

The complaint

Mr R complains about the advice he received from Pi Financial Ltd trading as Future Wealth Management (FWM) when he transferred a personal pension to a Self-Invested Personal Pension (SIPP).

Mr R says his funds were subsequently invested in high-risk products which lost value and caused him a financial loss.

What happened

There are several parties involved in this complaint. These are;

- Pi Financial Ltd (trading as FWM) - regulated financial adviser
- Horizon Stockbroking Ltd (HS) - regulated discretionary investment manager – in liquidation
- TAM Asset Management (TAM) - regulated discretionary investment manager
- James Hay (JH) - SIPP provider

Mr R says he was introduced to Pi in 2014 through an introducing agent following a cold call.

In April 2014 Pi completed a fact find with Mr R which recorded details about his circumstances. It recorded that Mr R;

- Was 63 years old.
- Had an income of £60,000.
- Had monthly outgoings of £2,000 including expenditure of £50 on Rent/Mortgage and £30 on Life/Savings Policies/Pensions.
- Had a realistic retirement age of 65.

The fact-find also noted that;

'[Mr R] is an experienced investor and is looking for active management for half of his pension via DFM and will manage the other 50% of the pension himself.'

Mr R completed two further documents with Pi which were dated 4 May 2014. One was a 'Knowledge and Experience – Assessment' which listed the types of investments Mr R had previously invested in. It noted Mr R had previously invested in bonds and contracts for differences (CFD's).

The other document was a 'Pension Replacement Contract Form' which included details about Mr R's existing personal pension and the new SIPP. The form recorded the charges and fees for the new SIPP as well as the risk category being 'Adventurous' and the strategy as 'DFM / Self Invested'.

Pi financial say that around April/May 2014 they sent Mr R a suitability report. The report is undated and Mr R disputes when it was provided to him saying the report was likely to have been written in June 2014.

Amongst other things the suitability report said;

Your financial goals, needs and priorities

During our meeting we discussed various aspects of your personal and financial situation, and we agreed that at the present time, your main needs and priorities are:

- *Review your existing personal pension and set up a SIPP*

...

Objectives

During our meeting we discussed various aspects of your personal and financial situation.

At the present time, your prime objective is to review your existing Personal Pension contract with [pension provider] and set up a SIPP to provide you with greater investment choice and flexibility. In particular you would like to investigate a transfer which would provide:

- *You greater fund choices and the ability to manage a part of the portfolio in line with your agreed risk profile.*

You confirmed that you are currently not a member, and will not be eligible to join your company pension scheme.

We have not discussed providing you with a target income in retirement or compared your existing providers projections. You have simply asked that I find a suitable investment fund for 50% of your existing pension plan and via your SIPP you will self-invest the rest in line with your agreed risk profile.

The report said that Mr R's risk profile would lead him to be an 'adventurous' investor. Under capacity for loss Pi said;

'Your capacity for loss is a second key element of your overall appetite towards bearing capital risk i.e. your ability to manage financially if a loss occurs.

As you are going to self-invest 50% of your pension pot and will be responsible for choosing the investments within the SIPP we did not discuss your capacity for loss as you will manage your investments and will manage any capacity for loss yourself with this part of your pension pot.'

In the recommendation section of the report Pi recommended that Mr R use TAM Asset Management as his DFM. It explained that there were various portfolio options available but considering Mr R's 'attitude to risk, tolerance and capacity we have agreed that the most suitable risk profile for you is adventurous'.

Pi went on to also recommend Mr R use JH as his SIPP provider.

Pi say their adviser submitted the SIPP application on 4 May 2014 and completed a new business submission for their compliance department. They've also sent a screen shot of their advisor sending documents relating to Mr R to their compliance department on 6 June 2014.

The JH SIPP opened in August 2014 and received £197,117.25 from Mr R's existing

scheme on 19 August 2014. Pi's fees of £3,942.34 were paid out of the SIPP on 29 August 2014 and £95,000 was transferred from the SIPP account to TAM on 28 October 2014.

On 6 March 2015 £97,500 was transferred from the SIPP account to HS. Mr R also made several regular and lump sum contributions into his SIPP from his employer throughout 2015 and 2016. The lump sums and half of the regular contributions were invested with TAM.

Mr R says he was concerned with the performance of his investments and in May 2016 he sold his investments in order to switch his SIPP to a new provider which happened in September 2016. He says his investment with HS had dropped to £41,571.88 and his total pensions value had fallen to £178,011.44 despite having made contributions of around £27,000.

Mr R made a complaint to Pi dated 1 June 2020. Amongst other things he said Pi had chosen TAM and HS on his behalf but these investments were very high risk and didn't match his risk requirements. He said he was soon to be reaching retirement and was reliant on these pension funds.

Pi didn't uphold Mr R's complaint. In summary they said Mr R had made his complaint too late. They said he was given advice in April 2014 which was more than six years before he complained. And Mr R had been concerned about the fund's poor performance in 2016, which was more than three years before he complained.

Mr R wasn't happy with Pi's response and so brought his complaint to our service. Our investigator said she thought Mr R had made his complaint too late for similar reasons to Pi. But Mr R disagreed. He said the investment into TAM wasn't made until October 2014 and the investment in HS wasn't made until March 2015. Which was within six years of when he made his complaint.

As Mr R disagreed the case has been passed to me for an ombudsman's decision.

I asked James Hay for documentation relating to when the SIPP and investment accounts were opened. They sent various documents and application forms relating to the SIPP. These included;

- A Strand Capital Limited application form – signed on 16 June 2014 (no money transferred)
- The James Hay SIPP application form - signed on 30 July 2014.
- The TAM Asset Management application form – signed on 30 July 2014.
- Charles Stanley & Co application form – signed 21 October 2014 (no money transferred)
- A Horizon Stockbroking Account opening form – signed on 9 December 2014.

I sent Pi and Mr R a provisional decision. In it I said why Mr R's complaint falls within the jurisdiction of this Service. I went on to explain why I was minded to uphold Mr R's complaint that the advice he received was unsuitable, and how Pi should put things right. I've copied the findings from my provisional decision on the jurisdiction and merits of this complaint below which form part of this decision.

Neither Mr R or Pi provided any further submissions or comments for me to consider in response to my provisional decision.

My provisional decision

In my provisional decision I said;

Why I can look into this complaint

The rules around timeframes for bringing complaints to our service can be found in the Dispute Resolution (DISP) section of the Financial Conduct Authority's (FCA) Handbook. I won't repeat the rules here but generally they say a consumer must complain to a business or our service within six years of the event from which their complaint originates. Or if later within three years of when they knew or ought reasonably to have known they had cause for complaint.

There doesn't seem to be any dispute that Mr R had a cause for complaint in 2016 when he grew concerned about his investment's performance. And Mr R didn't complain until 1 June 2020, so more than three years after he had cause for complaint.

Therefore, what I must decide here is when the six-year part of the rule began in order to establish whether Mr R made his complaint too late.

Pi say that their adviser gave Mr R the advice in question in April or May 2014. But Mr R disputes that saying the suitability report quoted documents that he'd signed during meetings in April and May 2014, so he says it was likely produced in June 2014. And even if it wasn't, he says Pi were carrying out regulated activities when the investments were made in October 2014 and March 2015.

I think it's important to note here that advising on pensions and investments often doesn't occur just on one day. It's a process that can span several weeks or months. And includes many activities that are inextricably linked to the act of providing a personal recommendation. This includes things like; gathering information about the consumer, recommended products and investments; producing a written summary of the recommendation; completing application forms to implement the advice; and liaising with existing and new providers.

These ancillary activities are all part of the advice process for which the adviser – in this case Pi – are responsible.

DISP 2.3.1R says we can:

Consider a complaint under the Compulsory Jurisdiction if it relates to an act or omission by a firm in carrying on...regulated activities...or any ancillary activities, including advice, carried on by the firm in connection with them.

I think it's likely Mr R met with Pi on 5 May 2014. The Pension replacement form was signed on this date and Pi's adviser completed the new business form. Pi say that their adviser also submitted the SIPP application on 5 May 2014. And so they say, the verbal and written recommendations would have been given to Mr R before that date.

However, the suitability report says;

'Replacement Business

In reviewing your objectives, I have recommended that you surrender/discontinue the contracts outlined in the Replacement Policy Form.

*The rationale for this is also outlined in the Replacement Policy Form, **which we completed during our last meeting** [my emphasis] and a copy of which is attached to this letter.'*

It's therefore likely that the suitability report was written at some point after 5 May 2014 (when the replacement business form was completed). And Pi have acknowledged that "the suitability report went through many versions before being finally approved".

Pi have so far been unable to provide evidence of these different versions or when the final version was approved. But I still can't say with any certainty when Mr R was sent the suitability report, and whether that was after 1 June 2014 – less than six years before he complained.

However, the suitability report wasn't the last part of Pi's responsibilities in providing the advice, they also completed the application forms for the SIPP and investment manager - TAM.

Pi say that their adviser submitted the SIPP application on 5 May 2014 at the same time as completing a new business form. However, James Hay provided the application form for the SIPP and an application to open an account with TAM.

Both documents were signed by Mr R – electronically in the case of the SIPP application – on 30 July 2014.

Further to that the SIPP application signed on 30 July 2014 had several errors, including errors with Mr R's date of birth and his employer's address. JH have provided communications from Pi which appear to have been received by them on 31 July 2014, pointing to these errors and asking for amendments to be made to the application.

The SIPP opened on 1 August 2014, two days after the application was signed. Which appears consistent with the documents being supplied and signed by Mr R in late July rather than May.

Even if Pi had submitted something to JH in May 2014, they don't appear to have acted on it. And the SIPP wasn't opened until after JH received the SIPP application which was signed in July 2014. And there's no evidence the TAM application was completed and signed by Mr R earlier than 30 July 2014.

Considering the available evidence and full circumstances of this complaint I think it's likely the advice process that Pi was responsible for continued into July 2014 as they were still carrying out activities inextricably linked to the advice they were giving.

As Mr R made his complaint within six years of July 2014, I consider that our service has the authority to consider the merits of his complaint. And while Pi haven't commented on the merits of this case, I've seen sufficient documentation from 2014 for me to consider the merits of Mr R's complaint and provide my provisional findings on them.

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.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

The FCA's Principles for Businesses (PRIN) apply to all authorised firms including Pi. Of particular relevance to this complaint is:

PRIN 2: A firm must conduct its business with due skill, care and diligence.

PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly

PRIN 9: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment.

In addition, where regulated investment advice is given, the more detailed Conduct of Business Sourcebook (COBS) rules apply. Of particular relevance to this complaint are:

COBS 9 which applies where a firm makes a personal recommendation in relation to a designated investment.

COBS 9.2.1(1) says 'a firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client'.

COBS 9.2.1 (2) says that when making a personal recommendation, 'a firm must obtain the necessary information regarding the client's:

(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;

(b) financial situation; and

(c) investment objectives; so as to enable the firm to make the recommendation, or take the decision, which is suitable for him.'

COBS 9.2.2 says:

'(1) A firm must obtain from the client such information as is necessary for the firm to understand the essential facts about him and have a reasonable basis for believing, giving due consideration to the nature and extent of the service provided, that the specific transaction to be recommended, or entered into in the course of managing:

(a) meets his investment objectives;

(b) is such that he is able financially to bear any related investment risks consistent with his investment objectives; and

(c) is such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

(2) The information regarding the investment objectives of a client must include, where relevant, information on the length of time for which he wishes to hold the investment, his preferences regarding risk taking, his risk profile, and the purposes of the investment.

(3) The information regarding the financial situation of a client must include, where relevant, information on the source and extent of his regular income, his assets, including liquid assets, investments and real property, and his regular financial commitments.'

I am also mindful of the general legal position including: the law relating to causation, foreseeability and remoteness of losses.

The suitability report said it was Mr R's objective to find a SIPP to transfer an existing personal pension into and he'd asked Pi to 'find a suitable investment fund for 50% of [his] existing pension plan'. It noted that Mr R planned to self-invest the rest of his funds in line

with his attitude to risk.

In the suitability report Pi made a personal recommendation to Mr R as to which SIPP provider to use. They said:

'I recommend that you consider establishing a Self Invested Personal Pension (SIPP) Plan offered by James Hay Partnership. James Hay Partnership was chosen over the other providers on the original research due to their low annual management charge, low set up fee and quality of service.'

Pi also made a personal recommendation as to which investment manager, and portfolio Mr R should invest in within his JH SIPP. They recommended TAM Asset Management saying:

'In order to determine the most appropriate offering available I have undertaken research via an independent research agency Defaqto. Their due diligence and research notes cover 58 discretionary offerings from 36 providers. This research was used to ensure that the potential providers considered were:

- Established*
- Profitable*
- Offered an appropriate service*

We are looking for proactive portfolio management at a reasonable cost.'

After providing information about TAM's portfolio options they said;

'After due consideration of your attitude to risk, tolerance and capacity we have agreed that the most suitable risk profile for you is adventurous.'

The suitability report didn't consider what Mr R would do with the remaining 50% of his funds. So, I've first considered whether Pi was entitled to restrict their advice to the recommendation of a SIPP provider and a DFM for only half of Mr R's funds.

The purpose of Pi's regulatory duties under FSMA (and COBS) is to provide consumer protection taking into account the differing risks involved in different kinds of investments, the differing degrees of experience and expertise consumers have and the needs consumers may have for the timely provision of information and advice that is accurate and fit for purpose (Section 1B FSMA).

When recommending the SIPP, Pi needed to have a reasonable basis for believing that their recommendation would meet Mr R's objectives and that he was able to bear any related investment risks. Mr R's recorded objective for transferring to the SIPP was the access to a wider range of investments through a SIPP and DFM.

I consider the risks of Mr R transferring his existing pensions and the risks of his intended investments through the SIPP with these monies were related to the establishment of the SIPP itself. Applying COBS 9.2.2, I'm satisfied Pi couldn't simply ignore the context of why Mr R wanted a recommendation for a SIPP and what Mr R was intending to do once the SIPP was established.

I consider that in order to advise on the merits of setting up a specific SIPP product, Pi needed to have regard to Mr R's wider circumstances including how his funds were currently

invested and what the intended investment strategy would be. Assessing the suitability of a SIPP in isolation without considering the whole transaction is not reasonably possible.

To reiterate this point, the FSA published an alert in 2013 when they became concerned that regulated financial advisers were misinterpreting the rules. The alert focussed on unregulated investments which were introduced by unregulated introducers as these held particular risks for customers, however I consider the principles here still apply where regulated investments are concerned. The alert said:

*'It has been brought to the FSA's attention that some financial advisers are giving advice to customers on pension transfers or **pension switches** [my emphasis] without assessing the advantages and disadvantages of investments proposed to be held within the new pension..'*

'The FSA's view is that the provision of suitable advice generally requires consideration of the other investments held by the customer or, when advice is given on a product which is a vehicle for investment in other products (such as SIPP's and other wrappers), consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments in unregulated schemes.'

'Financial advisers using this advice model are under the mistaken impression that this process means they do not have to consider the unregulated investment as part of their advice to invest in the SIPP and that they only need to consider the suitability of the SIPP in the abstract. This is incorrect.'

'For example, where a financial adviser recommends a SIPP knowing that the customer will transfer out of a current pension arrangement to release funds to invest in an overseas property investment under a SIPP, then the suitability of the overseas property investment must form part of the advice about whether the customer should transfer into the SIPP. If, taking into account the individual circumstances of the customer, the original pension product, including its underlying holdings, is more suitable for the customer, then the SIPP is not suitable'

It specifically referred to cases where advisers were under the false impression they could advise on the suitability of a SIPP in the abstract. In 2014 the FSA issued a further alert in which they reiterated [emphasis added]:

*'Where a financial adviser recommends a SIPP **knowing** that the customer will transfer or switch from a current pension arrangement to release funds to invest through a SIPP, then the suitability of the underlying investment must form part of the advice given to the customer. **If the underlying investment is not suitable for the customer, then the overall advice is not suitable.**'*

*'The initial alert outlined our view that where advice is given on a product (such as a SIPP) which is intended as a wrapper or vehicle for investment in other products, provision of suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments (**whether or not such investments are regulated products**).*

*Despite the initial alert, some firms continue to operate a model where they **purportedly restrict their advice to the merits of the SIPP wrapper.**'*

I appreciate that the alert focussed on particular situations and it didn't mention explicitly situations where a second regulated party was involved to give investment advice. But the essence of the alert, in my view, was to remind advisers that they couldn't just advise on a

SIPP in isolation, but that to comply with their regulatory obligations they needed to consider the consumer's wider circumstances and whether what they were intending to do was suitable and in their best interest.

It follows that in order to give suitable advice on the SIPP Pi needed to consider Mr R's wider circumstances and the suitability of the whole transaction, i.e. the switch from a personal pension to a SIPP, the suitability of a particular SIPP product and provider and the underlying investment strategy.

I also point to COBS 2.1.2R which sets out clearly that a firm must not seek to exclude or restrict; or rely on any exclusion or restriction of any duty or liability it may have to the client under the regulatory system. So Pi couldn't limit their obligation in COBS 9 by taking instructions from Mr R to only consider the SIPP wrapper in isolation.

Pi and Mr R were in an advisory relationship where Pi was the expert, and they had a duty to meet their regulatory obligations. As explained above COBS 9 required Pi to consider the wider suitability of Mr R's intended transactions when recommending a SIPP - whether he requested this or not. Pi had to consider the suitability of the whole intended transaction including the pension switch and where Mr R intended to invest after the transfer. They failed to do this and therefore I consider they did not act fairly or reasonably when providing their advice to Mr R.

Was the advice suitable

COBS 9 required Pi to take reasonable steps to provide Mr R with a suitable recommendation, so I've considered whether they met this requirement.

Pi's suitability report says that through discussions with Mr R, and the completion of a knowledge and experience form, they assessed his attitude to investment risk as 'adventurous'. And there's some evidence from the time to support that Mr R was happy to take higher risks with his investments. Mr R had recently been investing in CFD's and Pi recorded he'd held shares and bonds.

However, Pi's responsibilities didn't stop at establishing Mr R's investment experience and attitude to risk. The regulators rules said Pi also needed to know enough about Mr R to ensure he was able to 'financially bear any related investment risks consistent with his investment objectives'. It wasn't good enough just to know that Mr R had an adventurous attitude to risk, they needed to ensure he had the capacity for loss for such an investment. And I don't think Pi did. I'll explain why.

Pi's fact-find only recorded limited details about Mr R. The section to record income and expenditure only showed Mr R's Income of £60,000 and expenditure of £2,000 a month including £50 for mortgages/rent. It didn't record any information about any other pensions, savings or assets Mr R had to rely on in retirement.

Pi also failed to assess in any real detail Mr R's likely required income in retirement and how that could be achieved through his pension or other assets. Considering Mr R was 63 at the time of the advice, it should have been an important consideration when assessing Mr R's capacity for loss.

In the suitability report Pi said;

'We have not discussed providing you with a target income in retirement or compared your existing providers projections.'

And;

'As you are going to self invest 50% of your pension pot and will be responsible for choosing the investments within the SIPP we did not discuss your capacity for loss as you will manage your investments and will manage any capacity for loss yourself with this part of your pension pot.'

So, Pi didn't assess Mr R's target income or capacity for loss which meant they couldn't say with any certainty whether Mr R was able to financially bear the risk of having 50% of his funds invested in an adventurous portfolio. They also didn't compare Mr R's existing funds projected performance against their recommendation, meaning Mr R couldn't decide whether the transfer was in his interests from an informed position.

Mr R says he was reliant on this pension to provide an income in retirement and Pi's fact find didn't record any other pensions, savings or investments. He was 63 years old at the time of the advice and Pi recorded a retirement age of 65 although also said he wouldn't need to draw an income at that point. Meaning he had little time to recover from any losses he might suffer. So, it was vital that Pi considered if Mr R could afford to make significant losses with his pension. And the evidence demonstrates he couldn't. So Pi shouldn't have recommended he invest 50% of his funds in an adventurous portfolio.

Pi said that as Mr R was self-investing the other 50% of the funds, he could manage his own capacity for loss. But the regulator had also said Pi needed to ensure they knew enough about their client to be satisfied their recommendation was 'such that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.'

Mr R had answered in his knowledge and experience form that he would normally receive advice on his investments and didn't have any experience in requesting transactions on an execution-only basis. So, while Mr R did have experience in investing, I don't think the evidence supports that he had experience in managing his portfolio himself or ensuring that his capacity for loss was managed through balancing the risk in his portfolio. Allowing Mr R to manage 50% of his funds himself, without such experience, wasn't in his best interests. Especially when the 50% of funds that Pi did recommend were in an adventurous portfolio that in its nature was likely to see fluctuations in its value.

If Mr R self-invested his 50% into high-risk funds, the type of which like CFD's Pi knew Mr R had traded previously, his overall portfolio was likely to carry a higher risk far outweighing his capacity for loss.

It's unclear from the paperwork whether Pi knew in this particular case that Mr R was planning to invest through HS when they gave their advice on the SIPP. And it's possible Mr R made that decision later in the year as Mr R opened two other accounts on an execution only basis with Strand Capital and Charles Stanley when the SIPP was first opened. Although no funds were ever transferred to either platform.

However, I've seen that Pi sent James Hay the instruction to move 50% of Mr R's funds to HS in February 2015. And I'm aware that Pi's adviser had known about similar transactions from other clients. So, on balance I think it's likely Pi knew that Mr R, like other clients introduced by unregulated introducers, would invest through HS.

Even if Pi didn't know about Mr R's intentions to invest through HS, for the reasons I have set out previously, the suitability of the SIPP couldn't be established without confirming the suitability of the underlying investments. So, Pi shouldn't have recommended the switch when it didn't know what level of risk around 50% of Mr R's portfolio was going to be

exposed to. Pi ought to have found out how Mr R intended to manage the portfolio and couldn't make a recommendation without this information.

In summary, I think Pi should not have recommended the switch to a SIPP to Mr R. They should have explained that given his limited assets, he couldn't financially bear the risks with his retirement funds to invest in an adventurous portfolio, even if this only accounted for half of his pension fund.

In my view Pi were in breach of the Principles and COBS when they recommended the SIPP and investment without knowing that Mr R could financially bear the recommended risk. Pi's role wasn't to simply transact what Mr R might have thought he wanted. The adviser's role was to really understand what Mr R needed and recommend what was in his best interests. They didn't pay due regard to Mr R's interests and did not take reasonable steps to ensure that their personal recommendation was suitable for Mr R, as per their regulatory obligations. Therefore, I do not consider that Pi's actions in their dealings with Mr R were fair or reasonable in the circumstances.

As I've said, Pi couldn't just look at half of Mr R's funds without considering what was happening to the other half. They say it was Mr R's objective to self-invest these funds, but they'd also recorded he had no previous experience of managing his own investments and had previously relied on advice for his investments. And when Mr R's SIPP was opened, he didn't make any self-trades. After several months his funds were handed over to a single DFM to manage - which seems at odds with Pi's stated objective. Based on the evidence I've seen I don't think Mr R had a genuine need or the required experience to self-invest 50% of his pension which Pi should have made clear to him.

Would Mr R have transferred his pension to a SIPP anyway?

Pi may argue that even if they had provided Mr R with risk warnings or refused to recommend the SIPP, he would have gone ahead with the transfer with someone else. I've carefully considered this argument, however on balance I think Mr R would have listened to Pi if they had clearly told him they couldn't recommend a SIPP without knowing his intended investments and pointed out his attitude to investment risk may be at odds with his capacity for loss.

I think on balance if Pi, as a regulated adviser and independent third party, had told Mr R they couldn't recommend the SIPP without knowing full details of how his pension was going to be managed; told him the limited information it did have indicated the intended investments weren't suitable for his circumstances; and told him he couldn't afford to risk his pension in this way, he likely would have decided not to proceed.

I'm not persuaded the evidence suggests Mr R was so strongly motivated to make the transaction that he would have decided to press ahead with it against professional expert advice. For the reasons I have given above, I'm satisfied that Mr R would more likely than not have remained with his existing pension arrangements if Pi had explained the position in full and recommended against the SIPP.

Fair compensation

I have found that Pi gave Mr R unsuitable advice and if it wasn't for their advice, Mr R more likely than not would have remained in his personal pension. Having considered all the evidence and arguments, I consider it fair that Pi compensates Mr R for any losses he suffered by transferring into the SIPP and investing into TAM and other high risk investments through HS.

I'm aware that in similar complaints Pi have said they can't be required to pay compensation which is outside of their legal scope of responsibility and which is too remote to be recoverable as a matter of law.

Pi's scope of duty was to take reasonable steps to give a suitable recommendation. This included understanding Mr R's knowledge and experience, objectives and financial situation. Part of this duty was the consideration of the pension switch and the underlying investment in the SIPP as explained above.

Pi breached their regulatory duties when they recommended the switch to a SIPP. For the reasons I have given earlier in the decision, I think Mr R would have likely remained in his existing pensions but for Pi's failings. So Mr R wouldn't have been in the SIPP or HS account at all if Pi had met its obligations under COBS and PRIN. And consequently, he wouldn't have suffered the investment losses he did. I therefore consider the losses Mr R suffered from the high-risk investment are related to Pi's unsuitable advice.

Pi may argue that HS, who was also a regulated firm, had their own obligations towards Mr R and it was their investment strategy that ultimately caused Mr R's losses. And any issues with the way in which HS traded were not issues that could have been foreseen by Pi and the losses incurred are therefore too remote.

I recognise that HS also had regulatory obligations and it's possible that their actions may have also separately caused some of Mr R's loss. And I've taken into consideration that, in principle, if HS acted negligently or fraudulently, such actions might represent a break in the chain of causation.

In these particular circumstances, however, I don't think Mr R's losses were unforeseeable. Pi were aware of Mr R's previous investments into higher risk products like CFD's. And should have been aware of the investment strategy several of their clients had entered with HS. They ought to have known Mr R may invest in high-risk and speculative investment products and their fact find showed Mr R didn't have the capacity for loss for such an investment. So, I'm satisfied the real risk of Mr R suffering substantial losses and even the risk of total loss of his pension would or should have been foreseeable to Pi.

Pi knew of the high risks and significant losses Mr R could suffer by self-investing his pension funds or investing with HS. If Pi had given Mr R suitable advice these losses would have been prevented.

I can't consider a complaint against HS as they are in default. In the circumstances of this case I think it's reasonable to award fair compensation against Pi notwithstanding any potential break of chain of causation.

This is because I'm putting Mr R as far as possible in the financial position he would be in but for Pi's unsuitable advice. Mr R wouldn't have lost out at all but for Pi's failings to take reasonable steps to ensure their advice was suitable and Pi benefitted financially [in their role as independent financial advisors] from advising on this unsuitable transaction. So I consider it fair that Pi should compensate Mr R. I think apportioning responsibility to Pi for the whole of the loss represents fair compensation in this case.

In my view Mr R's losses flowed from Pi's failures in regard to COBS and PRIN as I have described. I don't think the losses are too remote or that I am departing from the law. In all the circumstances, I'm satisfied it's fair compensation that Pi compensates Mr R for the losses he suffered by transferring his pension into a SIPP and from there into high-risk investments.

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.

I've also considered again my provisional decision.

Neither side provided any new evidence or submissions in response to my provisional decision for me to consider. Therefore, I see no reason to depart from the findings I've already reached in this case. So, for the reasons I've explained in this and my provisional decision, my decision to uphold the complaint remains the same.

Putting things right

In awarding fair compensation for Mr R's losses my aim is to put Mr R as close as possible to the position he would probably now be in if he had been given suitable advice by Pi.

In my view, for the reasons given above, Mr R would more likely than not have stayed in his existing arrangements if Pi had followed their regulatory duties and not recommended the SIPP.

Mr R was advised to switch his pension again to a new provider with new investments on 08 September 2016. This advice was given by the same adviser, however in his role as an adviser for a different firm who wasn't an appointed representative of Pi. As the advice in 2016 forms a new advice point which Pi is not responsible for, I consider it fair and reasonable to stop loss calculations on this date. However, I also considered that Mr R will have lost out on investment returns on this loss amount between then and now. So, losses need to be brought up to date as set out below.

Pi should request a notional value from Mr R's previous pension provider. Pi should calculate compensation by comparing the notional value that Mr R's existing pension would have been on 08 September 2016 when it was transferred to a new provider (Value A) with the value of his SIPP (Value B) on the same date.

If Pi are unable to ascertain the notional value from Mr R's previous pension provider, to calculate Value A they must calculate what the pension would have been worth on 08 September 2016 had it produced a return using the benchmark - The FTSE UK Private Investors Income total return index.

If Value A is higher than B, then the difference between A and B is the loss. This loss amount should be revalued in line with the FTSE UK Private investors Income Total Return Index from 08 September 2016 until the date of my final decision.

I consider this benchmark fair as:

- Mr R wanted capital growth and was willing to accept some investment risk.
- 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.
- 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 R's circumstances and risk attitude.

When calculating Value A, any withdrawal, income or other distribution out of the SIPP should be deducted from the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I'll accept if they are totalled and all those payments deducted at the end instead of deducting periodically. Any additional sum paid into the SIPP should be added to the Value A calculation from the point in time when it was actually paid in.

The compensation amount should if possible be paid into Mr R'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 R as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid. If Mr R hasn't yet taken any tax-free cash from his plan, 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 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

In addition, Pi Financial Ltd should pay Mr R £300 for the distress suffered when he realised he had lost significant parts of his pension.

Pi Financial Ltd should pay interest at the rate of 8% simple per annum on the compensation calculated as at the date of decision if it's not paid to Mr R within 28 days of us notifying Pi Financial Ltd that Mr R has accepted my final decision.

Income tax may be payable on any interest paid. If Pi Financial considers it's required by HM Revenue & Customs to deduct income tax from the interest, it should tell Mr R how much it's taken off. It should also give Mr R a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Details of the calculations should be provided to Mr R in a clear and simple format

My final decision

My final decision is I uphold this complaint and require Pi Financial Ltd trading as Future Wealth Management to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 27 March 2023.

Timothy Wilkes
Ombudsman