DRN-4426551

The complaint

Mr P complains about the advice he, and Mrs P, have been given by Absolute Financial Management ('AFM'). He says that a fund switch made in 2020 wasn't right for him. This is because it was based on his tolerance for risk increasing, but this wasn't the case. And he says the new fund had a higher risk than the one he transferred from.

What happened

Mr and Mrs P have three complaints in total at the Financial Ombudsman Service. This is because the complaints concern three separate investments. As Individual Savings Accounts (ISA) and pensions can only be held in one individual's name, they have all been given separate complaint references here.

This decision is about Mr P's personal pension plan.

But Mr and Mrs P were both given advice jointly in respect of their savings and pension planning. And the advice was given after looking at their overall situation each time which included their investment, savings, pension and other asset provision they had. I've outlined the overall advice process and their circumstances below. And this is the same for each of their complaints.

In November 2016 Mr and Mrs P met with an adviser from AFM. He completed a fact find at this meeting that showed Mr P was aged 48 and Mrs P was aged 42. They lived with their two young dependent children and owned their own home which was subject to a mortgage.

Mr P was employed at the time, but it was noted that he was on gardening leave. His salary was recorded as being around £200,000 a year plus £750,000 from bonuses. Mr P was considering retirement at 55 or earlier.

They had assets that were valued at around £5.5 million which included three buy to let properties which were in Mrs P's name and providing an income to her. And their family home.

This fact find showed they had the following savings and investments:

- Mr P had a group personal pension with a value of about £450,000.
- Mr P had a personal pension with a value of £320,000.
- Mr P had a stocks and shares ISA with a value of £50,000.
- Mrs P had stocks and shares ISA's with a value of £82,000.
- They had cash holdings of £650,000.

Mr and Mrs P's attitude to risk was assessed as being 'low medium' or five on a scale of one to ten. This was broadly described as being comfortable with more modest returns and lower losses. And they were both concerned with not getting as much back from their investments as they put in.

In 2016 Mr and Mrs P were advised to change some of their investments. These were Mr P's personal pension, which was transferred to a Self Invested Personal Pension Plan (SIPP), and both of their ISA's. These are the investments that they have complained about. The complaints are not about this initial advice, they are about a fund switch that took place later.

Mr and Mrs P were advised to invest these using the Tatton Core Discretionary Fund Management (DFM) Service in its balanced portfolio for Mr P's SIPP and the same fund managers cautious portfolio for both of the ISA's. These invested partly in 'tracker' funds and the other half was actively managed in a range of funds and assets that met the portfolios objectives.

Mr and Mrs P and AFM met a number of times going forward, at least annually. I won't provide full detail about all these meetings as all the parties to the complaint are aware of them. But it's worth noting that Mr and Mrs P's attitude to risk was frequently assessed and it did rise in general from lower medium up to medium or high medium, that is up to six or seven on the scale of one to ten. That said, their capacity for risk remained low and they were always concerned with minimising losses.

There were no significant changes in Mr or Mrs P's personal or financial circumstances until 2019 when Mr P invested in two higher risk funds via his ISA's. These two funds made up around 18% of his total ISA holdings at the time.

A fact find was completed for Mr and Mrs P on 3 February 2020. This fact find confirmed that Mr P wasn't working, and he had been put on gardening leave again until December 2020. He was not looking for further employment and was moving towards retirement.

Mr and Mrs P had an annual review in September 2020 and this review precipitated the change to the funds that this complaint concerns. At this point the investments that form part of the complaints were as follows:

- Mr P's SIPP was valued at about £362,000.
- Mr P's ISA was valued at £149,000.
- Mrs P's ISA was valued at £184,000.

These investments remained in the Tatton Core portfolios except the investments in the higher risk funds.

I understand that at this point Mr and Mrs P still had the properties that I've outlined above. Mr P's Group Personal Pension was worth around £611,000 and they held £260,000 in cash deposits in various places.

In this review AFM said that the Tatton Core portfolio was not performing well and was *'now lagging other funds with their peer groups'* and recommended a change for all of the Tatton Core investments in the above policies. AFM recommended that Mr and Mrs P's ISA's be switched into the Liontrust SF Defensive Managed fund and Mr P's SIPP be switched into the Liontrust Cautions Managed fund. It said that these funds met Mr and Mrs P's aims as they were diversified investments that had performed well in the past. It was noted that Mr and Mrs P would use their cash reserves and then look to take an income from their pension and savings when needed and or available.

It was agreed that the investments above would be moved to these two funds in about four 'tranches'. I don't have the exact details about how and when the move happened, but it had taken place by mid-2021.

In Autumn 2021 another review of Mr and Mrs P's circumstances took place. Their situation was broadly unchanged. Mr P had no plans to return to work. Their income (in Mrs P's name) was largely from their rental properties and was about £40,000 each year. Their expenditure was £11,203 a month.

Mr and Mrs P complained in October 2022, a summary of what they have said over the complaint correspondence is that:

- The performance of the Liontrust investments has been poor. Mr P thought the fund switch from the *'unremarkable but stable Tatton investments'* into the higher risk Liontrust funds wasn't right and had caused a loss.
- The timing of the fund switch was poor as it was four months into Mr P receiving no regular income, and two years away from his retirement. Mr and Mrs P needed these funds to be their main source of income in the future.
- Mr P said the Liontrust funds didn't have the appropriate balance and diversification which is particularly important as these investments were the largest part of their investment portfolio.
- He thought the customer service had been poor and no meetings or alternative strategy had been offered.
- The charges on the new Liontrust funds were higher at 0.9% per year as opposed to 0.54% on the Tatton portfolios (including the DFM charge).

Mr P said in his complaint letter that they had recently crystallised these investments. I understand this took place in September 2022.

AFM has responded and not uphold Mr and Mrs P's complaints. Again, a summary of what they have said over all the correspondence is that:

- The investments and fund switch were suitable for Mr and Mrs P. The Liontrust investments offered a broad spectrum of investment type and assets and gave Mr and Mrs P control.
- The Liontrust investments had a lower volatility than the Tatton Core portfolios, the Liontrust investments were in line with Mr and Mrs P's 'lower' tolerance to risk.
- In 2022 Mr and Mrs P were advised to 'sit tight' to allow the funds to recover as they had only been invested for twenty months.
- Mr P was an experienced investor and would have understood the risk of the funds and the advice he was given.
- The complaint was largely about investment performance, and this couldn't be avoided in any event.

Mr and Mrs P didn't agree with AFM's view of their complaints, and they brought them to the Financial Ombudsman Service. Our Investigator considered this complaint and she thought that it should be upheld. She said that, in summary:

- It was recorded that the pension fund was switched so Mr P could exercise substantial control over the choice of investments in his pension. But this wasn't substantiated, and Mr P hadn't indicated that he wanted to control the investments himself to any great degree. He wouldn't control the underlying investments.
- The recommendation, whilst outlining the advantages to Mr P, was not tailored to Mr and Mrs P's situation.
- There wasn't enough consideration given to Mr P's circumstances at the time, in particular how close to retirement he was, and that they would likely need to access his funds at some point in the near future because of this.

- Given that the recommendation was to move to one fund, as opposed to the Tatton investments, which were tracker and fund of fund based, the new investment was likely to be more volatile for Mr P.
- And whilst AFM gave advice to sit tight while the fund fell in value, this is in direct contradiction to the advice it gave to change the investments in 2020 and 2021.
- The Liontrust fund was significantly more expensive that the Tatton Core portfolio.

AFM didn't agree, it said that, in summary:

- Mr P was a very experienced investor and knew the risks of financial markets and these investments. He fully understood the risk he and his wife were taking and guided both of them. That said Mr P wasn't a professional investor.
- The Liontrust fund was suitable for Mr P and Mr and Mrs P's complaint is largely about investment performance rather than suitability.
- The switch recommendation was made as the Tatton funds were underperforming, Mr P needed a better return to meet his objectives, he was informed that this was not guaranteed. He was used to high performing investments to fund his lifestyle and would want this to continue
- Mr and Mrs P had enough cash funds to leave the investments for some time, and meet their income shortfall prior to retirement, so they could take a longer timeframe and some risk with the new investments. He did not want to consider 'lifestyleing' his investments and he had opted out of this with his other pension.
- Mr and Mrs P had enough other assets, such as their cash, other investments and Mr P's other pensions to withstand some volatility with this investment and use their other assets to provide his income over the shorter term.
- Mr P was happy with the riskier investments he started. Which demonstrated a higher tolerance to risk.

AFM has provided extensive commentary about Mr P's financial background and work history. It says this shows that he was a knowledgeable investor and was able to fully understand the risks of the investments.

Our Investigator wasn't persuaded to change their opinion about the complaint. As no agreement has been reached the complaint has been passed to me to issue my 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.

Mr and Mrs P have complained that the investments they were advised to take by AFM are not suitable for them for a variety of reasons. Clearly this complaint was precipitated by the investments not performing as well as Mr and Mrs P wanted them to. But this doesn't mean the complaint is just *about* investment performance, it clearly isn't. And it's worth noting that almost every complaint about an investment product stems from a period of poor performance in some way.

AFM has provided a significant amount of information about Mr P's past employment and how it thinks this demonstrates that he is a knowledgeable investor, that he would be aware of how investments work, and most importantly he would appreciate the risk of the investments they have complained about. I don't disagree that this may be the case.

But my role here is to consider if AFM gave suitable advice to Mr and Mrs P. AFM is responsible for the advice it gave regardless of Mr P's occupation or knowledge. And I don't think the fact that Mr P may be a knowledgeable investor makes the advice AFM gave suitable. He is still a retail customer, whilst he is knowledgeable, I'm not persuaded that he necessarily was an expert in financial planning and what would constitute suitable advice.

I've considered if the investments Mr and Mrs P started were suitable for them. Like our Investigators I won't go into a lot of detail about the funds that were used. I think there are more important considerations here. But it is worth briefly explaining them and the differences between the investments Mr and Mrs P started in 2016 and those they switched to in 2020 and 2021.

The Tatton core portfolios that were started in 2016 are described by Tatton as hybrid portfolios with a mixture of index tracking and mainly fund of funds investments. I think it's reasonable to say that this approach can lower the risk and cost of investments. The Liontrust funds say that they invest in a mix of global equites, bonds and cash and aim to produce income and capital growth over five years or more. This seems to me to be an approach that could be more volatile.

It's also worth noting that all these portfolios and funds seem to invest in similar underlying assets. And I don't think, leaving everything else aside, it would be right to say that any of these investments had more risk than Mr and Mrs P wanted to take in relation to their recorded attitudes to risk. I don't think the main problem here is the risk of the funds themselves before and after the fund switches.

I think the most important consideration here is Mr and Mrs P's changing situation. In 2020 Mr P had recently stopped work and says they were two years away from drawing fully from their pensions and investments to provide the income they needed. Mr P says he had no plans to return to work.

The reason this is so important is that ordinarily a consumer's investment and savings needs change significantly at this point. Pensions and savings are often moved to less volatile, or income producing areas, to preserve their value. Mr P has said that they were looking for investments which would remain in low risk, low volatility areas. This was so they could draw down from them without the risk of large changes in their value.

And AFM were clearly aware of this change as it was documented, and the correspondences in 2020 that advised Mr and Mrs P to switch funds said that:

'As noted above once Mr P leaves his current employment you will need to use your savings and investments to meet most of your expenditure requirements, I have recommended that you initially use your cash savings to meet the shortfall, but once your Cash savings are reduced to a level that you are comfortable with you will need to start taking income from your ISA's and then your Pensions when available. Please refer to my email referred to above for my recommendation in respect of this. This is to be kept under review at future meetings.'

Given the importance of Mr P no longer being in receipt of a regular income I would have expected any advice given to Mr and Mrs P to fully encompass this, and detail how their financial circumstances would need to change going forward. But whilst this is acknowledged I don't think it formed an integral part of the advice given, as it should have done. There doesn't seem to be much detail about this at all in the suitability letters, or any of the surrounding correspondence.

I essentially agree with one of our Investigators when she said that the advice documentation is largely about the benefits and features of the Liontrust funds rather than how they were suitable for Mr and Mrs P's changing needs.

AFM has said that Mr and Mrs P didn't need to fundamentally change their investments as they had enough assets to be able to provide an income over the foreseeable future. And so, they didn't need to access these funds in the shorter term.

And I have taken on board that this investment was in a pension plan that Mr P couldn't draw from straight away. But Mr P was close to retirement and so this would change relatively quickly. And whilst he had decided not to progressively move another pension, he had into lower risk investments this doesn't mean the advice he was given here was right for him.

Mr and Mrs P's cash reserves were not especially high. And its good advice, and would have been here, to keep a significant amount of cash for unforeseen expenditures or to avoid surrendering an investment during a period of poor performance. AFM should have given advice on the basis Mr and Mrs P would access their investments in the near future.

Mr P has said that they didn't want to start new long-term investments as they were unlikely to invest for the five-year minimum recommended term. And this is supported by the point-of-sale documentation that I've quoted from above which says his longer-term plan is to draw an income from these funds. So, I agree that the fund switch wasn't right for this reason.

And in any event Mr and Mrs P's investments were already in long term income and capital growth-based investments that met their attitude to risk and needs. I don't think the new funds represented a fundamental change in this if this was their preferred shorter-term strategy. Even if it were right for Mr and Mrs P to invest these funds, they already were invested, and no change was needed. I've not seen any persuasive evidence from the time of the fund switch that Mr P wanted more control over how this money was invested.

AFM has said that their advice in 2022 was for Mr and Mrs P to 'sit tight' to avoid crystallising the losses when the funds fell in value. And they could do this as they had other investments to draw on. But I think it's established that they had a need for these funds, and so this wasn't a realistic strategy for them. And it conflicts with the rationale agreed about using these funds for income in the near future.

AFM has said that Mr and Mrs P were used to, and needed to obtain, higher returns to support their lifestyles in Mr P's retirement. This isn't documented at the time of sale, but I can accept that some of the conversations between Mr and Mrs P and AFM were not always recorded.

But this seems to me to be a fundamentally different approach to what they were advised to do. Mr and Mrs P seem to be essentially lower risk investors (albeit with significant assets that allow some high-risk investments). And they had a mortgage and young family to support. So their circumstances support this.

Proper planning can mitigate these risks, as can managing a consumer's expectations about what they can reasonably expect from an investment portfolio. But I don't see any indication that Mr and Mrs P wanted, or needed to, take significant risks to generate a higher income. The evidence I've seen points to the opposite being the case. That is they had a significant amount of assets and they wanted these in lower risk areas to provide an income. And this was a realistic proposition for them. I'm not persuaded higher risk investments are what Mr and Mrs P wanted or what AFM had in mind when it gave advice.

And it follows that any potential increase in performance that AFM expected the new funds to provide wasn't in itself a good reason to make the fund switches.

And lasty the Liontrust investments were more costly than the Tatton ones, the management charges were significantly higher. Given that there seems to be very little justification for the fund switches in respect of Mr and Mrs P's circumstances this is a further reason to say they weren't right for them.

Overall, I don't think Mr and Mrs P's circumstances were right for these fund switches. I can't see a genuine requirement to switch funds so close to Mr P's retirement. So I don't think the fund switches were suitable for them.

Our Investigator recommended that AFM also pay Mr P £150 for the distress caused by the unsuitable advice. I don't doubt that Mr P has been caused distress and concern in relation to his investments and retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr P as close as possible to the position he would probably now be in if he had been given suitable advice.

I think Mr P's SIPP investment would have remained within the Tatton Core Balanced Portfolio until he surrendered the subsequent investments in the Liontrust Cautious Managed fund.

To compensate Mr P fairly AFM should:

- Determine what the value of Mr P's SIPP Investment in the Tatton Core Balanced Portfolio would have had if it had remained in this investment till the time Mr P surrendered the subsequent investment in the Liontrust Cautious Managed fund.
- Compare this with the value this investment actually provided in the Liontrust Cautious Managed fund at the date the investment in this fund was surrendered by Mr P.
- If Mr P's SIPP investment would have had a higher value in the Tatton portfolio than the Liontrust fund then AFM should pay the difference.
- AFM should add interest at 8% simple per year on any loss from the surrender date to the date of settlement.

The additional interest is for being deprived of the use of any compensation money since the investment was surrendered.

If there is a loss, AFM should pay into Mr P's pension plan, 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. AFM shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

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

The notional allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr P is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr P 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%.

Any withdrawal from the SIPP should be deducted 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 AFM total all those payments and deduct that figure at the end to determine the value instead of deducting periodically. I understand that no withdrawals were taken.

AFM should also pay Mr P £150.

There is guidance on how to carry out calculations available on our website, which can be found by following this link: https://www.financial-ombudsman.org.uk/businesses/resolving-complaint/understanding-compensation/compensation-investment-complaints.

Alternatively, just type 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

The file shows that AFM has already calculated this compensation, it now should ensure this calculation is correct and up to date.

My final decision

For the reasons I've explained, I uphold Mr P's complaint.

Absolute Financial Management Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 February 2024.

Andy Burlinson
Ombudsman