DRN-5015425

Financial Ombudsman Service

The complaint

Mr M complains that his Self-Invested Personal Pension (SIPP) suffered poor performance over a span of a number of years. He attributes this to advice given from 2009 onwards including advice given when Mr M was a customer of Pi Financial Ltd after his adviser moved to it.

What happened

The investigator set out the background to the complaint, I've included an amended copy of this below for context:

In 2009, Mr M was a client of an adviser with Alba Asset Management Limited (Alba). Alba recommended that Mr M switch his final salary pension scheme to a new Brooklands SIPP. The proceeds were then used to make various investments, many of which appear to have been into unregulated investments. These investments included but were not limited to:

- £20,000 into Sustainable Land Plc
- £45,000 into Paradise Beach
- £50,000 into Guardian
- £50,000 into Joyston

In 2013, Mr M appointed a claims management company to make a claim to the Financial Services Compensation Scheme (FSCS) in respect of his failed investment in Joyston. In early 2014, Mr M turned 65 and retired. He transferred in group personal pension from his employer into the Brooklands SIPP. I understand no advice was given in respect of this transfer.

In January 2014, Mr M transferred the agency of his SIPP to RM Strudwick LLP (RMS); an appointed representative of Pi. On 16 February 2014, Mr M signed a client agreement with RMS. This stated that initial advice was charged at 1% of the sum invested, subjected to a minimum of £1,500, with ongoing advice charged at 1%, subject to a minimum of £600 per annum.

RMS made recommendations to Mr M in a suitability letter dated 1 October 2014. This set out that advice was being given in respect of £100,000 cash, which was in the Brooklands SIPP. Mr M's attitude to risk (ATR) had been agreed as 'low medium'; or 3 on a scale of 1 to 7. His objective was to invest for growth over a period of ten years. RMS recommended that £100,000 be transferred to a Skandia Collective Investment Account (Skandia CIA), which would be held in the SIPP. The money would be invested across 15 investment funds; broadly allocated as below:

- 39% across nine equity funds
- 20% across four fixed interest funds
- 15% in one property fund
- 26% in one money market fund

In their letter, RMS said that up to 4.5% of the initial investment could be paid to them as an initial fee, but that a fee of 1.18% had been agreed instead. The ongoing advice fee was agreed as an additional 1.18%. On 12 December 2014, Pi received an initial fee of £2,830.29 from Brooklands. They received a further £1,180 initial fee from Skandia on 29 January 2015.

A fact find was completed in 2017. Notes on this stated 'too much cash sitting around…cash is doing nothing…looking long term so 5-10 years'.

RMS issued a suitability letter on 15 February 2017. Again, this set out that the firm was making recommendations to invest some of the cash sitting in Mr M's SIPP; this time, £50,000. They advised he added this to his Skandia CIS (now referred to as the Old Mutual CIA). A risk tolerance report had been completed, scoring Mr M as '4 out of 7'.

The letter confirmed that for their ongoing advice fee, RMS would perform a monthly review of funds in his portfolio, report the monthly fund review, action any resulting changes to those funds, conduct an annual review of performance as well as a re-assessment of Mr M's ATR.

On 24 April 2017, Mr M signed a new client agreement with RMS. This was annotated to record that the initial service was 'review of cash in SIPP and investment recommendation', with the agreed fee recorded as '1.18% of sum invested, ongoing management of funds at 1.18% of funds managed'.

The £50,000 transfer completed on the same date, and was invested as below:

- 27% across seven equity funds
- 11% in one property fund
- 62% in one money market fund

I'll summarise below the actions that took place thereafter, and the allocation of assets in the Skandia CIA

2018: Risk tolerance report completed with a risk score of '3 out of 7'. A portfolio analysis report was produced showing allocation as around:

- 61% in one money market fund
- 11% in one property fund
- 28% across seven equity funds

2019: Risk tolerance report completed with a risk score of '4 out of 7'. A portfolio analysis report was produced showing allocation as around:

- 59% in one money market fund
- 12% in one property fund
- 29% across seven equity funds

2020: A portfolio analysis report was produced showing allocation as around:

- 56% in one money market fund
- 9% in one property fund
- 35% across seven equity funds

2021: Risk tolerance report completed with a risk score of '4 out of 7'. A valuation report was produced showing allocation as around:

- 52% in one money market fund
- 11% in one property fund
- 37% across seven equity funds

An annual suitability report was produced, recommending that Mr M change his investments from portfolio 4 to the higher risk, portfolio 5. The asset allocation of which was detailed as being:

- 52% money market
- 48% equities

Mr M disengaged RMS as his advisers in 2023. On 18 June 2023, he emailed a complaint to Pi. His complaint referred to the recommendation to transfer his final salary pension, and the failed investments that were made thereafter. He noted that over 14 years, the majority of his funds had gone down.

In response, Pi said that Mr M should direct his complaint to Alba, who had given the 2009 advice. But Mr M confirmed to Pi that his complaint was not just about the 2009 investment advice, but 'also the overall dismal growth performance over the past fourteen years…which has averaged 0.2% pa'.

After he referred is complaint to us, Pi said it had been made out of time, and they didn't consent to us investigating it.

The investigator looked into matters and upheld the complaint – he also found the complaint had been made in time. He upheld it on two issues. Firstly in 2017 the adviser had recognised Mr M's SIPP had too much held in cash and that cash wasn't performing. But then invested his funds in a cash like instrument and this also had the effect of his portfolio not matching his attitude to risk nor aligning with his objective of achieving growth.

The investigator also discovered that an initial advice fee was taken in December 2014 that didn't match up with the dates Mr M received advice – and there were separate initial fees charged for the times that Mr M did receive advice. He therefore said this should be refunded with investment returns applied.

Pi responded to say that its records showed that the advice was recorded as '*not sold by this office'.* Meaning the work was not provided under its network. But as the adviser was now part of its network any fees owed to him would've been paid to it and recorded as 'not sold by our office'.

It also said it didn't think Mr M's figures were correct regarding performance. It had modelled the performance of his funds against certain benchmarks and it had outperformed these.

It also pointed out that Mr M had left its network in 2023 but the redress didn't reflect this.

The investigator responded and acknowledged the redress would need to be amended to reflect this fact. And an amended redress was sent to both parties.

He said that whilst Pi might be correct about the performance it still hadn't provided suitable advice and would need to carry out a loss calculation against the benchmark he'd recommended.

Regarding the fee the investigator said Pi had received this fee. And the invoice showed it was requested by the adviser whilst he was part of Pi Financial and was to be paid into Pi's account. Therefore it was responsible for this fee and it hadn't shown it did anything for it.

We received no further response from Pi following this.

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 done so I agree with the findings of the investigator and for broadly the same reasons.

Time limits

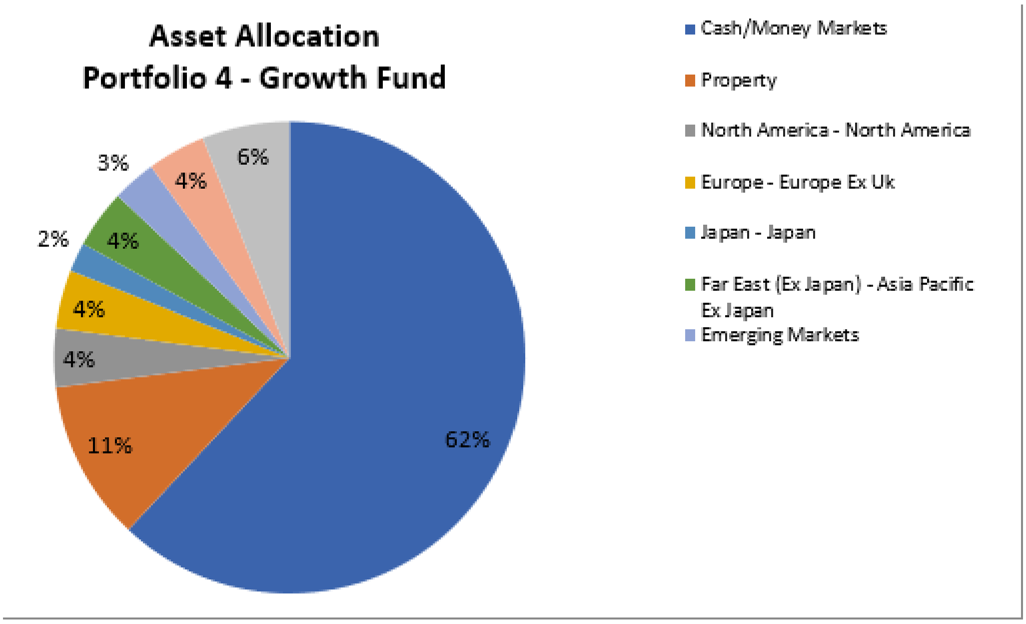
Regarding Pi's initial position that the complaint had been made out of time. As the investigator set out we are only looking at events that occurred when the adviser was part of Pi. The investments that had fallen in value sharply were not part of the advice given by Pi to Mr M, this was prior to its involvement. Since Pi became involved the value had fluctuated somewhat but withdrawals and additions had been made to the funds so there was no evidence that the customer ought to have known the advice had been unsuitable more than three years before he complained in 2023. For the avoidance of doubt I agree with the conclusion reached by the investigator here, as I presume did Pi as it didn't challenge this following the investigator's explanation.

Suitability of advice in 2017

Regarding the advice given to Mr M by Pi in 2017. Previously Mr M had been invested from 2014 in line with his 3 out of 7 attitude to risk. He was invested with a profile that just about met his growth objective. He was advised to invest around 54% across equity and property funds, with the remainder across fixed interest and money market funds.

However, in 2017 the adviser considered again his attitude to risk and found it to now be at 4 out of 7. Therefore, the risk profile of his funds going forward should reflect this. And in the 2017 fact find it was noted that Mr M had *'too much cash sitting around - cash is doing nothing'.* And the suitability report said his prioritised objectives were: *'Making your existing drawdown retirement provision work harder for you by investing some of the surplus cash you current hold within your SIPP.'*

However, as the investigator pointed out the investment advice didn't meet Mr M's objectives. This is taken from the suitability report:



For someone looking to get his money working for him, to reduce his cash holdings, with the objective of growth and a 4-7 attitude to risk, I don't think this was suitable portfolio with 62% held in cash like investments. So, I am upholding this part of the complaint for the same reasons as the investigator.

Fee taken in 2014

Pi are seemingly arguing that it was not responsible for the advice given in 2014 that it received payment for. And that it was paid for work the adviser did outside of its network. However, at this point in time the adviser had been working with Pi for some time, the adviser requested the fee be paid to Pi and was sent on an invoice with a footer which included Pi's firm details. In response to this complaint Pi have been unable to come up with an explanation as to what this fee was for. Other than it wasn't sold by its office. But the evidence doesn't corroborate this. So, I think it is responsible for this fee. And I can't see any work was done for it, it seems to have been taken by mistake or worse. So this should be refunded to Mr M with investment growth added.

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 invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable 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 that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

- If the fair 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 actual or expected marginal rate of tax at his selected retirement age.

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

- Pay to Mr M £300 for the trouble and upset caused by Pi's actions. Mr M was upset at the performance of his funds and the fee taken unfairly will, and the unsuitable advice may, have contributed to this.

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")	End date to date of settlement
Skandia CIA	No longer in force	FTSE UK Private Investors Income Total Return Index	Date of £50,000 investment in 2017	End of relationship with Pi on 21 July 2023.	The result of the calculation at end date needs investment growth added up to the date of settlement using the FTSE UK Private Investors Income Total.

<u>Refund of fee taken incorrectly plus investment returns.</u>

Separately, Pi needs to account for the £2830.29 fee it took unfairly in 2014. To do so it should:

From the date the fee was taken from the SIPP, it needs to work out what this would've been worth from 2014 to the start date shown above if it remained within the SIPP. Then from the start date above until the date of calculation it should then apply growth in line with the FTSE UK Private Investors Income Total.

For any loss established and including the £300 trouble and upset payment, if it is not paid within 28 days of Mr M's acceptance of the decision, 8% simple interest should be applied from then onwards to the compensation amounts until the settlement is paid to Mr M.

Actual value

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

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 Skandia CIA 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, I'll accept if Pi totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

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.

- 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

For the reasons explained I uphold this complaint against Pi Financial Ltd and require them to put things right as set out above upon notification of Mr M's acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 December 2024.

Simon Hollingshead
Ombudsman