

The complaint

Ms M complains that Pi Financial Ltd (Pi) are responsible for the personal recommendation she received to switch a personal pension to a self-invested personal pension (SIPP) and for the subsequent investments that weren't suitable and caused a loss.

What happened

Ms M had two existing personal pensions and, in early 2018, was approached by an unregulated introducer about her pension plans. This unregulated party introduced Ms M to Future Wealth Management (FWM) who were an appointed representative of Pi.

In April 2018 FWM provided Ms M with advice to switch her personal pensions to a SIPP with Forthplus. And recommended that the transferred funds should be invested through a discretionary fund manager (DFM) TAM Asset Management. FWM determined Ms M as having a high-medium attitude to investment risk.

An application form for the SIPP was completed and submitted to Forthplus. It listed two pensions to be transferred to the SIPP. But the section for the intended investments was left blank. The application form was dated 2 May 2018.

Pi have shown that it was contacted by FWM on 4 May 2018 and told that FWM was going to be closed and that Ms M's financial adviser was going to surrender his Financial Conduct Authority permissions.

On 18 July 2018 one of Ms M's personal pensions was transferred into her SIPP. The fund value transferred was £67,113.64. The second personal pension does not appear to have been transferred. The transferred fund remained uninvested.

In August 2018 another regulated financial advice firm – Rex Financial Services LLP (Rex) – contacted Ms M. It explained that it had been passed her details from her previous adviser. Rex enquired whether or not she was still planning to take tax-free cash and whether it had been requested yet.

On 3 September 2018 Pi wrote to Ms M to explain that FWM operated as an appointed representative of it. Pi explained that FWM was no longer trading. It offered to introduce Ms M to another adviser or to retain her information to forward to a new adviser she may appoint.

On 7 September 2018 Rex appears to have advised Ms M to invest her SIPP funds with an investment company – Cornhill Management. And her SIPP statement shows that, on 17 September 2018, £60,000 of her SIPP fund was transferred to Cornhill Management for investment.

Ms M's SIPP was invested evenly between:

- LUXIF-Amathus Conservative portfolio
- LUXIF-Amathus Balanced Growth portfolio

In February 2019 Ms M's SIPP provider contacted her to inform her that Rex had its permissions altered by the Financial Conduct Authority and that it had terminated its terms of business with Rex. It recommended that Ms M seek alternative financial advice.

By October 2021 Ms M's SIPP provider informed her that her investments were in liquidation. It was unable to trade them or to provide an updated estimate of their values. And, in October 2021, Ms M's SIPP provider was also in administration and her SIPP transferred to a new provider.

In February 2023 Ms M complained to Pi about the loss of her pension. She was unable to access her pension to take benefits and was likely to face a large loss of her pension.

Pi looked into what happened and considered that the recommendation that FWM gave was suitable. And explained that it wasn't responsible for the consequences of any financial recommendation that Ms M received after FWM stopped being her financial adviser. But it offered an ex gratia payment of £4,367.03. That was calculated based on the loss Ms M's fund experienced following the switch in July 2018 until the point that it thought Ms M became a client of Rex.

Ms M didn't accept Pi's offer and brought her complaint to our service. Our investigator looked into what happened and didn't think that FWM's advice had been suitable for Ms M. He didn't think that FWM demonstrated that the pension switch was in Ms M's best interest. And suggested how he thought Pi should compensate Ms M for the impact of its mistake.

Pi instructed legal representation who responded to challenge the opinion that our investigator reached. I summarise those arguments as follows:

- Pi is not liable for the full extent of Ms M's losses simply because it is the "last man standing". Rex, which provided the advice to invest with Firm C is no longer trading. Firm C is not regulated by the FCA. And the SIPP company, that had due diligence responsibility for the investments in Ms M's SIPP is also in administration.
- Pi's appointed representative complied with COBS 9.2, COBS 9.3 and COBS 19. It followed guidance in place which required it to consider the suitability of the investment the SIPP funds would be placed into.
- Ms M's complaint, in so far that it relates to the losses incurred by the investment in Firm C, are not in our jurisdiction. On the basis that Ms M is not an eligible complainant.
- Pi prohibited its appointed representatives from making recommendations for Firm C in October 2017.
- This was a pension transfer and not a pension switch as our investigator had treated it. Meaning Pi can only be judged on the suitability of the advice to transfer the pension to the SIPP. And not the later investment.
- Ms M's objectives, which were documented in the suitability report that Ms M signed, were met by transferring to the SIPP.

This complaint was referred for an ombudsman's decision. I looked into what happened and issued both parties with my provisional decision. In it I explained why I thought that Ms M's complaint was in our jurisdiction. And then went on to explain why I thought Ms M's complaint should be upheld. But I explained why I thought that Pi were only liable for the losses that Ms M suffered up until the point that she was given further advice to invest with Cornhill, which caused the significant loss to her pension fund.

Ms M explained that she was disappointed with my finding as it didn't compensate her for what caused the bulk of her loss. But she offered no further evidence or arguments for me to consider. Pi accepted the provisional decision and offered no further evidence or arguments for 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.

Having fully considered everything a final time my final decision is the same as the decision that I provisionally set out to both parties. I acknowledge Ms M's disappointment and understand that she has suffered significant losses. But for the reasons that I previously gave, and set out again in what follows, it is only fair and reasonable to hold Pi responsible for the losses that its mistake caused.

Why Ms M's complaint is in our jurisdiction

Pi questioned whether our service has jurisdiction to consider the complaint that Ms M has made. It argued that she may not be an eligible complainant for the purposes of the rules that govern our service. Those rules are set out in the Dispute Handling part of the Financial Conduct Authorities Handbook – referred to as DISP.

DISP 2.7 is the part of the rules that Pi has questioned. Which related to the question of whether Ms M is eligible to complain. Put simply, there is a two stage test for eligibility. The first is explained in DISP 2.7.3R and gives a number of definitions of types of person that can be eligible complainants. The second part of the test, in DISP 2.7.6R, deals with whether the complaint relates to matters arising from the relationship that the person has to have with the respondent business.

Taking the first part of the test under DISP 2.7, one of the types of person that can be an eligible complainant is a 'consumer', which is defined in the glossary as "*a person acting for purposes which are wholly or mainly outside that individual's trade...*". I think it is clear that Ms M was a consumer by this definition.

The second part of the test has a list of 17 possible relationships. The first of these is that the complainant is a customer. Which is, in its everyday meaning, someone who is, or has, been obtaining products or services from the business complained about. Ms M had a client agreement with FWM. So was its customer for the purposes of the service it provided. Which was a personal recommendation regarding switching her personal pension plans to a SIPP. The second part requires that the complaint arises from matters relevant to that relationship. So Ms M is limited to complaining about the advice she received from Pi as its customer.

I've considered the arguments made by Pi's representative about jurisdiction but don't agree with them. Ms M's complaint is about the position that she has ended up in following the recommendation FWM provided. Like our investigator explained, this decision will not consider the merits of the recommendation given by Rex. But that doesn't make Ms M ineligible to complain about the actions that Pi was responsible for regarding her pensions.

I've considered all the areas necessary for us to have jurisdiction but find no other issue that would prevent me from giving an answer on the substance of Ms M's complaint.

It is for these reasons that Ms M has a complaint that is in our jurisdiction. I will go on to give my decision on the merits of Ms M's complaint.

Did Ms M receive suitable advice from FWM?

For the reasons I'll explain, I've decided that the recommendation that FWM gave Ms M was not suitable for her.

Our investigator made reference to a report published by the regulator (then the Financial Services Authority) in 2009. That was entitled '*Quality of advice on pension switching*', and dated December 2008. This report identified areas where advice had caused consumers to be disadvantaged. Even though this guidance was given 9 years before the recommendation FWM gave it was still relevant to what good advice for pension switching looked like.

It meant that FWM needed to consider, amongst other things:

- Whether switching the pension resulted in a pension that was more expensive than their existing one.
- Whether the switch was to a pension that matched the consumers attitude to risk and personal circumstances.

So it is fair and reasonable that I consider these elements when considering whether FWM's advice was suitable. In addition to this I've also considered: the obligations FWM had under the regulator's Conduct of Business Sourcebook (COBS) – in particular COBS 9 (assessing suitability) and COBS 2.1.1R (client's best interest rule); and the Principles for Business – PRIN.

I'll start by considering the fact-find that Pi has provided. It is on a form that contains a lot of prompts to capture information that would be very important in being able to properly provide advice. And much of it appears left blank. For instance, no attempt has been made to document any understanding of Ms M's expenditure. Either in the present, or likely/anticipated expenditure in retirement.

It did reflect an outstanding mortgage amount of £82,000 against a property valued around £210,000. It indicated that the mortgage payments were £630 a month. But the area for existing pensions and investments was left blank.

There was a section for retirement comments that was also left blank. As was the section for the client's financial goals, needs and priorities. So, even though the document is signed I think it provides scant information. Which is important because COBS 9 sets out rules that required FWM to obtain necessary information to be able to make a personal recommendation. And I don't think Pi can clearly evidence that FWM did that. So, whilst COBS 9.2.5R entitled FWM to rely on the information that Ms M provided, COBS 9.2.6R meant that FWM must not make a personal recommendation if it didn't obtain the necessary information to assess suitability. Which I think was the case here.

I'll now consider the implications of the written recommendation that FWM provided. It started by telling Ms M that she'd instructed FWM to limit its advice to Pension Planning, specifically the setting up of a SIPP. And suggested that it had only obtained the necessary information to advise on that. But, in providing a personal recommendation, it isn't fair to simply transact what Ms M might have thought she wanted. FWM still needed to properly consider her circumstances and give advice that was in her best interests. Which might not have been switching to a SIPP, even though she may have already been pointed towards that by the unregulated introducer.

I've looked at the attention FWM gave to Ms M's objectives. And think that the objectives identified were quite generic. They didn't appear to properly consider her personal requirements in retirement. Which is an important part of pension planning. I say this

because FWM noted *“usually I would discuss your target retirement income requirements, but you stated you did not have a level of retirement income in mind”*. Of course, I can't now know what was discussed between FWM and Ms M, but I don't accept that this was a reasonable thing for FWM to accept. As part of retirement planning it needed to understand how Ms M intended to use this pension. This is where I would expect to see some understanding of expenditure beyond recording what the monthly mortgage payments were. The problem FWM had was that its fact-find was simply not good enough to be able to suitably recommend any new arrangements to Ms M.

From the information which FWM did manage to record it would have seemed that Ms M had no other pensions or savings. It understood she was 56 years old and able to start taking benefits from the pensions she had. Which were both money purchase pension schemes. And she indicated a preferred retirement age of 60. Which was, potentially, an investment term of only 4 years before this pension would have to start providing income. And FWM clearly understood that Ms M hadn't been making pension contributions to any plan for a while and appeared not to intend, or be able, to. Simply put, the pension pot she currently had was likely to be all the pension she would have and she might start to take benefits from it relatively soon.

FWM summarised Ms M's objectives as:

- Having greater investment choice and flexibility;
- To speak to an advisor rather than simply receiving statements;
- To consolidate both of her plans and access her 25% tax free cash to take her family on holiday and to do some home improvements;
- Needing a plan with increased access to varied investment managers;
- For her partner/husband to be the main beneficiary in the event of her death;
- Flexibility within a SIPP to allow her to access investments that suit both her objectives in retirement and level of risk she was comfortable with.

Again, I have fully considered the arguments that Pi's representative has put forward, but don't agree that these objectives warranted a switch to a SIPP. I will address these in turn.

Even if Ms M had genuinely expressed an interest in having greater investment flexibility I've seen no evidence that FWM explored the investment options in her existing pensions. Or whether those of a stakeholder pension would have been sufficient. Most pensions have a range of investment options for various risk appetites. And whilst a SIPP may have had a greater choice I am not persuaded that Ms M needed that. In a questionnaire that she completed for FWM, it was apparent she had little to no investment experience.

If Ms M had a genuine desire to obtain financial advice, that was an objective that was already met by obtaining advice and was not dependent on a pension switch to be met.

Consolidating her plans would have simplified her pension planning. So a pension switch would have achieved that. It may have supported the benefit of consolidating pensions, but this could also have been achieved by transferring to a stakeholder pension or personal pension. And, dependant on how Ms M intended to use her pensions, consolidation may not, by itself, have been enough to warrant a switch.

I've seen no compelling evidence that would have led FWM to genuinely consider that Ms M had a need for increased access to varied investment managers. She had a fund size that was expected to be in the region of £70,000 before taking any tax-free cash. Which FWM also identified as an objective. The likely investment return and her capacity for loss meant that a simple and cost effective pension solution was likely to be what she needed.

Whilst I certainly accept that Ms M would likely have wanted her partner to be the recipient of death benefits, I haven't seen that FWM explained to her that was already possible with her existing money purchase pensions. Or with any other type of money purchase pension that she may switch to. It certainly wasn't an objective that meant that a SIPP was a necessary outcome.

The final objective is the one that Pi's representative has argued could only be met by transferring to a SIPP. Of course, only a SIPP would provide the flexibility of a SIPP. But the key point ought to have been Ms M's ability to be able to access investments that met her attitude to risk and enabled her to best meet her objectives. Transferring to a SIPP wasn't the only way to achieve that. And the advice FWM gave should have focussed on what was in Ms M's best interests. Irrespective of any pre-conceived notions that she may have had when she was referred to FWM.

My conclusion is that there is nothing in her objectives that convinces me that a SIPP was the only way that her best interests could be served.

FWM went on to recommend a solution that moved Ms M's pensions to a SIPP. The recommendation included financial advice as well as the additional cost of a discretionary fund manager. Overall I think this was an over-engineered solution for a fund of the size Ms M had. And for the likely investment term she had. And by this I refer to what FWM understood of her likely retirement age. Not what was recorded in its attitude to risk questionnaire – which was 6 to 10 years. Which it ought to have considered to be at odds with the facts it had.

It assessed Ms M's attitude to investment risk as high medium. Like our investigator I'm surprised at this. I have looked at all of the questionnaire's responses. And think that there is some degree of conflict in those responses. But the questionnaire is just a starting point to help determine the most appropriate investment risk for Ms M. I don't think that FWM placed adequate value on the fact that Ms M had very limited investment knowledge or experience. It was information that was available from its questionnaire and should have been considered. I also don't think adequate importance was placed on capacity for loss. Given her testimony, I suspect that Ms M understood that she couldn't afford much loss at all with these pensions. And, I have already said, they were the only pensions that FWM were aware of. And it ought to have appeared extremely unlikely that Ms M could recover from loss in the four years she had to age 60. So it should have been recommending a more cautious approach than it did.

FWM's recommendation paid scant regard for options other than a SIPP. It made no comment of the benefits of remaining where she was or her ability to take benefits from her existing schemes. It dismissed the suitability of a Stakeholder Pension with no apparent comparison or reasonable rationale. And I cannot see that any reference was made to the potential suitability of a personal pension.

Then there is the issue of cost. FWM's suitability report made no comparison of the relative costs of Ms M's options. And it should have.

It documented the charges of her existing pensions as being 1%. But in the terms and conditions that Pi has shared for the pension that ended up being transferred, those costs appear to actually be 0.75% a year.

In comparison the SIPP had an annual fee of £400. Which, for the fund size around £70,000 would be 0.57%. And after taking a 25% tax free lump sum (which FWM indicated Ms M wanted to do) would end up being around 0.76% of the residual fund. On top of this FWM's recommendation was building in DFM charges potentially on top of individual fund charges.

It's suitability report indicated that the DFM would charge a 0.25% platform charge and 0.25% (plus VAT) annual management charge. Plus the SIPP levied additional charges that FWM didn't bring to Ms M's attention. Which included a further £150 a year for a fund in drawdown. Overall, FWM's recommendation placed Ms M in a product that was unquestionably more expensive. And it additionally recommended she pay a further 1% a year ongoing advice charge. Which may well have been unnecessary for a simpler pension solution.

It therefore follows, for the reasons I've outlined above, that I don't think FWM's recommendation was suitable for Ms M. It exhibited some of the elements of poor practice that the regulator had highlighted as long ago as 2009. I also find that FWM failed to comply with elements of COBS, including its obligation under COBS 2.1.1R.

Having identified that FWM's recommendation wasn't suitable I need to consider the implications of its failing.

It is evident from its suitability report that FWM went beyond just recommending a SIPP. Which it was also required to do. And it gave a specific recommendation that Ms M invest with a specific DFM. Whilst I don't agree that the recommendation was suitable for her, the consequence of that unsuitable advice would have been that Pi would be responsible for any loss that Ms M suffered by following its recommendation.

In this instance though, Ms M's SIPP was never invested with TAM Asset Management. Even though FWM had documented that recommendation to Ms M, when FWM completed the SIPP application form, it didn't include the investment details in the relevant part of the application. So Forthplus SIPP were never given an investment instruction as far as I can see. It meant that, when Ms M's funds were transferred on 18 July 2023, they sat in cash.

Pi have evidenced that by July 2018 FWM had resigned as its appointed representative. And FWM never gave any subsequent advice regarding the investment of Ms M's fund. This oversight in facilitating Ms M's transfer left her in a worse position than she was before the advice. She had a fund that had been reduced by the impact of charges and, being uninvested, wasn't recovering from those initial costs.

In this specific case though Rex contacted Ms M and on 7 September 2018 it appears to have provided a recommendation that Ms M invest her fund with Cornhill Management. This wasn't the investment strategy that FWM had recommended and which Pi were accountable for. Rex's recommendation went ahead on 14 September 2018. Because the pensions in question had always been money purchase pensions with the funds in some way invested, I can't say that the advice that FWM gave is the thing that brought about any consequences of the subsequent losses after the investment with Cornhill Management. In this particular case I am of the opinion that, because Rex were a regulated financial adviser in its own right, its advice broke the chain of causation. I say that because it could have provided the advice to switch to a SIPP and make the investment just as easily. So being in the SIPP at that point wasn't the thing that made the subsequent advice to invest with Cornhill Management possible.

Putting things right

I note Ms M's disappointment with the finding I indicated that I would reach in my provisional decision. For the reasons I've explained I have found that Pi gave unsuitable advice. But for that advice Ms M would, most likely, either have remained in her existing pension or have been switched to a suitable stakeholder or personal pension. So Pi is responsible for putting things right in this case up until the point that a different regulated third party, that it was in no way aware of or connected to, gave an alternative recommendation. That third party is

responsible for its advice and the fact that it is no longer trading doesn't, in this case, transfer its liabilities to Pi.

To put things right Pi need to calculate the loss to Ms M's Zurich pension from the point of transfer (18 July 2018) until the investment brought about by Rex (14 September 2018). In Pi's original offer it assumed investment growth using the FTSE Private Investors Income index over that period. And, given that I cannot be sure that Zurich will be able to provide a notional value of Ms M's pension at the later date (had she not transferred) I think this is a reasonable assumption.

Ms M's Zurich pension transferred £67,113.64 and Pi should calculate its notional value using the above index between the above dates. It should compare that with the actual value of Ms M's SIPP on 14 September 2018. If Pi is unable to obtain the actual value of the SIPP on that date, its presumed figure, based on offsetting the set up and initial advice charges, is an acceptable approximation.

If that calculation demonstrates that Ms M suffered a loss then the same index should be used to calculate the ongoing impact of that loss from 15 September 2018 until the date that Pi is told that Ms M accepts my final decision.

That total loss should be paid to Ms M as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Ms M has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this

Ms M has also been caused distress and inconvenience as a consequence of the advice that Pi provided. But I believe that the major part of her distress came about as a consequence of the failure of the investments made through Cornhill Management. Which I've decided weren't a direct consequence of Pi's mistake. For the distress and inconvenience that Pi have caused, Pi should pay Ms M a further £400.

If payment of compensation is not made within 28 days of Pi receiving Ms M's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Pi deducts income tax from the interest, it should tell Ms M how much has been taken off. Pi should give Ms M a tax deduction certificate in respect of interest if Ms M asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

My final decision

For the above reasons I uphold Ms M's complaint and direct Pi Financial Ltd to calculate Ms M's loss and compensate her in the manner that I have set out in '*putting things right*' above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 28 March 2024.

Gary Lane
Ombudsman