DRN-3350613

The complaint

Mr S complains that INTERESTME FINANCIAL PLANNING LIMITED (Interestme) gave him unsuitable advice to transfer his Personal Pensions (PPs) with another provider to a Wise Self-Invested Personal Pension (SIPP).

Mr S is represented in his complaint by a Claims Management Company (CMC). But I'll only refer to him in my decision.

What happened

Mr S said he was contacted by Interestme about a pension review in June 2016.

The adviser completed a fact find on 13 June 2016 which recorded the following:

- Mr S was 55, married, and had no financial dependents.
- He was self-employed and earning around £2,800 each month.
- He had two PPs with the same provider which had a total transfer value of £65,987.15. These funds had a current value with the existing provider of £67,199.96.
- He owned his home and had an outstanding mortgage of £10,000.
- Mr S wanted to retire by age 65. He wanted to be mortgage-free. He felt he would need £2,000 each month to live comfortably in retirement.
- He had no other sources of income in retirement.
- His attitude to risk was recorded as medium.

The fact find also recorded Mr S's objectives. It said his most important objective was greater performance prospects. It also said:

- He didn't know as much as he'd like about his pension. And had never had a review. So he wanted to speak with an adviser
- Mr S wasn't happy with his pension provider and wanted to understand his other options.
- He'd be happy to switch his pension to a contract with lower costs.

Following the fact find, Interestme produced a suitability report dated 11 August 2016. And recommended that Mr S transferred his PPs into a Wise SIPP. The adviser recommended that Mr S invested in the Balanced Portfolio managed by another provider.

The suitability report gave the following reasons that the adviser had recommended the switch and a new investment strategy:

- Mr S would have greater investment flexibility and greater flexibility when he eventually took his retirement benefits.
- He would have a wider fund choice.
- The recommended investment strategy offered greater potential returns which justified the penalty on transfer of the one existing plan which had a transfer penalty.
- Mr S wouldn't lose any guarantees within his existing PPs.

The suitability report listed the charges for the adviser's recommendation as follows:

- £114 each year tax wrapper charge,
- 0.84% Annual fund charge
- 0.42% platform charge

And stated that the annual charges Mr S was currently paying for his existing PPs were 1.2% on the fund with a current fund value of £1,378.92 and 0.8% on the fund with a current fund value of £65,821.04.

The suitability report also said that the adviser would charge a 3% initial fee for the advice and implementation of the recommendation. This was estimated as £1,980. There was also an ongoing advisory service charge of 0.75% each year. This was estimated as £480 in the first year.

The suitability report noted that the adviser's recommendation was more expensive than both Mr S's existing PPs and alternative choices such as stakeholder pensions. But felt that as Mr S's main objective was performance, the Wise SIPP was the best option.

Mr S signed the application form to transfer to the Wise SIPP on 20 August 2016. I understand it was set up on 22 September 2016. I understand that the regular monthly contributions of £208.55 that Mr S had been paying into his existing PPs were to continue.

Mr S complained to Interestme through a CMC on 27 January 2021. He felt the advice to transfer was negligent. And that his circumstances at the time of the advice meant he'd not been a suitable candidate for a SIPP. He felt that the transfer had caused him to suffer a financial loss. He also felt that he hadn't been invested in funds that were in line with his attitude to risk. Mr S also felt that Interestme hadn't complied with the Conduct of Business Sourcebook (COBS) rules. He wanted to be put back to the position he would've been in if he hadn't taken the unsuitable advice.

Interestme didn't issue a final response as they said Mr S had withdrawn his complaint. But on 23 March 2021 they wrote to the CMC about the fact that they'd recently received a large number of complaint letters from that firm. They asked them to stop sending complaints which they felt contained several inaccuracies. Interestme also felt that the CMC had been cold calling potential complainants and telling them they'd been mis-sold without any evidence.

Interestme also said in their 23 March 2021 letter to the CMC that they felt there were a number of errors included in Mr S's complaint. They didn't agree that Mr S had a low attitude to risk. Instead, they felt that the risk profile they'd discussed and agreed was that he had a medium attitude to risk. And they didn't agree that his circumstances at the time of the advice had made him unsuitable for the SIPP they'd recommended. They felt that each of the points the CMC had made were generic, with little evidence to suggest that they'd even assessed the client file.

Mr S brought his complaint to this service through the CMC in May 2021.

Our investigator felt that the complaint should be upheld. He felt that Interestme had recommended a higher cost SIPP without good reason. And that they'd incorrectly identified his attitude to risk as medium. He also felt that Interestme should've made Mr S aware that although he wanted to increase his income in retirement, it wasn't a realistic objective. He considered that Interestme should put Mr S back as close as possible to the position he would be in now if he'd been given suitable advice.

As agreement couldn't be reached, the complaint has come to me for a review.

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'm going to uphold it. I agree with our investigator that the advice Interestme gave to Mr S was unsuitable. I'll explain the reasons for my decision.

In 2009 the Financial Services Authority (now the FCA) published a report and checklist for pension switching that is still applicable. That checklist identified four main areas where consumers had lost out:

- They had been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension (because of exit penalties and/or initial costs and ongoing costs) without good reason

- They had lost benefits in the pension switch without good reason. This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits at an earlier than normal retirement age

- They had switched into a pension that does not match their recorded attitude to risk and personal circumstances

- They had switched into a pension where there is a need for ongoing investment reviews but this was not explained, offered or put in place.

I've considered these areas, where relevant, in my decision below.

I've also considered Mr S's circumstances at the time of the advice. I understand that he didn't actively seek out advice on moving his pensions, but that he was contacted by Interestme about a pension review. I consider that until that contact, Mr S was sufficiently satisfied with his existing pension arrangements and wasn't actively seeking advice.

I went on to consider whether Interestme's adviser should've put Mr S at ease about his existing pension arrangements instead of recommending he switch into the SIPP. I would expect to see reasonable potential for Mr S to be better off to make the advice suitable.

Interestme compared the existing pension arrangements with their recommended SIPP. In like-for-like projections, the suitability report said that the total expected projected values at age 65 of Mr S's existing pensions was £106,560 – made up of £1,560 from the smaller of the two existing plans and £105,000 from the larger one. And the total projected value at age 65 of the recommended SIPP was £101,010 – made up of £1,410 and £99,600. So the like-for-like projections indicated that the recommendation would lead to a lower total projected value at age 65.

The suitability report also gave much higher projected values at age 65 for the recommended SIPP based on "*its 5 year annualised performance less all the charges taken, including my advice fees*". The report also stated that the recommended investment portfolio had a five-year annualised performance of 9.4%. But then stated that the recommended portfolio had only been running for one year. Therefore the five-year performance had been: "*back-tested on a simulated basis*". The total projected value on this basis was £156,320 – made up of £2,320 and £154,000.

The suitability report stated that the recommended SIPP was more expensive than both Mr S's existing arrangement and other options such as stakeholder pensions. But said that the recommendation would justify the additional cost as it would meet his main objective of performance.

From what I've seen, I'm not persuaded that the adviser demonstrated that there was reasonable potential for Mr S to be better off. I say this because the like-for-like projections showed that it was likely that Mr S would be worse off at age 65. And the report also indicated that the recommended option was more expensive than his existing arrangement.

I can see that the suitability report did present much higher projected values based on the annualised performance of the recommended portfolio. But I don't consider that it was fair or reasonable to base a long-term projection on a single year of actual fund performance.

Ultimately, I don't consider that the projections fairly demonstrated that Mr S would be better off. So I don't consider that the advice was suitable in this regard.

As noted above, the regulator outlined what should be considered when advising on a pension switch. They said that if additional costs were involved with the advice to switch, or if the client ended up paying for services they were unlikely to use, this is likely to indicate that the advice was unsuitable.

I've not seen any evidence that Mr S was in need of regular ongoing advice, or that he used the service he'd been paying for. Therefore I'm not persuaded that the additional ongoing charges would've provided him with a better outcome.

I acknowledge that Interestme gave several reasons for their recommendation in the suitability report. While I don't disagree that these reasons might all be correct, it remained the adviser's responsibility to give Mr S suitable advice.

Interestme suggested that switching would give Mr S a wider fund choice. They felt this would give him a chance of achieving a bigger pension fund in retirement. And that this would more than compensate for the £1,213 penalty on the transfer of the larger of Mr S's existing PPs.

But the suitability report also noted that Mr S wanted to have an income of £2,000 each month in retirement. Interestme's analysis of Mr S's likely income in retirement if he stayed with his existing provider was that he'd have a total income of £906 per month, showing a potential shortfall of £1,094 per month. The suitability report also noted that Mr S would be solely dependent on the PPs they were reviewing and the State Pension. The suitability report didn't show a projection of the income Mr S could expect to receive if he followed their recommendation and actually achieved the higher projected fund at retirement. But if it had, it would've shown a considerably lower projected monthly income than Mr S said he wanted in retirement.

From what I've seen, I'm not persuaded that Mr S was likely to be better off after the switch. I say this because any potentially improved investment strategy would need to more than cover both the additional and higher charges, and the £1,213 transfer penalty, before any improved performance would actually benefit Mr S.

I also consider that if Mr S were to have any chance of getting close to his retirement income goal, he would've needed to take more risks with his pension fund. And as the suitability report noted, as he would be solely dependent on the PPs under review and the State Pension, I'm not persuaded he could afford to take such risks.

As our investigator said, Interestme should've made Mr S aware that it probably wouldn't be possible for him to achieve his income goal in retirement.

I also note that a further reason Interestme gave for recommending the SIPP was that it would provide him with the opportunity to drawdown his retirement benefits, which his existing options didn't. But the suitability report also stated that Mr S felt he would need to have his pension income guaranteed for life. So there's no evidence that he had any interest in taking a drawdown option. In any event, Mr S could've waited until he was approaching retirement age. And could've still switched at that point, when he would've known exactly what he wanted.

Overall, I'm not persuaded that the reasons Interestme gave for their recommendation were appropriate for Mr S. I say this because the recommendation was to switch to a pension that was more expensive than Mr S's existing one without good reason. And this caused Mr S to have to pay a transfer penalty of £1,213. The adviser also recommended an ongoing service, but I've seen no evidence that this was needed or ever actually put in place. Therefore I'm satisfied that the advice wasn't suitable.

I understand that Mr S has also complained that Interestme failed to fairly assess his risk (ATR).

Interestme have now provided evidence which shows that their adviser discussed Mr S's ATR with him. They have provided notes that show this conversation would've taken place at some stage between 8 August and 11 August 2016. And that the outcome of the adviser's analysis was that Mr S was a medium risk investor. However, there is very little documentary evidence of what was actually discussed at the time of the advice.

As I've already concluded that the advice Interestme was unsuitable, I've not considered this point further, as regardless of the outcome on this point, my overall decision will be the same.

I'm satisfied that the advice to transfer Mr S's existing pensions to the Wise SIPP was unsuitable. And that the advice required him to pay unnecessary fees throughout the switching and investment process. It also required him to pay a transfer penalty. Therefore I uphold the complaint.

Putting things right

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

I take the view that Mr S would've remained invested in his existing funds with his previous provider, however I cannot be certain that values will be obtainable for what the previous policies would've been worth.

I am satisfied what I have set out below is fair and reasonable, taking this into account and given Mr S's circumstances and objectives when he invested.

What must Interestme do?

To compensate Mr S fairly, Interestme must:

- Compare the performance of Mr S's investment with the notional value if it had remained with his 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.

- Interestme should add interest as set out below.

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

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

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

- If the adviser's fees were paid independently of the pension transfers, and not taken from the transferred funds, Interestme must also repay those fees, together with simple interest at 8% a year, from the date the fees were paid to the date of settlement. If the above comparison shows that no compensation is payable, the difference between the actual value and the notional value can be offset against the fees with interest.

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

Income tax may be payable on any interest paid. If Interestme deducts income tax from any interest it should tell Mr S how much has been taken off. Interestme should give Mr S 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	Still in force	Notional value from previous provider	Date of investment	Date of my final decision	8% simple per year from my final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

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

Notional Value

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

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

Any withdrawal from the SIPP 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 are a large number of regular payments, to keep calculations simpler, I'll accept the total of those payments being deducted at the end to determine the *notional value* instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Interestme will need to determine a fair value for Mr S's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr S wanted Capital growth and was willing to accept some investment risk. I say this based on the fund he was invested in with his previous provider.

- 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 S’s circumstances and risk attitude.

My final decision

For the reasons given above, I uphold this complaint. I require INTERESTME FINANCIAL PLANNING LIMITED to pay the amount calculated as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 13 December 2022.

Jo Occleshaw
Ombudsman