DRN-5790176

The complaint

Mr D's complaint about FINLI (Scotland) Limited ('FINLI') relates to the advice and services it provided from 2018 in connection with his pension. He says it missed / carried out infrequent ongoing advice reviews of his pension planning, there was a lack of focus on his primary investment objective of growth, it misrepresented its Portfolio Management Service (PMS) offering, and it did not explain the level of inflexibility in the asset allocation of his investment. Mr D says he has lost out as a result and seeks compensation.

What happened

The following is a summary of the background and key events leading up to the complaint to provide some context. It is not a complete timeline or chronology of events. And while I have read and considered everything, I haven't detailed here every piece of information or evidence provided by the parties. Where it is appropriate to do so, I will refer to specific evidence or expand on what follows here to support my findings in the section below.

Mr D had an existing relationship with FINLI. The relevant events here began in 2018.

In September 2018, FINLI recommended Mr D transfer his existing Self-Invested Personal Pension (SIPP) valued in excess of £300,000, to his established retirement account or pension plan held with another provider.

The suitability report FINLI produced summarising its recommendation, recorded the following relevant information.

- Mr D's objective was to seek growth of his pension funds, in excess of inflation over the longer term in line with his attitude to risk.
- Mr D's attitude to risk was recorded as remaining to be 'Balanced.' It said, while he will consider a more adventurous risk approach with a proportion of his wealth, he remained a balanced investor with regard to his pension.
- He accepted a broad-based approach with a significant proportion of his portfolio allocated across a range of assets, including fixed interest, property and both UK and overseas equity-based investments.
- Mr D had a strong knowledge of investments and took an active interest in investment markets.
- Mr D's portfolio was invested in a range of funds and asset classes, and it was rebalanced following the SIPP transfer.
- Annual ongoing suitability reviews would take place in accordance with its PMS, details of which it enclosed.

FINLI's client service agreement records that Mr D agreed to the ongoing advice service (signed in November 2018) which was charged at 0.5% a year deducted from his pension plan monthly.

FINLI's PMS document broadly described its service offering as:

'…you will enjoy active fund management and benefit from regular reviews of both your wider financial situation and your investments.'

It also said:

'**We believe in diversification**…diversification of an investment portfolio across a variety of different low correlated asset classes should help to reduce the overall level of risk with, say, a portfolio which only includes bonds.

We adopt an active investment approach…The objective with active management is to produce better returns than those of passively managed index funds. Active fund managers attempt to beat the market through security selection and tactical asset allocation…Whilst actively managed funds may have an overall strategic asset allocation, they will have the remit to change this, moving in and out of assets as well as different securities…

Strategic Model Portfolios…We typically use model portfolios for our clients…we have built a series of model portfolios, with varying degrees of risk…

Investment Reviews… Having created an investment portfolio that reflects an asset allocation and fund selection appropriate to your attitude to risk, we will continue to monitor the portfolio, switching funds that no longer meet our portfolio criteria and rebalancing when appropriate.'

In July 2019, FINLI carried out an annual review followed up by a suitability letter. In summary, this recorded that Mr D's circumstances and objectives had been discussed, his attitude to risk remained balanced, the portfolio had performed well, and the plan remained suitable. It said rebalancing of the portfolio had taken place to manage risk.

In 2020, Mr D took a cash lump sum from his pension. There is no evidence of an annual review being carried out.

In November 2021, Mr D says at his request, an annual review was carried out. A suitability letter was produced, which said that following a review of Mr D's circumstances and objectives, it deemed his pension plan remained suitable. Mr D's attitude to risk remained 'Balanced.' A portfolio rebalance was carried out including some changes to the underlying funds. A pie chart showing the asset allocation recommended was included here. The breakdown was as follows:

- Cash – 1%
- UK Gilts – 0%
- Corporate bonds – 35.5%
- UK equities – 22%
- Overseas equities – 30.5%
- Property 11%

The recommended investment portfolio's underlying funds were also included here.

Mr D accepted the recommended changes.

In 2022, Mr D took a further lump sum from his pension. There is no evidence of a review being carried out.

In July 2023, FINLI carried out an annual review. The suitability letter issued was of the same format as in 2021. Continued suitability of Mr D's pension was noted here. As in 2021, rebalancing and changes to the underlying funds were recommended. The changes to the asset allocation showed a reduction in corporate bonds to 32%, a reduction in UK equities to

20%, and an increase in Overseas equities to 36%. Again, the recommended underlying funds were included here.

Mr D accepted the recommended changes.

In April 2024, Mr D indicated to FINLI that he was considering moving advisers as he felt his plans were not performing. This ultimately led to him raising a complaint in September 2024. Mr D's complaint letter set out the history of the advice to transfer his SIPP as I set out above. He referred to understanding the geopolitical events, which made for challenging investment markets in 2021 and 2022, but despite 2023 being a recovery year, he said his portfolio continued to fall. He said he felt this was due to FINLI's lack of in-house investment knowledge. He provided graphical evidence of some of the funds in his portfolio, which he said showed poor performance. He said while he agreed to a medium risk approach in 2018, no consideration was given to changing risk profiles or addressing poor performing asset classes, and says no alternatives were discussed. He said he felt the PMS had been misrepresented. Mr D referred to gaps in his annual reviews and also said no re-appraisal of his attitude to risk was carried out. Overall, he said all of this and the perseverance with poor performing assets has resulted in bad advice which wasn't in his best interests.

FINLI didn't uphold the complaint. In summary it said it believed Mr D's complaint was primarily related to the performance of his portfolio rather than the advice he was given – he said he didn't consider he'd been wrongly advised in 2018. It referred to the advice paperwork where it was recorded that Mr D had a strong knowledge and understanding of investments (something Mr D has challenged) and that following a discussion about risk and investment options, a balanced risk approach was settled on for his pension monies. It referred to the PMS document Mr D was provided with and said it had no doubt that it was made entirely clear to Mr D what to expect from being invested in the balanced portfolio.

It went on to explain the portfolios were model portfolios managed to meet the risk expectations of its clients. It said they adhere to strict asset allocation models, which are only changed when they fail to meet certain criteria. It provided a more detailed explanation about asset allocation and how it was important to maintain a consistent predetermined exposure to certain assert classes. It said it was not operating a discretionary investment service, so it wasn't the case that it could accommodate bespoke investment requirements. It said it was satisfied the portfolio had had performed in line with its intended outcome, but noted that the performance had been impacted by many events, which had created volatility in world stock markets. It said Mr D's attitude to risk was reassessed at review meetings held in 2019, 2021 and 2023. But it referred to Mr D's own admission that he had been busy with his own business interests for a number of years, and it said that it had proved difficult to engage with him for review meetings.

Mr D replied. In summary he said his complaint wasn't about performance, it was about the lack of focus on his objective for capital growth. He said he had not received the services detailed in the PMS document. He said no review meetings were carried out in 2020 or 2022, and he challenged that he wasn't available to meet saying FINLI didn't firm up plans or send him reminders. He said he understood FINLI wasn't operating a discretionary fund management service, but he did expect it to manage and advise on his portfolio. He said the missed reviews gave him no opportunity to do his homework.

FINLI replied. It broadly repeated how its model portfolio worked and said it had nothing new to add to its earlier response, which was its final response.

Mr D remained dissatisfied, so he referred his complaint to the Financial Ombudsman.

One of our investigators considered the matter. And ultimately, they upheld the complaint, in part. In relation to the annual reviews, they said there was evidence of reviews taking place in July 2019 and November 2021 including rebalancing of the portfolio. But they said the evidence in relation to the contact in 2020 and 2022 appeared to be in relation to the specific matter of Mr D taking lump sums from his pension and not a review, which is what Mr D would have expected from the client agreement he signed. They acknowledged FINLI's argument that Mr D had been difficult to pin down to arrange review meetings, and he had rejected meeting requests. But they said FINLI hadn't provided any supporting evidence such as emails, call logs or meeting invitations to substantiate its claims. So, in the circumstances they said it was fair that FINLI refunded the ongoing advice charges Mr D paid for 2020 and 2022 and that compensation of 8% simple interest a year should be added.

In relation to the other matters, they said Mr D's complaint appeared to be about his dissatisfaction with investment performance. They said while the portfolio might not have performed as Mr D had expected, this stemmed from a misunderstanding about the service being offered – there was no evidence to support FINLI misrepresenting it. They said Mr D's investment was a model portfolio service using pre-defined investment strategies – it wasn't the case that Mr D could influence specific holdings or dictate changes. They said the portfolio was run in line with Mr D's balanced attitude to risk with rebalancing carried out, which is what they'd expect to see. And while Mr D had referred to lost opportunities, he'd been presented with other options in 2018, like using a SIPP, but actively chose the model portfolio service.

Mr D accepted the findings about the ongoing advice but said his main complaint hadn't been properly addressed, and he broadly repeated the points he'd previously made. Mr D also said that, had the review meeting taken place in July 2020, he might have understood the restriction in FINLI's service and implied he'd have taken a different course of action.

The investigator wasn't persuaded to change their opinion, and they repeated the key points they'd already made about the nature of the investment portfolio Mr D was invested in. They also said to suggest Mr D might have taken a different investment strategy had the missed reviews taken place, was speculative. They said they were satisfied a refund of the charges paid for the missed reviews was fair compensation.

FINLI accepted the investigator's proposal to settle matters. Because Mr D did not respond to the investigator's endorsement of their opinion, the complaint was passed to me to decide.

Before issuing my decision, I contacted both parties to let them know that I noticed the investigator had recommended that 8% simple interest should be added to the refunded ongoing advice charges for the missed reviews to compensate Mr D for lost growth.

I explained that while this wasn't our usual approach – typically the return on the refunded fees should be based on the investment growth of the funds they were taken from – I was happy to recommend this pragmatic and simpler approach if Mr D was in agreement, and if FINLI had no objections.

I also let both parties know that because Mr D's investment involved a pension, I would be making some assumptions around Mr D's expected tax position in retirement (a basic rate taxpayer.)
This is because if payment of any compensation payable is paid directly to Mr D instead of being paid into his pension, it is appropriate to make a notional reduction to allow for future income tax that would otherwise have been paid.

Mr D said he was happy to accept the 8% interest approach. He said he had fixed protection on his pension, which meant no further amounts could be added, and he had a remaining tax-free cash allowance. He did not challenge my assumption about his tax status.

FINLI did not reply, so I have taken its silence as agreement, and that it has no objections to the redress approach or the assumptions around Mr D's tax position in retirement.

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, regulatory rules, guidance and standards, codes of practice, and (where appropriate) what I consider to have been good industry practice at the relevant time. And where the evidence is incomplete or inconclusive I've reached my decision based on the balance of probabilities – in other words, on what I think is more likely than not to have happened, given the available evidence and wider circumstances.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint, in part, for largely the same reasons given by the investigator. My reasons are set out below.

Ongoing advice charges and missed reviews

Both parties have accepted the investigator's findings on this point. And I've not seen anything to persuade me to reach a different conclusion. It's not disputed that reviews took place in 2019 and 2021, albeit the 2021 review was slightly late. But there is no evidence that FINLI carried out reviews in 2020 and 2022 in line with the terms Mr D agreed to. That said whether it is fair for FINLI to charge for a review does not depend solely on whether the review occurred. I also need to take into account whether FINLI made reasonable efforts to invite Mr D to a review demonstrating that it was ready, willing and able to provide the review. While FINLI has said Mr D didn't want to engage and/or meeting requests were declined, it's not provided any evidence to support what it says.

So, in the circumstances, I think it is fair that Mr D is compensated, and he should receive a refund of the ongoing advice charges he paid for the two missed reviews.

Failed growth objective, misrepresentation of PMS document, and inflexibility in asset allocation

I have grouped the above points together as I think these points are linked and speak to the second part and the crux of Mr D's complaint.

I've considered what Mr D has said about these things. And having done so, I do think this is a complaint that is solely driven by and is ultimately about investment performance. And a complaint of this nature is not one I would typically uphold. So, if Mr D understood the risk he was taking but he thinks his investment should have produced a better return than it has, this alone is not grounds for me to uphold his complaint. And I think this is the case here.

I can see Mr D has challenged FINLI's description of him as having strong knowledge of investments. But based on Mr D's relationship with the firm and from what he said in bringing his complaint, I think he knew enough to understand the concept of investment risk and what this meant – that is, performance or returns could not be guaranteed and that he would have to be prepared to accept investment values could change or fluctuate over the short term, as was described to him in the ‘Attitude to Risk’ sections of each of the suitability reports he received.

So, where Mr D has said that FINLI failed to focus on his objective for growth, I think what is driving this point is that during the period in question – between 2020 and 2023 – Mr D’s portfolio didn’t grow as he’d hoped, and he was experiencing the short-term changes in values he was told about, and which I think he understood and accepted. These changes were, in my view, brought about by the global and geopolitical events, which dominated market sentiment at the time and made for challenging investment conditions across most asset classes. From what I’ve seen, what Mr D experienced was not as a result of anything that FINLI did wrong or because it didn’t understand or keep sight of Mr D’s long-term capital growth objective.

I’m also not persuaded that FINLI misrepresented the services set out in its PMS document as Mr D believes is the case. I think Mr D perhaps misunderstood or his expectations were different, but this wasn’t a result of any wrongdoing on FINLI’s part. As Mr D has had explained to him, his portfolio was a model portfolio designed by FINLI to match and be suitable for clients with certain risk appetites – in Mr D’s case, a medium or balanced risk approach. And this model approach was clearly referred to in the PMS document as I set out earlier on.

I can see Mr D has referred to the inflexibility of the approach and believed changes to the asset allocations could be made. Mr D has given the example of FINLI persevering with poor performing bonds and commercial property funds instead of moving into other things to seek better returns. But this wasn’t how things worked. And I don’t think FINLI misrepresented the position. In the suitability report Mr D received in 2018, it referred to Mr D accepting a broad-based approach and that a significant proportion of his portfolio would be allocated across a range of assets, which including fixed interest, property and both UK and overseas equities. And this is what Mr D’s portfolio was comprised of. The PMS also referred to this diversification approach broadly describing how the portfolio would be constructed. Creating a portfolio like this with a mix of asset classes to meet a defined risk profile is, in my view, reasonable and typical of the kind of approach adopted by many firms. And maintaining this kind of approach to meet a long-term growth objective, even in challenging market conditions, was also, in my view, fair and reasonable.

It wasn’t the case here that wholesale shifts away from certain asset classes would take place just because they weren’t performing at a particular time. To do so would result in a fundamental shift in the risk profile of the portfolio likely making it unsuitable. Again, I think this concept and approach was explained in the PMS document. It also wasn’t the case that Mr D himself could influence the investment decisions or make recommendations. And I don’t think the PMS document said or suggested he could.

I can see Mr D has referred to the various statements in the PMS document I highlighted earlier on – in particular, Mr D feels the references here to active fund management and the ability to move in an out of assets misrepresented the service because that’s not what he received. He’s also asked why this document was given to him if it wasn’t relevant to a restrictive balanced portfolio. But again, I think Mr D has misunderstood what was said here, not that it was misrepresented. And it was relevant to his portfolio.

FINLI’s reference to an active investment approach was that it used actively managed funds rather than passive index funds in its portfolios. And Mr D’s portfolio was comprised of actively managed funds based on what I have seen. I think where the greatest misunderstanding lies is the reference to moving in and out of assets. What FINLI said here was the active fund managers – that is, the underlying fund managers of the various investment provider funds making up the portfolio – had the remit to change the make-up of the fund albeit within certain parameters or asset allocation limits / strategy. And I have no doubt this took place, as I would expect during the course of Mr D's investment. But this was not FINLI's role, and I don't think the PMS document said or implied it was. It's role was more of a top-down approach looking at the broader asset allocation – how much should be allocated to bonds, equities, property etc – creating model portfolios to match the agreed risk profile.

So, I don't consider FINLI misrepresented its PMS to Mr D or that he didn't receive the service described here (notwithstanding the regular review failings, which I have already addressed.)

Mr D's agreed risk approach was balanced or medium. And based on what I have seen, in particular the reference to the makeup of the portfolios in the suitability reports I referred to earlier on, I've seen nothing to show his portfolio wasn't run in line with what could reasonably be described as being in line with Mr D's agreed risk approach. As I would typically expect to see with a portfolio of this nature and with Mr D paying for ongoing advice, changes were made, where necessary. Which included rebalancing the portfolio to maintain the appropriate asset class percentage split, as well as changes to the underlying funds as per the annual review suitability reports.

I can see Mr D says that he was stuck with the same portfolio for years and no proactive advice was given. But as I have explained above, changes were made to the portfolio, which is the type of action I would expect to see in the circumstances. And as I have also explained, maintaining the model portfolio approach was not unreasonable given Mr D's objective and his attitude to risk. Mr D has raised the point that his attitude to risk wasn't reassessed following the initial agreement for a balanced approach in 2018 – he didn't realise it was set in stone. But the annual review documentation produced following the reviews in 2019, 2021 and 2023 all refer to Mr D's attitude to risk being discussed / revisited and that he remained a balanced risk investor each time. So, I'm satisfied Mr D's attitude to risk was revisited and that opportunities to review it were provided by FINLI.

Of course, the opportunity to revisit Mr D's attitude to risk wasn't available in 2020 and 2022 because FINLI didn't carry out annual reviews. Mr D says that opportunities were missed and implies he would have acted differently had the missed reviews been carried out. He's also said that because it was documented in 2018 that he was prepared to take a greater level of risk with some of his money, he would have accepted an increase in risk approach if it had been offered. Mr D has also said that if the July 2020 review had taken place, the restrictive nature of the portfolio and the severe impact the global pandemic had on commercial property would have come to light, again resulting in a different outcome.

But I'm not persuaded by what Mr D says – I don't think the evidence supports it. Mr D's balanced or medium attitude to risk remained the same when the reviews were carried out in 2019, 2021 and 2023. And I'm not persuaded things would have been any different in 2020 or 2022. There's nothing to suggest Mr D's circumstances or objectives had changed at these times. And while commercial property was impacted as Mr D says during the global pandemic in 2020, it would not have been unreasonable advice to have remained invested throughout this period. Just because markets may have been volatile or a particular asset class was particularly impacted by market conditions, it doesn't mean changes should have been made to the portfolio.
And this is particularly the case here given what I said earlier on about the nature of FINLI's model portfolio and maintaining a diverse and broad spread of investments.

I'm also mindful that in the 2021 annual review suitability letter, commercial property still featured as part of the recommended portfolio. The report featured a pie chart where its inclusion was clear. It was also specifically highlighted in the letter. If Mr D had strong feelings about this asset class and his investment in it, this meeting would have been the opportunity to have raised it. But nothing of this nature is reflected here and Mr D accepted FINLI's recommendation as he did again in 2023.

So, I think Mr D's argument that things might have been different is being made with the benefit of hindsight, and I agree with the investigator that Mr D's claim here is speculative.

Summary

I understand that Mr D is disappointed with the performance of his investment over the period in question. The nature of investing means returns aren't guaranteed. And I think Mr D understands that. But unlike Mr D, I think the disappointing performance or lack of growth of his investment he has described was down to market conditions and the various geopolitical events – events Mr D has acknowledged – which impacted investment markets and investment returns over the relevant period. I do not think FINLI misrepresented its PMS or that Mr D did not get the investment portfolio service described.

So, I don't think FINLI has done anything wrong here, and as a result, I do not uphold this part of Mr D's complaint.

But Mr D did not get annual reviews in 2020 and 2022. And there is not enough evidence to support Mr D being offered them and consciously declining them. So, I uphold this part of Mr D's complaint and award compensation.

Putting things right

FINLI should do the following:

- Refund the ongoing advice fees Mr D paid for the missed reviews due in July 2020 and July 2022. The principle FINLI should follow here is that the preceding 12 months' of fees paid are the ones relevant to each missed review.

- Add 8% simple interest to the refunded fee amounts from the date each fee was paid to the date of my final decision.

- Ordinarily we would expect the compensation amount should be paid into Mr D's pension plan if possible. The payment should allow for the effect of charges and any available tax relief. But the compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

- Mr D says he has existing protection, which likely means payment into the pension isn't possible due to the protection implications. So, in the circumstances it should be paid directly to Mr D as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

- If, as Mr D says, he has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional reduction of 15% overall from the loss adequately reflects this.
- Provide Mr D with a copy of the redress calculation in a clear, simple format.

Income tax may be payable on any interest paid. If FINLI considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. FINLI should also give Mr D 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.

My final decision

For the reasons above, I've decided to uphold this complaint, in part, and I instruct FINLI (Scotland) Limited to put things right in line with the approach above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 29 December 2025.
Paul Featherstone
Ombudsman