DRN-5741243

The complaint

Mr D complains that AFH Independent Financial Services Limited ("AFH") gave him unsuitable advice to move his pension.

What happened

Mr D had an existing relationship with AFH as his advisers, and met with them in August 2019 to discuss elements of his financial planning. Following this meeting Mr D was given two pieces of advice – to invest some money in an offshore bond written into trust, and to switch his drawdown SIPP from another firm (who I'll call L) to AFH's discretionary managed investment service.

In 2023, through a representative, Mr D complained to AFH about both pieces of advice. The offshore bond advice is the subject of a separate complaint with our service, and this complaint and this decision are solely focussed on the pension switch advice.

Regarding the pension switch, Mr D complained that the investment funds within the discretionary fund management (DFM) service provided by AFH were too risky for him. He said his previous pension arrangements had allowed him access to a wide range of regulated funds and the DFM service removed diversity from the risk management of his portfolio of investments. He said the AFH pension had no discernible advantages over the SIPP he'd held with L – the charges were similar and the investments he could access through the two pensions were broadly the same. He said the advice led to unnecessary complication and costs involved in the transfer process.

AFH didn't uphold Mr D's complaint. In summary, they said:

- The adviser comprehensively evaluated the pros and cons of the switch, as well as other options such as retaining or adjusting Mr D's existing pension.
- The adviser concluded that the AFH option had lower costs than Mr D's existing pension. He also said that Mr D was keen to take advantage of a DFM arrangement, and AFH's DFM offering couldn't be added to his L pension. He found that while other DFM services could be added, they would add additional costs.
- The recommendation met Mr D's objectives, risk profile, and capacity for loss.
- The recommendation, reasons for making it, and costs involved were all clearly disclosed to Mr D.

Mr D's representative brought the complaint to our service. One of our investigators thought it should be upheld. Briefly, she said:

- While the ongoing costs of the L pension were marginally higher, this didn't take into account the impact of the up front advice fee on the return needed for Mr D to be better off with AFH's pension proposal.
- She wasn't persuaded Mr D needed or wanted the DFM option to the degree that AFH had suggested, where that formed a large basis for their recommendation.
- In any event Mr D could have used a DFM with his existing provider, and she wasn't persuaded it would have been more expensive for him to do so.

- Overall she didn't think the transfer offered value to Mr D or enough likely benefit to him to make it suitable to recommend he switch pensions.
- She didn't think, if suitably advised, Mr D would have moved from his L pension.
- She recommended AFH compensate Mr D by comparing the performance of his AFH pension with a benchmark.

Mr D's representative acknowledged the view. AFH didn't respond, and so the case has been passed to me for a decision. It's important that both parties have an opportunity to make representations about the outcome we reach before I make a final decision. And we've not had any kind of response from AFH since the investigator gave her assessment. I'm satisfied that she has chased AFH for any comment on two separate occasions, using an email address which AFH has previously responded to.

I'm therefore satisfied that AFH has more likely than not received the investigator's view and had an opportunity to make submissions if it wanted to. Mindful that neither party has provided any new evidence or arguments in response to the investigator's assessment, I therefore think it's appropriate for me to issue this decision now.

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've reached the same conclusions as our investigator and for broadly the same reasons.

AFH recommended Mr D move his pension, and take out new investments within it. So it needed to ensure, in line with its obligations in COBS 9, that the advice it gave was suitable. It needed to ensure that it recommended something that met Mr D's investment objectives, that he could bear the investment risks, and that he had the knowledge and experience to understand the risks involved (COBS 9.2.2R). It also more broadly needed to ensure it acted honestly, fairly and professionally in accordance with Mr D's best interests (COBS 2.1.1R).

At the outset I would note that I've thought very carefully about this complaint, and find it to be very finely balanced. I think AFH considered the relevant factors and information before giving their advice, and their explanation of why they recommended what they did is clear. But while I think this issue is balanced, overall I don't think it was fair and reasonable for AFH to conclude their recommendation was suitable for Mr D. I'll explain why.

I'll first deal with the aspects of the advice I don't think there was a problem with. There isn't a dispute about Mr D's broad circumstances and objectives – he was 74 and retired, with no dependents and an estate valued at around £2million.

His retirement income amounted to around £37,500 a year. This was made up of some annuities, the state pension, and rental income from properties he owned. About £7,800 of this income was from a drawdown SIPP he held with L.

His attitude to risk was assessed as 3 on a 1 to 5 scale, and AFH considered him to have a reasonably high capacity for loss given his other pension income and his non-pension liquid assets of around £750,000.

I think it was fair and reasonable for AFH to conclude that retaining the £100,000 or so in his L SIPP in a drawdown product was suitable. Mr D had other annuities, and plenty of spare cash, and so having flexibility with a portion of his pension – by retaining access and choice over how and when to draw it down – doesn't, to me, seem unreasonable even though Mr D may have been able to buy an annuity which would have provided a similar or even slightly greater income than that he was taking from the drawdown SIPP both with L and then with AFH.

I also agree that the AFH DFM which was recommended matched Mr D's attitude to risk and objectives, and was within his tolerance for loss. The asset allocation AFH said his portfolio would follow – 60% equities, 24% in fixed income securities, with 12% in property and small holdings of cash and alternative assets – is in my view one which it was reasonable for AFH to consider suitable for Mr D as a medium risk investor.

The issues start to unfold when I consider that the same was true of Mr D's existing pension investments with L. As AFH themselves noted in their suitability letter *"your current contract is invested in line with your agreed attitude to investment risk and the portfolio is appropriately diversified"*.

What, then, was the rationale for moving to a new pension provider and arrangement? AFH summed this up in their suitability letter. The disadvantages they gave to retaining Mr D's existing arrangements were that *"the on-going [L] charges are greater than the recommendation"* and that *"your existing plan […] does not benefit from any ongoing discretionary investment management which you have stated that you require."*

AFH went on to say that its own DFM offering couldn't be added to Mr D's plan with L. And that while other DFM solutions *were* available with L, *"this would be with an extra layer of costs and fail to address your investment risk and financial planning needs"*.

Expanding on the lower costs with their recommendation, AFH said that *"assuming all other factors remain equal, this could lead to you having higher retirement fund values."*

So it seems to me that AFH's reasons were chiefly that a) their proposal would be cheaper, potentially improving Mr D's returns and b) it was the best way to allow him to use a DFM, which AFH said he wanted.

I'm not persuaded that AFH's conclusions on costs are a good reason for switching Mr D's pension. On AFH's analysis, the ongoing costs under their recommendation would be 2.04%, very marginally lower than the 2.24% they thought Mr D would be paying with L. But by switching his pension Mr D was paying a 2% initial advice fee, which would significantly eat into the potential return especially in the early years.

Later in the suitability letter, AFH themselves say that assuming the same 5% growth rate, they projected that by staying with his existing arrangements Mr D would be around £5,000 better off by the time of his 87th birthday. They said that this was acceptable as the additional setup costs allowed for Mr D to take advantage of AFH's DFM service giving him *"the management you desire"*.

So factoring in initial charges AFH's recommendation wasn't likely to be any cheaper, and in fact AFH thought it likely to leave Mr D worse off, unless AFH's recommended portfolio outperformed his existing investments by around 0.25% a year.

In terms of Mr D's desire to use a DFM – which was used to justify these higher overall costs, the suitability letter says that *"you like the idea that a professional investment manager is able to make quick changes and to make the most of changing market conditions without having to wait for a review or your approval. You feel that you have neither the time nor the expertise to research the investment markets on an ongoing basis and so would appreciate the service offered by our investment managers to manager your portfolio".*

I've no reason to doubt that this is a fair reflection of Mr D's stated preference, and I note there's nothing to suggest Mr D contacted AFH to dispute anything in the suitability report, which contained many references to his desire for a DFM solution. And I acknowledge that the report is careful to state that the DFM may not outperform his existing investment arrangement.

But I've also considered that however transparent and clear the report, AFH needed to satisfy itself that the advice it was giving was suitable. While Mr D may have wanted the ease of someone managing his investments, I also note that AFH's description of its DFM said it didn't think *"active trading"* was a good idea – suggesting that investment decisions would be less frequent. Mr D already had an ongoing advisory relationship with AFH where his portfolio was reviewed and could be rebalanced once a year.

To be clear I'm not equating those two things. A DFM could indeed act more nimbly and make changes as conditions dictated, and Mr D wouldn't have to speak to his adviser as much as he wouldn't need to approve changes. Those things may well have been beneficial to Mr D. But I have two major concerns here.

The first is that despite the caveats as to performance, I'm not persuaded it was fair and reasonable for AFH to have concluded that the convenience and speed of a DFM was worth the potential costs involved here. This was Mr D's pension, and I'm not persuaded AFH have shown Mr D prized that convenience more than the overall performance of his pension and the income it would allow him to draw throughout his retirement.

I appreciate that there was a chance the DFM would outperform his existing portfolio – but as AFH's own analysis showed, if it just did about the same (and it was to be invested in a very similar mix of assets) then given the setup costs Mr D would likely be worse off in the long run.

The other issue I see here is the degree to which AFH only considered its own DFM proposition and discounted using a DFM with Mr D's existing pension with L. It says that this would have added an additional layer of fees, but it isn't clear whether and how AFH arrived at the conclusion it would be more expensive.

I understand that DFM options within L's SIPPs charged similar to the 1% Mr D was paying to AFH. And with a regulated DFM (who'd need to ensure the portfolio was suitable) Mr D may not have needed to pay for ongoing advice regarding his drawdown SIPP – which he'd been paying 1% a year before until this advice was given.

So taking all this into account, I'm not persuaded the reasons AFH gave for their recommendation were reasonable. They rested their advice (largely) on the cheaper ongoing fees and the ability for Mr D to use their DFM service. But the overall fee structure meant all other things being equal there was more drag on performance than by staying put. And in my view AFH gave too much weight to the advantages of their own DFM service. For the reasons given above, I'm not persuaded it was likely to give enough advantage to Mr D over either an ongoing advisory arrangement or a DFM through his L pension, in order to make the advice suitable.

Putting things right

Like our investigator, I think it was unsuitable for AFH to recommend Mr D switch his pension from L. But had he remained with L, I think it's likely he'd have made changes to investments over time, whether by using a DFM or on AFH's advice. So in considering fair compensation, I think it's appropriate to use a benchmark rather than the notional value of Mr D's previous pension.

Fair compensation

My aim is that Mr D 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 D 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 D's circumstances and objectives when he invested.

What must AFH do?

To compensate Mr D fairly, AFH must:

- Compare the performance of Mr D'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.

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

- AFH should pay into Mr D'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 AFH is unable to pay the total amount into Mr D'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 D won't be able to reclaim any of the reduction after compensation is paid.

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

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

Income tax may be payable on any interest paid. If AFH deducts income tax from the interest it should tell Mr D how much has been taken off. AFH should give Mr D a tax deduction certificate in respect of interest if Mr D 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
James Hay SIPP	Still exists and liquid	FTSE UK Private Investors Income Total Return Index	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.

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 James Hay SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if AFH 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 D wanted Income with some 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 D's circumstances and risk attitude.

My final decision

I uphold the complaint. My decision is that AFH Independent Financial Services Limited should pay the amount calculated as set out above.

AFH Independent Financial Services Limited should provide details of its calculation to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 September 2025.

Luke Gordon
Ombudsman