DRN-4303034

The complaint

Mr W complains that Pi Financial Limited (Pi) provided him with unsuitable advice to transfer his existing pension plans to a Self-Invested Personal Pension (SIPP) and invest with Mayfair Capital Limited (Mayfair), resulting in unnecessary fees and investment losses. He wants compensation for his losses.

Mr W is represented in his complaint by a claims management company (CMC).

What happened

Mr W was advised by M&S Solutions Limited, an appointed representative of Pi. As Pi is responsible for the advice, I will just refer to Pi in this decision.

Pi met with Mr W and recorded his financial objectives as being to retire at age 67, in around six years. With a minimum income of £1,100 per month including the State pension. But that he didn't intend to take his own pensions for 10 years. It noted that his existing pension pots were likely to run out by his *"mid 70's".* And he anticipated *"someone"* would take over the running of his business allowing him to take a percentage of the profit in retirement. It also recorded that Mr W wanted more information on how his pensions were invested, new opportunities and how he could diversify into *"more exciting asset classes".* It assessed his attitude to risk as being that of a *"Balanced Investor."*

Pi advised Mr W to transfer his existing personal pension plans with Abbey Life and Aviva to a SIPP and to then invest in a portfolio provided by Mayfair. The transfers completed in October 2017 with a combined value of around £72,091. Mr W withdrew £30,939.05 from the SIPP in April 2020 and appears to have transferred £4,761.09 to another provider in March 2022, leaving a cash balance of £750. The remaining investments held by his SIPP were illiquid and showed nil value. The CMC complained to Pi, saying;

- The advice was inappropriate, offering no benefit to Mr W and had resulted in significant losses,
- The investment with Mayfair was inappropriate for his circumstances,
- The investment was unregulated and high risk and unsuitable as a pension asset.
- The transaction only benefitted Pi and incurred unnecessary costs for him.

Pi rejected all the complaint points. It said its advice met Mr W's objectives and that it couldn't be held responsible for the investment performance of the underlying funds held in the SIPP.

Mr W referred his complaint to our service and our investigator looked into it, and he upheld it.

Our investigator said he didn't think the advice to transfer was suitable. He said whilst Mr W had said he didn't intend to take his pension benefits for around 10 years, he'd also said that if he'd lost his pension, it would greatly impact his and his wife's retirement plans. And that he only had around £2,000 in other savings, so Pi's classification that Mr W's capacity for loss was high was inappropriate. He said there was also an overemphasis on the possibility that Mr W's business would continue to provide him with income in retirement, which was unquantifiable. He said the transfer had incurred unnecessary costs, both initially and on an ongoing basis. And considering Mr W's balanced attitude to investment risk and the relatively short term to retirement it was unlikely that returns high enough to break even would be achieved.

Our investigator said the high charges incurred may have led Mayfair to pursue high risk investments to chase returns which had subsequently failed and were now illiquid. He said that whilst Pi said it wasn't responsible for the performance of the investments managed by Mayfair this wasn't a reasonable argument. Because the recommendation to use Mayfair as investment manager in the first place was unsuitable given the increased costs. And Pi had agreed to provide ongoing advice to Mr W which included:

- *"Review of investment performance and holdings*
- *Valuations and investment commentary*
- *Reassessment of risk profile and asset allocation*
- *Fund switching & rebalancing as appropriate"*

This meant Pi should have monitored the Mayfair portfolio and advised Mr W of any deviation from his agreed risk profile.

Our investigator said the other reasons given for the transfer were already adequately provided for by the existing plans. Or could have been achieved by transferring closer to Mr W's actual retirement date, should he require any additional flexibility. So, there had been no need to incur the additional costs the transfer resulted in. He said Pi should undertake calculations to establish the notional value of Mr W's Abbey Life and Aviva plans if he hadn't transferred them, but made the same withdrawals, and compare this with the actual value of the SIPP.

If the calculations showed a loss and compensation should be paid into a new pension plan allowing for charges and tax relief. If it wasn't possible to pay into a new plan, then compensation should be paid to Mr W personally. He said Pi should pay £200 compensation for the distress and inconvenience caused.

Mr W agreed with our investigator's view, but Pi didn't. It raised several points. It said it didn't agree its classification of Mr W having a high capacity for loss was incorrect and repeated the notes recorded in the fact find. It disagreed that the possibility of future income coming from Mr W's business in retirement was unquantifiable, saying that *"The future is unknown but educated predictions can be made."* And it repeated Mr W's objectives that had been set out in the fact find.

Pi also disagreed it was responsible for Mayfair's failed investment strategy. But it said in view of his objectives Mayfair had been *"advised as Mr W wanted higher growth and greater involvement,"* and the recommendation met his objectives. And it said whilst Mr W wanted to retire at age 67, he didn't intend to draw on his pensions then. So, the impact of initial charges would *"effectively diminish to zero"* over time given Mr W's *"drawdown strategy."* And it said the *"prospect of a larger fund at retirement was a realistic objective."*

As Pi doesn't agree it has come 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.

Having done so I am upholding the complaint.

Much like our investigator I think whilst there were problems with the investment performance of the Mayfair portfolio which might not have been directly under Pi's control, these issues only arose because of Pi's unsuitable initial and ongoing advice, which it is responsible for.

It isn't unusual for investors to have conflicting objectives and a financial adviser's role isn't to focus solely on those favouring a transfer of an existing pension or some other action that might generate fees. And I suspect some of Mr W's recorded concerns about his existing investments were suggested by Pi. Because both the fact find and suitability report contain what appear to be multiple stock phrases and expressions. Which I think Mr W was unlikely to have made himself, given his relative inexperience in investment matters. Instead, Pi needed to consider the wider circumstances including what could be achieved with any existing arrangements and establish that there was a clear need for, and benefit in transferring.

In this case Mr W was some years away from when he expected to begin drawing his pension benefits. So, I don't think the SIPP recommended offered any immediate advantage over his existing arrangements. Instead, the advice incurred significant upfront and ongoing costs (which I'll go into more detail about below), making it unlikely the new arrangement would ever provide superior benefits to those transferred. And I don't think these costs were properly explained to Mr W.

Mr W completed a *"Pension Review"* form with Pi in March 2017, before the transfers were recommended to him. This asked various questions about his pensions, his objectives, and his attitude to risk. I'll refer to some of his other answers later in this decision. But he answers yes to the question*: "Will you be totally dependent on this pension for your retirement (excluding state pensions)?"*

He also said his wife would be dependent on his pension if he died. And asked to rank how he felt between one and five, with one being *"Not at all"* and five being *"Very"* he answered the following questions:

> *"Would you consider using high risk investments as part of your overall portfolio?* **2**
>
> *Would you prefer to invest your pension funds in a wide spread of investments?* **4**
>
> *"If you were retiring today, how important would a guaranteed income be compared with a potentially higher but non-guaranteed investment based income"* **4**
>
> *If you lost your pension funds would it adversely affect your Retirement age?"* **4**

The questions and answers I've quoted above are, I think, more important than other issues Pi refers to as justifying its recommendation. Like queries Mr W may have had over the control of his pensions, and where they were invested, which were reasonable things for Mr W to also ask – but which weren't effectively addressed by Pi's advice in any case.

These answers suggest to me that Mr W was relatively cautious about his pensions, and dependent upon them. Suggesting that his capacity for loss was modest, not *"high"* as determined by Pi. That called for a conservative approach. And one of the reasons given by Pi for the recommendation to transfer was, *"You would like the funds to be spread across a range of investment choices, to reduce risk and improve opportunity for growth."* But instead, I think Pi's recommendations resulted in a reduced spread of investment, more risk, and much higher costs, that seem to have combined to result in significant losses for him.

Unnecessary costs

Pi's initial advice charge was 4%, plus 1% per annum for ongoing services payable in advance. These are reflected on the undated SIPP illustration showing an investment of around £67,000, although the actual transfer received was slightly higher than this. The illustration forecasts Mr W's fund growing to £69,400 in real terms assuming a 5% investment return and 2.4% per annum inflation to age 67, in around six years' time. That's a real return of about 0.6% per annum.

However, the illustration doesn't appear to reflect any costs for the underlying investments with Mayfair. These are separately identified as being a dealing charge of 1.5%, which I take to mean on both purchases and sales. But even assuming Mayfair invested the funds just once and held them unchanged, the illustration understates the initial costs by at least 30%. And there were likely to be other disbursement type costs on trades. The illustration doesn't reflect any ongoing dealing costs. As Mayfair apparently made no other charge in return for managing the portfolio, I think it was likely to be quite active with trades, meaning ongoing dealing costs could be significant. This is something Pi ought to have considered – the risk that this charging structure might incentivise the wrong behaviour.

So, whilst the Mayfair portfolio appears to have performed poorly, I think it was very unlikely that Mr W would ever benefit from superior investment returns given the significantly higher costs that were incurred in transferring and going forward, and the fact that trades would have to take place with sufficient regularity for Mayfair to consider its involvement worthwhile. Pi's claim that the impact of initial costs would *"diminish to zero"* over time is without merit. As that is only possible if the ongoing charges from the new arrangement were lower than those transferred from. There is no evidence that was the case because it was unclear what the actual ongoing costs with Mayfair would be.

The suitability report does set out costs for the SIPP and underlying funds and notes these are *"likely to be higher"* than the existing plans with Abbey Life and Aviva. But *"you* (Mr W) *believe these will be recovered by higher growth, although not guaranteed".* There is no analysis of what level of additional return would be required. And there isn't an explanation of why Mr W believed higher growth was likely. Indeed, when he'd been asked about his knowledge of investments before the transfers, he agrees he "*has some experience of investments but my knowledge is limited."* And in addition to the SIPP and underlying investment charges with Mayfair was Pi's own 1% per annum ongoing advice fee, so the additional return required to match the performance of the existing plans appears to be substantial.

Unnecessary charges continue for Mr W as fees for the SIPP continue until it can be closed once the outstanding issues of the two remaining illiquid investments are resolved. And when this will be is unknown.

The investment recommendation

Given that he was already invested in "balanced" investments and the recommendation was to also invest in a "balanced" portfolio with Mayfair, but with higher costs, it isn't clear to me where these additional returns would come from. Unless additional risk was going to be taken by Mayfair, meaning the portfolio was of a higher degree of risk than its name implied. As an expert, regulated financial adviser, Pi should have been mindful of such considerations in recommending and monitoring an investment.

Pi recommended Mayfair's *"Balanced Investor portfolio".* This is described in the suitability report as both a discretionary portfolio (where Mayfair would make all decisions) and then as an advisory portfolio (where Mr W would be involved in decisions). Other documents from the time also refer to Mayfair providing a discretionary service. The distinction between the two types of service is quite significant. These inconsistencies suggest to me that Pi didn't understand what it was recommending to Mr W, so it isn't clear how it's recommendation could be suitable for him.

What Pi does say about Mayfair's services seems to be drawn directly from Mayfair's marketing material. Somewhat clumsily edited to change (some) but not all of the pronouns, rather than there being any analysis of why the recommendation was specifically suitable for Mr W. As noted, the use of stock phrases appears common in the suitability report and there is even reference in it to a completely different client, suggesting sections of the report were just "cut and pasted" and that Mr W was being made to fit a set of existing recommendations.

The purported advantage offered by Mayfair seems to be that it provided a more personal, "hands on" service than typically available for investors with relatively small amounts of money to invest. Investment portfolios are generally constructed by mixing different proportions of the various asset classes to give broad risk classifications. Balanced is generally in the middle in terms of risk and the majority of balanced investments will have broadly similar asset splits.

Mr W's plans with Abbey Life and Aviva had the following asset allocations:

- Abbey Life – Balanced fund – UK equities 22.3%, fixed interest 19.5%, international equities 15.5%, North American equities 9.5%, European equities 7.5%, Asia Pacific equities 6.2%, other 6.2%, money market 5.1%, equities 3.3%, alternative investments 3% and property 1.9%

- Aviva – Balanced fund – international equities 43.8%, UK equities 28%, international bonds 7.8%, UK gilts 6.1%, property 4.1%, alternative trading strategies 3.4%, cash 3.2%, investment trusts 2.1% and UK corporate bonds 1.5%

I think these are broadly typical of the asset allocations seen in balanced portfolios aimed at medium to long term investments. The suitability letter states that the asset allocation split of a *"typical advisory"* balanced portfolio with Mayfair is: 48% Global equities, 20% Government bonds, 15% smaller equities, 15% Corporate Bonds and 2% in cash. But Pi states the exact portfolio will be advised by Mayfair, with a *"Spread of investments to reduce risk and improve growth opportunities."* It isn't explained how this would be achieved.

Pi also completed a *"Pension Replacement Contract Form"* for both the Abbey Life and Aviva plans which were signed by Mr W. These set out the issues around transferring the pensions, summarising the existing product and proposed replacement and why there is a benefit. Neither form sets out the charges of the Mayfair portfolio, but describe the new investment as being:

> "*Invested into Discretionary Fund Manager stock broking firm, Mayfair Capital who provide active management of client portfolio to help them achieve their long-term investment goals."*

It's unwise to overemphasize past investment performance as it isn't a reliable guide to the future. But in a section about past investment performance the returns achieved by Abbey Life and Aviva funds are noted over 3 and 5 years. It isn't clear whether this is annualised or a cumulative return. But for Aviva it is 6.2% over 3 years and 11.4% over 5 years. For Abbey Life the figures are 3.6% and 8.2% respectively. But no comparative investment returns are provided for Mayfair, even though the form provides for this information to be entered. I think this was unusual as this would often be considered as part of the evidence to support the suitability of the recommendations made.

Having looked into this, at the time of the advice, Mayfair had effectively no track record as an investment manager having only very recently been authorised by the FCA in 2016. Pi neglects to inform Mr W of this fact in either the suitability letter or the "*Pension Replacement Contract Form.*" It isn't clear to me how recommending an investment firm with no demonstrable track record, intending to invest in broadly the same way, but with significantly higher overall costs was ever likely to achieve superior returns to Mr W's existing plans.

The regulatory rules set out in COBS 9 in the FCA handbook required Pi to ensure that recommendations were suitable, having carried out the necessary due diligence. They also required Pi to have a reasonable belief that Mr W would understand the risks of the underlying investments being made for him by Mayfair. And a professional body for financial advisers – the Personal Finance Society - published a good practice guide in 2015 for investments like this. This suggested advisers *"needed to get under the bonnet"* and past the *"marketing blurb"* when conducting due diligence.

I've already explained why I doubt Pi understood what it was recommending in Mayfair, due to the inconsistencies of how it described its services. So, I don't think it did carry out proper due diligence. Mr W says he had limited experience of investments and I don't think it was reasonable for Pi to believe he would understand the type of investments Mayfair did enter into. Or, that he was the type of investor who really required this type of service.

And I think some of the investments selected by Mayfair can only be regarded as very high risk.

The two investments which remain in the portfolio are illiquid with no value. These are Heritage Corporate Finance Ltd Recovery Notes (Heritage) and NQ Minerals PLC (NQ). The Heritage holding appears to have arisen from investments originally made into failed corporate bonds issued by Corporate Finance Bonds Limited (CFBL) in 2017. These were listed on the Irish Stock market to provide finance for small and medium sized companies, at according to the FCA, high interest rates. This indicates the credit rating of the businesses borrowing the funds might be low. Even if that wasn't the case lending to relatively small businesses is an inherently risky investment. And is only likely to be suitable for the most experienced investors with a high capacity for investment loss. Mr W was neither and the financial regulations in place meant that CFBL bonds couldn't be sold directly to retail investors like him.

Unfortunately, the CFBL bonds were soon in difficulty. Their credit rating was removed in 2018 and they were delisted from the Irish Stock market in 2019 having defaulted, presumably as the underlying loans failed. In taking enforcement action against a separate business which also invested with CFBL, the FCA said these investments had a *"high degree of liquidity risk"* and it didn't consider them to be *"compatible"* with the needs and objectives of clients who had received pension switching advice. The failed CFBL bonds were repackaged into the current Heritage holding in Mr W's SIPP, which is a separate business presumably hoping to recover some of the outstanding loans. Some return may be provided to Mr W in future but presently they have no value.

The NQ holding was an exploratory mining corporation based in Australia, whose accounts had shown consistent losses from 2016 before it went into administration in 2021. So, another investment in a high-risk area in a business with no track record of success. I think investments of this type into relatively small businesses operating in very high-risk sectors was inappropriate given Mr W's attitude to risk and financial objectives.

But these investments appear to have comprised a significant part of the portfolio – the book costs (which wouldn't typically include Mayfair's charges) were around 14% of the funds sent to Mayfair for investment. So, before charges it's likely that at least 15% of the portfolio was invested into just two very high risk, relatively illiquid investments. As well as introducing Mayfair to Mr W, Pi had undertaken to monitor and review the portfolio on an ongoing basis and reassess his risk profile and asset allocation. So, I think it's reasonable that Pi should have queried what was happening and advised Mr W accordingly. But I haven't seen any evidence that it did this, and it hasn't made any comment that it did or what it concluded if it did.

So, I think the initial and ongoing advice was unsuitable on all levels, primarily benefitting Pi in the fees that it generated rather than offering any advantages to Mr W. From the available evidence I think it's clear that Pi's advice incurred unnecessary costs, reduced the diversity of Mr W's investments, and resulted in an increase in risk in those investments. That it then appears to have failed to adequately monitor or advise him about going forward as it should have done. Given the costs, the advice was unlikely to provide superior benefits and offered no immediate advantage over the existing arrangements in terms of death benefits.

Whilst Pi has said that the ability to access benefits flexibly in the future was important, this could have been assessed nearer the time benefits were required. And like its argument that the impact of initial charges would *"diminish to zero"* over a 15-year income drawdown strategy this is somewhat undermined by Mr W indicating on the fact find, he greatly preferred a guaranteed income in retirement rather than an investment linked one. That points to annuity purchase with no ongoing investment at retirement rather than a longer-term drawdown strategy.

So, I don't think the advice to transfer was suitable and if Mr W has suffered losses as a consequence, it is fair that Pi puts him back into the position he should have been in but for the poor advice.

Putting things right

I don't think Mr W was provided with suitable advice by PI and it seems likely that this has caused him investment losses. I think had he been advised correctly he would most likely have continued with his original pensions with Abbey Life and Aviva. So, it's also fair that Pi should compensate Mr W for any ongoing costs or expenses he is subject to because of the illiquid investments still held in his SIPP. So, Pi must:

- Compare the performance of Mr W's investment with the notional value if it had remained with the previous providers. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- If there is a loss, Pi should pay into a new pension plan set up for Mr W with another provider, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. But Pi shouldn't pay the compensation into a pension plan if it would conflict with any existing protection or allowance.

- If Pi is unable to pay the compensation into Mr W'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 compensation 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 W won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Mr W's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr W is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr W would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pi should add interest at 8% per year simple to any loss calculated until the date it makes settlement.

- If Pi considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr W how much it's taken off. It should also give Mr W a certificate showing this if Mr W asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

- Provide the details of the calculations to Mr W in a clear, simple format.

- Pi must pay Mr W £200 compensation for the distress and inconvenience he has been caused.

Portfolio name	Status	Benchmark	From ("start Date")	To ("end date")
Intelligent Money SIPP	Still exists but illiquid	Notional value from previous provider	Date of Transfer	See below

Actual value

This means the actual amount payable from the investment at the end date.
If, at the end date, any investment in the portfolio 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, Pi should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount Pi pays should be included in the actual value before compensation is calculated.

If Pi is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Pi may require Mr W provide an undertaking to pay it any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Pi should meet any costs in drawing up the undertaking.

Notional Value

This is the value of Mr W's investment had it remained with the previous providers until the end date. Pi should request that the previous provider calculate this value.
Any withdrawal from the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Pi totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

The SIPP only exists because of illiquid assets, which were part of an un-necessary portfolio. In order for the SIPP to be closed and further fees that are charged to be prevented, those investments need to be removed. I've set out above how this might be achieved by Pi taking over the investments, or this is something that Mr W can discuss with the provider directly. But I don't know how long that will take.

Third parties are involved, and we don't have the power to tell them what to do. If Pi are unable to purchase the investments, to provide certainty to all parties I think it's fair that it pays Mr W an upfront lump sum equivalent to five years' worth of SIPP fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP to be closed.

My final decision

My final decision is that I uphold the complaint against Pi Financial Limited.

I direct Pi Financial Limited to undertake the loss calculations set out above and pay compensation as described.

I further direct Pi Financial Limited to pay Mr W £200 in compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 March 2024.

Nigel Bracken
Ombudsman