DRN-5347610

The complaint

Mr K has complained about the advice provided to him by AFH Independent Financial Services Limited ('AFH'). Mr K has stated that the advice to transfer a Scottish Widows Group Personal Pension ('GPP') into a Scottish Widows Personal Pension ('PP') was unsuitable and has caused financial loss.

What happened

AFH completed a fact-finding exercise with Mr K on 15 February 2017. This documented Mr Ks circumstances at that time and showed that:

- Mr K was aged 40, employed as a Managing Director with a chosen retirement age of 65.
- Mr K's income was £45,000 a year. No income / expenditure analysis was undertaken.
- Mr K's attitude to risk ('ATR') was documented as being "Moderate".
- An existing pension was held with Scottish Widows. This was recorded as a GPP with a value of around £56,500. Mr K and his employer were making monthly contributions of £93.75 each.

AFH documented their advice in a suitability letter dated 10 March 2017.

This confirmed that as well as transferring the £56,500 from the GPP, a new single contribution of £25,000 was to be made, as well as ongoing monthly contributions of £1,000. Mr K's objectives were recorded as being to review his existing pensions, invest a lump sum and regular contributions, and to have access to a wider range of investments – including stocks and shares.

The ceding GPP was wholly invested into the Scottish Widows Mixed Pension Series 2 fund, with investment charges of 1% per year and an adviser charge of 0.5% per year.

The recommendation to move the existing pension was confirmed, with the suitability letter recording the advisers' reasons for this as being to:

- *"Move to a more modern account with full flexibility.*
- *Have access to a wider range of funds including stocks and shares."*

The new pension was detailed as being a Scottish Widows personal pension.

Mr K's ATR was re-confirmed as "moderate" with the funds to be split 65:35 between the Scottish Widows Balanced Portfolio and a Share Dealing Service.

This investment mix was recommended by the adviser on the basis that Mr K wished to take an active approach to investing to try and outperform the market, Mr K was willing to incur higher investment charges in return for enhanced performance, and that the recommendation matched Mr K's ATR.

The charges applicable to the new pension were detailed as being a product charge of 0.3%, investment charges of 0.8% for the Balanced portfolio and 0.65% for the share dealing service, an ongoing adviser charge of 0.5% per year, and an initial advice charge of £750.

After the transfer had been completed, in 2022 AFH provided Mr K with a new adviser. As Mr K had not been receiving annual reviews as he should have been, a complaint was made. This complaint has been dealt with separately and has not been considered within this decision.

Mr K then raised a second complaint, covering the suitability of the 2017 advice.

AFH issued its response to this complaint in March 2024. This stated that the complaint was not being upheld and that AFH considered their advice suitable.

Unhappy with this response Mr K referred his complaint to this service.

Our investigator looked into things and upheld the complaint. The investigator also went on to provide redress recommendations to both Mr K and AFH.

AFH have not responded to the findings issued by our investigator and as such the case has been passed to me for a final decision.

I initially issued a provisional decision which stated:

"In making this decision I have considered the regulatory framework and guidance that was in place at the time AFH gave Mr K advice.

The FCA Handbook contains the principles for businesses, which it says are fundamental obligations firms must adhere to.

These include:

- *Principle 2, which requires a firm to conduct its business with due skill, care and diligence.*
- *Principle 6, which requires a firm to pay due regard to the interests of its customers.*
- *Principle 7, which requires a firm to 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.*

Additionally, COBS 2.1.1 R requires a firm to act honestly, fairly, and professionally in accordance with the best interests of its clients and COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments.

At the time this advice was provided COBS 9.2.1 R stated:

"(1) A firm must take reasonable steps to ensure that a personal recommendation, or a decision to trade, is suitable for its client.

(2) When making the personal recommendation or managing his investments, the firm must obtain the necessary information regarding the client's:

> *(a) knowledge and experience in the investment field relevant to the specific type of designated investment or service;*
> *(b) financial situation; and*
> *(c) investment objectives;*

so as to enable the firm to make the recommendation, or take the decision, which is suitable for him."

Also, in 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching. This highlighted four key issues it thought should be focussed on:

- *Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?*
- *Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.*
- *Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?*
- *Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered, or put in place.*

Having looked at the point of advice documentation, and the regulatory rules and guidance above, I have reached the same outcome as our investigator and for broadly the same reasons.

Whilst I accept that the charges on the ceding GPP and the new personal pension are broadly the same – with the actual charges applicable to the new scheme dependent upon how much was ultimately allocated to the share dealing account - the documentation produced by AFH at the time of advice does not contain enough information about Mr K to justify the advice given.

The reasons given by the adviser in support of the new personal pension were to move Mr K to a more modern account with full flexibility and to have access to a wider range of funds including stocks and shares.

However, Mr K was aged 40 at the time of advice and around 25 years away from his chosen retirement age. As such and need for "flexibility" can only be consider a future need many years away at the time of advice. Additionally, whilst the personal pension may have allowed Mr K to access a wider range of investment funds, AFH only recommended one fund – the Scottish Widows Balanced Portfolio.

Having looked at the fund fact sheet for the Scottish Widows Balanced Portfolio and the ceding Scottish Widows Mixed Pension Series 2 fund held within the GPP, I would agree with what our investigator has already said. Both funds are similar in their make-up and both would be considered a match to Mr K's moderate ATR.

As such, I do not consider either of the reasons above sufficient to justify a transfer.

The only major difference between the ceding GPP and the personal pension recommended by AFH is the access to the Share Dealing account.

The suitability letter stated that 35% of the new personal pension would be allocated to this share dealing account, that this would match Mr K's ATR, and that Mr K would manage this element of the portfolio in order to try and outperform the market.

Whilst AFH would not be recommending any particular share purchases for Mr K, they did recommend the share dealing account itself, and as such they are responsible for ensuring its suitability overall.

The file has limited information on Mr K's investment experience and as such I cannot say whether it was appropriate for AFH to recommend Mr K self-invest such a significant proportion of his retirement provision. There is no commentary on file as to why Mr K wanted to do this, why he believed he could beat the wider investment market, or what investments he intended to make.

Overall, I do not believe the share dealing account recommended by AFH was in line with Mr K's attitude to risk, capacity for loss, or his investment experience.

Given I have concluded the share dealing account is the only major difference between the ceding GPP and the new personal pension I have reached the same overall conclusion as our investigator.

Had suitable advice been given I have concluded it is most likely that Mr K would have retained the existing GPP and placed the additional lump sum and regular contributions into this pension as the pension had charges broadly in line with the new scheme and an underlying investment fund which matched Mr K's ATR.

This decision has focussed solely on the suitability of the pension transfer advice given to Mr K by AFH. However, a previous decision has been issued which refunded some of the advice fees paid by Mr K to AFH. As the redress instructions below are intended to place Mr K as closely as possible to the position he would most likely now be in had suitable advice been given, the redress already paid because of this earlier decision must be considered."

I additionally asked all parties to provide any further commentary of evidence they wanted me to take into account before a final decision was issued.

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.

AFH did not provide any response to the provisional decision.

Mr K did however raise further questions about the redress instructions I included in my provisional decision.

Mr K said that he has replaced AFH with a new advisory firm and has subsequently moved his pension and investments. Since these changes have been made Mr K says he has seen a big improvement in the performance of his pension investments. As such Mr K has questioned why the redress instructions previously provided cannot be based on the performance of these new investments, rather than a notional value from the previously held Scottish Widows GPP.

The redress instructions I provide are intended to place Mr K into the position he would most likely be in had AFH provided suitable advice in 2017.

Whilst I appreciate Mr K is happy with the current performance of his new investments, it would be unreasonable for me to allow Mr K to use the benefit of hindsight and base redress on these new investments.

I have noted that Mr K has stated he was looking to make better use of his pension savings and was looking to move away from the existing GPP, I remain of the opinion that this represented a suitable option for him in 2017. Had AFH explained this and advised Mr K to retain the GPP and make his additional contributions into this scheme, I have concluded that it is more likely than not that Mr K would have followed that advice.

Even if this were not the case, there is no evidence to support the conclusion that Mr K would have rejected the advice, subsequently found and utilised the services of his current advisers, or that the investments which would have been recommended by Mr K's new advisers in 2017 would be the same as those currently held.

Given all of these uncertainties, I remain of the opinion that basing the redress calculation on a notional value from the ceding Scottish Widows GPP represents the fairest way of placing Mr K as close as possible to the position he would most likely be in had AFH provided suitable advice.

Given the above, the redress methodology below is in line with what was included in the provisional decision already issued.

Putting things right

My aim is that Mr K should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

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

What must AFH do?

To compensate Mr K fairly, AFH must:

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

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

- If there is a loss, AFH should pay into Mr K's pension plan to increase its value by the 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 AFH is unable to pay the compensation into Mr K'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 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 K won't be able to reclaim any of the reduction after compensation is paid.

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

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

- If either AFH or Mr K dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr K receives appropriate compensation. It won’t be possible for us to amend this assumption once any final decision has been issued on the complaint.

In line with what our investigator said in their findings, if Mr K had retained the existing GPP and made his future increased contributions into this plan, it is not unreasonable to assume he would still have required some form of ongoing advice (given the level of contributions being made).

A previous decision has already concluded what level of ongoing charges would have been appropriate and refunded 75% of the fees paid to AFH by Mr K. As such, this decision concluded that the remaining 25% of the fees were a reasonable amount for Mr K to pay.

This needs to be taken into consideration within this redress.

The ceding GPP scheme had the same 0.5% adviser charge as the new personal pension, and I cannot be certain of how the notional value / benchmark calculation will be completed.

- If the notional value / benchmark calculation is completed with the 0.5% adviser charge included, then no deduction for the redress already paid to Mr K should be made.

- If the notional value / benchmark calculation is completed without the 0.5% adviser charge included, then one third of the redress already paid to Mr K should be deducted from the overall redress calculation. The previous decision concluded that 25% of AFH’s fees were reasonable. If no adviser fees are included in the notional value / benchmark calculation, then this deduction removes this 25% which Mr K would / should have paid. (One third of 75% equals 25%).

Income tax may be payable on any interest paid. If AFH deducts income tax from the interest, it should tell Mr K how much has been taken off. AFH should give Mr K a tax deduction certificate in respect of interest if Mr K 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
Scottish Widows Personal Pension	No longer in force	Notional value from previous provider (Scottish Widows GPP)	Date of investment	Date ceased to be held	Any loss should be brought up to date of settlement in line with the FTSE UK Private Investors Income Total

					Return index

Actual value

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

Notional Value

This is the value of Mr K's investment had it remained with the previous provider until the end date. AFH should request that the previous provider calculate this value.

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

Any withdrawal from the Scottish Widows Pension 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 AFH totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, AFH will need to determine a fair value for Mr K'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 chosen this method of compensation because:

- Mr K wanted Capital growth and was willing to accept some investment risk.
- If the previous provider is 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'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 K's circumstances and risk attitude.

My final decision

In line with the commentary above I am upholding this complaint and require AFH Independent Financial Services Limited to calculate and pay redress in line with the methodology outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 22 March 2025.

John Rogowski

Ombudsman