DRN-5173865

The complaint

Mr E, through his representative, complains about advice he received from Insight Financial Associates Limited (Insight) in 2013.

Although represented in this matter, for ease of reading, generally all references to Mr E will include submissions by his representative.

What happened

The history leading up to this complaint is well known to the parties and has been clearly set out in the investigator's assessments, which for completeness, I have largely replicated below with small additions and amendments.

In 2013, Mr E met with his longstanding financial adviser, who had moved to Insight, to review his existing pension arrangements. He wanted to ensure they continued to meet his requirements going forward.

Mr E held a personal pension with Hartford valued at around £300,000 and another with Aviva valued at approximately £40,000. The Hartford plan provided a guaranteed lifetime income from age 75 and a penalty charge would apply for transferring out of this arrangement.

At the of time of advice, Mr E's circumstances were recorded as:

- 69 years old, planning to retire at 75.
- Divorced, with no financial dependents.
- Employed as a solicitor with a total yearly income of around £110,000 (combination of salary and share profits).
- Net monthly income of £4,000 and a net monthly expenditure of around £2,500.
- Interest only mortgage with £275,000 and six years remaining.
- Pension annuity income of £300 per month.
- No substantial savings or other investments, outside of capital investment in business of around £100,000.

Mr E's attitude to risk (ATR) was assessed to be medium (four out of ten) and his objectives were recorded as: flexibility, certainty in an uncertain economic market, and security knowing what his pension income will be, whilst benefitting from the "'lock ins" that are calculated on an annual basis.

Insight wrote to Mr E on 1 September 2013 to set out their recommendations and advice in a financial planning report. This advised Mr E to transfer his two personal pension plans to a plan with MetLife, together with an ongoing monthly contribution of £500.

In summarising the options available to Mr E, Insight said he could remain with his current providers. However, they had looked into Hartford and found they were no longer trading in the UK and were reviewing the charges on their contracts in view of raising them. So, Insight researched other providers who offered similar contracts with guarantees but with more benefits and flexibility.

The Hartford pension had locked in fund growth or ‘step ups’ which would cease at age 75, the fund growth lock in was capped at 10% per annum and the death benefits ceased at age 75. The report also explained that if the guaranteed income provided under the Hartford plan exceeded the Government Actuary Department’s (GAD) rate or income drawdown maximum, Mr E would have to buy an annuity with Hartford on a single life basis.

It explained that like the existing Hartford plan, the new MetLife plan would also have a secure income option. This would lock in positive investment performance, had guaranteed ‘step ups’ in the income if the policyholder deferred taking an income and would guarantee an income for life.

Therefore, Insight recommended the transfer to MetLife on the basis that Mr E would have the security of knowing what his income would be, whilst benefitting from lock ins that are calculated on an annual basis.

The financial planning report detailed the advantages of the proposed transfer as: guaranteed income for life, no investment performance risk, investment growth locked in, keep options open, transfer at any time, guaranteed death benefits, save for retirement in a tax efficient way, defer taking an income indefinitely, transfer in existing pensions and defer decision on whether to purchase an annuity for as long as needed.

The report also explained that the new plan was more expensive than Mr E’s existing arrangements. But the adviser said the recommendation wasn’t based on cost, but the income guaranteed feature, which for each year Mr E deferred taking income, the secure income base (the initial amount invested) would increase by 4%.

For the initial advice, Insight charged 3% of the transfer value, around £10,000 and an ongoing adviser charge of 0.5%.

Mr E accepted the recommendation, and the two transfers, totalling around £340,000 were fully completed by 19 September 2013.

In May 2017 Insight were removed as Mr E’s adviser on his plan with MetLife.

Mr E took a pension commencement lump sum in 2019 and began taking an income from this pension plan in September 2022.

On 28 September 2023, Mr E’s representative complained to Insight about the suitability of the advice Mr E was given in 2013.

Insight didn’t uphold the complaint and suggested it may have been made too late.

Unhappy with this response, Mr E, through his representative, brought his complaint to this service. When Mr E referred the complaint to us, Insight didn’t provide consent for us to investigate it. Our investigator considered the reasons Insight gave for the complaint being out of time and concluded Mr E had complained within the relevant timescales and, as such, we could investigate the complaint. Insight disagreed with the investigator and so the complaint was referred to me to decide whether we had jurisdiction to look into Mr E’s complaint. I concluded that we did, and the case was returned to the investigator to consider whether the advice provided to Mr E was suitable.

The investigator was of the view that the advice wasn't suitable. He noted that one of the main reasons for the advice to switch from the Hartford pension was the fact that there were signs that Hartford was winding down their business in the UK and would be reviewing their existing products and charges. But the investigator wasn't persuaded that this was a key concern which would threaten Mr E's pension at the time. There wasn't any foreseeable threat to Mr E's pension and even if there would be in the future, he retained full regulatory protections for his plan. So, the investigator didn't find this a compelling reason to transfer.

Additionally, the investigator wasn't persuaded that the investment growth lock ins, deferral income increases, and secure income base offered by the MetLife plan were reasons to switch plans, as the Hartford pension offered much of the same level of guarantees, and projected higher income and capital growth than the MetLife plan, at a lower cost.

The investigator concluded that the Aviva switch was also unnecessary as there were over 300 funds available to invest in within that plan. So if there were concerns the existing funds were failing to meet Mr E's capital and income objectives, it would have been cheaper and simpler for Mr E to adjust his investments within the existing plan.

The investigator also wasn't persuaded that death benefits were a key concern for Mr E sufficient to justify the transfer. And noted that even though the recommendation wasn't made based on lower charges, Mr E was only six years from retirement and had a medium ATR, so he didn't think it was realistic to expect the new plan to outgrow the increased charges effectively.

Ultimately, the investigator concluded that the advice to transfer Mr E's two pension plans subjected his pension to increased costs in return for lower potential returns. He wasn't persuaded that the guarantees available under the new plan were so valuable as to overcome the associated drawbacks in comparison to the existing pension arrangements. So, he didn't think the advice was suitable for Mr E.

The investigator then set out what Insight needed to do to put things right, including an award of £200 for the distress and inconvenience caused to Mr E by this situation.

Mr E accepted the investigator's view and confirmed his tax rate as 20% in respect of this matter.

Insight did not agree with investigator. They maintained that the complaint had been brought too late. Insight also said that the advice wasn't unsuitable as Mr E had concerns about Hartford and an increase in their charges, and if he stayed with Hartford and wanted to take an income greater than the GAD rate Mr E would have had to purchase an annuity, which he didn't want to do. Insight also didn't think enough consideration had been given to the advice to transfer the Aviva plan.

The investigator considered all of these arguments but wasn't persuaded to change his mind. Accordingly, the complaint was referred to me for a final decision.

I wrote to the parties and let them know that I intended to uphold the complaint but proposed a change to how Insight should put things right and gave them the opportunity to comment.

Insight commented that they were removed as Mr E's financial adviser, and he subsequently received subsequent financial advice from a new adviser who confirmed that Mr E should remain in the MetLife plan. They said this meant that not only should have Mr E complained earlier, but Insight's responsibility for any losses should be limited.

Mr E's representative responded that Mr E's MetLife plan has been a closed fund since 2017 and that he has fully vested this plan, meaning no further payments can be made to it.

They also disagreed with the suggestion that Insight's liability should be limited in this case.

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.

At the outset I would like to thank the parties for their patience and cooperation in this matter.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for doing so. I have considered these submissions, including those in response to my redress proposal, in their entirety.

However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.

It is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant because of this.

Jurisdiction

As an initial matter, Insight maintains that this complaint has been brought too late. So I've reconsidered whether this is a complaint this service has the power to investigate. And having done so, I confirm that I remain of the view that this complaint has been made within the time limits set by the regulator and is within our jurisdiction for the reasons set out in my previous jurisdiction decision.

Was the advice suitable?

In considering Mr E's complaint I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Insight's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability.

So, amongst other things, to fulfil its duties Insight had to know its client, act in his best interests and give suitable advice.

Over the years, the regulator also provided guidance to be read alongside the applicable rules.

In 2009 the then regulator, the Financial Services Authority (FSA) published a report on the quality of advice on pension switching. The report 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.

In 2012 the FSA produced finalised guidance – 'FG12-16 Assessing suitability: Replacement business and centralised investment propositions.' The guidance pointed out several examples of good and poor practice the regulator had seen in the replacement business cases it had reviewed.

Amongst other things, its key findings said:

> *Replacement business*
>
> *2.11 We continue to identify firms failing to consider the impact and suitability of additional charges when conducting replacement business. Several firms in our review failed to consider the costs and features of the existing investment, and were unable to quantify the additional charges associated with the new investment. In addition, several firms failed to provide a comparison of the costs of the existing investment and the new recommendation in a way the client was likely to understand.*
>
> *2.12 We saw examples of firms recommending switches based on improved performance prospects, but providing no supporting evidence to show that these performance prospects were likely to be achieved. While we acknowledge that firms cannot be precise about the potential for higher returns, where improved performance is an objective of the client, firms should clearly demonstrate why they expect improved performance to be more likely in the new investment.*
>
> *2.13 Firms often failed to collect adequate information on the existing investment or failed to consider the features and funds available within the existing solution. Firms should collect adequate information on the existing investment to demonstrate they have taken reasonable steps to ensure the suitability of their recommendation.*

In 2016 the Financial Conduct Authority (FCA) published guidance on its website for 'assessing suitability'. The guidance said that when undertaking replacement business, firms need to ensure they:

- *consider objectively your clients' needs and objectives*
- *collect necessary information on your clients' existing investments and the recommended new investments, such as the product features, tax status, costs and the performance of the underlying investments*
- *implement a robust risk-management system to mitigate the risk of unsuitable advice and poor client outcomes*

Although the guidance in 2016 post-dates the advice Insight gave to Mr E in 2013, it didn't mark a change to the rules Insight were already expected to follow. The essence of the guidance, in my view, was to remind firms like Insight of the standards that should already have been relevant when considering replacement business.

The 2016 update by the FCA also referred to the FSA's FG12-16 guidance. I therefore believe FG12-16 to have still been considered appropriate and relevant by the FCA.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint; I'll explain why.

The switch to the MetLife plan looks to have been unnecessary when viewed on financial grounds. The new arrangement was more expensive, and I'm not persuaded that there was good cause.

Like the investigator, I don't consider Hartford's financial security a sufficient reason to warrant forgoing secured income whilst incurring additional fees. Although I don't dispute that some changes were being made to Hartford's business at the time of advice, I've seen no evidence to suggest that Mr E's pension was at risk or otherwise threatened by these actions. And even if this wasn't the case, Mr E retained full regulatory protections for this plan.

I'm also not persuaded that the guarantees offered by the recommended plan differed in any material way from those offered by the Hartford plan. Certainly not enough to justify the increased cost, including the £10,000 paid for the advice and the ongoing adviser charges.

Mr E was six years from his planned retirement date, and with his medium ATR I consider it more likely than not that he would be in a worse financial position at retirement with no greater security regarding his pension. So I am not persuaded that the advice to switch his Hartford pension to a more expensive arrangement, with substantially similar guarantees, was in Mr E's best interest.

Insight have said that there were restrictions on the Hartford plan, like the GAD rate application, that meant a switch would give Mr E greater flexibility. However, I have been provided with no evidence to suggest the same restrictions would not apply to Mr E's MetLife plan, so I don't agree that this is a compelling reason for the advice to transfer.

Likewise, I've not seen sufficient evidence to persuade me that the advice for Mr E to move his pension with Aviva to MetLife was suitable either. The MetLife pension was more expensive and if there were concerns regarding his investments, Aviva's plan offered 300 fund options that likely could have met his investment objectives without incurring any substantial additional cost to effectuate. I can't see that this was sufficiently considered by

Insight. And I note that adding the Aviva pension to the MetLife plan did not increase the overall quoted pension available to Mr E at retirement.

Overall, in line with what our investigator has already said, there are limited justifications provided here in support of the advice Insight provided. It was reasonable six years away from retirement for Mr E to look to review his pension provision, but the plans he was already invested in met his level of risk, provided valuable guarantees and a secure income, at a lower cost than the plan Insight recommended. So, I don't consider this advice to have been in Mr E's best interests; therefore, it was not suitable.

Should redress by limited?

Insight have argued that their responsibility resulting from any loss because of their advice should be limited. They reason this is because they were removed as advisers in 2017 and so didn't have oversight to ensure Mr E's investments were suitable. But I don't consider this persuasive. Mr E remained in the investments recommended to him by Insight. And I've seen nothing to suggest that Insight would have made different recommendations after its initial advice in 2013.

Furthermore, Insight assert that as Mr E received subsequent advice from a new adviser in 2018 it can't be held responsible for loss after this point. I've thought about this, but I do not agree. At the time of advice in 2018, I understand the new adviser was only reviewing the existing arrangement. This would be a review based on Mr E's objectives and circumstances *at that time*. Simply finding that Mr E should not make any changes to his pension at that time, doesn't mean the advice given five years earlier was suitable. And in fact, both parties agree, the new adviser specifically did not review the previous advice.

Furthermore, it does not appear that Mr E's new adviser took any actions that I consider break the chain of causation. I've been provided with no evidence that after following the 2013 advice, Mr E could not have returned to his previous plans. And better secure income options were not available on the market. The reason Mr E was in this situation in 2017 an onwards, was a direct result of the advice provided by Insight in 2013. Therefore, I do not agree that Insight's responsibility should be limited.

Putting things right

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

What must Insight do?

To compensate Mr E fairly, Insight must:

- Compare the performance of Mr E's investment with the notional value if it had remained with the previous providers. 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.

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

- Payments into Mr E’s pension plan are not now possible, so, Insight should pay any compensation owed 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 E won’t be able to reclaim any of the reduction after compensation is paid.

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

- For example, if Mr E 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 E would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Pay to Mr E £200 for distress and inconvenience caused to him as a result of the unsuitable advice.

Income tax may be payable on any interest paid. If Insight deducts income tax from the interest it should tell Mr E how much has been taken off. Insight should give Mr E a tax deduction certificate in respect of interest if Mr E 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
MetLife Plan	Still exists and liquid	Notional value 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 E's investment had it remained with the previous providers until the end date. Insight should request that the previous providers calculate this value.

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

Any withdrawal from the Metlife Plan 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 Insight 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, Insight will need to determine a fair value for Mr E'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 E wanted Income with some 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 E's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that Insight Financial Associates Limited should pay the amount calculated as set out above.

Insight Financial Associates Limited should provide details of its calculation to Mr E in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 28 April 2025.

Jennifer Wood
Ombudsman