DRN-4779599

The complaint

Mr M complains that Pi Financial Ltd trading as Albemarle Financial Consulting (Pi) gave him unsuitable advice to switch two personal pensions to a SIPP.

What happened

Our investigator set out a short background to the complaint which I have amended slightly as below:

Mr M met with an adviser in October 2017 to discuss his retirement planning.

The fact find completed by Mr M at the time of the advice said that he wanted his pension to perform as well as possible. He said he had received a quote from another adviser which would be lower charges than his current plans, however he wasn't sure what the growth would be.

At the time of the advice Mr M was working as a self-employed Electrician and earning £20,000 per year.

The fact find showed that the Reliance Mutual and Scottish Widows Personal Pensions were Mr M's only pension provision.

He had other assets at the time of the advice including:

- £70,000 in deposits
- £30,000 in ISA's
- £85,000 in an OEIC
- £15,000 in BP shares

From the fact find it appears that the money in deposit was to be used to purchase a property.

Mr M also owned property worth £410,000 in total including his main residence and two buy to let properties.

In the fact find completed on 23 October 2017 Mr M recorded his attitude to risk as 3 "realistic" on a scale of one to five.

Mr M also completed a risk tolerance questionnaire on the same date. The results of the

questionnaire said that Mr M results placed him in risk group 5 out of 7. When describing risk group five the report said people in group five, '*think of "risk" as "uncertainty" or "opportunity"*' and are prepared to take a medium degree of risk with their financial decisions.

The adviser issued a suitability report and made a recommendation for Mr M to transfer his personal pension to a SIPP they said:

'My recommendation of the Transact Wrap Platform meets your objectives as stated in the Objectives section of this report of:

- *You wish to invest your pension funds with a view to maximising the investment performance, within appropriate risk parameters, over a period of 8 years, taking you to your intended retirement age of 67;*
- *You want to continue your regular contributions at their current level;*
- *You would like to receive regular contact and updates regarding your pension.*
- *It also meets your objectives as stated above in relation to investment.*
- *This is because managing your pension monies through the use of the Transact Wrap Platform will facilitate the Clever Adviser Process detailed above.'*

Mr M went ahead with the recommendation and transferred his plans to the Transact SIPP and set up regular contributions of £100 gross per month to the SIPP.

Our investigator looked into matters and recommended the complaint be upheld. She felt the advice had been unsuitable for a number of reasons and that Mr M should've been advised to stick with his current investments as they were suitable for him and lower cost. She didn't think there was a good reason to transfer that outweighed the increase in costs.

Pi responded in detail but I'll only include the arguments that relate to the key points I'll refer to in the findings. I do agree with some of the arguments they have made regarding what the investigator said – but in my view they were peripheral points when considering the crux of this complaint. Pi said:

"In 2009 the Financial Services Authority (now FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out:

- *They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason*
- *They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or a right to take benefits at an earlier than normal retirement age*
- *They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances*
- *They had switched into a pension where there is need for ongoing investment reviews, but this was not explained, offered or put in place.*

The key phrase in first two bullets above is "without good reason" and goes to the heart of Mr M's stated investment objectives namely:

- *Mr M wished to invest his pension funds with a view to maximising the investment performance, within appropriate risk parameters, over a period of 8 years, taking him to his intended retirement age of 67;*
- *He wanted to improve the performance he had seen within his pension funds;*
- *He wished to have his pensions actively managed;*
- *He wanted to receive regular contact and updates regarding his pension.*

Chapter 2 of the report details the approach taken by the FSA in the thematic review to which the report relates; paragraph 2.4 states: " 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;"

It is clearly the case from the recommendations contained in the suitability report signed by Mr M on 29th January 2018, and the resulting transactions arranged for him, that the investment flexibility for which Mr M's pensions were switched was both very much required and used to facilitate the recommendations made. Firstly, Mr M's pension portfolio was allocated to eleven separate asset classes or sectors in proportions designed to match his stated risk profile (attitude to risk or ATR), that this asset allocation was populated by initial individual fund and direct cash holdings, and that most importantly it was the intention that these fund holdings should be reviewed on a monthly basis, and where necessary switched, a process that subsequently took place.

This process was the basis of the advice given to Mr M, i.e. it was advice relating to how best to invest his pension monies to achieve his stated investment objectives as detailed above. The switching of his pension contract was secondary to this, as it was required in order to facilitate the investment recommendations, which could not have been facilitated from the contracts he originally held. This was specifically detailed in the suitability report in the "Alternative Options Considered and Discounted" section of the report.

The recommendation to switch did not rely on a direct comparison of the investments held in the ceding schemes with those of the receiving scheme, in the hope of improved performance from a like for like switch. Rather, as detailed above, the recommendation to switch was designed to facilitate Mr M's stated investment objective of "maximising the investment performance, within appropriate risk parameters" through the active ongoing management of his portfolio, another of his stated objectives, as opposed to the necessarily nearly static holding of a restricted range of funds, managed solely by one fund manager in relation to each of the ceding schemes.

Furthermore, whilst the ceding schemes were self-evidently not unsuitable to hold pension monies and as a result it was explicitly stated in the "Alternative Options Considered and Discounted" section of the suitability report on page 19 that Mr M did not need to do anything, the ceding schemes clearly were unsuitable to meet Mr M's stated investment objectives, being:

"..to improve the performance you have seen within your pension funds'

and

"..to have your pensions actively managed"

and with an overarching objective of:

"..invest[ing] your pension funds with a view to maximising the investment performance, within appropriate risk parameters"

The suitability of the advice to transfer is therefore not compromised by suitability of the ceding schemes as both ceding schemes were in fact unsuitable to achieve Mr M's stated investment objectives.

The investigator had said "Mr M's SIPP would have to perform better than the existing pension and make up the initial and ongoing charges in a relatively short period of time for the transfer to be beneficial"

This is an inherent risk in switching any product or underlying investment fund and there is both never any guarantee that ultimate outperformance will be achieved by the receiving scheme or fund and also explicit risk warnings to this effect are given in the Risks section of the suitability report, specifically:

"Due to the set-up costs of the new contract and any penalties incurred in transferring away from your existing pension arrangements, there is a risk that the death benefits which would be payable subsequent to the transfer may be lower than those currently in place. This is particularly true in the earlier years following the transfer; there is also no guarantee that this position would ever be reversed under the new arrangement."

and

"There is no guarantee that by switching investment funds that the overall value of your investment will be higher than if you had not switched funds and continued to invest in your original fund"

Having said this, taking account of Mr M's investment objectives and given the historic outperformance of the Clever Adviser system relative to the sector average performance of the same asset allocation weightings, and the likelihood of risk adjusted underperformance of a concentrated static investment strategy within the ceding schemes, it was felt on balance that the recommendation was one we were able to make.'

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 agree with the outcome reached by our investigator. I don't agree with all that she said but she did identify the key reason that I think meant the advice was unsuitable for Mr M. Namely that the advice to switch the investments meant higher costs without a sufficiently good reason.

Whilst Pi have referred to Mr M's objectives recorded in the suitability report and said these couldn't be met within his current investments, Mr M sought advice to consider whether he was getting the best out of his pension. Whilst I'm sure Mr M agreed he'd like to have his pension actively managed and to receive updates, Mr M's over-riding aim was to maximise his pensions performance over the next eight years (i.e the value at the end of those years). In my view the other objectives were simply methods to attempt to achieve that goal and likely introduced by Pi and agreed to by Mr M.

The purest explanation of what Mr M wanted is in my view his handwritten notes recorded in the Personal Financial Questionnaire on 23 October 2017 – in this he said: '*Would like my pension investments to perform as well as possible. Reliance Mutual I pay £147.pa charges. I still pay into Scottish Widows and get charged about £800p.a. Had quote from Quadris saying they would only be charging £650p.a so that would save some charges, but obviously it is a question of what growth would be. They would take 3.25% transfer charge (£3k) to put both pensions into a Novia SIPP."*

Mr M then went onto talk about other financial matters that weren't directly relevant to his pensions but that he wanted advice about, he finished by saying '*my accountant is currently helping me decide whether or not to form a new company for the two new property developments, but I would like some advice about how these houses are owned (sole or joint ownership, tenants in common, in trust, etc) and investments in general'.*

So I think its clear Mr M came with no fixed idea about exactly what his objectives were other than he wanted advice about his financial situation and to make sure his pension could perform as well as possible. He had some notion that reducing charges could improve performance but didn't want this if it could be at the expense of growth. Mr M was clear that he planned to retire and take benefits in approximately eight years, so it was about performance over this time period.

As the investigator pointed out and as Pi have quoted from in their response, the key industry information to consider about pension switching is the 2009 Financial Services Authority (now the FCA) report on pension switching and the associated checklist. That checklist identified four main areas where consumers had lost out:

- *They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason*
- *They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate (GAR) or the right to take benefits at an earlier than normal retirement age*
- *They had switched into a pension that does not match their recorded attitude to risk (ATR) and personal circumstances*
- *They had switched into a pension where there is a need for ongoing investment reviews, but this was not explained, offered or put in place.*

Whilst the investigator referred to a number of elements in the transfer related to the top three bullet points, I'm of the view the one that has significance here, is the first. Mr M did lose a benefit on transfer but I don't think it was important to his decision making. And I don't think it is necessary here to debate the suitability in terms of risk for Mr M. I say this because I think the key issue here is the first bullet point, as Mr M's objective was to make sure his pension was performing as well as possible and Pi's recommendation increased the costs.

The advice given by Pi increased the charges substantially that Mr M would pay from his pension and would negatively affect his pension's performance. This was not a cheap or even mid range investment solution in terms of cost, with the fund costs, provider costs, ongoing adviser costs and the investment costs bringing the total annual cost as stated in the suitability report to 2.87% + £80. It looks like there was also an initial one off cost to purchase the funds of £48.72. And there was also the initial fee payable to the adviser of £2,961.50.

Mr M's combined funds were under £100,000 so these additional costs weren't insignificant. And the total annual charges were a substantial increase in costs and so there would have to be a very good reason to do so. Given Mr M's over-riding objective was receiving the best value out of his pension as he could over the next eight years, there needed to be a realistic chance that the switches could significantly improve the performance of his pension – to outweigh the increase in costs and to claw back the initial costs as well. By comparison for his Scottish Widows pension Mr M was paying 1% p.a and 0.75% p.a for the Reliance Mutual plan. So Mr M was essentially trebling his annual charges.

So there had to be a very good reason to switch his funds – such as poor performing or largely static funds where additional growth didn't look realistic. Or that the new fund(s) had performance historically well above his existing funds.

The portfolio recommended had after charges (but its not clear if this includes all the charges or just the charges directly related to the clever adviser service) had achieved a return of 9.87% p.a over five years. Whilst past performance cannot be relied upon to predict future performance, it is obviously a decent indicator of the strength of a particular fund or portfolio. So, there was recent history of growth but this needed to be considered alongside his existing investments. And the funds Mr M had transferred from also showed a similar recent history. The Reliance Mutual fund had a five year growth of 9.6% (not including charges). The Scottish Widows funds Mr M was invested in had five year returns of 8.29%, 9.58%,13.96% and 7.16% (unclear if including charges – I've assumed not) so this wasn't a case of swapping under-performing funds for one with a strong history of performance.

So the case for saying there was a good reason for increasing the costs to meet Mr M's objective of getting the best performance possible wasn't met by the advice in my view. Mr M was trebling his costs when the funds he was already in were performing adequately and at a similar level to the recommended portfolio. I don't think it was a good bet that his new portfolio with the additional costs would outperform his existing funds. So I don't think there was a good reason to transfer.

Pi have argued Mr M wanted regular reviews and his pension to be actively managed but as I've said I think this was purely related to making sure his pension performed well which was his over-riding objective. He sought advice to make sure his pensions performed as well as possible. Trebling his charges for an expensive investment solution that he didn't really need, wasn't likely to achieve that goal. And I think the adviser ought to have known that and told Mr M that transferring to a solution like that wasn't in his best interests. Had he done so I don't think Mr M would've wished to transfer. He had already shown in his comments that he had awareness of the impact of charges but knew growth was also important. But the adviser didn't set out clearly the impact of the increasing charges on his pension compared to his then current plans.

So I will be upholding the complaint.

Putting things right

Fair compensation

My aim is that Mr M 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 M would have remained with his previous provider, however I cannot be certain that a value will be obtainable for what the previous policy would have been worth. I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr M's circumstances and objectives when he invested.

What must Pi do?

To compensate Mr M fairly, Pi must:

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

- Pi should also add any interest set out below to the compensation payable.

- Pi should pay into Mr M's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Pi is unable to pay the total amount 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 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 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 expected marginal rate of tax at his selected retirement age, this has been assumed to be 20%.

- Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal the current basic rate of tax. However, Mr M would have been able to take a tax free lump sum, so the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Pi deducts income tax from the interest it should tell Mr M how much has been taken off. Pi should give Mr M a tax deduction certificate in respect of interest if Mr M 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
Transact SIPP	Still exists and liquid	Notional values from previous providers	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

This is the value of Mr M's investment had it remained with the previous providers until the end date. Pi should request that the previous providers calculate this value.

Any additional sum paid into the Transact SIPP should be added to the *notional value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Transact SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Pi totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous providers are unable to calculate a notional value, Pi will need to determine a fair value for Mr M's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr M wanted Capital growth and was willing to accept some investment risk.

- If the previous providers are unable to calculate a notional value, then I consider the measure below is appropriate.

- 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 would be a fair measure for someone who was prepared to take some risk to get a higher return.

- Although it is called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mr M's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Pi Financial Ltd trading as Albemarle Financial Consulting should pay the amount calculated as set out above.

Pi Financial Ltd trading as Albemarle Financial Consulting should provide details of its calculation to Mr M in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 17 December 2024.

Simon Hollingshead
Ombudsman