

## The complaint

Mr B complains that Pi Financial Limited trading as Diversify Financial Services (“Pi Financial”) wrongly advised him to transfer the value of his existing Personal Pension Plan (“PPP”) to a new Self-Invested Personal Pension (“SIPP”) and use an advisory investment management service provided by Mayfair Capital Limited (“Mayfair Capital”).

Mr B is represented in this complaint by a law firm (“Representative”).

## What happened

The events leading up to this complaint were set out in detail by our investigator in his assessment which he provided to both the Representative and Pi Financial. I don’t intend to repeat here what our investigator stated but will instead provide a summary.

Mr B had an existing PPP provided by Prudential. He couldn’t access benefits flexibly through flexi-access drawdown due to the terms of the PPP. By November 2017, the PPP was valued at about £43,693 and invested in Prudential’s with-profits fund, the underlying asset allocation of which as at 31 December 2016 was:

- 31.3% International Equities
- 26.4% Fixed Interest
- 16.1% UK Equities
- 15.2% Property
- 6.6% Alternative Assets
- 4.4% Cash

Mr B was introduced to Pi Financial by an unregulated firm called UK Life. Following this introduction, Pi Financial obtained information about Mr B and his PPP.

On 20 November 2017, Pi Financial issued its suitability report to Mr B recommending that he transfer the value of his PPP to a new SIPP provided by Intelligent Money. Mr B’s circumstances and objectives were recorded as follows at that time:

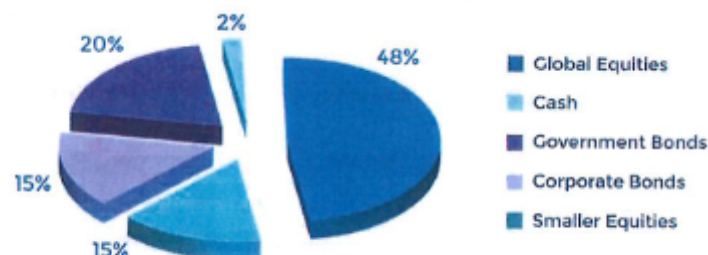
- He was 53 years old, in good health, single with no financial dependents;
- He was a self-employed builder with yearly income of about £40,000;
- His assets comprised his residential home valued at £250,000, £45,000 cash held on deposit and a PPP provided by Prudential (the subject of this complaint) into which he was making net contributions of £56 per month but planned to increase this to £200 per month;
- His debts comprised an interest-only mortgage of about £83,000 on his residential home which was due to be repaid in 2025;
- He wanted to retire at age 60 and receive gross annual income of about £25,000 from that age but realised he may need to defer retirement until age 65;

- He was planning on building some holiday lets over the next three years, some of which would be under his ownership with the intention that these would generate income to help meet his retirement income need. It was also noted that he would contemplate downsizing his residential home in the future to release equity to help fund his retirement;
- He had been disappointed with the investment performance of his PPP in the preceding years and wanted to invest it in “*more exciting assets*” to improve returns;
- He had limited previous investment experience and a ‘*Balanced*’ risk profile.

Pi Financial recommended that Mr B transfer the value of his PPP to the SIPP for the following reasons:

- *“Your pension assets can be invested within an environment akin to your attitude towards risk, providing a wider range of investment choice and a greater potential for return*
- *Your fund value cannot be accessed flexibly as you wish with your current provider and therefore you would like to switch to a new plan which allows all of the access options now available under the pensions freedoms legislation*
- *You would like the funds to be spread across a range of investment choices, to reduce risk and improve opportunity for growth*
- *You want loved ones to benefit from the pension which you have built up, should you pass away, as part of an inter-generational estate planning your family can benefit from with this type of pension*
- *A SIPP will allow you to exercise substantial control as a member over the choice of investments held under your pensions. You want the opportunity to invest your monies in something that is more exciting than present*
- *While invested your fund will benefit from tax advantaged growth*
- *Benefits can be taken at any time from the age of 55”*

Pi Financial recommended that Mr B use an advisory investment management service provided by Mayfair Capital (although in some parts in the suitability report it incorrectly referred to it as a discretionary investment management service) and invest in the ‘*Balanced*’ risk portfolio. The following snapshot of a typical ‘*Balanced*’ portfolio was provided in the suitability report:



The costs associated with Pi Financial’s recommendation were stated as follows:

### Mayfair Capital's charges

- 1.5% commission charge on any dealing

### Pi Financial's charges

- £150 Fund Management Charge
- 4% initial advice charge based on the transfer value paid into the SIPP
- 1% ongoing advice charge based on the fund value of the SIPP

Mr B accepted the recommendation. He entered into a separate contract with Mayfair Capital to open a trading account through which investments would be placed. The transfer from the PPP to the SIPP was completed in January 2018 for a transfer value of £48,042. Over the period until December 2019, Mayfair Capital placed a significant number of trades which generated commission payments. In early December 2019, Mr B contacted Mayfair Capital to tell it that he had decided to withdraw the entire value of his SIPP as a lump sum. He received a total payment of £33,041, which comprised £8,260 as a tax-free lump sum and £24,466 as a taxable lump sum. Mr B was unable to close his SIPP because some shares were then illiquid and couldn't be traded.

### This complaint

The Representative, on behalf of Mr B, complained to Pi Financial that it wrongly advised him to transfer the value of his existing PPP to a SIPP and use the advisory investment management service provided by Mayfair Capital. It said that the advice was negligent and had caused Mr B to suffer a financial loss of about £18,921.

Pi Financial didn't uphold this complaint. It said its role was limited only to recommending a suitable SIPP product and investment manager. In its view, the recommended SIPP product was suitable because the provider, Intelligent Money, was financially strong, provided an excellent service, had a competitive charging structure and offered a wide range of investment opportunities. And it was also satisfied Mayfair Capital was a suitable investment manager after it had carried out due diligence on its proposition in January 2017. It didn't accept responsibility regarding the investment performance of Mr B's SIPP because, in its view, and in line with the '*reliance on others*' rule (COBS 2.4.4R) in the regulator's Handbook, Mayfair Capital was solely responsible for investment decisions and, therefore, any financial losses flowing from these if later deemed unsuitable.

The Representative didn't accept the response provided by Pi Financial and referred the matter to this Service. Our investigator recommended that this complaint be upheld on the basis that there wasn't any credible reason for Mr B to transfer at that time. In summary, the investigator stated that the transfer exposed the value of Mr B's pension savings to a higher level of risk than he realised or was able to tolerate and led to higher charges without good reason. He acknowledged that Mr B was likely attracted to the ability to access benefits flexibly but given that he didn't envisage doing so for at least several years, he didn't need to transfer at that time. Our investigator explained to Pi Financial that its regulatory duty extended beyond simply recommending the SIPP and that it was also responsible for ensuring the intended investment strategy – to be managed by Mayfair Capital – was also suitable for Mr B.

The investigator concluded that Mr B shouldn't have been advised to transfer to the SIPP or invest through Mayfair Capital, and had he been properly informed of the lower cost and range of investment options offered by Prudential he wouldn't have decided to switch. He accepted that Mr B was looking to improve on the performance of his existing PPP, so he proposed compensation on the basis that he would've invested broadly in line with: 50% in

the FTSE UK Private Investors Income Total Return Index and 50% based on the average rate from fixed rate bonds. In addition, he said that Pi Financial should pay Mr B £500 compensation for the stress, trouble and upset caused by the unsuitable recommendation.

The Representative, on behalf of Mr B, didn't express any view on whether it accepted our investigator's opinion and recommended remedy. Pi Financial submitted various contemporaneous documents and repeated its previous assertion that Mayfair Capital was responsible for the investment advice and, therefore, for remedying any financial losses suffered by Mr B.

Since agreement couldn't be reached, this complaint has been referred to me, an ombudsman, to review and decide. This is the last stage of our process.

### **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.

In deciding this complaint I've taken into account the law, any relevant regulatory rules, guidance and good industry practice at the time. I've also carefully considered the submissions made by the Representative, on behalf of Mr B, and Pi Financial. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I'd like to clarify that the purpose of this final decision isn't to repeat or address every single point raised by the Representative on behalf of Mr B or Pi Financial. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. I've considered all the evidence afresh. Having done so, I've reached the same conclusion as our investigator for broadly the same reasons. I've explained my reasons why below.

#### *The regulator's suitability rules and guidance*

Pi Financial was authorised and regulated by the Financial Conduct Authority ("FCA") at the time it advised Mr B. So when it advised him on his retirement planning it was required to adhere to the suitability rules and guidance in the Conduct of Business Sourcebook ("COBS") section in the FCA's Handbook.

Primarily, Pi Financial was required under COBS 2.1.1R to *"act honestly, fairly and professionally in accordance with the best interests of its client"* in its dealings with Mr B. The suitability rules and guidance that applied when Pi Financial provided its recommendation to Mr B were set out in COBS 9. The purpose of the FCA's rules and guidance is to ensure that regulated businesses take reasonable steps to provide advice that's suitable for their clients' needs and to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile. In order to ensure this was the case, and in line with the requirements in COBS 9, Pi Financial needed to gather necessary information for it to be confident its advice met Mr B's objectives and that it was suitable. Broadly speaking, Pi Financial had to undertake a "fact find" process in order to achieve this.

In addition to the requirements set out in COBS 9, the then regulator, the Financial Services Authority ("FSA"), issued a report in December 2008 titled *"Quality of advice on pension switching"* which I think was relevant when Pi Financial advised Mr B. The report summarised the findings of the regulator's thematic review on the quality of advice given to individual since pensions A-day on 6 April 2006 to switch the value of their pensions into a

PPP or SIPP. The regulator stated:

*“We assessed advice as unsuitable when the outcome was the customer switching into one of the following:*

- A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was flexibility of a drawdown option, but there was no evidence that this option was needed).*
- A pension that was more expensive than a stakeholder pension, but a stakeholder pension would have met the customer’s needs.*
- A more expensive pension in order to consolidate different pension schemes, but where the extra cost was not explained or justified to the customer.*
- A new pension and the customer had lost benefits from their ceding pension (for example, guaranteed annuity rates) without these being explained or justified.*
- A pension that did not match the customer’s attitude to risk and personal circumstances.*
- A pension where there was the need for ongoing advice, but this had not been explained, or offered, or put in place.”*

#### Was Pi Financial’s advice suitable?

Pi Financial recorded that Mr B wanted to retire at age 60 and receive gross annual income of about £25,000 from that age but realised he may need to defer retirement until age 65. It used Prudential’s retirement income modeller software to show the sustainability of Mr B’s income need from age 65. Based on this, Pi Financial noted that Mr B’s pension savings were likely to be insufficient to meet his income need during his retirement. I think this was an understatement given the income modeller showed that Mr B would run out of money within two years by age 67.

It appears Pi Financial wasn’t alarmed by this because it was noted Mr B was planning on building some holiday lets over the next three years, some of which would be under his ownership with the intention that these would generate income to help meet his retirement income need and he would also contemplate downsizing his residential home in the future to release equity to help fund his retirement. In my view, the use of holiday lets and downsizing the residential home were, at that stage, merely speculative options. The only thing certain at that point was the value of Mr B’s existing PPP then valued at about £43,693. I think what was important at that stage, bearing in mind Mr B was then aged 53, was to seek – as much as possible – to preserve and maximise the returns (at the lowest cost) from his existing pension fund.

I think it’s fair to say that Mr B was dissatisfied with the investment performance of his existing PPP. In my opinion, Mr B’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 advisers to exercise caution when recommending centralised investment propositions, the FSA said that 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.

I've reviewed how Mayfair Capital invested Mr B's SIPP during the relevant period. Some of the investments could be regarded as high risk and speculative and I note that some later became illiquid. Mr B doesn't 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 Capital would offer – up until that point his investment experience was limited to holding cash on deposit and investing money in a with-profits fund through his existing PPP.

The information sheet produced by Prudential confirmed that the annual investment charge for his PPP was expected to be 1% a year and that Mr B could switch to alternative funds without charge. So the charges under Mr B's existing PPP were within the stakeholder price cap. I don't think there was any need for *"inter-generational estate planning"* when Mr B's existing PPP would offer a return of fund on his death on the same basis as the SIPP since both plans were governed by the same HMRC rules relating to death benefit payments. Or that he needed to transfer at that time to a product that offered flexible benefits when he didn't require access for at least several years.

The value of Mr B's PPP represented his main source of retirement income at that time. In my view, Mr B didn't require ongoing advice (or the associated cost this entailed) and should've stayed with Prudential considering his needs, circumstances, risk profile and option to switch funds within his PPP without charge if he was dissatisfied with the performance of the with-profits fund. I haven't seen evidence Pi Financial adequately considered and discounted this alternative, lower cost option before recommending that he switch into the SIPP and invest through Mayfair Capital.

#### Pi Financial's due diligence into Mayfair Capital

Pi Financial had a duty to ensure any recommended investment manager was appropriate and carry out due diligence on the firm it was recommending, as initially set out in the FSA guidance on centralised investment propositions published in July 2012.

Mayfair Capital was authorised and regulated by the FCA on 3 April 2017. It seems that its intention was to operate as a discretionary investment management service in the future (the suitability report confusingly described Mayfair Capital as providing a discretionary and advisory service) but lacked the necessary 'managing investments' permission at that time. So it provided an advisory service instead. 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 Capital had only recently been established in 2016 and authorised about six months before Pi Financial recommended it to Mr B, so particular care should've been taken. But from what I can see, Pi Financial was relying on due diligence – limited as it was – carried out when Mayfair Capital wasn't even directly authorised at all. Pi Financial's compliance director emailed Mayfair Capital in January 2017, at which time Mayfair Capital was an appointed representative of another firm (which unlike Mayfair Capital 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 Capital 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 Financial showed Mr B in its suitability report. However I see little rigorous interrogation of what approach Mayfair Capital intended to take, other than Pi Financial asking it to specifically confirm in a subsequent email that Mayfair Capital wouldn't invest in non-mainstream or unregulated collective investments. And that only Mayfair Capital advisers holding the CF30 client-facing permission would advise clients.

So, I haven't seen persuasive evidence that Pi Financial “*got under the bonnet*” and really understood what kind of investments Mayfair Capital would consider for Mr B – nearly a year after the above email exchange – before it recommended in November 2017 that Mr B invest with Mayfair Capital. And I've noted that Pi Financial was collecting 1% pa trail fees from Mr B to provide ongoing advice itself, whereas Mayfair Capital claimed to be providing that service for no ongoing fee other than 1.5% dealing commission on each trade. Not only could that have led to confusion as to which firm was reviewing the ongoing suitability of Mr B's portfolio, it should've also led to concerns as to whether Mayfair Capital could afford to provide the service being claimed or advise Mr B appropriately. The dealing commission structure meant that Mayfair Capital would need to keep buying and selling investments in Mr B's SIPP to derive any income.

#### *Pi Financial's view that Mayfair Capital should be held responsible for Mr B's losses*

Pi Financial doesn't accept responsibility for the investment performance of Mr B's SIPP since the transfer because, in its view, and in line with the ‘*reliance on others*’ rule (COBS 2.4.4R) in the regulator's Handbook, Mayfair Capital was solely responsible for investment decisions and, therefore, any financial losses flowing from these.

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

The agent as client rule, in circumstances where it applies, would actually have limited Mayfair Capital's regulatory responsibilities to Mr B. Pi Financial does correctly say that Mayfair Capital 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 doesn't mean to the exclusion of Pi Financial's wider duty of care to Mr B, as a result of recommending Mayfair Capital to him in the first place.

I acknowledge that Mayfair Capital may have recommended investments to Mr B that were too high risk and have lost value and so could also and separately be considered to have caused some of the same losses. However, in deciding this complaint against Pi Financial, I'm satisfied that without its unsuitable recommendation to use Mayfair Capital, those losses could've been avoided.

Overall, I've decided that Pi Financial's recommendation was unsuitable. I say this because, in my view, the switch led to Mr B incurring extra costs without good reason, exposed the value of his pension savings to an inappropriate level of risk that didn't match his attitude to risk and personal circumstances, and didn't produce credible evidence the SIPP would likely produce better investment returns, all of which were unsuitable outcomes described by the regulator in its thematic review on pension switching in December 2008.

It's my view that Mr B's needs could've been met by his existing PPP. It offered a sufficient range of investment funds and had lower charges than the solution recommended by Pi Financial. So in the circumstances of this case, I consider it fair and reasonable that Pi Financial compensates Mr B for all his losses. If Pi Financial feels that Mayfair Capital is also at fault here, it's free to pursue Mayfair Capital directly after it has compensated Mr B in full.

### Putting things right

My aim is that Mr B 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 B would've invested differently, likely within the PPP provided by Prudential. It's not possible to say precisely what he would've done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr B's circumstances and objectives when he invested. What I've set out below is in line with the remedy recommended by our investigator.

To compensate Mr B fairly, Pi Financial 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's a loss, Pi Financial should pay into Mr B's SIPP, to increase its value by the amount of the compensation and any interest. Pi Financial's payment should allow for the effect of charges and any available tax relief. Pi Financial shouldn't pay the compensation into the SIPP if it would conflict with any existing protection or allowance.
- If Pi Financial is unable to pay the compensation into Mr B's SIPP, it should pay that amount direct to him. But had it been possible to pay into the SIPP, it would've 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 B won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. I've decided that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would've been able to take a tax-free lump sum (which he did when he withdrew money from the SIPP in 2019), the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- In addition, Pi Financial must pay Mr B £500 compensation for the stress, trouble and



upset caused by its unsuitable recommendation.

- Provide the details of the calculation to Mr B in a clear, simple format.

Income tax may be payable on any interest paid. If Pi Financial consider that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr B how much it's taken off. Pi Financial should also give Mr B a tax deduction certificate in respect of interest if Mr B 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
Intelligent Money SIPP	Still exists but illiquid	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of Transfer-in to Intelligent Money SIPP	Date of this final decision	8% per annum simple from date of this final decision if Pi Financial doesn't settle within 28 days of receipt of Mr B's acceptance

### **Actual value**

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

If, at the end date, any investment in the SIPP 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, the *actual value* should be assumed to be nil to arrive at fair compensation. Pi Financial should take ownership of the illiquid portfolio or investment by paying a commercial value acceptable to the SIPP provider. This amount Pi Financial pays should be included in the *actual value* before compensation is calculated.

If Pi Financial 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 Financial may wish to require that Mr B provides an undertaking to pay Pi Financial 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 SIPP. Pi Financial will need to meet any costs in drawing up the undertaking.

### **Fair value**

This is what the SIPP would've 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 Financial deducts them all at the end of the calculation.

### **Why is this remedy suitable?**

I've chosen this method of compensation because:

- Mr B wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It doesn't mean that Mr B would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr B could've obtained from investments suited to his objective and risk attitude.

### **My final decision**

I uphold Mr B'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 B to accept or reject my decision before 17 August 2023.

Clint Penfold  
**Ombudsman**