DRN-4010422

The complaint

Mrs L, in her capacity as administrator of Mr L's estate and as the beneficiary of his pension, has complained that Mr L was given unsuitable advice by one of Pi Financial Ltd's appointed representatives to switch his personal pension to a self-invested personal pension ("SIPP") and to then use an investment stockbroker (who I'll refer to as "M") to manage his funds.

Mrs L has also complained that the appointed representative gave her incorrect information about how much tax she'd have to pay if she took death benefits from Mr L's pension.

For ease, rather than distinguishing between the appointed representative and Pi Financial Ltd I will simply refer to "Pi" throughout my decision.

What happened

In 2017 Pi issued a financial planning report to Mr L. Mr L was 54 the time and working part time. His selected retirement date was 67. The report said that Mr L's objectives were:

- to look at how his pensions were currently invested and at what opportunities there were in the market; he wanted to look at 'more exciting' asset classes
- to move his pension away from his current provider as he believed the charges on the current pension were significant and the fund value was decreasing
- to achieve a minimum joint income of £1,500 in retirement.

Mr L's attitude to risk was noted to be 'balanced' and his capacity for loss was low. He had no other assets.

Pi recommended that Mr L switch his existing personal pension to a SIPP. The reasons given were so that he could have substantial control over the choice of investments, the fund would benefit from tax advantaged growth and benefits could be taken when Mr L turned 55.

It also recommended that Mr L use M to advise him on investments. It noted the following reasons for this:

- Mr L would be able to access his pension flexibly and he would be able to invest his funds in a wider range of investments
- by using M his portfolio could be developed and he would receive bespoke advice on his investments.

The report also noted that while the charges on the SIPP and underlying funds were likely to be higher than the current personal pension they could be recovered through higher growth.

Mr L followed the recommendation and switched his pension to the SIPP. The funds were invested with M from July 2017. The total value at the time of the switch was just under £46,000. M went on to recommend various investments to Mr L.

Mr L sadly passed away in September 2018. In January 2019 Mrs L asked Pi about taking death benefits from the pension. Pi told Mrs L that she would "pay tax potentially at 45% on the pension" and it advised her to keep the pension and use it for income when she retires.

In July 2020 Mrs L discovered that she could take the death benefits from Mr L's pension tax-free, provided she did so within two years of Mr L's death.

Mrs L complained to Pi as she felt the recommendation was unsuitable for Mr L. She also felt she was mis-advised about the tax implications of taking the death benefits.

Our investigator thought the complaint should be upheld. In summary, although he felt there were reasonable grounds to recommend switching pensions, he felt the recommendation to use M was unsuitable because Mr L was an inexperienced investor with a limited capacity for loss. He also felt Mrs L was mis-advised regarding the tax liability.

Our investigator recommended that Pi calculate the losses that Mr L's estate had incurred as a result of its initial advice to use M – allowing for the fact that some the losses were caused by M. However, as Mrs L was aware that she could take the death benefits tax-free before the two-year time limit to do so had expired, he didn't think it was fair to hold Pi liable for any resulting loss from the incorrect advice she'd been given in January 2019.

Pi disagreed with our investigator's conclusion but nevertheless agreed to pay the recommended compensation. Mrs L disagreed as she felt the compensation wasn't sufficient to cover her losses. The matter has therefore been passed to me to consider.

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.

Mrs L has made various comments about things that have happened and information she was given/not given by Pi, M and the SIPP provider. She's also made a related complaint to us against M about its involvement in this matter. This complaint concerns Pi's involvement and this decision only relates to Pi's actions. I'm looking at the complaint about M separately.

In respect of this complaint I've concentrated on what I consider the be the root cause and crux of the problem – namely the initial advice given to Mr L to switch pensions and use M to manage the investments; and the later advice given to Mrs L to keep the pension because of the potential tax she'd have to pay if she took the death benefits.

Advice to switch and use M to manage the investments

The report started by confirming that Mr L didn't have much investment knowledge and intimated that he hadn't kept track of his pension or how it was invested. It then went on to say that based on a questionnaire Mr L completed the advisor assessed Mr L's attitude to risk as *balanced* – which the report then explained was typically where an investor had moderate levels of investment knowledge and would keep up to date with investment matters. The definition of a balanced investor didn't therefore appear to align with Mr L's stated investment knowledge. It may have been that the questionnaire pointed to Mr L being a balanced investor but, in my view, there was a clear contradiction that I think needed exploring further. The report says there was discussion about risk and it pointing to a balanced profile but it's not clear how the discrepancy was explored or explained.

I'm not necessarily persuaded by any of the three reasons that Pi gave for recommending the SIPP. I say that because:

- in respect of Mr L having substantial control over the choice of investments – it's not clear to me whether someone who didn't have much investment knowledge and hadn't previously monitored their investments really wanted or needed specific control over their investments
- in respect of the fund benefiting from tax advantaged growth – any pension benefits from tax advantaged growth so it's not clear to me how the recommended SIPP differed to Mr L's existing pension in this respect
- in respect of benefits being taken when Mr L turned 55 – benefits can be taken from all pensions at age 55, so it's not clear to me how the recommended SIPP differed to Mr L's existing pension in this respect.

Costs were clearly important to Mr L so a key consideration should have been to keep charges as low as possible as these would affect growth. However, using M meant Mr L was incurring additional costs – as M's charges were in addition to those being charged by Pi and the SIPP provider. There was reference to extra costs in the report, but only to the extent that Mr L believed the higher charges would be offset by higher growth. I don't think this was enough. Pi was making the recommendation so irrespective of what Mr L *believed*, I think it needed to carry out a cost versus benefit analysis and explain this to Mr L in terms he was likely to understand. I can't see that this was done.

The regulator made it clear in 2009 that a pension switch was unsuitable if the new arrangement incurred extra costs without good reason. I can't see that there was good reason for Mr L to incur the additional costs. I think Mr L's main objective was to get the best possible returns on his pension within his risk profile as he'd been disappointed with the performance of his existing funds, particularly given the charges. I haven't seen any persuasive evidence that he really needed M to manage and recommend a wider range of investments to achieve that goal.

As mentioned above, it seems clear that Mr L didn't have any real investment experience – the report said his investment experience predominantly came from savings accounts and his existing pensions (for which he would always seek advice). And as the existing pension was invested in a balance fund, which the report suggests Mr L didn't review that often, I think it's reasonable to say he didn't have much active involvement in the underlying investments.

It appears that Mr L was looking for a wider range of investments so that he could have some diversification and spread of the risk. However, I think he would have benefitted more from a simple low-cost arrangement that was regularly monitored and reviewed by the advisor (who was charging Mr L an ongoing 1% fee) to ensure that it remained suitable for his needs. I don't think the arrangement with M, which incurred further charges was necessary. And I can't see that a simpler and cheaper option was properly explored.

I therefore conclude that the advice to use M to advise on the investments was unsuitable. Furthermore, I think my conclusion is supported by Pi's own view of the situation. I say this because in a conversation Mrs L had with Pi around the time of her complaint Pi's representative specifically said that using M just added another layer of complexity and charges, and he questioned what benefit using me provided for Mr/Mrs L.

Advice on keeping the pension

On 10 January 2019 Mrs L asked the advisor about taking death benefits from the pension as she was looking to buy her house. She specifically asked if she could have the money or if she had to keep it as a pension but in her name. The advisor replied the same day saying that Mrs L would pay tax on the pension (potentially at 45%) so his advice was to keep it and use it for income when she later retired.

In fact, Mrs L was able to take death benefits from Mr L's pension tax-free as long as she did so within two years of Mr L's death or of the pension provider being told a reasonable time later. The pension provider has told us it was notified of Mr L's passing on 10 December 2018. So Mrs L effectively had until December 2020 to claim the death benefits tax-free. Accordingly, I conclude that the information the advisor gave Mrs L about the potential tax liability was incorrect, and the advice he gave her about keeping the pension on that basis was unsuitable.

Similar to above, my conclusion appears to be supported by Pi's own view of the situation. I say this because in the phone call I referred to above between Mrs L and Pi from the time of her complaint Pi's representative specifically said that the information the advisor gave was incorrect.

Summary

For the reasons outlined above, I conclude that:

- Pi's recommendation for Mr L to use M to manage the investments in his pension was unsuitable, and
- Pi's advice to Mrs L about paying tax on the death benefits was unsuitable.

Putting things right

Had Mr L been suitably advised I don't think he would have invested through M because of the increased costs. And had Mrs L been correctly advised in January 2019 I think she would have taken the tax-free lump sum death benefits from the pension as she planned to use the money to put towards a property she was buying.

My aim is to put Mrs L as close as reasonably possible to the position she would have been in but for the unsuitable advice. I nevertheless need to take account of the fact that in the complaint about M I've concluded that M (rather than Pi) was responsible for some losses that the pension might have suffered. The failings here are in respect of the advice to use M and the advice regarding paying tax on the death benefits. Other failings – eg unsuitable investments in some bonds and shares – aren't Pi's responsibility.

If Mrs L now chooses to take death benefits she will suffer a loss in comparison to the position in January 2019 as she will be liable for tax. However, I think it's important to note that in July 2020 Mrs L discovered that the information she'd been given in January 2019 was incorrect and that she could get the death benefits tax-free, and she had until December 2020 to claim the death benefits tax-free.

I appreciate the deadlines were tight and Mrs L was still sorting out other issues following Mr L's passing. But in July 2020 she still had around five months in which to take the death benefits without having to pay any tax. I think this was a sufficient period of time for Mrs L to have started the process of obtaining the death benefits. So while I'm satisfied that the advisor clearly misadvised Mrs L about the tax situation I'm not persuaded that this ultimately led to her not being able to take the death benefits tax-free. Accordingly, I don't think there are grounds to make Pi pay any compensation in this respect.

With that in mind, I think it's only appropriate to look at compensation for losses suffered due to Pi's recommendation that Mr L use M to manage the investments in his pension.

Our investigator used a formula to calculate how much he felt Pi should pay. However, the compensation figure he came to was only an approximation (eg the notional value of the investments on 15 January 2019 wasn't exact) in an attempt to bring the parties together to come to an agreeable settlement. We don't have the capacity or expertise to carry out the exact calculations. So rather than come to a precise figure my redress will be formulaic, along the same lines as that suggested by our investigator.

So, to compensate Mrs L fairly Pi should compare the performance of Mr L's investments (as specified in the table below) 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. Pi should add interest as set out below and pay the final amount to Mrs L. It should also provide details of the calculation to Mrs L in a clear, simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Interest
Sums invested (less what was invested in CFBL bonds and NQ Minerals shares)	Still exists	FTSE UK Private Investors Income Total Return Index	Date of investments	15 January 2019	2.81% compound interest from 29 September 2019 to the date of this decision

It's possible that income tax might be payable on any interest paid. If Pi considers that it's required by HM Revenue & Customs to deduct income tax from the interest it should tell Mrs L how much it's taken off. It should also give her a tax deduction certificate in respect of interest if she asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

The 'actual value' is the actual amount payable from the pension (excluding the CFBL bonds and NQ Minerals shares) as of 20 July 2020. The 'fair value' is what the investment (excluding the CFBL bonds and NQ Minerals shares) would have been worth at the end date had it produced a return using the benchmark.

In addition to the above, Pi should pay Mrs L £150 for the distress and inconvenience caused.

I think the above compensation is fair because Pi's reasonable liability is only for losses in respect of its advice to use M to manage the investments – it's not fair to include the investment in the bonds and shares in the 'comparison' calculation because Pi isn't responsible for the advice M gave Mr L in this respect. It's not possible to know precisely how Mr L would otherwise have invested the money, but it seems that he was willing to accept some risk to the investment in order to achieve capital, and the FTSE UK Private Investors Income Total Return Index is a fair measure for someone who was prepared to take some risk to get a higher return.

I think 15 January is the appropriate end date for the comparison as this is when Mrs L would have taken the death benefits had she been correctly advised at the time. And I think 20 July 2020 is the appropriate end date for the losses to be crystallised as this is when Mrs L discovered she could take the death benefits tax-free.

The 2.81% interest rate detailed is fair because this is the rate on Mrs L's mortgage and the amount she borrowed was more than it otherwise would have been had she had the funds from the death benefits available to help fund the purchase of the property. The £150 is fair compensation for the distress and inconvenience Mrs L has suffered (eg the shock at discovering the initial advice was incorrect, the inconvenience of having a higher mortgage than would otherwise have been needed) as a result of the incorrect tax advice.

When responding to our investigator Mrs L made various comments on why she felt the compensation was insufficient. Some of the comments related to issues she felt were caused by Mr L being given incorrect advice about his investments. I've dealt with those in my decision on the complaint against M.

Mrs L felt the two year time period for her to claim the death benefits was irrelevant and felt it was harsh to say that she knew within that period that she could have taken the death benefits tax-free. As I said earlier, my aim is to put Mrs L as close as reasonably possible to the position she would have been in but for Pi's wrongdoing. And while it is clear that Pi misadvised her in January 2019 about the tax situation, I can't ignore the fact that this was rectified – albeit not by Pi – at a point when Mrs L still had sufficient time to claim the benefits tax-free. So I don't think it's fair to make Pi pay Mrs L any compensation for the fact that she will now have to pay tax if she chooses to take the death benefits.

My final decision

I uphold this complaint. I require Pi Financial Ltd to settle this matter as outlined under the 'Putting things right' heading above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 22 April 2023.

Paul Daniel
Ombudsman