DRN-5218805

The complaint

Mr M complains about the suitability of the advice he was given in May 2016 to switch the value of his two existing personal pension plans ("PPPs") to a self-invested personal pension ("SIPP").

The advice was given by Wise Pension Group Limited which is now called InterestMe Financial Planning Limited ("InterestMe"). For ease, I've just referred to InterestMe below.

Both Mr M and InterestMe have appointed legal firms to represent them in this complaint. For ease, I've referred to the legal firms' respective comments as being those of Mr M and InterestMe below.

What happened

In March 2016, Mr M received an unsolicited phone call from InterestMe offering a pension review of his existing PPPs. This led to a meeting where InterestMe recorded the following information about Mr M and his wife:

- He was aged 51, married and didn't have any financial dependents. His wife was aged 62 and financially independent;
- He was self-employed in the hospitality sector and received gross annual income of around £40,000. It was noted he was living within his means;
- His assets comprised the marital home valued at £175,000 he shared with his wife, a stocks and shares ISA valued at around £11,200, and joint cash savings of around £28,400 he held with his wife;
- His liabilities comprised an interest-only mortgage of £28,000 on the marital home which was due to be repaid in 15 years' time in 2031. Details of the repayment method at the end of the mortgage term weren't recorded;
- He had a *'Medium'* risk profile; and
- He had two existing PPPs with Zurich and Sun Life, the combined fund value of which was around £49,200. It was noted that he *"would like to review both pensions with a view to consolidation".* The details of those PPPs were as follows:

PPP provider	Approximate Transfer values	Investment allocation	Five-year annualised performance	Ongoing charges
Zurich	£41,400	Invested in a single Managed fund	5.96%	Effectively 0.0% AMC because charges were rebated into the fund

				£0 transfer penalty
Sun Life	£7,800	Invested in two Managed funds	5.84%	1.0% AMC £260 transfer penalty

InterestMe recorded that Mr M had several objectives attached to his two existing PPPs, summarised as follows:

- *"You want to retire by 65 and would like to have an income of around £1,500 per month.*
- *You do not know as much about your pensions as you would like to.*
- *You have never had a review and would like to speak with an adviser.*
- *You have not had a review for a while and would like to see how it has been performing.*
- *You are unhappy with your pension provider and want to understand the options available to you.*
- *You have not considered planning for your retirement before and want to understand your potential position, any shortfalls that may exist and what actions you can take to improve your position.*
- *You believe that a combination of the positive long-term investment returns and making ongoing contributions play the most important role in growing your pension"*

In May 2016, InterestMe issued a suitability report to Mr M recommending he switch the value of his two existing PPPs to a Wise SIPP administered by Intelligent Money – and invest via a Discretionary Fund Manager ("DFM") called Strand Capital Limited, although this wasn't referred to as such in the suitability report. InterestMe recommended that Mr M invest in the DFM's Balanced portfolio to align with his *'Medium'* risk profile.

The reason given in the suitability report for switching to the SIPP was *"to improve investment performance".* In support of this, InterestMe stated that the five-year annualised performance of the recommended Balanced portfolio was 9.4% per year on a notional back-tested basis as the portfolio had only operated for a year. InterestMe noted that the figure of 9.4% per year was higher than the five-year annualised performance of the two existing PPPs.

The costs associated with the recommendation for the SIPP were set out in the suitability report, summarised as follows:

Initial advice charge based on value of two PPPs switched to the SIPP

- £1,497 (or 3%)

Ongoing annual charges based on the SIPP fund value

- 0.75% adviser charge
- 0.84% investment management charge
- 0.42% dealing charge
- £114 SIPP wrapper charge

Therefore, the total ongoing charge under the recommended SIPP and DFM investment solution was in excess of 2% per year. This was significantly higher than the combined cost of retaining the two existing PPPs.

Mr M accepted the recommendation. The SIPP received around £49,200 (£41,400 from Zurich and £7,800 from Sun Life) which was sent to the DFM for investment in the Balanced portfolio in July 2016. Following the switch, InterestMe didn't provide any ongoing advice or reviews to Mr M.

Strand Capital Limited administration

In May 2017, the DFM entered administration. As a result, the investments in Mr M's SIPP became illiquid. InterestMe sent Mr M various updates over the next 18 months. Towards the end of 2019, Mr M received some of his pension savings back.

InterestMe's records show that between June 2018 and August 2021, Mr M contacted it by phone on several occasions to discuss the situation with the DFM entering administration and the impact this had on the value of his SIPP.

This complaint

In September 2023, Mr M submitted (through his legal representative) a written complaint to InterestMe about the suitability of the advice he was given in 2016 to switch the value of his two existing PPPs to the Wise SIPP. In summary, he said he was a low-risk investor with a limited capacity for loss. He stated the switch had led to him incurring higher costs and suffering a financial loss. He requested redress to put him into the position he would have been in but for the unsuitable advice.

In January 2024, InterestMe issued its final response to Mr M rejecting this complaint. It stated it was satisfied it had carried out sufficient analysis in 2016 to support its recommendation that the switch to the SIPP was in his best financial interests. And that the DFM entering administration and any losses flowing from this was outside of its control. Furthermore, it had kept Mr M regularly updated about this and so it was satisfied he was given regular information about the administration process and multiple opportunities to complain sooner.

Mr M referred the matter to the Financial Ombudsman Service. In response, InterestMe stated the complaint received in September 2023 had been made too late because it was made more than six years after the advice in 2016 and more than three years of when it believed Mr M became aware he had cause for complaint. Therefore, it didn't believe this complaint had been made in time under our rules.

Our investigator didn't agree with InterestMe's position on the jurisdiction of the Financial Ombudsman Service to be able to consider this complaint. She said there was evidence Mr M had expressed dissatisfaction in a phone call in June 2021 about the suitability of the switch advice he had been given in May 2016 and that InterestMe failed to acknowledge and investigate it at the time. The investigator went on to assess the merits and concluded that the pension switch advice was unsuitable because it exposed Mr M's pension savings to more risk than he was willing and able to tolerate and incurring higher costs without good reason.

To put things right, our investigator recommended that InterestMe carry out a loss assessment and pay any redress due to Mr M based on the notional position he would be in had his SIPP instead been invested as follows from the outset to date: 100% FTSE UK Private Investors Income Total Return Index.

InterestMe didn't accept our investigator's view. It provided additional comments explaining why it continued to believe this complaint had been made too late and that the Financial Ombudsman Service was therefore unable to consider the merits or direct it to calculate and pay any redress. Our investigator considered InterestMe's additional comments but wasn't persuaded to change her view. Since agreement couldn't be reached, this complaint has been referred to me for review. This is the last stage of our process.

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.

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. Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words, I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Having considered the evidence, I've reached the same conclusion as our investigator – on both the jurisdiction and merits elements – and for largely the same reasons. I've explained my reasons why below.

Jurisdiction

InterestMe believes this complaint was made too late under our rules because it received it in September 2023 which was more than six years after it advised Mr M in 2016 and more than three years after it believed he became aware he had cause for complaint.

InterestMe's argument is essentially that Mr M knew or ought to have known there was a problem from May 2017 (when the DFM entered administration) to the end of 2019 (when he received some of his pension funds back, which showed the financial loss he'd suffered). It says that between these dates Mr M received information about his underlying investment in the SIPP being illiquid and about the Financial Service Compensation Scheme ("FSCS") advising consumers to complain to their advisors. InterestMe says there isn't any record of it receiving this complaint before September 2023. Therefore, it didn't believe it had been made in time under our rules.

Our investigator disagreed and instead concluded that Mr M had complained in June 2021 which was within six years of the advice complained about but InterestMe failed to treat it as a complaint at the time as she believed it ought to have done.

I'll set out the relevant rules. The Financial Ombudsman Service is governed by the Dispute Resolution ("DISP") rules set out in the FCA Handbook. The relevant provision here is DISP 2.8.2R which says (unless there are exceptional circumstances or the respondent consents) and so far as is relevant here:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received"

In considering whether Mr M complained in time, I take into account the glossary definition of 'complaint' in the FCA handbook, as follows:

"…any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service, claims management service or a redress determination, which:

(a) alleges that the complainant has suffered (or may suffer) financial loss, material distress or material inconvenience; and

(b) relates to an activity of that respondent, or of any other respondent with whom that respondent has some connection in marketing or providing financial services or products… which comes under the jurisdiction of the Financial Ombudsman Service"

This means Mr M must have been aware:

1. broadly, that a loss has been or may be suffered;
2. that it was a result of some act or omission, and
3. on whom responsibility for that act or omission rests.

Mr M is complaining about the pension switch advice InterestMe gave him in May 2016. The switch and investment in the DFM's Balanced portfolio was completed in July 2016.

InterestMe's records show that in June 2018, March 2020, June 2021 and August 2021, Mr M contacted it by phone to discuss the situation with the DFM entering administration and the impact this had on the value of his SIPP. I've reviewed InterestMe's internal notes. I think the relevant ones are as follows:

23 March 2020:

"Client called and was very distressed as to why since 2016 his pension has gone down 30%. (obviously with the current climate with covid-19 everyone's has dropped). He said he's unhappy that he hasn't heard from [adviser] *about the drop in monies. I have booked him in for a call with* [adviser] *today at 12pm as he said he wants to ask* [adviser] *questions about it."*

3 June 2021:

"Spoke to the client and answered all of his questions around the Strand situation and he has informed me he wishes to make a complaint. He feels things have gone on too long. He also spoke to Aria today who have told him about the OWG situation and he was irritated that we have not informed him of this. He will be writing in to make a complaint."

26 August 2021:

> *“Spoke to* [Mr M] *and gave him an update and reaffirmed to him the only way to move his grievances forward was to send in the formal complaint that he agreed to do back in June that he has still been working on. He will now do this.”*

These notes were created by InterestMe and were a summary of the phone calls it had with Mr M. In my view, the words InterestMe used in creating the internal notes indicate it was aware Mr M was dissatisfied and wanted to complain – but it wasn’t prepared to do anything about it unless he put those concerns in writing. InterestMe’s approach in requiring clients to express their concerns in writing before it treats this as a complaint is contrary to the glossary definition of a ‘complaint’ in the FCA handbook. The definition doesn’t explicitly require consumers to put their concerns in writing, as InterestMe seems to believe. Complaints also include any oral expression of dissatisfaction.

On any objective assessment of those internal notes, I think InterestMe should have recognised Mr M was complaining and therefore instigated its complaints process at that time. This is because Mr M was orally expressing dissatisfaction about the distress and investment loss he believed he had suffered due to the advice given by InterestMe to switch to the SIPP and invest in the DFM’s Balanced portfolio*.* The phone calls noted above occurred within six years after the event complained – the event being InterestMe’s pension switch advice it gave him in May 2016. So, in line with our investigator’s opinion, it’s my view that Mr M complained in time under the DISP rules. That InterestMe chose not to deal with the complaint at the time shouldn’t prevent Mr M from complaining now and receiving any redress that might be due.

Since I’m satisfied Mr M complained within six years of InterestMe’s recommendation, I don’t think it’s necessary to determine at what point he became aware or ought reasonably to have become aware that he had cause for complaint. Therefore, I’ve gone on to consider the merits below.

<u>*Merits*</u>

The FCA’s Principles for Businesses (“PRIN”) apply to all authorised firms. PRIN 2 *(‘A firm must conduct its business with due skill, care and diligence’*); PRIN 6 (‘*A firm must pay due regard to the interests of its customers and treat them fairly’*); and PRIN 9 *(‘A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment*’) are, in my view, particularly relevant.

The COBS rules also apply. COBS 2.1.1R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its clients and applies in relation to designated investment business carried on for a retail client. And COBS 9 is relevant too. It sets out a firm’s obligations to assess the suitability of investments and the information the firm must obtain - about the client’s knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives. A firm must have a reasonable basis for believing that what’s recommended meets the client’s investment objectives; that the client is able financially to bear any related investment risks consistent with his investment objectives; and that he has the necessary experience and knowledge in order to understand the risks involved in the transaction or in the management of his portfolio.

Like the investigator, I’ve also taken into account the regulator’s report issued in December 2008 titled *“Quality of advice on pension switching”.* That report summarised the findings of the regulator’s thematic review of pension switching advice and gave examples of good and poor practices it found on the quality of advice given since pensions A-day on

6 April 2006. The regulator noted, amongst others, the following as examples of what it considered to be unsuitable advice:

- 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 was flexibility of a drawdown option, but there was no evidence that this option was needed).

- A more expensive pension in order to consolidate different pension schemes, but where the extra cost was not explained or justified to the customer.

- A pension that did not match the customer's attitude to risk and personal circumstances.

- A pension where there was the need for ongoing advice, but this had not been explained, or offered, or put in place.

And, in 2013 and 2014, the regulator published alerts aimed at reminding advisers that, when advising on pension switches, the provision of suitable advice generally required consideration of the suitability of the overall proposition, that is, the wrapper and the expected underlying investments. The earlier alert was aimed at where investments in unregulated schemes were intended. But the later alert confirmed that giving suitable advice generally requires consideration of the overall transaction, that is, the vehicle or wrapper and the expected underlying investments and whether or not such investments are regulated products. I've also borne in mind the general legal position, including the law relating to causation, foreseeability and remoteness of losses.

Overall, I agree with the investigator and for the reasons she gave that InterestMe's advice to switch to a SIPP and invest via a DFM was unsuitable for Mr M. In summary:

- Mr M's two existing PPPs had minimal ongoing costs, as set out in the table above. The combined charges for the recommended SIPP were in excess of 2% per year plus a pension wrapper charge of £114 per year. This was more than double what Mr M had been paying under his existing PPPs. One of Mr M's stated objectives were *"You would be happy to look at the possibility of switching your pension to a contract with lower costs".* But the switch led to him incurring significantly higher costs, contrary to his objective. In my view, the comparative charges wasn't clearly set out in the suitability report to help Mr M make an informed decision. Rather, it required him to piece together the various costs and charges mentioned in the suitability report to calculate the overall cost. The extra charges, plus the 3% initial advice fee, would have a significant effect on future investment growth.

- The suitability report stated the recommended fund choice – the DFM's Balanced portfolio – would deliver higher returns than the existing PPPs over the longer term. But I don't think that was realistic bearing in mind the comparative costs or based on reliable performance data or assumptions. The projected fund value under the SIPP was based on what was termed a back tested five-year annualised performance figure of 9.4% per year, which was net of InterestMe's initial and ongoing advice fees. In my view, it was inappropriate to use a projection based on extrapolated returns from very short term (one year) historical performance figures, particularly when performance was the main driver for the switch.

- Although the suitability report stated the estimated investment return achieved by the Balanced portfolio wasn't guaranteed, I think the projection likely misled Mr M. I think he'd have found the estimated projected value under the SIPP (a fund value of £116,000 compared to £75,800 if he stayed with his existing PPP providers) very attractive. But I don't think he was given a realistic picture of how the SIPP would likely perform and the returns which could reasonably be expected to be achieved. The regulator's standard growth rates at the time for use in illustrations - 2%, 5% and 8% for low, medium and high returns respectively – put things in context. In other words, Mr M's SIPP would need to achieve year on year returns in excess of the higher rate and when he was only prepared to take a medium level of risk. I think the switch exposed Mr M's pension savings to more risk than he was willing and able to tolerate.

- I agree with our investigator's view that the illustrations produced by InterestMe indicated that Mr M would be in a significantly worse position at retirement primarily because of the costs involved in switching.

- The SIPP likely offered more flexibility as to how Mr M could access his benefits. But, he was then aged 51 and around 14 years away from his planned retirement at age of 65 and so he'd be paying for features he didn't need for a long time. If, in the interim, a need arose that could've been addressed then. Mr M couldn't access benefits until age 55 at the earliest in any event.

- I don't see that Mr M had any need to invest in a DFM portfolio. The suitability report didn't make it clear that a DFM was involved. Nor does it set out the reasons why a DFM is recommended and considered suitable for Mr M. The DFM added another layer of costs and Mr M's pension savings of around £49,200 were modest. He wasn't a knowledgeable or experienced investor and I don't think he had any need for other than a relatively basic pension arrangement. As noted by our investigator, Mr M's two existing PPP providers offered a sufficiently wide choice of alternative funds and so, if InterestMe's review had highlighted that fund changes were appropriate, internal fund switches could've been arranged.

- Despite any failings by the DFM, it's my view that InterestMe is responsible for Mr M's losses. Firstly, it's my view the recommendation to switch to the SIPP was unsuitable. Further, InterestMe recommended Mr M use the services of the DFM and invest in its Balanced portfolio. As I've said above, in recommending a switch to a SIPP, InterestMe had to consider the proposed underlying investment. Mr M's pension savings were held by the DFM and invested by it as a direct result of InterestMe's recommendation. I recognise that it wasn't InterestMe's fault that the DFM later entered administration in 2017. But Mr M is in the position he's in because of InterestMe's unsuitable advice. I think the root cause of any losses he's suffered in consequence of the DFM's failure goes back to InterestMe's unsuitable advice. The DFM was regulated and might have some responsibility for some of Mr M's losses. But although the DFM was responsible for managing Mr M's investment following the switch, that arrangement only existed by virtue of InterestMe's unsuitable recommendation.

- Following the switch to the SIPP, InterestMe didn't provide any ongoing advice or reviews to Mr M despite charging him for this. Failing to provide ongoing advice when it was required was one of the examples of poor practice and unsuitable advice noted by the regulator in its report issued in December 2008 titled *"Quality of advice on pension switching".*

- For the reasons I've given, I think it's fair and reasonable to uphold this complaint and to hold InterestMe fully responsible for any losses Mr M has suffered in consequence of its unsuitable advice to switch to a SIPP and invest via the DFM.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr M as close as possible to the position he'd probably now be in if he'd been given suitable advice. Like our investigator, I think Mr M would have invested differently. It's not possible to say precisely what he would have done. But I'm satisfied that what I've set out below is fair and reasonable given his circumstances and objectives when he invested. This is in line with the redress methodology previously recommended by our investigator.

To compensate Mr M fairly, InterestMe must:

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

- Add any interest set out below to the compensation payable.

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

- If compensation cannot be paid into Mr M's pension plan, it should be paid 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 previously set out by our investigator, I've decided Mr M is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. 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, resulting in an overall reduction of 15%.

- Provide the details of the calculation to Mr M in a clear, simple format.

Income tax may be payable on any interest paid. If InterestMe considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. InterestMe should also give Mr M a tax deduction certificate in respect of interest if he 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

SIPP	Some liquid/some illiquid	FTSE UK Private Investors Income Total Return Index	Date of investment	Date of this final decision	8% simple per year from date of this final decision to settlement (if not settled within 28 days of InterestMe receiving Mr M's acceptance of this final 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, InterestMe must take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. The amount InterestMe pays should be included in the actual value before compensation is calculated.

If InterestMe is unable to purchase any illiquid investment, the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. InterestMe may wish to require that Mr M provides an undertaking to 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 money from the pension plan. InterestMe 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's a large number of regular payments, to keep calculations simpler, I'll accept if InterestMe totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

For the SIPP to be closed and further fees avoided, the illiquid assets need to be removed. I've set out above how that might be achieved. But, if InterestMe is unable to take ownership of any illiquid investments (and they can't otherwise be removed from the SIPP), they'll remain in the SIPP. I don't think it would be fair for Mr M to have to pay ongoing SIPP fees when the SIPP only exists because of unsuitable advice. If the SIPP can't be closed, InterestMe should pay Mr M a lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). That's a reasonable period to arrange for the SIPP to be closed.

Why is this remedy suitable?

I've chosen 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'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 Mr M's circumstances and risk attitude.

There is guidance on how to carry out calculations available on our website. This can be found by typing 'compensation for investment complaints' into the search bar on our website: www.financial-ombudsman.org.uk.

My final decision

I uphold Mr M's complaint. InterestMe Financial Planning Limited must calculate and pay compensation to Mr M as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 February 2025.
Clint Penfold
Ombudsman