The complaint

Mr M complains that Pi Financial Limited (trading as Diversify Financial Services) wrongly advised him to transfer from his three existing personal pensions into a self-invested personal pension (SIPP) and use an advisory investment management service from Mayfair Capital Limited. Through a Claims Management Company (CMC), he says that Pi failed to advise on the true costs associated with the new set up, the pension recommended is more complex than Mr M's previous arrangements and he has incurred multiple unnecessary fees.

What happened

Mr M's CMC says he received a cold call offering a review of his pension from a person representing 'UK Life', an unregulated firm. He met that person at his home on two or three occasions before being referred to Pi's adviser, who he only spoke to on the phone. The CMC suggests that most of the fact-finding had been carried out by UK Life and Pi's adviser only checked that information. When paperwork needed completing in person, it says that was again done with UK Life.

Pi obtained policy information on Mr M's existing arrangements during October 2017. The Standard Life plan was invested in its 'Mixed Blend' fund, which was invested across UK and overseas shares, property, bonds and property and only charged 0.27% (after a 0.8%pa discount because it was a Group Personal Pension – 'GPP') to manage. The Abbey Life plan was invested in its International fund (UK and mainly overseas equities) with administration fees totalling £75pa and fund charges in addition. The Aviva plan was invested in a with-profits fund which had implicit charges, part of which attracted a guaranteed annual bonus of 4%. But a large terminal bonus of £14,723 was at that time payable. There were no penalties for transferring any of the plans.

The adviser issued his suitability report on 14 November 2017, which suggested that Mr M was looking to diversify his pension and invest in 'more exciting asset classes' without making additional contributions. It described his existing pensions as 'frozen'. He was aged 50, co-habiting with no dependants and planned to retire at age 67. He had a £90,000 mortgage on his main residence worth £250,000, which he expected to be paid off by age 58, as well as another property worth £100,000 and a plot of land which he was looking to build properties on.

The adviser mentioned that Mr M did not know the exact details of his other credit arrangements – Mr M's CMC has informed us that this was £20,000 on credit and store cards.

An Old Mutual attitude to risk assessment had been carried out, which Mr M had signed. His answers included:

- *'I want the best long-term returns I can get. I fully expect periods where the value of my investments might suffer extended falls'* (the highest risk option).
- He was prepared to invest in a portfolio which (as an example) might gain 37% in one year but also lose 23% over the same period. If he lost 13% he would sit tight, but wouldn't invest any more sums (these were both the third riskiest of four options).
- *'I am not concerned about falls in value as I expect to recover any falls by the time I*

need to sell my portfolio' (again, the highest risk option).

- If his savings were insufficient he would *'Take more risk with half of the money and increase your savings'* rather than making more contributions (third riskiest of four).
- He was not interested in purchasing an annuity unless the circumstances required it.

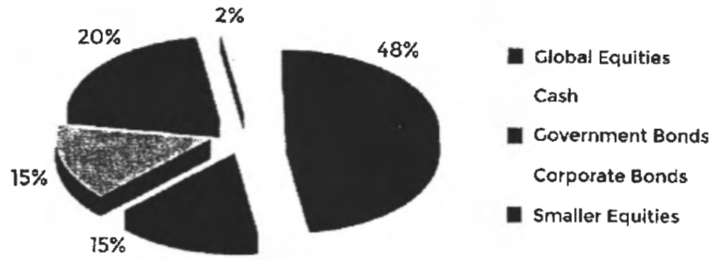
The questionnaire produced an attitude to risk score of 8/10. In any event, the adviser said in his suitability report that Mr M's assets were *'not easily realisable into cash'* and he should be classed as a *'more middle of the road balanced investor'.* However he also went on to say that Mr M had a 'high' capacity for loss as his standard of living would not be affected by this investment.

He recommended Mr M transfer into the SIPP in order to obtain a wider range of investment choice to 'reduce risk' and improve opportunity for growth. In addition, to benefit from 'inter-generational estate planning'. His report suggested that the lifestyling option attached to the Abbey Life (and from what I can see, Standard Life) plan was an 'old school' strategy associated with annuity purchase, and regular rebalancing of the portfolio by an IM for drawdown of benefits was now preferred. Mr M's existing plans were said to offer insufficient investment options overall.

The proposed Intelligent Money SIPP was described as financially strong, offering excellent service and competitively-charged. Mayfair Capital was described as a Discretionary Fund Manager (DFM), however the adviser went onto explain this firm was actually offering an advisory service where Mr M retained the final decision on whether to accept its recommendations. (Whilst it appears to have been Mayfair's long-term intention to become a DFM and it has since gained the FCA *'managing investments'* permission, it was a new entrant to the market in 2017 and did not yet hold that permission.)

Pi said that Mayfair's service would involve Mr M having a personal investment adviser who would reassess his circumstances and objectives to arrive at an initial asset allocation, as well as provide ongoing advice including monthly market reports *'with an update of the equity, FX, commodity and bond markets'*, and other special reports. Mr M would be able to log into his portfolio online to monitor performance, and to trade across 36 global exchanges.

The following snapshot was given of the typical 'balanced portfolio' Mr M would invest into, although the exact proportions would be agreed after Mayfair's advice. This was the middle of three risk levels offered. (Although this copy is in black and white, the similar, later versions of this chart I've seen suggest the 48% is likely to refer to global equities, the 2% to cash and the 20% to government bonds):



Dealing commission of 1.5% was charged on every trade, which Pi said would come to £1,265 for Mr M (about 1.7% of his funds) based on a typical two trades per year. But Mayfair was to charge no other fees - said to be more competitive than other investment managers. It does not appear that the third-party industry research into IMs included with the suitability report featured Mayfair at all. The SIPP had an initial and annual charge of £150, plus an initial advice charge of 4% and 1%pa ongoing charge (both to Pi) which *'covers the cost of reviewing client's retirement pots against their retirement needs and risk attitude'.*

Based on this, Pi said the charges for the SIPP and IM were likely to be higher than his existing plans (but *'no greater than a stakeholder* [plan]'). It said Mr M believed these charges would be recovered by higher growth (although this was not guaranteed). The SIPP illustration showed a reduction in yield due to charges to age 67 of 1.4%. Pi illustrated that a total target income of £24,000pa (including state pension) from age 67 would run out by age 73 if the expected growth was 5%pa, so it noted that level of funding 'may prove insufficient'.

The adviser added, *'We also considered the importance of having my ongoing service commitment and keeping your pension on track to meet your needs, aims and goals which is a fundamental part of the service we provide.'* The report, which Mr M signed at the end, said that he had elected for that service. Pi's terms of business said that the 1%pa ongoing service proposition included a 6 month 'desktop review' and 'offer of annual review', extending to a review of the investment performance and holdings and fund switching/ rebalancing as appropriate.

Three transfers were made into the Intelligent Money SIPP: from Abbey Life (£3,697), Aviva (£43,666) and Standard Life (£26,986). They were all invested in Mayfair Capital's balanced portfolio. Initial fees totalling £3,856 were paid to Pi with the SIPP starting in January 2018.

Pi has provided no evidence of annual reviews being conducted by its adviser. The adviser ceased to be authorised under Pi from June 2018.

It appears Mr M first got in touch with the CMC who questioned the suitability of the advice in 2018, and this prompted a further discussion with the adviser who said he was in the process of settling into another advisory firm. In October 2018 the adviser emailed Mr M a summary of their conversation. He noted that construction of the properties Mr M planned to build was partly completed, and that Mr M was happy with the level of service from Mayfair as *'…your main pension you believe is your holiday homes, therefore this is effectively money to play with'*. The adviser shared that response with Pi.

The CMC then raised the complaint with Pi in March 2020.

Pi responded, in summary, that it was its adviser who had carried out the fact-finding with Mr M and recommended the SIPP and use of Mayfair. This was in order to achieve Mr M's ambitious income objectives, whilst also giving him the flexibility to encash sums from age 55 to build properties on some land he owned. It accepted that initially Mr M had been introduced to it by UK Life.

It denied that the costs of the new arrangement were hidden from Mr M or that it was unnecessarily complex. Further, it considered Mayfair had accepted responsibility for all subsequent investment losses arising because of COBS rule 2.4.4R (otherwise known as the 'reliance on others rule') in the regulator's handbook. It therefore forwarded Mr M's complaint to Mayfair. Mayfair did not uphold Mr M's complaint and that has also been referred to the Financial Ombudsman Service.

As at 25 January 2022, Mr M's Mayfair portfolio was invested as follows:

Security Long Description	Quantity Held	Book Cost	Value in Base
CLEANTECH BUILDING MATERIALS PLC ORD	2,015.00000	6,626.53	5,076.42
RIOT BLOCKCHAIN INC COM NPV	120.00000	3,986.03	1,346.30
BEYOND MEAT INC COM USD0.0001	124.00000	9,069.32	5,745.82
NQ MINERALS PLC GBP0.001	122,903.00000	11,881.40	0.00
PAYPAL HOLDINGS INC COM USD0.0001	33.00000	5,225.23	3,968.30
ISHARES II PLC CORE UK GILTS UCITS ETF GBP DIST	545.00000	7,553.61	7,461.05
CONTINENTAL RESOURCES INC COM USD0.01	80.00000	3,899.53	2,926.32
VANGUARD INVESTMENTS UK LTD LIFESTRATEGY	30.00000	5,190.89	5,216.54
VANGUARD INVESTMENT SERIES UK GILT UCITS	313.00000	7,560.32	7,434.78
META PLATFORMS INC COM USD0.000006 CL 'A'	34.00000	8,500.02	7,783.05
CARNIVAL CORP COM USD0.01	220.00000	4,498.48	3,220.25
POUNDS STERLING (GBP)	16.42000	16.42	16.42
US DOLLARS	6,934.34000	5,141.91	5,141.91
		79,149.69	**55,337.16**

One of our investigators considered Mr M's complaint against Pi and thought it should be upheld, albeit that he referred to Mayfair as a DFM. In summary, he said:

- Pi hadn't investigated whether Mr M could consolidate his existing plans into the Standard Life GPP which had the lowest (0.27%pa) charge.
- It failed to highlight the valuable benefit of the 0.8%pa discount on the GPP or the 4% guaranteed annual bonus on part of the Aviva plan.
- The regulator had made clear in its thematic review into pension switching in 2009 that a pension switch was unsuitable if additional costs were incurred for no good reason – and that seemed to apply here.
- Pi had assessed Mr M's attitude to risk as balanced, which its own documentation shows his existing funds were broadly meeting. These were invested in broadly the same asset classes as Mayfair's initial proposed portfolio.
- Some of the investments subsequently made by Mayfair – referring to the above snapshot – seemed to be in higher-risk smaller companies and as such exceeded Mr M's attitude to risk.
- Mr M didn't need to switch pensions purely in order to have the possibility of doing drawdown several years later: that could have been reviewed nearer the time.
- As Mr M had a relatively modest fund value, keeping costs low should have been the main driver - and not the added expenses or complexity of an investment manager.

The investigator concluded that Mr M should not have been advised to switch to the SIPP or invest in Mayfair, and had he been properly informed of the lower cost and guarantees of some of his existing arrangements he would not have decided to switch. He accepted that Mr M was looking to improve on the performance of his existing plans, so he proposed compensation on the basis that Mr M would have invested broadly in line with the FTSE UK Private Investors Income Total Return index.

The investigator took into account the possibility that Mayfair's recommendations may also have contributed to Mr M's losses. But in his view, Mr M only ended up in the SIPP and therefore was exposed to Mayfair's advice as a result of Pi's actions. He therefore considered that Pi should compensate Mr M for the losses he had suffered in full – and if it wished to do so, Pi could pursue any other parties it considered were responsible once it had paid that compensation.

Mr M agreed with the investigator's view but Pi didn't, although it relied on the adviser (who no longer works for Pi) for its response. In summary, the adviser said:

- Mr M signed its 'pension replacement contract form' which disclosed the benefit of the 0.8% annual charge reduction. But it also confirmed Standard Life only had 12 funds to choose from, so it wasn't suitable advice to consolidate with that firm.
- Mr M wasn't concerned with saving money but the opportunity of greater returns.
- It would have taken Mr M over 5 years to achieve the same amount in guaranteed returns on the Aviva with-profits fund that he already had in terminal bonus. And that plan didn't accept transfers-in.
- It was good long-term financial planning to make arrangements that enabled Mr M to take drawdown later on; rather than wait until an age where he may not have been capable of making those kinds of decisions.
- The investigator had ignored Mr M's objectives which were articulated and agreed at the time of advice, including a need for flexibility and access to a wider investment choice with third-party management expertise.

The adviser also referred to an email exchange between Mayfair and Pi dated 23 January 2017. He said this showed that Mayfair was accepting responsibility for suitability of the customer's initial portfolio construction, of transactions to that mandate *and* ongoing suitability of the portfolio - in line with COBS 2.4.3R(2a), which allowed Mayfair to agree to treat Mr M as its own client (an exception to what was otherwise the 'agent as client' rule).

I issued a provisional decision on this complaint on 6 December 2022 because the investigator had not responded to the further comments Pi had made. However Pi has not responded further to the provisional decision, and Mr M accepted that decision. So I make no apology for largely repeating the provisional decision in its entirety below, as I've seen no reason to depart from my provisional findings.

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.

Pi noted at the time that M's pension funds 'may prove insufficient' to give him a total income (including state pension) from age 67 of £24,000pa. I think that is a massive understatement given that its own projections showed Mr M would run out of money within six years at that rate of withdrawal. The reason the adviser wasn't alarmed by this appears to be entirely due to an expectation that Mr M's second property and further properties he was looking to develop on the land he owned would, in effect, actually be his pension.

However, the adviser assessed Mr M overall as having a more balanced attitude to risk. So I have trouble understanding how it would have been suitable advice for Mr M to have been so reliant on a speculative property development to provide his pension income instead of seeking – as much as possible – to preserve and maximise the returns (at the lowest cost) from his existing pension fund.

Pi suggests that Mr M wasn't bothered by cost. There is nothing about his circumstances, given he had limited liquid assets, was not financially sophisticated, and did not have a high overall attitude to risk, to mean that he should have been expected to (or would have wanted to) pay higher charges for the prospect of returns that were not guaranteed to offset those costs. One thing that does speak true is that lower charges will have less impact on the growth than higher ones.

The adviser's comment (made in 2018) that *'this is effectively money to play with'* goes far from indicating he properly understood Mr M's circumstances or provided suitable advice. Mr M had invested in several pensions for the purpose of providing income in retirement – so it's not clear why the adviser had chosen to write these off as a non-core part of his retirement plans. Pi is also expected to independently investigate Mr M's complaint, and whilst it should of course gather the adviser's comments as part of that investigation, given that the adviser no longer represents Pi in any capacity I'm surprised at the lack of scrutiny it has applied to those comments when responding to the investigator's view.

In my opinion, Mr M's need to grow what was clearly an insufficient pension fund as much as he could was best served by keeping costs low. In its guidance in July 2012 for IFAs to exercise caution when recommending centralised investment propositions, the Financial Services Authority (FSA) said that said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments an investment manager would be making for him.

Mr M does not strike me as the type of investor who would be willing to engage with, understand or appreciate the benefit of regular engagement with an investment manager of the sort Mayfair would offer. He already had the types of pension arrangement that best suited his level of understanding and attitude to risk – the majority of which had unbeatably low costs (Standard Life) or inbuilt guarantees (Aviva).

If Mayfair's dealing costs which Pi estimated at about 1.7%pa were added to the reduction in yield for the new SIPP of 1.4% (which had not illustrated these additional costs) the total comes to 3.1%pa. So the adviser was a long way from being correct in asserting that the charges of the new proposition came within the stakeholder cap of 1.5%. And in fact the average charges of Mr M's existing pensions appear to have been well within that cap already.

I agree with the investigator that there was no need to consolidate Mr M's plans for the purposes of flexibility until (and if) that need became unavoidable, and in the meantime they were more likely to grow under lower charges. There was no need for 'inter-generational estate planning' when an existing personal pension would offer a return of fund tax-free on Mr M's death. And if there was a worry that Mr M might lose the capacity to manage with a drawdown plan, that would hardly be grounds for buying one at all. If it was worth consolidating Mr M's funds anywhere, clearly it was with Standard Life – as Mr M was aged 50 and it wasn't yet necessary to have a drawdown option.

The information Pi received from Standard Life shows that it accepted transfers, and that Mr M's substantial fund charge discount also applied to any new money paid in. I believe the adviser was also mistaken that Standard Life only *offered* 12 funds. The letter actually says Mr M can only invest in 12 funds *at one time*. The current key features for a Group Flexible Retirement Plan on Standard Life's website says that it offers a wide range, including externally managed funds - and I have no reason to doubt that wasn't the position in 2017 given Standard Life's considerable market coverage. There would have been enough funds for an investor of Mr M's limited experience - and they were well-worth using to benefit from the lower charges which would improve the growth prospects by 0.8%pa straight away.

The charges on the Abbey Life plan appear to be higher than Standard Life, and there was no penalty for transferring from this plan. Part of the Aviva plan had a guaranteed annual bonus and the other part did not. The adviser suggested (after the sale) that further annual bonuses might eat into this terminal bonus. That was certainly possible, although the terminal bonus reflects performance over the whole lifetime of the plan, including periods where the annual growth in Aviva's assets exceeded the annual bonus granted. I agree that Mr M had an overall balanced attitude to risk, given his largely illiquid asset base outside the pension. So on balance, I think the adviser underplayed the potential benefit of keeping the with-profits plan in force as part of Mr M's overall provision.

Aviva was a financially strong company and the 4%pa guaranteed bonus was an attractive benefit – but I accept that Aviva was effectively charging from the with-profits fund's assets for that guarantee and the attraction of a Standard Life plan which Mr M could transfer into and invest in similar assets under (potentially even with-profits) is unusual. So in conclusion, I think it would have been suitable advice for Mr M to consolidate all three pensions with Standard Life, or consolidate two of them leaving the Aviva plan intact.

Due diligence into Mayfair

Pi also had a duty to ensure any recommended investment manager was appropriate and do due diligence on the firm it was recommending, as initially set out in the FSA guidance on centralised investment propositions I've mentioned above. As Mayfair was essentially getting around a lack of the 'managing investments' permission by providing an advisory service, I consider the Personal Finance Society's good practice guide for due diligence into DFMs (dated February 2015) is still relevant here.

These papers said that the due diligence should for example include research into an investment firm's reputation and financial standing, as well as the types of underlying assets it would invest in and its approach to investing. The PFS paper said advisers needed to 'get under the bonnet' of a manager's 'marketing blurb' and were required to question and challenge information provided to them.

Mayfair had only recently been established in 2016 and authorised about six months before Pi recommended it to Mr M, so particular care should have been taken. But from what I can see, Pi was relying on due diligence – limited as it was – carried out when Mayfair wasn't even directly authorised at all. Pi's compliance director emailed Mayfair in January 2017, at which time Mayfair was an appointed representative of another firm (which unlike Mayfair did hold the *'managing investments'* permission). He said:

> *'If you have a standard due diligence document setting out details about your firm, how you operate etc, could I trouble you to forward this to me. I have of course obtained information from the public domain i.e. FCA register and Companies House.'*

Mayfair only responded with hyperlinks to the FCA register, its website and the director's CV. It enclosed *'…the SIPP Brochure which includes details of all our Advisory Model Portfolios from Cautious to Speculative. It also includes a brief breakdown of the type of investments one could expect to see in the balanced portfolio.'* This appears to have been the origin of the chart Pi showed Mr M in his suitability report. However I see little rigorous interrogation of what approach Mayfair intended to take, other than Pi asking it to specifically confirm in a subsequent email that Mayfair would not invest in non-mainstream or unregulated collective investments. And that only Mayfair advisers holding the CF30 client-facing permission would advise clients.

So, I haven't seen persuasive evidence that Pi 'got under the bonnet' and really understood what kind of investments Mayfair would consider – nearly a year after the above email exchange – before it recommended that Mr M invest with Mayfair. And I've noted that Pi was collecting 1%pa trail fees from Mr M to provide ongoing advice itself, whereas Mayfair claimed to be providing that service for no ongoing fee other than 1.5% dealing commission on each transaction. Not only could that have led to confusion as to which firm was reviewing the ongoing suitability of Mr M's portfolio, it should also have led to concerns as to whether Mayfair could afford to provide the service being claimed or advise Mr M appropriately. Mayfair would have to keep moving the investments to derive any income.

Involvement of the unregulated introducer

I've considered the CMC's point that Mr M was cold-called by an unregulated third party who did much of the data gathering, and he didn't actually meet the Pi adviser at all. Based on what I have seen, I have no reason to doubt a significant part of this testimony. Pi agrees it accepted a referral from UK Life and as this was an unregulated firm it was not bound to the same conduct of business rules as Pi. No reference has been made to any meetings between Mr M and Pi, and I note Mr M actually signed Pi's terms of business on the day he received the suitability report rather than at any earlier date.

The CMC has also referred to the FCA's alert from August 2016. This said the FCA was concerned at the increase in cases where the introducer had an inappropriate influence on the investment choice, or where parts of the advice process are delegated to the introducer. The CMC says that is what has happened here.

Acting against this I can see that Pi says in its final response letter that its adviser completed his own 'pension review form' with Mr M. A copy of this has not been provided, but I accept that it's possible Pi carried out further fact finding or checking information with Mr M over the phone. However, I haven't seen evidence either way to show what information it did (or did not) receive from UK Life in the first place - and how it ensured that Mr M was not inappropriately influenced by that firm.

As I've shown, none of the reasoning for why Mr M needed to transfer his pensions (in particular given the attractions of his existing plans) is strong in this case. And I'm open to the possibility that Mr M had already been encouraged by the unregulated introducer into thinking that it was a good idea to transfer. I think Pi should have countered any preconceptions Mr M had by firmly emphasizing the benefits of those existing plans - rather than referring to them as 'frozen' and allowing him to be attracted to 'exciting' opportunities elsewhere which don't seem to have been appropriate to his attitude to risk.

Pi's view that Mayfair should be held responsible for Mr M's losses

In support of this, Pi has quoted both the 'reliance on others' rule (COBS 2.4.4R) and an exclusion from the 'agent as client' rule (COBS 2.4.3R(2a)).

The reliance on others rule says that in being instructed to provide investment services, Mayfair was entitled to rely on any information provided to it by Pi; or any recommendations Pi had given to the mutual client, Mr M. But it also says that Pi would remain responsible for the accuracy of the abovementioned information and suitability of the abovementioned recommendations. In other words, Pi remained responsible for its decision to recommend Mayfair to Mr M (and for the ongoing review service it was charging to provide him). This rule doesn't prevent me from deciding that Mr M would not have suffered losses (including losses from investments recommended by Mayfair), *but for* Pi's advice to use Mayfair.

The agent as client rule, in circumstances where it applies, would actually have limited Mayfair's regulatory responsibilities to Mr M. But as Pi has correctly noted, Mayfair negated this rule by provide its services directly to Mr M as client – so reference to either of these rules add little to this complaint. Pi does correctly say that Mayfair confirmed in writing - albeit at a point significantly earlier and when it was regulated differently - that it was accepting responsibility for the suitability of its own recommendations (which is obviously correct). But it's important to note this does not mean to the exclusion of Pi's wider duty of care to Mr M, as a result of recommending Mayfair to him in the first place.

Based on the more recent valuation I've seen, it looks like some of Mr M's investments may have been too risky and specialised for his attitude to risk. I do not know if that was the position right from outset or that became the position later on. Either way, if Mayfair has recommended investments that were too high risk and have lost value, it could also and separately be considered to have caused some of the same losses. However, I'm deciding the complaint against Pi and I'm satisfied that without its unsuitable recommendation to use Mayfair, those losses could have been avoided.

Pi seems to have exercised insufficient oversight over Mr M's application to open a trading account for Mayfair, given that the application notes Mr M had carried out trades in collective investments and alternative investment market shares (when I cannot see that he had), and would as a result place 20% of his portfolio into alternative shares and non-investment grade debt. It refers to investments in AIM and penny shares and companies trading on the NEX Exchange. Pi should have overseen the handover of their mutual client and that alone gives me reason to say it should have found out and queried such an asset strategy further, asked for more information about what sorts of bonds Mayfair would usually invest in, and what due diligence they would do on the investments.

Further, given the existing pension arrangements Mr M held, one of which was particularly low cost and with access to a fund range that would suit Mr M's attitude to risk, this is a case where an investment manager (or DFM) was a long way from being suitable for him. It was also too complex, requiring Mr M to take investment decisions he wouldn't understand. So, in the circumstances of this case I consider it fair and reasonable that Pi compensates Mr M for all his losses. If Pi feels Mayfair is also at fault here, it is free to pursue Mayfair directly after it has compensated Mr M in full.

Putting things right

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

I take the view that Mr M would have invested differently, likely within the Standard Life pension or a combination of the Standard Life and Aviva pensions (in order to retain the with-profits component). It's not possible to say precisely what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr M's circumstances and objectives when he invested.

To compensate Mr M fairly, Pi must:

- Compare the performance of his investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value,* there is a loss and compensation is payable. If the *actual value* is greater than the *fair value,* no compensation is payable.
- Also pay any interest set out below.
- If there is a loss, Pi should pay into Mr M's pension plan, to increase its value by the amount of the compensation and any interest. Pi's payment should allow for the effect of charges and any available tax relief. Pi shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Pi is unable to pay the compensation into Mr M's pension plan, Pi should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is to

ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr M won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr M's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr M 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%.
- In addition, Pi must pay Mr M £250 for the trouble and upset caused by the unnecessary introduction of the SIPP and Mayfair into his retirement planning.
- Provide the details of the calculation to Mr M in a clear, simple format.

Income tax may be payable on any interest paid. If Pi consider that It's required by HM Revenue & Customs to deduct income tax from that interest, Pi should tell Mr M how much it's taken off. Pi should also 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 HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Original transfer values *paid into* IM SIPP	Some liquid/ some illiquid	FTSE UK Private Investors Income Total Return Index	Date(s) of transfers-in	Date of my final decision	8% per annum simple from date of final decision if Pi does not settle within 28 days of receipt of Mr M’s acceptance

Actual value

This means the actual amount payable from the portfolio at the end date. If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the *actual value* of the portfolio. So, Pi should take ownership of any illiquid investments by paying a commercial value for them that is acceptable to the pension provider. This amount Pi pays should be included in the actual value before compensation is calculated.

If Pi is unable to purchase an illiquid investment, its value should be assumed to be nil for the purpose of arriving at the *actual value* of the portfolio. Pi may wish to require that Mr M provides an undertaking to pay Pi any amount he may receive from the investment in the future. That undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Pi will need to meet any costs in drawing up the undertaking.

Fair value

This is what the portfolio would have been worth at the end date had it produced a return using the benchmark.

Any contributions made into the SIPP should be included in this benchmark return from the point they were added. Any withdrawals made from the SIPP should be deducted from the benchmark return from the point they were paid. If there are a large number of deductions and it prefers to do this, I'll accept if Pi deducts them all at the end of the calculation.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr M wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors Income total return index is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.

My final decision

I uphold Mr M's complaint and require Pi Financial Ltd to pay him compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 January 2023.

Gideon Moore
Ombudsman