we would normally see. And at that point, I think there was still time for Mr M to look elsewhere if he wasn't happy with the advice provided or the fee payable, and that was an option outlined in an email sent by Hood.*

*I also note that Mr M has said that the tone and content of the emails from Hood were such that he felt pressured and distressed. Mr M has explained how he felt at the time, and it is not for me to try to assess that in any way. However, I do have to look at whether what Hood did here was reasonable and could objectively be described as pressuring Mr M.*

*I do think there was a break down in the relationship between Hood and Mr M, with Hood indicating it wasn't sure that it wanted to continue working with him. I think in its response to the first email, Hood could have given further explanation in relation to the fee payable and the tone and language it used could have been more conciliatory.*

*However, I note that Hood acknowledged fairly early on in the emails that its initial response was lacking and it explained that response had been sent late in the evening, whereas it said it should have instead waited and formed a more detailed response explaining how the fees had been calculated. So, I think there was a fairly swift change in tone by Hood, and I don't think there is anything there that I would consider amounted to applying pressure to Mr M to take out the new plan.*

*Did Hood act promptly when given the instruction to sell to cash?*

*Mr M gave the instruction to Hood to convert the funds into cash on the morning of 16 March 2020. I can see that was acted upon by Hood, with it giving the provider instructions to sell later that morning, so within a few hours. I am satisfied therefore that Hood acted reasonably promptly in the circumstances.*

*Mr M has said that Hood gave him a consideration figure of about £151,500, which wasn't realised. I think it is important to consider the different roles of the firms involved here. Hood was responsible for the advice to take out the pension plan. It wasn't the provider of the plan, so Hood wasn't responsible for the terms and conditions of that plan and how much was paid to Mr M by the provider.*

*I note the key features document for the pension plan, which is referred to in the recommendations report, noted that:*

*"As a result of trading practices, there is a possibility that the price of investments may fall or rise in the period between us receiving your instructions and the time of the transaction."*

*Mr M says if he had been told that the sale process was automated, then he wouldn't have taken out this plan. I consider the information provided to Mr M at the point of sale did warn him that there could be a delay between the provider receiving instructions and a transaction taking place. So, I don't think it matters whether this was because of automation, or for some other trading practice reason.*

*I don't consider that the use of automation for carrying out trades is an unusual feature for these types of pension plans which are provided through a platform. And I'm not persuaded on balance that it would've been a deciding feature in respect of Mr M taking out the plan. I don't consider the value Hood gave Mr M on 16 March 2020 was a guaranteed figure, I*

*think it was the valuation available at that time. However, that wasn't the same as the price that would be realised when the funds were actually sold, because it depended on the different pricing points of different fund managers. I should note that this issue is the subject of a separate complaint against the provider, and as I don't think that Hood did anything wrong in this regard, I don't intend to address it any further here.*

#### *Hood's response to the data subject access request*

*Mr M originally complained to Hood about its response to his data subject access request. As the investigator has said, that issue wasn't included in his complaint to our service. Although I can see that Mr M referred to the file he received from Hood on 23 April 2020 in his complaint and indicated that some emails and texts were missing from that file. He also indicated that the emails were included with his complaint and the texts had been referred to in his original letter of complaint.*

*I understand that Mr M made his subject access request at around the time he made a complaint to the provider on 8 April 2020. So, my view on balance is that Hood responded promptly and within the prescribed time period. Although I appreciate Mr M's point that some emails and texts weren't included in the file sent to him by Hood, I note that Mr M had possession of those already because he was the party sending or receiving those emails and texts. So, while I agree that those communications should have been provided if Hood still had access to them, as Mr M already had them, I don't think there had been any detrimental impact on Mr M, or on his ability to bring his complaint, as a result. So, I don't intend to ask Hood to do anything further on this.*

*As has been mentioned, the Information Commissioner's Office also has a remit in respect of data protection issues.*

#### *Summary*

*I consider on balance that the advice provided to Mr M to transfer one of his existing plans (with the larger value) was unsuitable for the reasons already outlined. However, I don't consider on balance that the remainder of the advice was unsuitable.*

*In addition, while I acknowledge that Hood could've dealt with some issues more comprehensively, for instance requesting a signature on the risk assessment document at the relevant time, I don't think that Hood acted incorrectly or that its actions were unfair in the circumstances.*

#### *Putting things right*

*Hood should compare the notional value of the existing larger paid-up plan (assuming it had remained invested in the same funds) at the date of any final decision along these lines with the notional value of the corresponding proportion of the new recommended plan (assuming it had remained invested in the same fund rather than being switched to cash) at that same date.*

*If the calculation demonstrates a loss, the compensation amount should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would*

*conflict with any existing protection or allowance.*

*If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 30% overall from the loss adequately reflects this.*

Both parties were given an opportunity to respond to the provisional decision with any further representations they may wish to make.

Mr M didn't provide any further representations.

Hood responded and in summary it said the following:

- The charges on the recommended plan had changed on 8 April 2021, when VAT was removed from the discretionary managed portfolio fee. So, the investment management fee was reduced from 0.33% to 0.27%, reducing the overall cost to 0.94%. The difference in costs was therefore 0.31% per year.
- It acknowledged the new plan was more expensive than the (larger) existing plan. However, it said Hood had carried out a cost/benefit analysis and it believed the benefits of being invested in the new plan outweighed the benefits of keeping the existing plan.
- It said a primary reason for the recommendation to the new plan was to allow Mr M to invest in the FE Invest Service.
- Hood acknowledged there were a range of funds available within the existing plans but didn't think switching to any of these would've been a suitable solution for Mr M. It said if Hood had selected individual funds from those available, it would've had to build a portfolio of funds and match them to an appropriate asset allocation that was risk assessed and aligned to an appropriate risk mapped profile. It said it would've had to ensure those funds were regularly reviewed and rebalanced to avoid the portfolio drifting out of line with the risk mapped allocation and becoming unsuitable.
- Hood said a regular review and rebalancing was not included in its charge of 0.5%. It said that service would cost significantly more as it would require specialist investment knowledge. Hood said it didn't believe in running advisor model portfolios as it felt a discretionary managed service was more cost effective and had the benefit of using a highly qualified investment team.
  
- It said the benefit of moving to the new plan was to be able to access a suitable investment solution with more robust risk management. Hood said this ensured the investment was and remained aligned to Mr M's risk profile and it significantly outweighed the cost saving of keeping the plan where it was. Hood provided documentation which explained the investment services and portfolios managed by FE Investments and said it felt the additional cost was justified.
- It noted that Mr M hadn't contributed to his pension for several years. It said his pension planning was becoming a priority and he wanted to boost his retirement funds. Hood said one of Mr M's requirements was for those funds to be professionally managed within an agreed risk profile. So, it said his objectives had been met.

- Hood said it wasn't correct to compare the performance of the new investment to the performance of the old as the two plans were different. Hood said the benefits of the new plan far outweighed, what it described as, a slight cost differential. It said this included proper and regular rebalancing of the risk profile and the ability to manage investments and react to economic conditions swiftly.
- It provided a performance chart which showed investment returns for the FE portfolio and the existing pension plan. It noted that both portfolios had fallen sharply during the pandemic but had then recovered with the FE portfolio outperforming the existing plan until December 2021. Hood said the FE portfolio had previously been outperforming the existing plan funds by about 8%. However, it said as markets declined in 2022 the existing plan funds were less affected by the factors such as inflation and the outbreak of war in Ukraine. Hood said it was unfair to compare the funds during a period of such high volatility and unprecedented falls in the gilt market. And it said as the gilt markets recovered the gap between them would close.
- Hood said the proportion of Property Funds in the existing plan was significant and it referred to the risks associated with this type of funds.
- Hood did not agree with the method I had outlined for redress. It said the redress should be linked to the difference in cost only and not fund performance. Hood said it wasn't a fair comparison as the two plans were different. It also said if I was simply saying that the switch was unsuitable based on a charge difference, then compensation should be based on the difference in costs.
- Hood said it had acted correctly and the advice it had given was suitable. It acknowledged the breakdown in the relationship and said the decision to switch into cash had resulted in the investments losing the opportunity to recover.

### **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 done so, and noting the representations made by Hood, my decision remains the same as set out in my provisional decision, which is reproduced above and forms part of this decision. However, I acknowledge the points made by Hood - and address them below.

Hood says that my provisional decision, that the switch of one of Mr M's existing plans is unsuitable, is based solely on the difference in costs between the two plans in question. It says, in effect, that this shouldn't be the deciding factor. Hood says that the increased cost of the new plan is outweighed by the benefits it provided.

Hood also says that remaining in his existing pension plan and switching funds was not a suitable solution for Mr M, because it says he would've needed regular reviews which would have been more expensive than the 0.5% it charged for ongoing advice.

I don't agree with Hood that my provisional findings are based solely on the difference in costs. I acknowledge that switching to a new plan with higher costs can be suitable where the new plan provides additional benefits, which outweigh the impact of the increased cost. However, I am not persuaded on balance that this is the case here.

The level of charges is relevant to a decision to switch pension plans because charges have an impact on performance. So, a more expensive plan will have to perform at a higher level to achieve the same return as a less expensive plan. And if the existing plan is not unsuitable, I think proper and robust justification is required to switch plans and take the risk that the new plan won't outperform the old plan.

Indeed Hood, in its report to Mr M, looked at some factors relevant to the review of his existing pension plans and said he wished to “*look at whether they are competitively charged and if they are invested in line with your aims and attitude to risk,...*”

So, I think it is clear that the cost of charges was a factor that was of some importance to Mr M.

I note what Hood has said about the charges on the new plan being reduced in April 2021, some 15 months after Mr M took it out. But clearly that is not a factor that Hood would have been aware of at the time of giving the advice and in any event, it still meant the charges were 0.94% which was more than the 0.62% for the existing plan.

(I note that the figures provided by Hood in its recent response suggest the charges for the existing plan were 0.63%. However, the plan summaries included with the point of sale documentation provided by Hood, state the charges were 0.62%. In any event that small difference does not impact my decision).

I don't think that there is anything to suggest that Mr M's existing plan was unsuitable for him. It was invested in several different funds encompassing different asset classes as follows: 46% Aviva Mixed Investment 40-85% Shares, 33% Aviva Property, 12% Aviva Mixed Investment 0-35% Shares and 9% Aviva UK Equity Income.

I consider those investments provided some diversification and I am satisfied on balance that Mr M was willing and able to take some risk with his pension plan over the long-term.

I also note that the new plan was invested in a hybrid fund which falls within the IA Mixed Investment 40-85% Shares sector. It was described as having a significant proportion of equities in the world's more developed economies and also as having an allocation in bonds and some limited exposure to property. So, I think there were some broad similarities with the investments in Mr M's existing plan.

I appreciate the new plan had a larger fund range than Mr M's existing plan but as I have noted in the provisional decision, if Mr M had been unhappy with the funds he was invested in, he could have switched to other funds within the same fund. That doesn't mean I think he needed to do that, but merely that this option was available to him.

However, I'm not persuaded on balance that Mr M was dissatisfied with his existing pension plan. I think it was more of a case of being persuaded by the recommendation and advice from Hood. I consider its advice gave significant weight to the benefits of the new plan but didn't sufficiently highlight the disadvantages of switching from the old plan – and so lacked the necessary balance for him to make a fully informed decision. And while I accept that professional management of funds, using the discretionary management model, might have been attractive to Mr M, I am not persuaded it was an objective which would have overridden any consideration about cost. I note for instance, that Mr M cancelled the ongoing advice service provided by Hood shortly after he took out the plan, which suggests cost was a relevant factor for him.

Hood could have simply advised Mr M to keep his plan as it was, with a review at some point in the future.

Hood says the benefit of the discretionary management portfolio was that it would be reviewed and rebalanced using expertise from a highly qualified team. While I can see the advantages of that type of portfolio, I am not persuaded that this warranted Mr M switching from a suitable, diversified, cheaper pension plan that he had held for several years.

Hood has also said that the discretionary management within the new plan allowed a quick reaction to economic conditions, but it has acknowledged that the new plan was impacted more significantly by economic conditions in the last year than Mr M's existing pension plan. So, I think the level of benefit from that factor was somewhat limited.

### Redress methodology

Hood doesn't agree with my conclusions on the outcome. But, in any event, it says the redress I have outlined is not appropriate because it says I am comparing two different types of pension plan and it says the events of recent times have significantly impacted market conditions. It says if I disagree with Hood on whether the advice was suitable, then I should carry out a comparison based on the difference in costs between the two plans rather than comparing the performance of the two plans.

The redress I have outlined is based on what I consider *would have* happened on balance *but for* the unsuitable advice, and my findings – whilst noting the higher costs within the replacement plan - aren't in any case restricted to that aspect alone. If the recommendation to switch his (larger) existing plan hadn't been made, I think it more likely than not that Mr M would have remained invested in that former plan. So, I think it is fair and reasonable to compare the notional values at the date of this decision. I think using the date of this decision rather than the date Mr M sold the funds in the new plan to cash, also gives some recognition of Hood's position that Mr M shouldn't have sold the funds when he did, against its advice, because of market conditions at the time. Thereby, acknowledging that Mr M could have mitigated his loss by waiting for things to stabilise.

I appreciate that market conditions have been impacted by recent events, but markets do fluctuate and Mr M's former pension plan would also have been susceptible to any resulting impact. I therefore think it is fair and reasonable to provide my decision based upon calculating redress at this current point in time, in order to compensate Mr M for any unsuitable advice. And, as I have said, I consider it more likely than not that Mr M would have remained invested in his former plan if the recommendation hadn't been made.

### **Putting things right**

Hood should compare the notional value of the existing larger paid-up plan (assuming it had remained invested in the same funds) at the date of this decision with the notional value of the corresponding proportion of the new recommended plan (assuming it had remained invested in the same fund rather than being switched to cash) at that same date.

If the calculation demonstrates a loss, the compensation amount should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid in retirement. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 30% overall from the loss adequately reflects this.

If payment of compensation is not made within 28 days of Hood receiving Mr M's

acceptance of my final decision, interest should be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Hood deducts income tax from the interest, it should tell Mr M how much has been taken off. Hood should give Mr M a tax deduction certificate in respect of interest if Mr M asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

### **My final decision**

My final decision is to uphold Mr M's complaint against Hood Financial Planning Limited in part for the reasons outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 February 2023.

Julia Chittenden  
**Ombudsman**