

## **The complaint**

Mr S complains that Future Wealth Management Ltd (FWM), an appointed representative of Pi Financial Ltd (Pi), gave him unsuitable advice to switch two personal pension plans to a Self-invested Personal Pension (SIPP) and invest with a discretionary fund manager (DFM).

## **What happened**

In 2017 Mr S met with an unregulated introducer to FWM who I'll refer to as DG.

DG carried out a fact find to record Mr S's circumstances at the time, his objectives, risk profile and investment experience. It's recorded that;

- Mr S had two personal pensions with L&G which were invested in With-Profits funds. The transfer values of the two plans were around £45,000 and £12,000 respectively.
- Mr S wasn't working at the time due to a long-term illness. He rented his home and had no other assets.
- He had an attitude to investment risk of 'lowest medium'.
- He wanted to access his pension funds 'as and when' he needed. He also wanted increased flexibility in line with his attitude to investment risk.

A suitability report written on FWM headed paper was produced and sent to Mr S. It recommended a transfer of both L&G pensions to a SIPP with London & Colonial (L&C). The report went on to recommend an investment with a DFM – SVS Securities – in their Income Model Portfolio.

The suitability report noted Mr S had the following objectives which formed the basis for recommending the transfer. These were;

- He wished to consolidate his pensions.
- He wanted to take tax free cash (TFC) at age 55 and leave the rest invested as he didn't know when he would fully retire.
- He wanted a good standard of living in retirement as well as flexibility on how he took his income.

Mr S accepted the recommendation. Application forms for the SIPP and investment were submitted and the transfer was completed on 1 February 2018. The amount transferred was £58,730.12.

On 2 February 2018 £56,306.59 was transferred to SVS to be invested. SVS securities was placed in Special Administration on 5 August 2019 and its client book was acquired by ITI Capital in June 2020.

ITI Capital returned £18,450.79 to Mr S's SIPP on 27 September 2022.

Mr S, through his representative complained to Pi. He said that the advice he'd been given was unsuitable and had caused him to suffer a financial loss.

Pi said neither FWM nor Pi had given the advice Mr S was complaining about. They said the evidence demonstrated that the advice was given by the unregulated introducer – DG - and as such they said they weren't responsible for the impact of that advice.

Mr S brought his complaint to our Service. Pi didn't think our Service had the authority to look into the complaint as they maintained that Mr S wasn't their customer for this advice. Pi provided detailed submissions in support of their arguments. In summary they said the advice was given solely by DG without the knowledge or the authority of FWM. They say DG was acting in an unregulated capacity and didn't have any agreement with Pi to provide advice. So, they say they aren't responsible for this advice that was given by DG.

Our investigator looked into things and concluded that there was sufficient evidence to show the advice was given by FWM and therefore Pi were responsible for it. So, the advice fell within our jurisdiction to consider. Our investigator went on to conclude that the advice was unsuitable and asked Pi to put things right.

Pi disagreed with our investigator and so the complaint has been passed to me to decide.

### **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 first of all considered whether our Service has the jurisdiction to consider this complaint. Pi maintain that the evidence demonstrates the advice was given by DG who wasn't authorised by them to provide advice under their agreement with him or FWM.

Our rules say that I can consider a complaint if it relates to an act or omission by a firm carrying out regulated activities. This also includes activities for which the firm is responsible (including the business of any appointed representative or agent for which the firm have accepted responsibility) [DISP 2.3].

There's no dispute that it was DG who met with Mr S and completed the fact-find documentation and other paperwork. And Pi claim it was DG and not FWM who provided advice to Mr S.

I've thought carefully about all of the evidence before me along with the arguments that Pi has made. Taking everything into account, I'm satisfied it's most likely FWM advised Mr S to switch his pensions and invest through SVS Securities. In the circumstances here, there are several things that satisfy me it's most likely FWM advised Mr S:

- Mr S signed a 'Client agreement' with FWM on 14 September 2017.
- A 'Client Fact Find' recorded on FWM headed paper was completed and signed by Mr S on 14 September 2017.
- Mr S was provided with a Defaqto research report on the proposed SIPP. At the footer of each page, it noted '*Research report prepared by [HY – the director of FWM] using Defaqto Engage*'.

- A Pi financial 'Pension replacement contract form' detailing the proposed transfer from Mr S's personal pensions to L&C was completed and signed by him on 15 October 2017
- The SIPP application form, in the section titled 2.1 Financial Adviser Details named HY as Mr S's adviser, gave HY's FWM email address and said that he was working for Pi. It also said "Yes" next to the statement:

*"Advice given which takes into account the suitability of both Simple Investment SIPP and the underlying investment strategy. My/our client is following the advice given."*

- The advice and annual fee structure were set out in the SIPP application under the heading 3. Financial Adviser Remuneration. This stated that a charge of 3.25% of the value of any transfer into the SIPP would be applied and a 1% annual fee would be paid to Mr S's adviser. And I can see from the SIPP statement that these fees were paid by way of deductions from the fund.
- The SIPP application also showed under the heading 4.1 Initial Investments that 100% of the funds were to be allocated to the Investment Manager SVS Securities.
- On 20 October 2017, FWM forwarded the application form for SVS securities to L&C. The letter accompanying the paperwork was written on FWM letterheaded paper and was signed by FWM's administrator, Ms Y.
- L&C emailed HY on receipt of the application form for Mr S saying 'Thank you for the application for the above client'. The email was sent to HY using an alternative email address to his FWM email address. But I don't think this changes the fact that it shows HY was aware of and involved in the opening of the SIPP. L&C also copied HY on the same email address, into an email that it sent to Mr S on 12 January 2018 confirming the establishment of the SIPP.
- L&C emailed HY on his alternative email address on 1 February 2018 confirming that they'd received Mr S's funds and would shortly be paying HY the initial fee of £1,908.73.
- A letter from the job centre to Mr S seems to have been certified as a true copy of the original on 15 January 2018. It is stamped with HY's name, business address and phone number, with a signature. I note that Pi disputes this and says that the signature does not resemble the one it has on record for HY, however, on balance I think it is more likely than not that this document was certified by HY. I say this largely because, as I've concluded above, FWM were named as Mr S's advisers in the application process.

So, although I haven't seen anything to specifically show that FWM submitted the application, I'm satisfied that on the balance of probabilities it did, and that FWM were involved in the process of making the arrangements for the investment in SVS.

The suitability letter dated 19 January 2018 clearly showed that advice was given. And I'm satisfied it's most likely HY was aware of the content of this letter and allowed it to be sent in his name, even if he didn't draft it himself. I note Pi has questioned the validity of the letter and the fact it wasn't signed by HY. But from the evidence I've detailed above, it's clear he, in his role with FWM, was involved in what was happening. He was also aware of L&C receiving an application from Mr S who was referred to as his client and he was aware he was being paid a significant fee from Mr S's SIPP.

If HY wasn't aware of Mr S, or the advice he'd been given, it's likely HY would have questioned these emails and the payments received. But I've seen no evidence he did that. Taking everything into account, I don't think there's enough to reasonably conclude the recommendation letter was created and sent without HY's knowledge.

As well as the individual documents I consider the wider circumstances at play here. Specifically, Pi were able to provide our Service with all of the key documents typically generated during an advice process. Those include a fact-find, client agreement, suitability report and application forms all on FWM or Pi headed paperwork. It's difficult to envisage a situation where these would be in Pi's possession if it wasn't aware of or involved in the advice process. It's notable too that they'd received payment for the recommendations recorded in those documents.

My conclusion is therefore, on the balance of probabilities, that HY, in his role as FWM, did give advice to Mr S about the transfer to the SIPP. I'm also satisfied that he arranged the associated investments with SVS Securities. So, in summary, regulated activities were carried out by FWM that Pi were ultimately aware of and responsible for.

Having concluded that Pi was ultimately responsible for the advice Mr S received, for ease, I'll now refer to Pi when talking about the actions of Pi and FWM.

As our Service has the authority to look into Mr S's complaint, I've then gone on to consider the merits of his 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 is COBS 9 which applies where a firm makes a personal recommendation in relation to a designated investment.

The purpose of the rules and guidance is to ensure that regulated businesses like Pi take reasonable steps to provide advice that is suitable for their clients' needs and that 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 here, and that any recommendations met the requirements in COBS 9.2.2R, Pi needed to gather the necessary information for it to be confident that its advice met Mr S's objectives and was suitable. They also needed to make sure he could financially bear the risks of any recommendation made.

In 2009 the Financial Services Authority (now FCA) also published a report and checklist for pension switching that is still applicable today. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason.
- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age.
- They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances.
- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

There's no evidence that the L&G pensions contained any kind of guarantees that were lost during the switch to a SIPP. So, I don't think the switch was unsuitable for that reason. However, I think some of the other issues highlighted by the regulator were present in Mr S's switch.

It should have been clear to Pi from the fact-finding exercise they carried out that Mr S's responses indicated he was a low risk, inexperienced investor with no other assets on which to rely and someone for whom traditional low-cost pension arrangements would have been more appropriate.

Mr S had existing pension funds of around £58,000. These were his only recorded pensions in the fact-find which made it all the more important that they weren't subject to undue risk or costs that were likely to erode his funds. But Mr S was advised to switch his pensions to a SIPP with a DFM arrangement in place.

Given the relatively modest funds available to Mr S, it's unlikely that he would've benefited from or needed the services of a DFM especially when that was likely to be a more complex and expensive arrangement.

The new SIPP wasn't a low cost or traditional pension arrangement. And the costs associated with the SIPP were greater than Mr S's existing pensions. The overall charges associated with Mr S's L&G pensions were 1% per annum. In contrast the SIPP had an initial advice charge of 3.25%, a setup charge of £100, an annual maintenance charge of £199, fund charges of 0.75% per annum plus transaction charges, and ongoing advice charges of 1% per annum.

Although there may have been some advantages to taking out a SIPP in the form of greater flexibility, I'm not persuaded that Mr S, with his modest pension funds and investment inexperience, really needed access to a wider range of investments and especially via a DFM. And there appears to have been little thought about when and how Mr S would access his funds flexibly.

I say that because I've seen no evidence that Pi really explored what Mr S's requirements were in retirement and how accessing his benefits flexibly would achieve that. Pi noted Mr S had an objective of affording the standard of life he was accustomed to in retirement. But they failed to demonstrate how their recommendation helped achieve that objective. Pi also didn't explain why they thought Mr S needed TFC at age 55. He had no recorded debts and his income appeared to sufficiently cover his expenditure at the time. This is something that I'd expect Pi to explore and record information about.

There's also no evidence Mr S was particularly interested in where his funds were invested or that he had the knowledge or experience to understand the additional costs of the DFM model and the types of investments that would be made on his behalf.

I've seen nothing to suggest that Mr S was particularly unhappy with his existing arrangement which was already broadly invested in line with his attitude to investment risk. But even if Mr S was unhappy, I think it's likely that there would have been cheaper alternative options, such as a stakeholder pension, that likely would have met his needs. Taking everything into account, I'm satisfied it ought to have been clear to Pi that there was no obvious justification for Mr S to move from his existing pension schemes into a more complex and expensive SIPP and the subsequent investment in SVS.

Pi has argued that SVS's misadministration caused Mr S's loss, so I have considered this as part of my decision. But I remain of the opinion that the root cause of any loss Mr S suffered was Pi's advice. This is because without Pi's involvement in the switch of the pensions and investment in the SIPP, Mr S wouldn't have invested in SVS. So, in short, all of Mr S's loss stems from the fact that Pi facilitated the inappropriate switch to the SIPP, which facilitated the subsequent investment.

If Pi still believes that the other parties actions contributed to the losses, it can take these concerns up directly with them.

## **Putting things right**

### **Fair compensation**

My aim is that Mr S 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 S would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr S' circumstances and objectives when he invested.

### **What must Pi do?**

To compensate Mr S fairly, Pi must:

- Compare the performance of Mr S' investment with the notional value if it had remained with the previous provider. 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.
- Pi should also add any interest set out below to the compensation payable.
- Pi should pay into Mr 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 Pi is unable to pay the total amount into Mr S' pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the 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 S won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr S' actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr S 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 S would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr S £350 for the distress and inconvenience caused to him by the fear of losing his pension provision and the associated disruption to his retirement plans.

Income tax may be payable on any interest paid. If Pi deducts income tax from the interest it should tell Mr S how much has been taken off. Pi should give Mr S a tax deduction certificate in respect of interest if Mr S 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
Options (L&C) SIPP	Some liquid/some illiquid	Notional value from previous provider	Date of pension switch	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.

It may be difficult to find the *actual value* of the portfolio. This is complicated where an asset is illiquid (meaning it could not be readily sold on the open market) as in this case. Pi should take ownership of any illiquid assets by paying a commercial value acceptable to the pension provider. The amount Pi pays should be included in the actual value before compensation is calculated.

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

### ***Notional Value***

This is the value of Mr S' investment had it remained with the previous provider until the end date. Pi should request that the previous provider calculate this value.

If the previous provider is unable to calculate a notional value, Pi will need to determine a

fair value for Mr S' investment instead, using this benchmark: For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

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

I've decided on this method of compensation because:

- Mr S wanted Capital growth with a small risk to his capital.
- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.
- 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 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 S into that position. It does not mean that Mr S would have 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 S could have obtained from investments suited to his objective and risk attitude.

### **My final decision**

I uphold this complaint. My decision is that Pi Financial Ltd should pay the amount calculated as set out above.

Pi Financial Ltd should provide details of its calculation to Mr S in a clear, simple format.

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

Timothy Wilkes  
**Ombudsman**