

The complaint

Mr M complains that Abbey Financial Services (N.I.) Ltd (AFS) gave him unsuitable advice to transfer his three existing Personal Pension Plans (PPPs) to a Self-Invested Personal Pension (SIPP) and invest using a Discretionary Fund Manager (DFM).

Mr M is represented in his complaint by his solicitor. But I'll only refer to him in my decision.

What happened

In 2016, Mr M asked AFS to provide him with financial advice on his existing pension provision. Mr M met with a pensions adviser from AFS on 9 March 2016. AFS completed a fact find which noted:

- Mr M was aged 60. He was married and in good health, and had no financial dependants.
- He was self-employed with a gross monthly income of around £1,300
- He and his wife had a joint monthly surplus income of around £300
- Mr M and his wife jointly owned a property worth £200,000. They had an outstanding mortgage with four years remaining.
- Mr M had savings of £12,000 in cash. His wife had around £7,000 saved in cash.
- Mr M had had three PPPs with two pension providers worth around £55,000. His wife had no private pension provision recorded. Mr M didn't expect to have any other source of income in retirement other than this and the state pension.

Mr M's objectives were recorded as:

- wanting flexible access to his pension from age 65
- building up funds as effectively as possible
- he may need a Tax-Free Cash (TFC) lump sum in one or two years' time to use towards a deposit on an investment property for development with his brother

It was also noted that he wasn't in a position to make additional contributions.

AFS also completed an Attitude To Risk (ATR) questionnaire with Mr M. This recorded that Mr M had a growth objective, and was prepared to take a moderate level of risk. His attitude to risk was later recorded in the suitability report as 'Balanced/Moderately Adventurous'. The ATR questionnaire also recorded that Mr M wasn't an experienced investor.

AFS produced a suitability report for Mr M dated 28 September 2016. It recorded that Mr M's primary objective was to create a pension fund which could be used to provide him and his dependants with an income in retirement. The report stated that Mr M had been unable to

specify the level of income he required at age 65, but that he was aware that he had a shortfall. It also said that he would like access to alternative investments that would give him a fixed rate of return, as he'd been disappointed with the performance of his existing pensions. The report said that Mr M wanted to use: "*a flexible, low charging, tax efficient savings vehicle*".

AFS recommended that Mr M transfer his three existing PPPs into a SIPP with a new provider. It said it was making this recommendation, having considered alternatives which might have lower charges, as it was more suitable for Mr M due to the investment choice it offered. And because it could be managed by a Discretionary Fund Manager (DFM). AFS provided no advice on fund selection as it said that Mr M was going to use a DFM.

The suitability report also explained that AFS would charge Mr M 3.5% of the transferred amount for its initial advice. And that there would be an Annual Fund charge of 1.0% and an Annual Platform Charge of 0.2%, as well as administrative costs for the SIPP.

Mr M completed and signed a SIPP application on the same date the suitability report was produced. His three PPPs were then transferred to the SIPP in October 2016. After the initial advice fee had been deducted, the remaining funds (£53,197.82) were invested through a DFM.

In late November 2018, Mr M took a TFC lump sum of £11,800.

In May 2022, Mr M complained to AFS, through his solicitor, about the suitability of the advice he'd been given in 2016. The following complaint points were made:

- If Mr M's needs had been properly considered, the transfer to the SIPP for the purposes of investing wouldn't have been recommended.
- AFS didn't fully explain to Mr M what his SIPP would be invested in. And it didn't explain to him that his fund would only grow if an underlying investment within the SIPP was successful.
- AFS didn't give Mr M any kind of performance comparison between his existing pensions and the recommended SIPP investments.
- Mr M had limited understanding of the risks involved in moving his pension funds into a SIPP. The SIPP wasn't appropriate for him as he wasn't high net worth, a sophisticated investor or a high-risk investor.
- AFS must've known that Mr M would depend on his pension funds in retirement.
- As Mr M's pension fund was relatively small, it would be particularly vulnerable to adverse investment performance and the impact of policy charges from the SIPP.
- AFS had received commission payments without Mr M's informed consent.
- AFS had breached its duty to Mr M under the FSA's Higher Principles of Business and the Conduct of Business Rules.

Mr M asked AFS to reimburse him for the financial losses he felt he'd suffered because of the advice. He also claimed interest at 8% each year on that loss. And asked AFS to cover his legal costs in bringing his claim.

AFS issued its final response to the complaint on 28 June 2022. It didn't uphold the

complaint. It covered the following complaint points:

- It didn't fully consider Mr M's needs fully when transferring his PPPs to the SIPP
- Mr M's investment was exposed to significant risk as a result of the advice
- Mr M wasn't a sophisticated or high net worth client and shouldn't have been exposed to the impact of policy charges from the SIPP
- It wasn't entitled to receive commission in relation to the investment.

AFS said it had conducted a full fact find and ATR questionnaire and made a recommendation after that. It said that Mr M had needed Flexi-Access Drawdown (FAD) as he wanted to withdraw some TFC for a business venture with his brother. It said that the fact find had established that Mr M didn't need any income from the pension at that time. And that he'd confirmed that he was unhappy with the performance of his existing pensions, which it said were invested in traditional funds. AFS said Mr M was looking to access alternative investments.

AFS said the adviser had explained the concept of a DFM to Mr M and that it had appealed to him. And that although the adviser had also discussed other SIPPs with lower fees, Mr M had agreed with the recommendation as he wanted his funds to be managed on a more active basis to attain better returns.

AFS felt the appointed DFM was responsible for the fund selection and had control of investment matters. It said the DFM would've clarified the risk rating of the investments to Mr M.

AFS said Mr M had been placed into a low charge environment in his SIPP. And that the charges had been fully disclosed to Mr M in the suitability report. AFS also said that it hadn't received any commission payments in relation to the investment.

Our investigator felt that the complaint should be upheld. He felt that the advice was unsuitable. And that AFS hadn't presented Mr M with the full facts, so he hadn't been able to make an informed decision. He felt that it was highly unlikely that the recommendation could be considered value for money, given the size of Mr M's investment. He also questioned the level of risk AFS recommended for future investments.

Our investigator also said there was no evidence that AFS had considered Mr M's options if he remained with his existing providers. He also felt that the recommendation of a DFM was questionable given the sums involved.

Our investigator recommended that Mr M be put back, as close as possible, to the position he would probably now be in if he'd been given suitable advice. He felt he would've remained with his previous providers. He also felt that AFS should pay Mr M £300 for the distress and inconvenience it had caused him.

AFS didn't agree with our investigator. It said that the only investment used within the SIPP was through a regulated entity – the DFM. It also said that FAD wasn't available within Mr M's existing schemes.

Mr M's solicitor told this service that it would contact his previous pension providers to obtain the information it needed so that it could comment on AFS's point about FAD.

AFS made a settlement offer to Mr M through this service on 11 April 2023, although it

maintained that the advice had been suitable. The offer was made without prejudice and without admission of liability. AFS said that the offer was formed: *“on the basis that the advice to transfer was suitable to fulfil Mr M’s goals, but thereafter, he could have been placed in a more cautious fund, based on an attitude to risk of cautious”*. As such, AFS used a specified named fund from a provider it would usually use for a fund of that type as the basis for its loss assessment.

AFS’s loss assessment calculated a total redress of £15,659,82 (after adjustment for the fact that Mr M had already taken his TFC).

This service shared AFS’s settlement offer with Mr M, through his solicitor, for his consideration. The solicitor said that it couldn’t advise Mr M on whether to accept the offer or not as it needed further information, which it was in the process of getting, from Mr M’s previous pension providers.

Mr M’s solicitor continued to chase for the information it needed so it could assess the settlement offer throughout May 2023. It asked the previous providers whether a FAD had been available. And also asked for the current notional transfer value of Mr M’s former plans.

At the end of May 2023, AFS confirmed to this service that its settlement offer remained available. Mr M’s solicitor confirmed that it had received the requested information from his previous providers. But then told this service on 1 June 2023 that it was still waiting for one further notional value. It was also confirmed that FAD was available from both of Mr M’s previous pension providers.

As agreement couldn’t be reached, the complaint has come to me for a review.

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, I’m going to uphold it. I’ll explain why.

When we look at a complaint about the suitability of advice we consider if the recommended actions were suitable for the consumer at the time of the advice, in light of the information we know about the consumer and the product. AFS say that its advice was suitable. But it has made a settlement offer without admission of responsibility.

AFS’s offer assumes that it was reasonable for Mr M to have transferred to the SIPP, but that he should’ve been advised to invest in a more cautious fund after the transfer, in line with a cautious ATR.

Mr M doesn’t think that the advice was suitable. He wants to be put back into the position he would’ve been in but for the unsuitable advice.

We don’t only need to consider whether the recommended actions were suitable for the consumer’s circumstances at the time. We also need to ensure that businesses act in the best interests of the consumer.

From the information I’ve seen, I’m satisfied that AFS did take reasonable steps to establish Mr M’s financial situation and investment objectives. But I’m not persuaded that it then used this information to recommend the most suitable course of action for Mr M to meet his objectives. This is because I’m not persuaded that the advice AFS gave Mr M considered if he could meet his objectives within his existing arrangements. Nor am I persuaded that AFS

has evidenced that it carried out any sort of assessment on the likely outcome of its recommendations compared with Mr M staying in his existing arrangements. I also don't consider the recommendation was cost effective compared with other options that might've been available to Mr M. So I don't believe the advice was in Mr M's best interests.

Mr M appears to have been invested in a large number of individual stocks and shares in the SIPP he transferred to. And I understand he was previously invested in managed funds with his previous pension providers. I've seen no evidence that the SIPP investments would've been more likely to meet his objectives of accessing: "*alternative investments that would give him a fixed rate of return*" than his investments with his previous pension providers, or other funds those providers had available, given Mr M had been "*disappointed with the performance of his existing pensions*". So I've no evidence that Mr M needed, or benefited from, the wide range of investments available under the recommended SIPP through a DFM.

In any event, AFS didn't provide Mr M with any investment advice. Nor did it recommend a particular DFM. So it would've been impossible for AFS to have assessed whether Mr M was more likely than not to be better off by following its recommendation, or by staying in his existing arrangements.

The suitability report said that Mr M wanted to use: "*a flexible, low charging, tax efficient savings vehicle*". I'm not persuaded that the recommended SIPP, plus the use of a DFM, would've been well-suited to meet this objective.

I say this because it's not clear whether the transfer to the SIPP led to higher costs than the previous pension arrangements. This is because it appears that AFS didn't carry out a

cost comparison. And if it did, it didn't provide this to Mr M. But I consider it likely that the SIPP plus the DFM cost more than the existing arrangements, due to the annual costs of the new SIPP/DFM of at least 1.2% a year, plus the costs of individual trades and administrative charges.

Although the 1.2% charge was explained to Mr M in the suitability report, I'm not persuaded that all of the charges were explained to him before he made the decision to transfer to the SIPP. And I agree with our investigator that it was unlikely that the recommendation would provide Mr M with value for money. I say this because Mr M's total pension was relatively small and he had a relatively short period of time to his chosen retirement age. Therefore it would be difficult for him to make up the initial adviser charge of 3.5%.

I also agree with our investigator that Mr M didn't appear to have been an experienced or sophisticated investor at the time of the advice. And while I acknowledge that Mr M seemed to have stated in the ATR questionnaire that his standard of living wouldn't be affected if he lost money on his investments, I consider that AFS should've realised that Mr M would be heavily impacted by such losses given his age, lack of capacity for further pension contributions, level of other savings and lack of other private pension provision. I've seen no evidence that Mr M's capacity for loss was ever properly discussed with him and in my opinion such a conversation should've taken place under his circumstances.

Given Mr M's age and financial circumstances, I'm satisfied that AFS should've advised him against taking a high level of risk with all his private pension savings. Instead, I consider it should've advised him to take a more cautious approach so he could be more certain of having access to the funds he required in future. Therefore I agree with our investigator that AFS shouldn't have recommended the level of risk it did for Mr M.

I acknowledge that AFS has made a settlement offer without admission of liability. It said that Mr M wanted to explore an investment with his brother. And that he wasn't able to do this if

he remained in his existing pension arrangements. So it felt that its advice to transfer was suitable as it allowed him to achieve his goal.

But I can't reasonably say that Mr M couldn't have accessed the TFC he felt he would need from his existing pension plans. I say this because I've seen no evidence that AFS carried out any sort of assessment of what those plans could offer. And because I also understand that FAD was available from both of Mr M's previous pension providers. I also don't agree that AFS's settlement offer puts Mr M back to the position he would most likely be in but for the unsuitable advice. For these reasons, I can't reasonably say that AFS's settlement offer is fair.

From what I've seen, but for the unsuitable advice to transfer to a SIPP and use a DFM, Mr M would still be with his existing pension providers. I say this because I agree with Mr M that the recommendation exposed his pension funds to significant risk which AFS didn't fully advise him on or consider. So I'm satisfied that the investment itself wouldn't have taken place but for the advice.

Putting things right

Fair compensation

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

I take the view that Mr M would've remained with his previous providers. I'm satisfied that what I've set out below is fair and reasonable in this situation.

It should be noted that this compensation doesn't include interest of 8% on any calculated financial loss unless AFS don't settle within 28 days of receiving Mr M's acceptance. This is because this method of redress will put Mr M back as closely as possible to where he would probably be now but for the unsuitable advice.

The compensation also doesn't allow for Mr M's legal costs to be covered by AFS. This is because we wouldn't normally award costs for the complainant's own time in pursuing a complaint, and I've seen nothing here to suggest that Mr M couldn't have managed his complaint himself.

What must AFS do?

To compensate Mr M fairly, AFS must:

- Compare the performance of Mr M's investment with the notional value if it had remained with the previous providers. 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.
- AFS should also add any interest set out below to the compensation payable.
- AFS should pay into Mr M'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 AFS is unable to pay the total amount into Mr M's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've

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 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.
- For example, if Mr M is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr M would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr M £300 for the distress and inconvenience the unsuitable advice has caused him. I can see that given Mr M's age, and the fact that he will be somewhat reliant on his pension savings, the unsuitable advice would've caused distress and affected his retirement planning. However, my recommended redress will put Mr M back to the position he would've been in but for the unsuitable advice.

Income tax may be payable on any interest paid. If AFS deducts income tax from the interest it should tell Mr M how much has been taken off. AFS 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 HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists and liquid	Notional value from previous providers	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mr M's investment had it remained with the previous providers until the end date. AFS should request that the previous providers calculate this value.

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

Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point

on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AFS totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

My final decision

I uphold the complaint. My decision is that Abbey Financial Services (N.I.) Ltd should pay the amount calculated as set out above.

Abbey Financial Services (N.I.) Ltd should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 4 July 2023.

Jo Occleshaw
Ombudsman