DRN-4728567

The complaint

Mr M's representative has complained that Pi Financial Ltd gave him unsuitable advice to transfer an existing stakeholder pension policy to a Self Invested Personal Pension (SIPP), saying that this has caused him significant losses.

What happened

The investigator who considered this matter set out the background to the complaint in his assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr M contacted M&S Solutions, an appointed representative of Pi Financial (and so I'll refer to the respondent firm as Pi Financial), to discuss his retirement planning needs.

Pi Financial completed a fact find analysis to establish Mr M's circumstances and financial objectives. An assessment of Mr M's attitude to risk determined his risk appetite was a "6" (out of 10), where "1" was lowest risk and "10" was highest - and in the suitability report this was described as balanced. The with-profits fund investment in the Royal London pension was also considered to be a balanced risk investment.

Pi Financial issued a suitability report dated 26 June 2017. It recommended Mr M transfer his Royal London Stakeholder pension policy to an Intelligent SIPP and to invest with a Discretionary Fund Manager ("DFM"). Pi Financial noted that Mr M had the following objectives, which formed the basis of its reasons for recommending the transfer:

- Access tax-free cash to build a garage for his car.
- To diversify investments and provide better opportunity for growth.
- For the pension to be passed down to loved ones.

The SIPP had a fixed annual fee of £150, compared to the 1% annual charge for the Royal London pension. But Mr M would pay a 1% ongoing adviser charge and a 1.5% dealing commission to the DFM.

Mr M accepted Pi Financial's recommendation, and the transfer took place over the following months. The amount transferred was around £36,628.

Mr M complained to Pi Financial via his representative on 30 May 2023, raising concerns that the advice was unsuitable for several reasons, which can be summarised as follows:

- The advice to switch Mr M to the Intelligent SIPP away from his previous entirely "mainstream" position was inappropriate and has resulted in significant losses to Mr M's pension fund value.
- The pension switch advice wasn't suitable given Mr M's circumstances (low risk, retail client) and was unlikely to ever benefit him.

- The investment with the DFM wasn't appropriate given Mr M's circumstances.

- The investment was into an unregulated high-risk, single asset, non-standard product, and wasn't suitable as a pension asset. The investment had no liquidity and now had no value.

- There was no market for Mr M to sell this asset, either now, or upon retirement.

- The transactions therefore only served the benefit of the adviser and had the effect of incurring unnecessary costs for Mr M.

Pi Financial declined to uphold the complaint, however, saying that the advice was suitable and that any complaint about changes made by the DFM should be raised with that business.

Dissatisfied with the response, Mr M's representative referred the matter to this service.

Having considered the complaint, our investigator thought that it should be upheld, saying that, although Mr M had a need to access his tax free cash, transferring into the SIPP and DFM wasn't a suitable option to achieve this. In support of this position, he said the following:

- Mr M had genuine plans to use the tax free cash to build a garage and use the remaining funds to buy a car – and he did build the garage shortly after taking the tax free cash. Further, although other options to fund this were explored, Mr M's preference was to access his tax free cash.

- His stakeholder plan only allowed him to take tax free cash if he also took the remaining benefits as a lump sum or an annuity. He was a few years away from retirement, and so transferring would mean that he could take the tax free cash and not take the remaining benefits until he needed them.

- But although Mr M had expressed dissatisfaction with the fees charged on his existing plan, by transferring into the SIPP and entering into DFM, he would likely be paying higher fees, especially if the ongoing advice fee was included. The DFM charged 1.5% dealing commission on trades and there may be other costs, depending upon the investments chosen.

- In December 2008, the regulator issued a report entitled "Quality of advice on pension switching". This summarised its findings following the thematic review on the quality of advice given to customers to switch the value of their pensions into a new plan.

- The regulator said the following:

  "We assessed advice as unsuitable when the outcome was the customer switching into one of the following:

  - *A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to* *be better, or the reason as flexibility of a drawdown option, but there was no evidence that this option was needed).*

- *A pension that was more expensive than a stakeholder pension, but a stakeholder pension would have met the customer's needs…"*

- It was Pi Financial's position that Mr M was seeking enhanced growth, but DFM wasn't suitable for Mr M. It was typically suited to investors with a higher net worth and more investment experience than that possessed by Mr M. Mr M was only transferring around £36,000 - and previously investing in a SIPP wouldn't qualify him as being experienced in such matters.

- Mr M had no need for DFM, and he would have been better off with a more basic product which didn't carry the potential for much higher charges.

- The possibility of greater returns and access to a greater number of funds may have seemed appealing to Mr M, but it was Pi Financial's responsibility to make a recommendation which was in Mr M's best interests. DFM wasn't suitable for Mr M, given his circumstances and objectives.

- Pi Financial also needed to take particular care here, given its knowledge that Mr M had another SIPP which was used to invest in overseas property, and which it knew was unlikely to yield a return.

- Mr M didn't have a need for ongoing annual reviews – and this seemed to be recommended because of the product in which he was going to invest, rather than being a prerequisite. Mr M primarily wished to access his tax free cash. Had Mr M been advised to transfer into a suitable arrangement, he could then have asked for advice as and when he needed it, for example when he came to retire.

- There was therefore no good reason for Mr M to incur higher costs in this case. There would have been other products with similar costs to his stakeholder plan, and Mr M could have still taken his tax free cash and invested the remainder more in line with his attitude to risk. There were products which would have provided the required flexibility and would have been more suited to someone like Mr M with limited experience and only a few years from retirement.

- And although Pi Financial had said that it couldn't be held responsible for any unsuitable investments chosen by the DFM, it had nevertheless recommended the transfer and DFM in the first place. Had it not done so, and instead recommended a suitable arrangement for Mr M, he wouldn't have been invested in the funds chosen by the DFM. And so Pi Financial was responsible for any losses incurred.

To put things right, the investigator recommended that Pi Financial should compare the actual value of Mr M's SIPP with the notional value of the transferred amount, had it been invested in line with one of our benchmark indices – the FTSE UK Private Investors Income Total Return Index. This was an appropriate proxy for the type of investment which would have been suitable for Mr M – who wanted capital growth and was willing to accept some investment risk. The index comprised of mainly UK equities and government bonds.

If this demonstrated a loss, the investigator said that, in the first instance, Mr M should be compensated by Pi Financial paying into his pension plan – but if this wasn't possible, it should be paid directly to Mr M with a deduction for the (assumed basic rate) income tax he would pay on the benefits.

If any aspect of the SIPP was illiquid, and so it was difficult to attribute a value to the SIPP, then Pi Financial should buy the illiquid investment out of the SIPP. If this wasn't possible, then it should assume that the value of that investment was nil.

The investigator said that Pi Financial may wish to arrange an undertaking with Mr M for him to pay to it any amount he may receive from that investment in the future.

The investigator asked Pi Financial to respond to his assessment within two weeks. Pi Financial said in response that it disagreed with the outcome, but requested a two week extension to provide its response.

This expired, however, and Pi Financial then requested a further two week extension, to which the investigator agreed. It then responded as follows:

- The matter of the increased fees was addressed within the suitability report – this was accepted for the sake of higher growth and the "hands on", more personalised management approach of the DFM.

- It was unfair to speculate that if Mr M was unhappy with the fees charged by another provider, he would therefore be unhappy with the fees charged within the recommended arrangement.

- Mr M signed the declaration which said that if he felt the recommendation didn't reflect his circumstances and objectives, he would contact the adviser. He didn't do so.

- It was also speculative to say that Mr M's holding of another SIPP wouldn't have made him experienced in such matters. His investment in overseas property within the SIPP meant that he would have had knowledge in this particular field. Mr M was also described within the suitability report as having a good understanding of general financial and economic affairs, as well as experience of investing in a range of financial instruments.

- Mr M was also recorded as being happy to take more risk with his retirement funds so long as there was a better opportunity for return.

- It was because Mr M's pension fund was only around £36,000 that DFM was recommended – he was seeking to invest for around 11 years and wanted to diversify his investments to help spread risk and improve the opportunity for growth.

- The existence of the other SIPP, albeit with a failed investment worth nothing at the time, meant that Mr M had relevant experience. And having the failed investment wouldn't mean that the subsequent SIPP and DFM were unsuitable for Mr M.

- The limited time to retirement was one of the factors which made the SIPP and DFM appealing to Mr M as it provided opportunity for "a larger growth of his conservative fund". Mr M may now be more risk averse due to losses incurred, but he was assessed as being a balanced risk investor at the time. And this was the type of portfolio which was recommended in order to diversify his investments and reduce risk.

- The particular DFM chosen was recommended in order to provide a service to Mr M, having been deemed to be a suitable and appropriate provider for him. Mr M entered into an agreement with the DFM, for which it charged Mr M for the advice per transaction. The DFM was authorised by the FCA and was responsible for the advice it provided to Mr M. If the services it then provided were inappropriate, it was unfair to hold Pi Financial responsible. The DFM had a duty to act in Mr M's best interest, and Pi Financial couldn't be held responsible for its failings.

As agreement hasn't been reached on the matter, it's been referred to me for review.

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.

And having done so, I broadly agree with the conclusions reached by the investigator, and for similar reasons.

Mr M had relatively straightforward objectives – to access his tax free cash and invest the remainder for the prospect of capital growth until he came to retire. There was nothing about his circumstances or objectives which might reasonably have made him a suitable candidate for DFM.

On the matter of his financial experience, it's fair to say that he did have another SIPP and so would have been familiar with that type of wrapper, but I address further below the particular significance of that investment, having as it did a nil value at the time of the advice. Mr M had a balanced attitude to risk, but was concerned about charges, and had a relatively modest pension fund to invest after taking tax free cash.

I've noted Pi Financial's very rationale for DFM being the relatively modest size of Mr M's pension fund. As with the investigator, my view is that the size of the pension fund – around £26,000 if maximum tax free cash was taken - would make it particularly vulnerable to the type of fixed transaction costs associated with DFM, such as for trading, or custody charges. On top of this, Mr M would be paying for ongoing fund management which, as with the investigator, and for a pension pot of this size, would be difficult to justify.

To be clear, my view isn't that in every circumstance DFM would be unsuitable for a pension pot of this size, and I don't consider there to necessarily be a minimum amount which might appropriately lend itself to DFM – circumstances and objectives will differ. But as with all DFM, there would need to be a reasonable justification for entering into this type of arrangement, be it an expressed proactive desire from the consumer to do so whilst acknowledging and accepting the higher associated costs, or other persuasive indications as to why this particular type of active management would be suitable (e.g. a high risk/growth objective).

But none of these conditions seemed to apply here. Mr M had in fact expressed concern about the charges within his other SIPP, as follows:

"I currently have a SIPP with [SIPP provider] and the charges annoy me more than the fluctuation."

Even stripping out the initial advice fee of £1,384, the charges within the SIPP/DFM were predicted to be over £1,000 pa, in addition to £346 pa payable to Pi Financial for a review of his overall financial position. This compared to around £350 pa within the existing plan.

So to invest him in an arrangement with these significantly higher charges, the exact nature of which would be dependent on the trading frequency within the DFM arrangement, according to the discretion of the fund manager, would seem entirely contrary to his aims and concerns in that regard.

Mr M may have expressed no objection to the higher fees, but he was acting upon advice given by Pi Financial which was that it was worthwhile paying additional fees for the sake of higher growth. But my view is that Mr M wasn't suited to DFM. Moreover, Pi Financial, as the professional party in the transaction, ought to have been mindful of his concerns around fees, along with the broader unsuitability of DFM for Mr M, and then acted and advised accordingly.

I can see no record of Mr M expressing a pre-existing keenness to enter into DFM, despite the higher associated costs, before this was recommended by Pi Financial – it wasn't something that he'd approached Pi Financial with a desire to establish.

Further, as set out above, Mr M had another SIPP within which he'd invested in overseas property, and which seemed to have liquidity issues. It might reasonably be concluded, therefore, that for someone with a balanced attitude to risk, a suitable balancing investment for that separate asset which clearly presented significant risks would be a straightforward, low cost, mainstream fund, or funds.

This position is further endorsed by Mr (and Mrs) M's other assets – they had an unencumbered property valued at around £100,000, but had quite modest amounts of savings, at around £8,000. Mr M had membership of an occupational pension scheme, but this was valued at around £22,000. And so, given that, unless compensation was received, the other SIPP investment was at the time unlikely to yield a return, and his overall likely pension fund at retirement, I think his capacity for loss was quite limited.

Mr M was seeking capital growth, but this might reasonably be achieved through investment within either one well diversified fund, or several funds if he wished to diversify further. He was also only a few years from retirement, and so it might also be reasonably concluded that maximising returns – without paying more than he needed to in fees - in a balanced fashion which didn't expose him to too much risk and the possibility of beginning to draw on his pension benefits at depressed points in financial markets, would be suitable for him.

I've also noted that, whilst the aim was greater diversification for the prospect of higher growth, the existing balanced fund contained cash equities, fixed interest and a small proportion of "other" investments. This wasn't markedly different from the balanced portfolio recommended within DFM, which also had a similar asset split of equities, cash and fixed interest. Mr M could have replicated this within a mainstream fund, or funds, after transferring and taking his tax free cash.

As set out by the investigator, given his overall circumstances, including the proximity to retirement, the quite modest size of the fund being transferred, his attitude to risk, and low capacity for loss, along with his straightforward objective of capital growth and concerns around fees, he simply wouldn't have needed, or been suited to, the type of more costly active management associated with DFM, or otherwise annual reviews through an advising firm. If he wished to seek financial advice when he came to retire, he could then have done so.

Overall, for the reasons set out above, I'm not persuaded that DFM was suitable for Mr M. My view is that he should have been advised to transfer to another low cost product which allowed him access to his tax free cash, and offered a range of well diversified mainstream funds which would provide him with the balanced type of risk/reward with which he was comfortable.

In closing, I’ve noted Pi Financial’s comments about it not being responsible for the investment decisions taken by the DFM. But my view, as with the investigator’s, is that Mr M should never have been invested into DFM, and so potentially “in harm’s way”, in the first place. Had suitable advice been given, he wouldn’t have been exposed to the possibility of unsuitable subsequent investment decisions by the DFM.

If Pi Financial Ltd considers that the DFM has taken investment decisions which have exacerbated any losses here, then that will be a matter between it and the DFM.

Putting things right

As with the investigator, in assessing what would constitute a fair remedy here, my aim is to put Mr M as close as possible to the position he would probably now be in if he had been given suitable advice.

I also think that, suitably advised, Mr M would have transferred into a pension without the need for ongoing advice or a DFM. It is not possible to say precisely what he would have done, but I am satisfied that what the investigator set out is fair and reasonable given Mr M's circumstances and objectives at the time.

Pi Financial Ltd should therefore compare, at the date of this decision, the actual value of Mr M’s SIPP investments with the notional value, at the same date, had it instead been invested in the FTSE UK Private Investors Income Total Return Index. I agree with the investigator that this would be a suitable proxy for the type of investment which would have been suitable for Mr M – who wanted capital growth and was willing to accept some investment risk.

If there is a loss, Pi Financial Ltd should pay into Mr M's pension plan, to increase its value by the amount of the compensation. The payment should allow for the effect of charges and any available tax relief. Pi Financial Ltd shouldn’t pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

If Pi Financial Ltd is unable to pay the compensation into Mr M'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 M won’t be able to reclaim any of the reduction after compensation is paid.

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

As set out by the investigator, it’s reasonable to assume that Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20% (my understanding is that Mr M has already withdrawn his tax free cash).

If 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 Financial Ltd should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount which Pi Financial Ltd pays should be included in the actual value before compensation is calculated.

If Pi Financial Ltd is unable to buy the illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Pi Financial Ltd may wish to establish an undertaking with Mr M that he will 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 Financial Ltd will need to meet any costs in drawing up the undertaking.

Any redress should be paid within 28 days of Pi Financial Ltd being notified of Mr M's acceptance of this decision. If it isn't, interest at 8% simple pa should be added from the date of this decision to the date of settlement.

My final decision

My final decision is that I uphold the complaint and direct Pi Financial Ltd to undertake the above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 June 2024.

Philip Miller
Ombudsman