DRN-4376086

The complaint

Mr M complains with the help of professional representatives that Investec Wealth & Investment Limited (Investec) should have treated him differently due to his vulnerability and not allowed him to transfer his pension.

What happened

In early 2020, Mr M said at the start of the pandemic he'd noticed quite a considerable drop to his pension fund and this had come as a shock. He had time to research investment options and approached several investment firms to consider his options going forward, including Investec.

In July 2020 Mr M discussed with Investec transferring his personal pension this at the time had a value of approximately £250,000.

Following this in October 2020, Investec confirmed the options under review to Mr M, whether to consider the funds within the existing plan or to consider a Discretionary Fund Management ('DFM') which met Mr M's objectives set out in the original contact.

A few weeks later Mr M's situation was discussed further and he said he was disappointed in the performance of his pension and wished to proceed to look at alternative investment strategies.

On 9 November 2020, Mr M informed Investec of the sad passing of his mother and asked to reschedule a planned meeting. Investec responded to send its best wishes to the family and said it would leave this for now *'and we can come back to it at another point'*.

On 17 November Mr M emailed Investec to ask for a meeting, Investec responded to say they did have availability but they said *'there really is no rush if you want to leave things a bit longer'.*

Mr M arranged a meeting shortly after which was done remotely. It was recorded that Mr M wished to adopt a more bespoke investment strategy to maximise his growth of his pension. It was noted that Mr M also had a DB pension in position with his employer that was projected to provide £24,000 a year at age 65. Mr M was 54 at the time of advice and it was recorded he was considering making use of the opportunity to take a lump sum at age 55 to reduce his mortgage. Mr M had a risk attitude of medium/high and a good capacity for loss with his existing pension and other assets. It was also recorded that a Vulnerable Assessment had been carried out. This said:

'Vulnerability Assessment

Not vulnerable.

Mr M did lose his mother a few weeks ago, but we have had many discussions with Mr M over the last few months, and we gave him time and the option to put these discussion on *hold. However his views have not changed since before or after losing his mother, so keep moving ahead as thought'.*

Investec sent Mr M an investment report following this meeting which recommended transferring his funds into an Investec SIPP with the DFM in place. This was sent so that it could be discussed in the next meeting on 4 December 2020. It said this should be seen as a starting point to their discussions.

Prior to this meeting Mr M asked for it to be moved and then on 8 December 2020, Mr M emailed Investec to say he'd spoken to his partner and he'd decided to leave things for now, as the last few months hadn't been great with the passing of his mother and he hadn't really discussed his finances with his partner in any detail. And he asked whether everything could be put on hold until the new year.

Investec responded to say that this was absolutely fine, it was right to make sure they were both happy. And it was happy to have a chat with Mr M and his partner in the new year once they'd had a proper think.

Mr M agreed it was definitely right to take some time to think about it. Mr M said he would delay until January but in the meantime could he have more information about the difference between a DFM and the Advisory Management strategy.

Investec emailed to say Mr M should take his time and not to make any rash decisions. They also offered to invite Mr M's partner to future meetings so that she was part of the process. Comprehensive information was given about the difference between the two options.

It was explained that the advisory service is aimed at those individuals who are experienced enough to make their own decisions and have time to manage their own portfolio. It explained it didn't think this would be suitable for Mr M for a number of reasons including the time it would take for Mr M to manage and it would represent a bigger risk to his pension than a DFM.

On 11 January Mr M emailed Investec to say he understood the concerns with the advisory management solution but he wished to have more control over his funds so he wished to go down that route.

Investec responded to say it felt a chat would be good about this and it might be able to provide a compromise which Mr M might see the benefits of.

Mr M said in response he had spent several months thinking about this and didn't want to be in the position he was with the previous provider and having to change how his portfolio was managed again. He said he'd put the hours in over Christmas to decide on Advisory Management but asked for information about the compromise.

Investec responded to say its compromise which it carried out for some other clients was to act as a DFM but to call customers to discuss the investments before dealing. If Mr M couldn't be reached it would still act as a DFM to allow it to act swiftly, so any communication issues wouldn't affect his ability to act for Mr M.

On 13 January Mr M informed Investec that he'd already transferred his personal pension on his own and into a SIPP. And the funds were sitting in cash.

A meeting was held on 15 January and Investec recorded that Mr M was now happy with the DFM proposal and that they had his authority to contact the SIPP provider to gather information ahead of the proposed transfer to an Investec SIPP.

A call took place on 26 January 2021 to discuss the investments. Mr M requested he move away from UK funds and invest in two particular funds he already held within his ISA and liked. He also wished to have exposure to renewable energy, AI and healthcare.

On 26 January 2021 Investec shared its suitability report confirming potential next steps. The recommendation was similar to the previous report, recommending a transfer to an Investec SIPP with a DFM. The DFM would invest in line with Mr M's attitude to risk but take on board Mr M's preferences.

On 27 January there was further discussion about the investment choices. Investec confirmed they had rebalanced the portfolio to consider some of Mr M's preferences but it also explained why some of these preferences weren't in their view suitable.

That same day Mr M agreed to transfer his funds to Investec.

However, on 4 February 2020, Mr M emailed Investec to say he wished to cancel the transfer as he'd realised he wouldn't be satisfied unless he was making all the decisions regarding his SIPP.

Investec responded to say they were obviously disappointed but Mr M should only proceed if he was 100% happy so it understood. And it wished him well with the SIPP and urged him not to do anything rash to chase returns. It said to be sensible and not chase dreams and keep a well-diversified portfolio.

Mr M then responded to say he'd thought about it more and he wished to proceed as he wasn't sure he'd have time to manage his own SIPP. He said he should've chatted it over with Investec before sending the previous email late at night.

On 10 February 2021, Mr M emailed Investec following a chat on 4 February to ask if any charges would apply if he was to put the transfer on hold. Investec confirmed it could be stopped and enclosed the relevant forms. It explained it couldn't put things on hold but it could stop the transfer and then restart at a later date. It said that unless Mr M was 100% happy with the DFM solution agreed Mr M shouldn't go ahead. It said it was aware Mr M wished to have more control and manage it all himself, if this was the case a DFM wouldn't be suitable. It said it couldn't recommend that course of action but if a DFM doesn't meet his needs he should look at other options.

Mr M responded to say he was hoping he could reach an agreement with his appointed fund manager, the fund manager had raised concerns about the risks Mr M wished to include in his portfolio. Following this, the transfer proceeded after Mr M agreed to it and the funds were transferred to the Investec SIPP.

On 1 March 2021 Mr M contacted the DFM to request that his funds were invested immediately. Mr M asked to invest in a particular fund, the DFM responded to say it would be good to chat about that as it was a departure from previous discussions. A meeting was arranged for 5 March 2021 to discuss this.

Mr M then contacted Investec to say following uncertainty in the markets he wished to sell all his funds to cash.

Investec called Mr M to explain why he shouldn't sell at this point and arranged a meeting on 8 March to discuss. It was recorded that Mr M admitted he was too emotionally close to matters and wants to react when he knows he shouldn't.

Mr M didn't attend this meeting but sent an email confirming he wished to sell down all assets that same day. The DFM decided to carry out these instructions as he felt he'd already pressed hard on why this wasn't the best course of action.

On 10 March Mr M contacted Investec to explain he'd like to move away from having so much involvement and leave it to the professionals. He admitted he should've listened to the DFM and had learnt an expensive lesson. The DFM then sent Mr M a new version of the portfolio which Mr M agreed to but the DFM said they wouldn't go ahead yet as Mr M needed time to consider this.

The following day the DFM emailed Mr M to confirm the conversation and provide a slight update to the proposed portfolio. This email said he would be delighted to take the responsibility completely from Mr M's shoulders so that he could focus on his family rather than worrying about 10 year bond yields. It was agreed they would go back to basics and the DFM would take full responsibility.

On 20 June 2022 Mr M contacted Investec to say he was concerned that he maybe shouldn't have transferred at all. And asked Investec to review how a recovery of his losses could be achieved and whether the decisions made were correct.

It responded to say it felt the recommendations and investments had been suitable and that despite the short-term issues he was well placed for future growth. It offered Mr M the chance to have the transfer reviewed by its compliance department. The result of this was that it didn't uphold the complaint as they felt its advice had been suitable.

Mr M contacted our service and had three main points of complaint:

1. That it should've put in place procedures to support and protect clients like him who'd suffered a bereavement and stopped him from making financial decisions that would've had a negative impact.

2. Investec should've allocated more time for him to review the pension suitability report and fully explain the risks involved and financial implications.

3. Investec should have recognised he wasn't an experienced investor and restricted him from having the input that he did in terms of the SIPP portfolio and asset allocation.

Our investigator looked into matters but didn't uphold the complaint. The investigator set out his recommendation and sent two further responses following challenges from Mr M. I'll summarise his reasoning for not upholding the complaint below:

- The recommendation made to transfer from the SIPP to the Investec SIPP was suitable for Mr M's objectives so that he could have the DFM arrangement. And was better suited than the execution only SIPP Mr M had transferred his personal pension into.
- Investec was not responsible for the personal pension transfer as Mr M carried this out himself. Furthermore, this did not meet the requirements that Mr M set out to have more control over his funds.
- Whilst Mr M wasn't an experienced investor the arrangement Investec devised meant that if Mr M chose funds unsuitable for him it could still veto this.
- Investec took steps to ensure the funds and overall portfolio remained at a suitable steady level of risk and have taken account of Mr M's preferences to ensure suitability.
- Investec had treated Mr M fairly in relation to the passing of his mother. It had given him time and took a hands-off approach.

- Had Investec not made the recommendation the investigator felt Mr M would've opted to self-select funds and Mr M could've been a lot worse off in doing so.
- The investigator agreed with Investec's categorisation as him not being a vulnerable customer.
- Investec gave Mr M time and passed their best wishes on when notified of Mr M's mothers death. When Mr M came back to continue discussions, they reiterated there was no rush.
- Investec cannot be expected to assume how an individual would deal with the loss of a parent, giving ample space and time to Mr M is the appropriate first line of support. Had this brought about any additional concerns, he had no reason to believe Investec would not have acted on those.
- When Mr M emailed Investec on 4 February 2020 to cancel his transfer, Investec took steps to support Mr M by asking that he does not take any *'rash'* steps to *'chase returns'.* Investec also emailed Mr M on 10 February 2021 to reassure him that unless he is 100% happy with the recommendation, he should not proceed.
- Mr M would have transferred and attempted to manage his funds independently if not for the involvement of Investec.
- He disagreed there was clear indicators of vulnerability.
- The email which Mr M referred to stress affecting him was after the funds were invested and if this was the first time he'd said something like this it's clear he did not make Investec aware of the additional mental health pressures he was under.
- The amount of emails and the fact Mr M had changed his mind a number of times should be seen in the context of a complexity of a pension transfer. Whilst Mr M did change his mind on occasion, these were in the view of the investigator to his detriment and Investec took reasonable steps here to protect him from attempting to self-select funds and engage in high risk behaviour.
- It cannot be simultaneously argued that Investec's process didn't allow Mr M to raise his vulnerability but also that he did raise his vulnerability in the email referred to where Mr M said he was stressed.
- Mr M was clearly well researched regarding financial matters. Whilst there are times Mr M disagreed with steps taken by Investec, there is no evidence to suggest he did not understand them.
- Mr M would be in a worse position if not for the involvement of Investec as he explicitly stated that he was going to take matters into his own hands. His categorisation as a vulnerable consumer would not have stopped him making such a decision.
- Mr M with hindsight may feel his decision making was impacted by his mental state at the time of the advice, but he considered Investec acted fairly and prevented Mr M from potentially opening himself to significant financial harm had he attempted to manage the funds on his own.

Mr M's representatives said:

- The FCA's vulnerable customer guidance includes life events such as a bereavement.
- Mr M was clearly vulnerable because he was dealing with the rapid decline of his mother's health from late 2019 until her death in November 2020. He was required to support his father and these events were exacerbated by the circumstances of the pandemic and lockdowns. This affected his home life and he suffered from trauma that went untreated at the time due to the pandemic and this caused severe stress, anxiety and insomnia.
- Because of this Mr M was unable to comprehend the advice and he was dabbling in things he didn't understand.
- Had Mr M not been vulnerable he would not have gone ahead with the recommendation.
- Investec ought to have established Mr M as vulnerable from when he told it about his mother's passing. It was then required to put in place systems to enable Mr M to be fully

supported. It did not do this, nor did it offer Mr M third party representation or support services.
- Investec hasn't met the FCA's guidance on vulnerable customers nor its own internal policy.
- These failures meant that Mr M was provided with inadequate advice, which facilitated Mr M transferring his pension due to the lack of scrutiny around his decision making and vulnerability.
- Had it not been for these failures, its likely Investec could have intervened to provide Mr M with sound advice and accordingly he would not have authorised the transfer of his funds.
- Investec should've had the skills and capacity to recognise Mr M's vulnerability where there were clear indicators of it.
- Mr M had told Investec in March 2021, that he was suffering stress and needed to take some time out of the markets to focus on his family.
- Mr M also displayed an inability to make important decisions and would often change his mind. He cancelled meetings and wrote numerous emails to the business; this is a clear indicator of his vulnerability.
- It was for Investec to establish Mr M's vulnerability and not for him to tell it. And it was required to put in place systems to allow this. Therefore Mr M was inhibited from being able to discuss his needs as a vulnerable customer.
- The investigator is wrong in his assumption Mr M would've transferred in any event. Whilst he may have made attempts to do so had Investec (or any other firms acting reasonably) acted appropriately in consideration of Mr M's vulnerability then the transfer would not have gone ahead.
- Mr M was clearly vulnerable, Investec failed to take the appropriate steps and had they done so Mr M wouldn't have transferred.

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. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

There has been a substantial amount of correspondence to consider in this case. We are an informal dispute resolution service, and my role is to come to a fair and reasonable decision. Whilst I have summarised the majority of the points raised above, my findings will concentrate on what I consider to be the crux of the complaint. My role is not to give an answer to every point raised but to come to a conclusion that I think is fair and reasonable based on the facts of the case. So, I won't comment on or refer to all the arguments raised; this is not meant as a dis-service it is simply a reflection of my role.

The cause of this complaint

It's clear that the source of Mr M's complaint was the drop in performance suffered by his funds in the SIPP. These losses had occurred in the context of almost unprecedented market conditions due to certain world events.

Mr M said he remained happy with the service given by Investec and wanted to remain with it. However, he'd checked the performance of the funds he'd previously been invested in and saw they had performed well in comparison to his current investments agreed with Investec and started questioning these decisions.

He wondered whether he should've transferred and whether Investec ought to have allowed him to play a part in his fund selections as part of the DFM solution it came up with. He believed he was too inexperienced to do so and he'd been vulnerable at the time.

As the complaint has progressed it has shifted more towards that his vulnerability ought to have been established at an early stage. And Mr M ought to have been prevented from transferring from his original personal pension.

Ultimately though, this complaint comes down to whether Investec should be held responsible for Mr M's losses.

Should Investec be held responsible for Mr M's losses?

Mr M had come initially to Investec as he was no longer happy with the personal pension due to its performance and the lack of flexibility over fund selection. He'd also approached other firms before choosing Investec.

Whilst this was before his mother's sad passing, Mr M's representatives argue that his decision making was already being affected by the stress he was under due to his mother's declining health. But I cannot see that Investec would've been aware of this.

I think it's important that Mr M already had a strong preference towards transferring his funds out of the personal pension before the passing of his mother. His objectives before and after this point were consistent. So, I agree with the investigator's view that there weren't obvious signs that Investec could pick up on to say Mr M was acting differently due to the bereavement. And I don't think Investec's categorisation of Mr M as not vulnerable was unreasonable based on their knowledge at the time.

After Mr M informed Investec of his mother's passing, I think Investec acted fairly and reasonably. It did not push Mr M to continue with the transfer and actively dissuaded him from rushing into making decisions.

On Mr M's request, Investec moved forward to provide an investment report based on what it could do with his funds if he chose to transfer to its SIPP to benefit from a DFM arrangement. Given Mr M's objectives, I think this recommendation was suitable. This report was not as detailed as the later suitability report he received for the SIPP-to-SIPP transfer, after he'd already transferred out of the personal pension himself. But for the avoidance of doubt nothing about the personal pension product in comparison to the recommended product here would lead me to conclude that this advice was clearly unsuitable for Mr M at this stage. The new arrangement was more expensive than his personal pension, but this is to be expected given the additional service Mr M would receive from Investec. And I think Mr M clearly placed value on this.

Mr M had capacity for loss, he had a medium high attitude to risk, there were no guaranteed benefits being lost on transfer and it was clear he was unhappy with his current product and wished to have more involvement and choice within fund selection which he couldn't get within his existing product. Mr M also already held an ISA where he actively made the investment decisions. And he had ideas already about where he wished to invest his funds based on this experience. So I am satisfied that Investec had done nothing wrong up to this point.

However, I've also considered what would've happened if Investec advised Mr M not to transfer as Mr M's representatives say they ought to have done. But I think on the balance of probabilities Mr M would've transferred anyway. Investec did not approach Mr M and the evidence suggests he came with a clear leaning to take action. And his subsequent actions after this support that Mr M wasn't going to be easily persuaded to sit still and leave his funds as they were with the personal pension provider. Even when Investec came up with alternatives to Mr M taking all the risk on his shoulders (but allowing him some input), Mr M very nearly went against this advice. There was nothing inherently unsuitable in transferring his personal pension to another personal pension and it met Mr M's objectives, so I fail to see what Investec could've said to dissuade Mr M.

After this initial recommendation, Mr M asked Investec to put things on hold as things hadn't been great for him with the passing of his mother. Investec was understanding in its response and offered the opportunity to chat to both him and his partner in the new year. It was left to Mr M to decide if and when he should contact Investec to continue discussions. Investec recognised Mr M needed some space and put no pressure on Mr M to continue if he didn't want to.

At the next contact initiated by Mr M, he had already transferred the personal pension to a SIPP of his choice (an execution only SIPP with a provider he already held an ISA with) without the involvement or knowledge of Investec. I don't think it would be reasonable to hold Investec responsible for this transfer as Mr M carried it out himself. But as I've said in any event, I don't think the advice it gave Mr M prior to this was unsuitable.

Despite Investec's previously detailed explanation as to why it would not be suitable for him, Mr M was still pushing to have a solution where he made all the decisions in terms of investment. This was a theme from the moment Mr M contacted Investec through to the point Mr M suffered losses and it convinced him to take a step back.

The evidence supports that Mr M wouldn't be satisfied unless he had some involvement and I think at this point in proceedings it was clear there was a danger that Mr M could and probably would decide to take the risk of self-investing. So Investec offered a solution tailored to Mr M's needs but where it would still retain control of his investment decisions. Given the risk of what he was intending to do, I think this half-way offering is representative of a firm acting in its clients' bests interests. Mr M would retain the guidance and ultimate control function of a DFM but it also met his strong preference to have involvement in the investment strategy. Had this not been offered, I think its clear Mr M would've taken the decision to manage his own investments and put himself at a higher degree of risk of suffering losses to his pension.

Whilst later Mr M expressed his regret over his influence in this arrangement when certain funds suffered losses, I agree with the investigator that the DFM kept the portfolio at a consistent and suitable risk level for Mr M throughout this period. So, I don't think there was anything unsuitable about this arrangement and Mr M having some involvement.

Looking at its interactions with Mr M and the advice and guidance Investec gave him, I think it acted fairly and reasonably and, in his best interests. I understand Mr M's frustration at the losses his portfolio suffered and why when he compares it with the personal pension performance, he's questioned how this had occurred. And I can see he's come to see his decisions in light of his vulnerable state of mind due to his mother's passing and the cumulative factors of the pandemic on his mental health. He's then concluded that Investec was at fault for not stopping him from making these decisions.

However, I think Investec did do its best to steer him away from making rash decisions. The path he has ended up taking with a professional fund manager in place rather than self-selecting funds in an execution only SIPP is in my view a better place for him to be in. Had Investec not offered the solution it did, I think Mr M would've chosen to go down the self-selecting route, and I think this would've likely caused him more stress in the long run. For the reasons I've already explained, I am not persuaded that there is a scenario where Mr M would've remained in the personal pension.

I understand Mr M and his representatives consider Investec shouldn't have recommended the original personal pension transfer but as I've said ultimately Mr M acted on his own here. And I don't think this would've represented unsuitable advice in any event given his objectives.

In terms of finding out the sad news that Mr M's mother had passed away, Investec acted with care, gave him space and time and did not push him into making any decisions. When Mr M said he was going to end the client relationship it gave him friendly advice to act sensibly and generally left it to Mr M to decide how to proceed in terms of its recommendations. It was not forceful, it did not attempt to steer Mr M to make decisions he was not happy with and it gave Mr M enough relevant information to make an informed decision. I think it treated Mr M fair and reasonably in light of his bereavement and what it knew of his circumstances.

So for the reasons explained, I've seen nothing to suggest that ordinarily Investec should be held responsible for Mr M's losses.

Mr M's vulnerability and would this have made a difference?

Mr M's representatives have made detailed submissions about why Mr M was a vulnerable client, the FCA's specific guidance on this matter, Investec's lack of adherence to this guidance and to its own procedures.

The significance of this argument is that Mr M's representatives believe had Investec correctly established him as a vulnerable client and put in place the correct procedures in line with the FCA's vulnerable client guidance, the end result would've been that Mr M wouldn't have transferred.

Ultimately, this point comes back to the argument that the advice was unsuitable as Mr M should've been advised not to transfer. But being a vulnerable client shouldn't stop a person receiving transfer advice. And putting in place support structures, representatives etc doesn't make unsuitable advice suitable and not putting it in place doesn't make suitable advice, unsuitable. I also note there has been nothing specific about how treating Mr M as a vulnerable client should've resulted in a different advice outcome.

However, I've thought about what would've happened if Mr M had been treated as a vulnerable client. And I think on the balance of probabilities even if Investec had categorised Mr M as vulnerable (which for the avoidance of doubt I broadly agree with the investigators findings on this subject) it wouldn't have prevented him from transferring in any event. Mr M had a very strong preference to take control of his investments and the evidence shows he was willing to take action off his own back.

Mr M's representatives argue this isn't relevant as any firms that Mr M could approach acting reasonably ought to have considered him vulnerable. And then acted according to the FCA guidance and advised he shouldn't transfer and the result would've been Mr M remained within the personal pension.

But Mr M didn't need advice to transfer, his benefits were not safeguarded benefits. He held a personal pension with no guarantees and as was demonstrated, he was able to transfer this policy without the involvement of an advisory firm in the transfer. And I think this is what would’ve likely happened if a firm had said to him that due to his vulnerability transferring was not in his best interests. Nothing about the way Mr M interacted with Investec leads me to believe that he would’ve considered this a suitable course of action or agreed with a recommendation not to transfer.

Conclusion

After careful consideration, I think Investec has acted fairly and reasonably and has not made an error. Therefore, I will not be upholding this complaint.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 14 February 2024.

Simon Hollingshead
Ombudsman