DRN-4844774

The complaint

Ms J says the financial advice she received from PI Financial Ltd trading as PI Financial Dixon Sutcliffe & co (PI) was not suitable.

What happened

Ms J said that she was induced to transfer her pension as PI said her pension would grow faster. It didn't make an adequate assessment of her overall financial position to assess the impact of its advice. It failed to comply with FCA requirements, it didn't match its recommendation to her attitude to risk (ATR). It recommended a SIPP which was not suitable for her and failed to properly assess her needs and objectives. The costs were not explained and compared to her previous pension and it didn't tell her its recommended solution was nonstandard.

PI said that it completed a suitability assessment and set out the findings in its suitability letter. It recommended a SIPP and an investor portfolio. Ms J signed the confirmation and her previous pension was transferred. It had not induced her nor made any promise to make her transfer. It had completed a detailed assessment of Ms J's financial situation before making its recommendation. It had assessed her attitude to risk (ATR) which Ms J signed to confirm she agreed to the conclusions of the ATR as a balanced investor. The recommended portfolio met that requirement. It demonstrated that it had assessed her capacity for loss. A SIPP was a suitable vehicle for her objectives. It set out the costs and compared these to her existing provision. It said there were no grounds for the complaint.

The investigator said they were satisfied with the ATR questions and the conclusion it reached. The ATR report made clear that the pension might go up and down in value. There was no evidence of promises about performance. They were satisfied the fact find was an adequate assessment of Ms J's circumstances at the time of the advice. The charges were set out in the client agreement but it was not clear that there had been a direct side by side comparison of these. There was a discretionary fund management (DFM) charge of 1.5% such amount payable on fund switches. They felt such switches were more likely with a DFM arrangement. They didn't think Ms J had a specific need for a DFM. PI had not classified nor treated her as a high net worth individual. It seemed she had limited capacity for loss but the proposal fit with this. They were not persuaded there was a need to transfer to a SIPP and take on a DFM further, had the charges been fully explained, it seemed unlikely she would have done so. They directed an award for loss.

PI didn't agree. It said:-

- The report made clear that the charges were likely to be higher than her existing pension but it offered the potential for higher growth and a more diverse portfolio including assets outside of the stock market. There was flexibility to take pension benefits which was not the case with her previous pension.

- Ms J was well educated and had a well-paid job. It was unrealistic to believe she would not have understood the costs and charges that were explained to her and she would have understood the importance of signing the suitability letter.

The investigator still didn't agree. They said that while Ms J was well educated she did not have experience in investments. Just because she expressed interest in more adventurous investments did not mean that it was suitable to invest in this way. Particularly for her main pension, that was essential for her retirement. They thought a clear side to side comparison would have made the costs difference much clearer. What was in the suitability report didn't make it clear enough.

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.

PI is regulated by the Financial Conduct Authority (FCA). The FCA sets out rules that govern how PI should operate when providing financial advice.

Ms J was advised to transfer her money purchase pension policy to another money purchase pension policy (in the form of a SIPP). This is known as pension switching.

In 2009 the Financial Services Authority (now FCA) published a report and checklist for pension switching. It identified areas where consumers could miss out due to pension switching. These included:-

1. Where they switched to a pension that was more expensive than their existing pension or a stakeholder pension would have been, without good reason. This could be because of exit penalties and or initial costs and or ongoing costs.

2. They lost benefits in the pension switch without good reason, for example a right to an employer contribution, guaranteed annuity rate or ability to take pension early.

3. They switched into a pension that did not match their attitude to risk and personal circumstances.

4. They switched into a pension when there was a need for ongoing investment reviews but this was not explained, offered or put in place

Further it said the reason for switching needs to be sound, there needs to be potential to be better off to more than compensate for the risk the consumer might end up worse off.

The FCA report indicated that in order to satisfy these requirements it is helpful if the adviser has made a comparison between the new and old pension. Typically we would expect to see the charges in the old and new policy compared and explained by the adviser before the switch took place and the impact demonstrated using illustrations of both schemes. Advisers are also required to consider stakeholder pensions as charges on these plans are capped.

SIPPs
The FCA also warned that advisers may suggest that a SIPP:-

- could provide more flexibility than the old pension plan, or
- gave the consumer access to a wider range of funds and or
- that receiving the plan enables the consumers to take their benefits by way of income drawdown when they retired.

The FCA indicates that while these things may be correct it's the adviser's responsibility to give the consumer suitable advice. Just because the consumer is attracted to the features of a new plan when they're told about them, doesn't mean they need them or should be recommended. For example the consumer may not need the flexibility or range of funds or drawdown option at that point in time.

Attitude to risk
An adviser should not encourage a consumer to take more risk than they want or could afford to take in order to make the advice given more suitable.

Ongoing reviews
If an adviser constructs a portfolio with percentages of different types of assets or in different regions it's more likely to get out of balance over time and need reviewing. We'd expect the advisor to explain the importance of carrying out reviews and offer them proactively rather than leaving the onus on the consumer to request them.

What did PI advise?

I have reviewed the advice given my PI in the light of these areas.

Firstly it is useful to note Ms J's position before the switch.

Ms J's previous scheme was with an insurance company Group Personal Pension (GPP) and had a fund value in 2017 of around £136,000.

It was invested in a variety of funds (over 12) with an investment strategy described as *Balanced Lifestyle Strategy (Annuity*) with over 66% in a Global managed fund.

The annual management charge (AMC) was 0.68%. There was a 100% allocation rate for payments in. There were adviser charge of 0.5% per annum but it is unclear if this was being paid. So the overall ongoing costs was around 0.68% and 1.18%.

Costs

PI points out that its report made clear that the cost of the new SIPP and underlying funds *would likely be higher than Ms J's existing pension*. It said that the report said the following

'***you** believed these would be recovered by higher growth, although this was not guaranteed.*

It set out the total cost as follows:-

Fund Annual Management Charge £150

Initial Advice Charge: Flat Rate Fee of the combined £136,116 invested £3,000

Ongoing service charge paid annually in advance 1% of the combined £136,116 assets invested £1,316.16.

Total Initial adviser charges £4,316.16

From this it is clear that the 1% ongoing service charge and £150 annual management charge are in total greater than the 0.68% AMC that is already being paid. But the fact the charges are higher does not automatically make the switch unsuitable for Ms J. For example it may be that she will receive more services than under the old pension. However I need to consider if the difference and the impact of the difference was fully explained and satisfied the need to show that there was potential to be better off to compensate for the higher charges (and in particular the initial advice charge).

I have seen an illustration for the new SIPP which sets out the impact of charges. It set out that there are charges for managing the plan which depend on the funds selected and separate charges paid to advisers. It lists the annual product charge as £150 plus the initial adviser charge of 4% and thereafter 1% annually. It assumes a selected retirement age of 65.

I have seen the adviser agreement with PI. This sets out what is included for the 1% on going service provision. It says there is an offer of a 6 month review and 6 month interim desktop review. It confirms an initial fee of £3,000 and annual 1% thereafter. Ms J signed this on 27 December 2017.

I think that based on the report Ms J should reasonably have been aware of the charges in the new scheme.

I agree the report does set out the costs but I don't believe that there is an easy to understand comparison of the costs of the new and old scheme nor of the impact on the investment. I have not seen parallel illustrations of both schemes to demonstrate this. I don't think it is sufficient for Ms J to acknowledge in the report that the costs are higher without being supported in understanding the impact of those higher costs compared to her old pension.

It is difficult to see how Ms J could reasonably believe that '*the higher costs would be recovered by growth*' in the absence of those clear comparisons. But even if I am wrong and Ms J had been provided with appropriate evidence to support that belief, I would expect PI to comment on this in the light of appropriate illustrations. It was for PI to demonstrate that there was a reasonable chance she would be better off following the transfer not for it to rely on her conclusion that she could be better off. If it didn't think her stated belief was correct it should have said so. But I cannot see that PI did either agreed or disagreed with the statement.

Flexibility and drawdown

The report makes clear that there is no existing protected or enhanced lump sum entitlement, no guaranteed annuity rate. So it does not seem that these were lost as a consequence of the switch.

The report gives several reasons for the switch including that:-

- The fund cannot be accessed flexibly with the current provider.
- While invested the fund will benefit from tax advantaged growth.
- Benefits can be taken at any time from age 55.

While these may be correct, Ms J was 13 years from retirement and didn't need flexible access at this point in time. The benefit of tax advantaged growth was also the case for her previous scheme. I don't have information about the date from which benefits could be taken from the old scheme, but typically most schemes would enable benefits to be taken from age 55. So while PI referred to these issues they do not in my view provide reasons to support the switch for the reasons I have given above.

Range of funds
The report said that the strategy

"would allow you to have a more diverse portfolio, contain an element outside of the stock market asset class which you can choose and can be added at a later date. There is flexibility when you take benefits which is not the case with the (existing pension plan),… again a feature that is of appeal to you.

The report is phrased in places as if something is suitable because it is what it says 'Ms J' wants. However the adviser role is to provide suitable advice and not to simply reflect Ms J's wishes. Even if these things were truly things she understood and wanted it was up to PI to explain why they were or weren't suitable for her particular circumstances.

The report referred to the fact that one of Ms J's objectives was to be involved in investment and that

' You wanted to invest some monies in more exciting asset classes'.

'You like the idea of investing your funds into a Self-invested Personal Pension due to their investment opportunities.'

It didn't explain what those asset classes were, what was meant by exciting but most importantly whether these fit with her ATR and personal circumstances and were therefore suitable for her. It is surprising to see that PI made no comment about the suitability of assets outside the stock market. Such investments could be illiquid and therefore might be higher risk and less suitable for Ms J. I think it is unlikely that such assets would be justified as suitable given the wide range of balanced investment funds and portfolios available in the pension market place.

Discretionary fund management (DFM)
The report recommends investment with a provider who will make investment decisions for Ms J while remaining within her assessed attitude to risk. But having reviewed the report I don't think it set out clear reasons why this was suitable for Ms J nor why it might be more suitable than other potentially cheaper investments such as ready made balanced portfolios that did not require DFM.

Other options
The report does consider other options such as a personal pension and stakeholder pension. The former is dismissed as it said the investment opportunities available were more restrictive than the recommended plan. But it didn't explain why Ms J needed a broader range than those a personal pension might offer.

It considered a stakeholder pension but said the charges of the recommended pension are no greater than a stakeholder at this time.

Conclusion

On balance based on all the evidence I don't think that overall PI has demonstrated that the advice to move to the recommended SIPP was suitable for Ms J.

I say that because while higher costs were explained there was no clear comparison with the previous scheme nor demonstration of the impact on the investment for the future.

While it impliedly suggests she needs a wide range of funds and DFM there is no explanation of why such a wide range is needed nor why DFM is justified.

Some of the reasons for the switch (such as flexibility) were not needed at this point in time and other benefits were common to the old and new pension so didn't provide a reason to transfer.

I asked for further information about the investments in the SIPP and the DFM. However I have not received any further information but I don't think I need to. I say that because in being instructed to provide investment services the DFM was entitled to rely on any information provided to it by PI or any recommendations it had given to the mutual client Ms J.

PI remain responsible for the accuracy of the abovementioned information and suitability of the above mentioned recommendations. So PI remained responsible for its decision to recommend the DFM to Ms J and for the ongoing review service it was charging to provide her.

This means I can conclude that Ms J would not have suffered losses (including losses from investments recommended by the DFM) but for PI's advice to use the DFM. This is further supported by the fact that PI had a wider duty of care to Ms J as a result of recommending the DFM. If PI feels the DFM is also at fault it is free to pursue it directly after it has compensated Ms J.

Putting things right

In light of the above, I am not persuaded there was a need for Ms J to transfer to the recommended SIPP and take on the services of a DFM and I don't think it's likely she would have done so if the charges had been clearly explained to her.

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

I think Ms J would have invested differently. It is not possible to say precisely what she would have done, but I am satisfied that what I have set out below is fair and reasonable given Ms J's circumstances and objectives when she invested.

What should PI do?

To compensate Ms J fairly PI should:

- Compare the performance of Ms J's investment with that of the benchmark shown below. If the *fair value* is greater than the *actual value*, there is a loss and compensation is payable. If the *actual value* is greater than the *fair value*, no compensation is payable.

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

- If there is a loss, PI should pay into Ms J's pension plan, to increase its value by the amount of the compensation and any interest. PI's payment should allow for the effect of charges and any available tax relief. PI shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.

- If PI are unable to pay the compensation into Ms J's pension plan, it should pay that amount direct to her. 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 Ms J won't be able to reclaim any of the reduction after compensation is paid.

- The notional allowance should be calculated using Ms J's actual or expected marginal rate of tax at her selected retirement age.

- It's reasonable to assume that Ms J is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Ms J 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%.

- PI should provide the details of the calculation to Ms J in a clear, simple format.

- PI should also pay Ms J £300 to reflect the distress and inconvenience to Ms J caused by its advice.

Income tax may be payable on any interest paid. If PI consider that it's required by HM Revenue & Customs to deduct income tax from that interest, PI should tell Ms J how much it's taken off. PI should also give Ms J a tax deduction certificate in respect of interest if Ms J asks for one, so that she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ('Start date')	To ('end date')	Additional interest
Intelligent Money SIPP	Still exists and believed to be liquid	FTSE UK Private Investors Income Total Return Index	Date of Investment	Date of settlement	8% per annum simple from the date of final decision to the date of payment if PI does not make payment to Ms J within 28 days of Ms J's acceptance of my decision.

Actual value
This means the actual amount payable from the investment at the end date. If, at the end date, 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 should take ownership of any illiquid investments by paying a commercial value for them that is acceptable to the pension provider. This amount PI pays should be included in the actual value before compensation is calculated.

If PI is unable to purchase an illiquid investment, its value should be assumed to be nil for the purpose of arriving at the actual value of the portfolio. PI may wish to require that Ms J provides an undertaking to pay PI any amount she may receive from the investment in the future. That undertaking must allow for tax and charges that would be incurred on drawing the receipt from the pension plan. PI will need to meet any costs in drawing up the undertaking.

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

Any additional sum paid into the investment should be added to the fair value calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, PI can total all those payments and deduct that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?
I've chosen this method of compensation because:

- Ms J wanted Capital growth and was willing to accept some investment risk.

- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.

- 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 Ms J'S circumstances and risk attitude.

There is guidance on how to carry out calculations available on our website.

My final decision

I uphold this complaint and direct that PI Financial Ltd trading as PI Financial Dixon Sutcliffe & co should within 30 days of this service informing it that Ms J has accepted this decision:-

1. complete the calculations and make any payment of compensation to Ms J as set out in the putting things right section above, and

2. pay Ms J £300 for distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision by 8 November 2024.

Colette Bewley
Ombudsman