DRN-4485695

The complaint

Mr H complains PI Financial Limited (PI Financial) wrongly advised him to transfer his personal pensions to a Self-Invested Personal Pension (SIPP) invested within a Discretionary Fund Manager (DFM). He believes the advice was unsuitable and not in his best interests. He says he was not advised of the full costs and asks to be compensated.

What happened

Mr H is represented in his complaint by a third-party representative but for ease I shall refer to Mr H throughout my decision.

The background to this complaint was set out in my earlier provisional decision. For clarity I repeat it here.

Mr H held two pensions. A personal pension with Friends Life (now Aviva) and a S.32 buyout policy with Aegon. His total pension investment at the time of the advice was around £62,500.

Mr H says after speaking to Pension Wise with a view to accessing the tax-free cash available on his pension plans, he sought independent financial advice from PI Financial. The advice, based upon his circumstances at the time, were detailed in the Financial Planning report dated 27 September 2017, which recorded:

- Mr H was 55 years old at the time of advice.
- He was married with no financial dependents.
- He was employed earning £20k per annum.
- Mr H and his wife had emergency savings of £2000.
- He was in good health
- Mr H was a member of his workplace pension scheme. He joined in 2017 and was making regular contributions.
- Mr H had some experience in investing via his personal pension and workplace pension.
- He was considered to be a balanced investor and his capacity for loss was considered to be low.
- Mr H wished to retire at age 65 and was looking for a desired target income in retirement of £1000 per month.
- He wanted to take advantage of tax-free cash that would be available through his pension. Mr H intended to use the tax-free cash for a deposit on a house purchase costing around £65,000. He aimed to be mortgage free by age 65.
- He was also seeking to work abroad for a higher salary to generate surplus income.

After assessing Mr H's circumstances and objectives, the adviser recommended Mr H transfer his Friends Life and Aegon personal pensions to an Intelligent Money SIPP with Mayfair Capital as the DFM.

In the Financial Planning report the adviser detailed the reasons for recommending Mr H transfer his pensions as:

The recommendation was made for the following reasons:

- Mr H's funds could be invested within an environment providing a wider range of investment choice.
- The SIPP would offer greater flexibility. The adviser noted that Mr H's fund value could not be accessed as flexibly as he would like with his current providers and so he recommended Mr H switch to a new plan which allows all of the access options available under the pension's freedom legislation.
- The adviser highlighted Mr H's wish to take his tax-free cash soon.
- Access to the Mayfair proposition could only be made through the use of a SIPP.

Mr H complained to PI Financial in December 2022.

PI Financial issued its final response on 10 February 2023; it didn't uphold Mr H's complaint. In summary it said:

- The charges of the recommended plan were fully disclosed, and Mr H was made aware they were higher than his existing plan.
- Th plan met Mr H's objectives.
- PI Financial cannot be held responsible for the underlying performance of the funds held within the SIPP.

Dissatisfied, Mr H brought his complaint to this service.

- An investigator looked into things for Mr H. She didn't agree the advice to transfer Mr H's pension plans was suitable or in his best interest. She set out the details of how she reached her decision in her view issued on 6 June 2023. In summary it said:
- Mr H's circumstances and needs did not warrant a bespoke service in the form of a DFM.
- Mr H had an extremely limited capacity for loss. He has only joined his work pension scheme the same year as the advice was given, he had limited savings and a current mortgage of £49,000, which he wanted to repay before he reached 65 years of age.
- The financial report stated he wanted to take tax free cash to buy a property, but it didn't say how much or when he needed it, nor did it state any discussion about any other means of raising this capital.
- Mr H's current pension plans would have allowed him to access the 25% tax free cash he was seeking and there was nothing to indicate he needed any further flexibility.

The investigator carefully considered the charges. She found these to be set out very clearly in the financial planning report, so she could agree that the costs were not disclosed and so she didn't uphold this aspect of the complaint.

Mr H accepted the investigators view.

PI Financial did not. In summary it said:

- A DFM was a suitable option for Mr H, even though his investment was around £45,000 after the tax-free cash had been accessed.
- Mr H wanted a DFM as he said he liked the idea of active management with more personal involvement.
- The failure of Mayfair Investment Strategy does not fall to PI Financial.

Because PI Financial did not agree with the investigators view, the complaint was passed to me for a decision.

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.

In my provisional findings I said I intended to uphold Mr H's complaint but my approach to redress was slightly different to that of our investigator and so I issued a provisional decision to allow both parties the opportunity for any further submissions they wished to make.

How does the regulatory framework inform the consideration of Mr H's case?

The first thing I considered is the extensive regulation around transactions like those performed by Pi Financial for Mr H. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

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

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like PI Financial. As such, I need to have regard to them in deciding this case.

When I consider a case where someone has switched their personal pension, I look at their circumstances at the time. Why were they interested in switching? Were those wants or needs reasonable? And so, should the adviser have recommended the switch?

Each case is different, but I'd expect the switch to be in the consumer's best interests to make the advice suitable. And in this regard, I'd expect to see a comparison was made between the old pension and the new one.

In 2009 the then Financial Services Authority published a checklist for pension switching that I think is still helpful today.

It highlighted four key issues it thought should be focussed on:
Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?

Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.

Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?

Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered or put in place.
I explained In Mr H's case, I'd be focusing particularly on his circumstances and main objectives, as well as matters around charges and the benefits he had under his former arrangements.

Due diligence into Mayfair

Pi had a duty to ensure any recommended investment manager was appropriate and do due diligence on the firm it was recommending, as initially set out in the FSA guidance on centralised investment propositions. I consider the Personal Finance Society's good practice guide for due diligence into DFMs (dated February 2015) a useful basis to assess how Pi approached its responsibilities here.

These papers said that the due diligence should for example include research into an investment firm's reputation and financial standing, as well as the types of underlying assets it would invest in and its approach to investing. The PFS paper said advisers needed to 'get under the bonnet' of a manager's 'marketing blurb' and were required to question and challenge information provided to them.

Mayfair had only recently been established in 2016 and authorised about six months before Pi recommended it to Mr H, so particular care should have been taken.

Pi Financial said it approved Mayfair and took confidence that it was directly authorised by the FCA and passed its stringent assessments. But there is no detail in the file to persuade me that Pi undertook stringent due diligence from a firm that was only established just over six months before the adviser recommended it to Mr H.

Introduction by an unregulated adviser

Mr H says, via his third-party representatives that he spoke with a representative who is not named on any of the documents. He said he has never spoken with the author of the Financial Report nor the name of the regulated introducer on the application. I've considered the representatives point that Mr H met with an unregulated third party who did much of the data gathering, and he didn't actually meet the Pi adviser at all.

This is concerning because the FCA raised an alert in August 2016. This said the FCA was concerned at the increase in cases where the introducer had an inappropriate influence on the investment choice, or where parts of the advice process are delegated to the introducer. Further, the retirement options seem to have Mr H's printed name in similar handwriting to the adviser – it is not signed by Mr H but is dated the same day it was produced. The Financial Report is also not signed nor dated. The client declaration is signed by Mr H and dated 16 September 2017 (which is typed). The Pension Replacement form is unsigned and undated. The Risk Profile is unsigned and undated. The second risk profile is signed by Mr H but again the date has been typed in as 16 September 2017. The knowledge and experience form has been completed by the adviser and Mr H's name has been written in, but the document is unsigned and dated 16 September 2017.

The file note provided by Pi dated September 2017, says Mr H has not returned the forms albeit he has completed them by telephone. He works abroad and works long hours.

This leaves me perplexed as to who spoke with Mr H and when. The Financial report is dated 27th September 2017, but the file note suggests Mr H is abroad and working long hours during September so I'm not clear how Pi met its regulatory obligations and would welcome further information from Pi in this respect.

Did Pi Financial meet its obligations to Mr H when it advised him to switch his personal pensions into a new plan?

In short, I think the answer to this question is no. I'll explain why I've reached this conclusion. Mr H was 55 years old at the time of the advice. He was married with no dependent children He was working as a slaughter man earning a modest income, so much so he intended to look for work abroad to supplement his income. He wanted to obtain a mortgage of £49,000 and wanted to access his tax-free cash to purchase the property.

He said he wanted to retire at 65, even though he wouldn't have access to his state pension until he was 67. Within ten years he wanted to have paid his mortgage off in full. There is no mention of the second property that Mr H stated he intended to buy. There are no details of how much tax-free cash he needed, when he intended to purchase it or of any discussion regarding any other means of capital raising to buy this property.

Mr H had two personal pensions, one with Friends Life and another with Aegon. His Aegon policy was a S.32 buyout plan and as such had a guaranteed minimum pension attached to it. He also had recently (the same year as the advice) joined his workplace pension scheme in 2017.

Mr H had no investment experience outside of his personal pensions. These were his only retirement provision, aside from any state pension entitlement. His savings were very modest at around £2,000 and so he had no other savings or assets to fall back on, so his capacity for loss was low.

A SIPP is generally suitable for consumers who need access to a range of investments and funds not normally available via a basic pension wrapper. It's also typically suitable for individuals who need to have their monies managed in a bespoke, or discretionary style. Usually, a straight-forward stakeholder or personal pension may be more suitable for consumers who have only modest funds and non-complex needs. That's ordinarily because often, although not always, it's cheaper for the consumer.

It seems to me the SIPP and DFM recommendation was a 'fait accompli' from the first appointment. I say that not only because the Financial Report positioned Mr H's desire for a DFM as an objective, when from what I can see, he was a relatively inexperienced consumer who more than likely hadn't come across a DFM before, but because the Financial Report simply discounts both personal pensions and a stakeholder pension as being too "restrictive" SIPP. I'm not sure in what way Mr H's personal pensions or a stakeholder pension were too restrictive for him as this isn't explained. And specifically, it doesn't address whether the adviser even considered making use of either fund switches to better align (if he needed to) the existing investments to the customers ATR, and / or consolidating the funds into a one of the existing plans.

Mr H's motivation for seeking advice was to access the tax-free cash element of his pension plans. But there are no details of how much tax-free cash he needed, when he intended to purchase a property nor of any discussion regarding any other means of capital raising to buy this property. So, it isn't clear either why he couldn't access his tax free from his existing plans.

When considering the recommendation for a SIPP invested with a DFM, one would usually expect to see a pension pot of £100,000 or more. It is usually less likely to be suitable for a smaller investment, as in this case of around £45,000 as the additional charges involved are likely to erode the pot. Given Mr H's modest pension pots, I am persuaded Mr H would more likely than not have benefited from a basic arrangement or one with access to a range of mixed asset funds which the adviser reviewed occasionally rather than a bespoke DFM arrangement.

I don't agree that it is acceptable to base a recommendation on what a client says they would like rather than what would be in the best interest of an investor with limited experience.

Charges

I explained that charges play a very important part when considering whether it's in the consumer's best interest to switch their pension or not. Whilst they can't be viewed in isolation, higher costs would generally point towards being a good reason not to move. So, that means there'd need to be other, more compelling reasons to justify a switch. Mr H's existing plans had an AMC of 1% and £2.19 per month admin charges, with the S.32 plan incorporating a Bid offer spread of 5%. Pi detailed the charges for the new plan as follows:

Fund Annual Management Charge £150

Mayfair Capital dealing commission 1%

Initial Advice Charge 4% of the combined £65,024.83 invested = £2,600.99

Ongoing service charge 1% of the combined £65,024.83 assets invested=£650.54 per annum

Total charges: £3401.23.

So, the new costs were significantly higher than his existing arrangements. Taking the annual increased costs into account, would take many years of consistent outperformance over his existing funds to make the increased costs worthwhile. Importantly, just because a firm has explained what the costs are to a consumer, it doesn't then make the recommendation suitable. Furthermore, because Mr H only started contributing to his workplace pension scheme in 2017, the same year the advice was provided. This means he would not yet have built up a significant pension pot and so he wasn't in a position to take risks with his existing retirement provision and incur further costs.

Existing benefits

One of Mr H's existing plans was a S.32 buyout bond which offered a guaranteed minimum pension. Mr H gave up with guarantee and again the Financial report is silent on why he would do so.

The Financial report says he wanted greater flexibility. But beyond access to his tax-free cash, which he could have taken from his existing plans without incurring any additional costs, there is nothing to suggest he needed any additional flexibility. He was 10 years from retirement at the time the advice was given and so I'm not persuaded any further flexibility was needed.

I've seen nothing to persuade me that Mr H was seeking a sophisticated investment proposition that would give him the chance to invest outside conventional funds that the

SIPP would provide. Instead, I think greater investment fund choice was of limited benefit when Mr H has little experience of investing. There wasn't any explanation as to why he wanted a greater fund choice, or what investments he wanted to make that were not already available within his existing plans.

The documented response from Mr H within the Financial Report says.

'*In discussions with this client I explained options open to him in terms of where he could invest his monies. One of the options was the "Mayfair proposition" which is an active broking facility. The client had always felt he was dealing with big insurance companies and liked the idea the idea of more involvement with a more personal service. The ability to know where each part of his monies was being invested with a particular company and also the rationale behind it was of great interest to him and set it apart from other propositions discussed ie. Stakeholder and personal pensions.*

But this fails to explain why the adviser discounted simpler options for him. The Retirement Options Letter is a separate document and is generic information regarding all available retirement options, it does not explain why they were not suitable or why a SIPP was more suitable.

The regulator's guidance notice (Financial Standards Authority – "Assessing Suitability") from March 2011 highlighted a key theme that I think is very relevant in this case. Within the examples of poor industry practice, they identified clients with small pension funds being recommended DFM arrangements. The regulator explained a DFM investment approach was unlikely to be appropriate for such customers because of the additional costs incurred. I'm persuaded it should've been clear to Pi Financial that such an arrangement was unlikely to be in Mr H's best interests given the guidance the regulator provided at the time.

Attitude to Risk

Pi Financial assessed Mr H as being moderately adventurous in his attitude to risk.
I note the Risk Profile report provides additional questions asked of Mr H including:

Have you invested in something that turned out to be a lower return than you expected?
Mr H answered: No
And
Does the proposed risk rating we have discussed accurately reflect the risk you are willing to take?

Mr H answered: No

After discussion Pi Financial assessed Mr H was a Balanced investor.

In the Pension Replacement Contract Form, the reasons for recommending Mr H switch his pension include:

No longer suitable for clients' objectives
Lack of features and flexibility
No longer suitable for clients ATR.
Both Mr H's existing plans were based on a Balanced Portfolio and Pi Financial reaffirmed this was his current attitude to risk. There is no explanation as to why then his existing plans were not suitable. Both plans allowed for a withdrawal of tax-free cash and there is no explanation as to why the plans did not meet Mr H's objectives.

I'm not persuaded the customer's stated objectives or wider insight provided within the Financial Report provide a compelling enough catalyst when considering Mr H's wider financial position to switch his existing pensions to a new SIPP with a DFM arrangement. If indeed, Mr H, was educated about the differences between DFM and a passive or managed fund, may have been attracted to the potential benefits of having his money managed in a bespoke style, that doesn't necessarily mean it was the right thing for him. Just because a client is keen and wishes to act or has been told about the costs, doesn't necessarily mean it's in their best interest to do so and in such circumstances, it's incumbent on the adviser to help guide the consumer down the route that's right for them.

To summarise, for the reasons set out above, my view is that Pi Financial hasn't acted in Mr H's best interests and intend to ask it to put matters right. In doing so, I have also considered the trouble and upset this matter has caused Mr H. I set out in my provisional decision how Pi should put matters right.

Pi responded to my provisional decision with some further submissions and maintained its position that it felt the advice given to Mr H was suitable.

Mr H accepted my provisional findings without any further submissions.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide on the balance of probabilities, what's most likely to have happened.

I have summarised this complaint in less detail that Mr H has done and, I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this; our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it - I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. Instead, I will focus on what I find to be the key issue here which is that Mr H feels he was wrongly advised to transfer his pensions.

In its further submissions, Pi hasn't brought any new evidence for me to consider. Rather it re-iterates the points it has already made and brings forth further argument that the failure of any investments is not Pi's responsibility.

For clarity I will address the points Pi has raised.

Due diligence

Pi has argued it did carry out due diligence and points to a number of facts it obtained about Mayfair namely it was aware that:

Mayfair were directly authorised by the Financial Conduct Authority (FRN 766642).
Mayfair's key personnel had over 10 years of investment and financial services experience.
Mayfair had £10,050,000 under management.

Mayfair offered investment approach which was determined by the risk profile of each respective individual client to which the investment is tailored.
I'm not persuaded that this list of facts represents what due diligence should like. It should for example include research into an investment firm's reputation and financial standing, as well as the types of underlying assets it would invest in and its approach to investing. I consider the Personal Finance Society's good practice guide for due diligence into DFMs (dated February 2015) is still relevant here. The PFS paper said advisers needed to 'get

under the bonnet' of a manager's 'marketing blurb' and were required to question and challenge information provided to them. I remain of the view that the due diligence carried out by Pi wasn't sufficiently robust.

Introduction by an unregulated adviser

The points raised by Pi in respect of this haven't really shed any light on who was doing what. I think it's fair to say that recollections can fade with time, but that doesn't account for why Mr H cannot recall the process and that large aspects of the factfinding were done over the telephone. I can't say for certain who took on what role, but I find it off that the adviser who apparently carried out the fact find, and the advice isn't clear to Mr H. In order for him to decide to make such a significant decision he should have had a clear working relationship with the adviser, but this doesn't appear to be the case.

Did Pi Financial meet its obligations to Mr H when it advised him to switch his personal pensions into a new plan?

With regard to Mr H's motivation in seeking access to his pension, this was to purchase a property for 65k. Due to his age this would require a significant deposit and so he intended to access his pension funds to secure the TFC for a deposit. In my provisional decision I had referred to an existing property, but it has been clarified that he was renting at the time and looking to purchase a property. However, this would still mean that he would have extremely limited funds left in his pension plan after the withdrawal of the tax-free cash and only ten years in which to repay the mortgage to ensure he attained the financial security Pi relies on as the basis for its advice in the first place.

In my opinion, Mr H's need to grow what was clearly an insufficient pension fund as much as he could was best served by keeping costs low. In its guidance in July 2012 for IFAs to exercise caution when recommending centralised investment propositions, the Financial Services Authority (FSA) said that said the adviser needed a reasonable belief that the investor could understand the nature of the risks of the underlying investments an investment manager would be making for him.

Mr H does not strike me as the type of investor who would be willing to engage with, understand or appreciate the benefit of regular engagement with an investment manager of the sort Mayfair would offer. He already had the types of pension arrangement that best suited his level of understanding and attitude to risk – both of which had significantly lower costs that the proposal Pi advised him to invest it. Further, the suitability report does not adequately explain why alternative lower cost options were discounted.

Pi was notably silent in its submissions with regard to the higher costs the advice it provided

Pi has raised the issue that the complaint is actually one of investment performance and should be directed to Mayfair. It points to an email sent to Pi, in January 2017, from Mayfair which reads:

Mayfair are responsible for all investment advice for clients who hold accounts with ourselves. Only our CF30's will provide advice on funds held with ourselves.

It argues that Pi cannot be held responsible for the performance of the underlined funds and the complaint should fall to Mayfair.

Although Pi does correctly say that Mayfair confirmed in writing that it was accepting responsibility for the suitability of its own recommendations (which is obviously correct) It is important to note this does not mean to the exclusion of Pi's wider duty of care to Mr H, as a result of recommending Mayfair to him in the first place.

This complaint is clearly focussed on whether the advice given by Pi to Mr H recommending he transfer his pension plans was suitable for his needs and circumstances.

I haven't seen any evidence to dissuade me from my earlier provisional findings and I remain of the view that given the existing pension arrangements Mr H held, were of significantly lower cost with access to a fund range that would suit Mr H's attitude to risk, this is a case where an investment manager (or DFM) was a long way from being suitable for him. It was also too complex, requiring Mr H to take investment decisions he wouldn't understand. So, in the circumstances of this case I consider it fair and reasonable that Pi compensates Mr H for any losses. If Pi feels Mayfair is also at fault here, it is free to pursue Mayfair directly after it has compensated Mr H in full.

Putting things right

My aim is that Mr H 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 H would have invested differently and would more than likely have stayed with his existing provider making an internal switch to a product that would have offered him the flexibility he was seeking. But as it's not possible to assess precisely how he would have invested; I have sought to be pragmatic in my approach and assume his investment had performed in line with a benchmark which broadly reflects the level of risk he was prepared and able to accept.

To compensate Mr H fairly, Pi Financial must:

- Compare the performance of his investment with that of the benchmark shown below. If the fair value is greater than the actual value, there is a loss and compensation is payable. If the actual value is greater than the fair value, no compensation is payable.
- Also pay any interest set out below.
- If there is a loss, Pi should pay into Mr H's pension plan, to increase its value by the amount of the compensation and any interest. Pi's payment should allow for the effect of charges and any available tax relief. Pi shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Pi is unable to pay the compensation into Mr H's pension plan, Pi should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation should be reduced to notionally allow for any income tax that would otherwise have been paid. This is to ensure the compensation is a fair amount - it isn't a payment of tax to HMRC, so Mr H won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr H's actual or expected marginal rate of tax at his selected retirement age.
- It's reasonable to assume that Mr H is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr H would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- In addition, Pi must pay Mr H £350 for the trouble and upset caused by the unnecessary introduction of the SIPP and Mayfair into his retirement planning.

- Provide the details of the calculation to Mr H in a clear, simple format. Income tax may be payable on any interest paid. If Pi, consider that It's required by HM Revenue & Customs to deduct income tax from that interest, Pi should tell Mr H how much it's taken off. Pi should also give Mr H a tax deduction certificate in respect of interest if Mr H 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
Pension plans original transfer values paid into IM SIPP	“still exists”	FTSE UK Private Investors Income Total Return Index	Date of transfers in	Date of final decision	8% per annum simple from date of final decision if Pi does not settle within 28 days of receipt of Mr H’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.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr H wanted Capital growth and was willing to accept some investment risk.
- The FTSE UK Private Investors 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 h's circumstances and risk attitude.

My final decision

For the reasons I have given I uphold this complaint and direct PI Financial Limited to carry out the redress as detailed in the Putting Things Right section of this decision.
Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 22 February 2024.

Wendy Steele
Ombudsman