

The complaint

Mr C complains that he was provided with negligent advice to switch his pension by M&S Financial Solutions Ltd, an appointed representative of Pi Financial Ltd (referred to throughout as Pi) which has caused him to suffer a financial loss.

The complaint was brought on Mr C's behalf by a claims management company however for the purposes of clarity I will refer to all correspondence as having been received from Mr C.

What happened

In January 2017 Mr C met with an adviser from Pi in order to review a pension arrangement with Hartley SAS. Mr C held a workplace pension worth approximately £49,000, and a SIPP, with Hartley SAS, invested in the SVS Securities portfolio worth approximately £43,000. Mr C wanted to review this pension because he was unhappy with the service he had received from both the provider and his previous adviser. His key objective was to grow his pension for retirement (at age 67). He had read about SSAS products and wanted to investigate investing in "*more exciting asset classes*." Mr C had already taken tax free cash from his pension, which had been set up in December 2015 and comprised of transfers from other pension arrangements.

At that time he was aged 55, married and employed. He had a mortgage of £40,000 which would be cleared before retirement age, and no other assets in addition to the pensions detailed above. His income was approximately £25,000, however he believed that in retirement he would require an income of around £10,000.

His state pension entitlement is unclear as the report states that Mr C should check his national insurance contributions to make sure he qualified for full state pension, although the subsequent information provided confirms Mr C believes that he will receive a full state pension.

Mr C's attitude to risk (ATR) was assessed to be moderately adventurous (4 out of 5) following completion of a set of risk profiling questions. Mr C was assessed to have a high capacity for loss. Due to his income needs being met by other sources, it is stated that this fund was surplus to his requirements and he could therefore afford to take this higher level of risk. The file states that Mr C believed that losing the whole fund "*wouldn't be a game changer*".

A suitability report was provided to Mr C in March 2017, recommending that he transferred his personal pension to a Small Self-Administered Scheme (SSAS) with Davies & Co, invested in a discretionary fund management arrangement (DFM) with Tatton Investment Management in either the Tatton Core Aggressive and/or LuxeFund. The report stated that the pension would initially be transferred from an existing provider to the Carey Pension Restricted SIPP while arrangements were being made with Davies & Co to establish the SSAS. The rationale for the recommendation was;

- *“A SSAS will allow you to exercise substantial control as a member and as a trustee over the choice of investments held under your pension. You want the opportunity to invest part of your monies in something that is more exciting than at present.*
- *While invested your fund will benefit from tax advantaged growth*
- *Benefits can be taken at any time from the age of 55*
- *Although the fund is small you would not rule out investment into commercial property in later years if you saw the right set up in your locality and your fund had grown sufficiently to make this feasible. Small local units are relatively cheap and could provide a good rental income to you.”*

The report further states the reason for the investment strategy recommended;

“This is a service for clients who want to hand over the responsibility for managing investments to an expert. An investment manager is appointed and they will construct a portfolio to suit a client’s specific requirements and will make all the day-to-day investment decisions on the client’s behalf whilst keeping inside the risk and return framework agreed with the client at outset.”

These two statements are not aligned, as the rationale for the SSAS predominantly focuses on the ability to exercise control over the choice of investments, whilst the rationale for the investment relates to the fact that the DFM service was for clients who did not want to manage their investments.

The fees for the SIPP were stated to be *“in the region of £450 + VAT”* however the report stated that Mr C was aware of the Davies & Co proposition which *“reduces their fees proportionately to absorb this additional layer of costs”*. The report states that the proposed SSAS charges were 1.25% entry charge and a 0.99% ongoing plan fee. The annual management charge (AMC) for the Tatton DFM was stated to be 0.3%pa for the Core Aggressive fund. It is noted that this is not consistent with the Managed Fund Portfolio Service guide on file. For the Luxe Fund, the charge would be based on profit generated within the fund, 70% to the client and 30% to the fund manager.

The report states that an initial fee of 1.5% was agreed (£630) with an ongoing advice charge of 0.5%.

The file indicates that this transfer did not go ahead, and in October 2017, Mr C completed an application for a transfer of his pension to the Mercantile Investors SIPP, invested in a balanced portfolio via Agincourt DFM. Although a suitability report or other confirmation has not been provided to explain this recommendation, the application form on file confirms that advice was provided in October 2017 by the same adviser at Pi as for the previous recommendation. This transfer did take place, and the funds were transferred in December 2017. It is clear to me that this advice was the responsibility of Pi.

In December 2019, a further transfer application was completed, for Mr C’s pension to be transferred to a Davies & Co SIPP. Although the individual adviser was the same, the recommendation was not made by Pi. The transfer completed in February 2020, and in May 2021, Mr C accessed his entire remaining pension fund.

Mr C complained in September 2022 that the advice had been negligent and that he had suffered losses as a result. Due to issues with authority for dealing with the complaint within

the file, the response from Pi was delayed, however in March 2023, they provided their final resolution letter. They did not uphold the complaint and stated the following;

- The advice was in line with the client's capacity for loss and attitude to risk
- The client's objectives were met
- Pi financial cannot be held responsible for the performance of the underlying funds held by the SIPP, caused by the present investment market conditions.

Mr C forwarded the response to this service as he remained unhappy. The investigator found that the recommendation to transfer from the Hartley SAS pension was appropriate, however Mr C did not need a complex arrangement such as a SSAS or DFM style investment, and an alternative investment would have better met his needs. The investigator also did not agree with the assessment of Mr C's attitude to investment risk as [moderately] adventurous, nor his stated high capacity for loss.

Pi did not agree with the investigator's view. They submitted a further response, outlining the fact that had Mr C remained with the Hartley SAS investment, he would have suffered significant financial loss following SVS Securities having entered administration in 2019. They did not agree with the investigator's comments in relation to the assessment of Mr C's attitude to risk, and highlighted the responses that had indicated that he was happy to take an adventurous level of risk.

The additional comments made did not change the investigator's view and therefore the case has been referred to me for a final decision.

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.

The complaint is lengthy and highlights a number of issues. I've considered what I understand to be the key complaint point, namely whether a recommendation to transfer from Mr C's Hartley SAS Ltd SIPP to a different SIPP and/or SSAS (to be invested via a DFM) was suitable. Having reviewed the file and considered Mr C's circumstances, I agree with the investigator's view, that had Mr C received suitable advice he would have transferred his pension arrangement, rather than remained with Hartley SAS Ltd, however he would have transferred to something different. I also agree that the complex solution recommended not appropriate.

When considering whether it was appropriate for Pi to have recommended that Mr C transfer his benefits from his Aviva pension arrangement to a personal pension and invest via a DFM portfolio, I have considered the relevant rules and guidance in place at the time, alongside Mr C's circumstances, objectives and previous knowledge and experience.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time, and carefully considered the additional submissions made by Pi. The FCA's suitability rules and guidance that applied at the time Pi advised Mr C were set out in COBS 9. 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 to ensure they're not inappropriately exposed to a level of risk beyond their investment objective and risk profile.

I have also considered the regulator's checklist for pension switching, which highlighted four key issues it thought should be focussed on;

- Charges (has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder without good reason?)
- Existing benefits (has the consumer lost benefits in the switch without good reason?)
- Risk (has the consumer switched into a pension that doesn't match their recorded ATR and personal circumstances?)
- Ongoing fund management (has the consumer switched into a pension with a need for ongoing investment reviews, but this was not explained, offered or put in place?)

Having considered these points, there is no evidence that Mr C lost existing benefits on transfer. Likewise, I am not concerned with the provision made in relation to ongoing management of his pension. However, I have considered in more detail the charges applying to both pension arrangements, and his attitude to risk to ascertain whether the transfer was in Mr C's best interests.

I have first considered the charges. If a recommendation to switch a personal pension from one provider to another will result in the customer incurring additional charges, the additional charges should be justified in terms of the benefit to the customer. There is no clear comparison of the charges between the existing and the recommended pension arrangements within the documentation on file, which has been made more complicated by the complex nature of the first recommendation followed by the change in the recommendation made prior to application.

Nonetheless, the suitability report stated that the new pension arrangement would be more expensive than the existing arrangement, but that Mr C believed that *"these will be recovered by higher growth, although not guaranteed"*. Considering the recommendation made, to invest in either a SIPP or a SSAS with the investments being invested within a Discretionary Fund Manager (DFM) arrangement, I think it is reasonable to conclude that the charges of the pension being recommended would have been higher.

Given Mr C's comments relating to his unhappiness with his previous pension, in terms of the information available and the limited fund range, I do not consider that it would be unreasonable for a switch to an alternative pension arrangement would have been appropriate, even if that did mean incurring additional costs. Due to the fact that many SIPPs have similar charging structures to personal pensions, I do not believe that a SIPP would have been inappropriate per se and do not uphold this element of Mr C's complaint. However, I do not agree that the same is true for the recommendation to invest his funds within a DFM arrangement.

I have also considered the appropriateness of the transfer in light of Mr C's attitude to investment risk. An attitude to risk questionnaire was completed in April 2017, and formed the basis of the investment recommendation. The responses provided resulted in Mr C being assessed as a Moderately Adventurous investor. Having reviewed the Risk Profile report, I note that there are conflicting responses to the questionnaire which may indicate that Mr C was more comfortable with a more cautious level of risk. I acknowledge that in the view, the investigator highlighted the responses provided by Mr C that indicated a lower risk tolerance, and in response, Pi pointed out the responses provided that suggested Mr C was willing to take a higher level of risk. On balance, I think that the very fact that the responses were inconsistent should have alerted Pi to the fact that Mr C may not have been clear in relation to the level of risk he was willing to take, and should at the very least, have prompted further discussion in respect of this. I can find no evidence on file that this was done. Given the responses provided, I think it is more likely than not (also taking into account Mr C's overall

lack of investment knowledge and experience) that the level of risk he was willing and able to take was probably not as high as indicated.

I note that the file states that Mr C felt that the funds represented by this pension were surplus to requirements, and to lose them “would not be a game-changer”. I do not disagree that this does seem to suggest that Mr C was not unduly concerned about the potential impact of losing this pension fund. However, Pi were in the position of a professional financial adviser who had a duty of care to provide a recommendation that was in Mr C’s best interests, and ensure that he was aware of the implications of this attitude, particularly given his limited wider assets. I do not agree that taking such a statement from Mr C at face value was in line with this duty of care.

I don’t think the DFM arrangement was suitable. At the time the recommendation was made, the suitability report stated *“the charges for the new recommended funds are higher than those with Aviva but you believe that these will be recovered by higher growth although not guaranteed.”* However, I don’t think that higher growth could be relied upon and couldn’t reasonably be used as a reason for Pi to recommend the DFM arrangement. The higher costs of a DFM arrangement *can* be justified if someone has a particular need for the features they bring; for instance, if someone has particularly bespoke investment needs. But I can’t see why Mr C would have had a particular need for the features of a DFM arrangement given his needs and circumstances.

I note that the suitability report states that Mr C had read about SSAS arrangements, and was interested in more exciting investment options. The suitability report states that Mr C was potentially interested in commercial property at a later stage, however given the size of the pension fund alongside Mr C’s limited other assets, I do not conclude that this was anything more than a possibility for the future. There is no other indication within the file to indicate that a DFM arrangement would be either wanted by, or suitable for Mr C. And I haven’t seen any other feature of the DFM arrangement that would have particularly appealed to Mr C or which couldn’t be accessed through more traditional pooled funds at a lower cost. All things considered, therefore, I don’t think I can reasonably say the DFM recommendation was suitable.

Furthermore, I have considered whether Mr C was fully aware of the level of the charges of the DFM recommended. There are two suitability reports on file, dated March and April 2017. Both relate to the recommendation to transfer firstly to the Carey SIPP, and subsequently to the Davies and Co SASS. Both suitability reports outline the administration cost of the SIPP, and the SSAS costs, as well as the DFM charges. However neither report clearly sets out the investment management charges or include any sort of useful comparison of costs and what the impact of those costs would likely be over time. This is particularly relevant in this case, as the SIPP and the SSAS would have had setting up costs, which as flat fees (as opposed to fees based on a percentage) would have had a proportionately higher impact on Mr C’s small fund. Additionally, the charges are spread over several pages within the suitability report, thereby making it extremely difficult for a true picture of the costs involved to be seen. I consider this is a failing in itself under the regulator’s principles (most notably PRIN 7) but it feeds into the lack of suitability of the recommendation because it wouldn’t have been particularly clear at the time to the parties what drag on performance the charging structure of the DFM would have caused and whether that would have been acceptable to Mr C. In the circumstances, it’s difficult to conclude Mr C was given the information he needed or that the DFM arrangement was suitable. I acknowledge that in practice the “SIPP to SSAS” part of the transaction did not ultimately progress, and Mr C transferred directly to a SIPP to be invested within a DFM arrangement. Nonetheless, the above principles are still relevant – there is nothing to indicate that a DFM arrangement was appropriate for Mr C, and there is no evidence that he was made aware of the costs involved.

For the reasons stated above, I uphold Mr C's complaint in part. I agree with the Investigator's view that given Mr C's situation and circumstances, the switch to an alternative arrangement such as a personal pension or SIPP was suitable. I also agree that Mr C did not need to invest his transferred fund in a DFM arrangement, and by doing so has incurred additional charges unnecessarily which cannot be justified. I believe it would have been more appropriate for Mr C to have been recommended to invest in a less complex solution which would have been available to him at a lower cost. Had Pi's recommendation been along these lines, I've seen no persuasive reason why Mr C would have gone against that advice and insisted on utilising a DFM arrangement.

Putting things right

Fair compensation

My aim is that Mr C 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 C would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr C's circumstances and objectives when he invested.

What must Pi do?

To compensate Mr C fairly, Pi must:

- Compare the performance of Mr C's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

If the fair 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.
- Since transferring his pension away from the SIPP recommended by Pi, Mr C took his pension benefits in full. Therefore, as it is not possible for Pi to pay any loss into Mr C's pension, 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 C won't be able to reclaim any of the reduction after compensation is paid.
- The *notional* allowance should be calculated using Mr C's actual or expected marginal rate of tax at his selected retirement age.
- For example, if Mr C 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 C would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.
- Pay to Mr C £100 for distress caused by the potential loss of investment.

Income tax may be payable on any interest paid. If Pi deducts income tax from the interest

it should tell Mr C how much has been taken off. Pi should give Mr C a tax deduction certificate in respect of interest if Mr C 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
Pension Plan	No longer in force	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date transferred away – April 2020	8% simple per year on any loss from the end date to the date of settlement

Actual value

This means the actual amount paid from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Pi should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the Pension Plan should be deducted from the fair 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 fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr C wanted Capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income **Total Return** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- I consider that Mr C'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 C into that position. It does not mean that Mr C 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 C could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the 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 C in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 21 February 2024.

Joanne Molloy
Ombudsman