DRN-4287373

The complaint

Mr B complains about advice given by Inter-UK Financial Services Limited (Inter-UK) to switch to a self invested personal pension (SIPP) and invest via a Discretionary Fund Manager (DFM). Mr B's pension fund has fallen in value and Mr B says that Inter-UK is responsible for the losses he's suffered.

What happened

Mr B says he was cold called by Inter-UK offering a pension review. A meeting at Mr B's home took place. Mr B completed a fact find which included an attitude to risk questionnaire. Inter-UK produced a suitability report on 25 May 2018. It recorded that Mr B had pension savings of £46,987.13 with Aviva. Mr B had health issues which meant he wanted to keep his options open with regards to accessing his pension. He agreed and understood his attitude to risk score and he was a balanced investor (although I've said more about that below). Inter-UK recommended that Mr B transfer his Aviva personal pension to a SIPP with Momentum which would allow him to access a Mixed Model Portfolio with SVS Securities plc (SVS) as DFM. Inter-UK would also provide an ongoing service to ensure the investments remained suitable for Mr B's circumstances and objectives.

On 16 June 2018 Mr B signed SVS's model portfolio SIPP application. It said he'd be investing in SVS's Model Portfolio: Balanced. That was one of four portfolios set out: Cautious; Balanced; Growth and Aggressive Growth. Mr B's SIPP with Momentum was opened in August 2018. On 13 September 2018 £49,103.80 was transferred from Aviva to the Momentum SIPP. Inter-UK took a fee of £1,473.11 on the transfer and Momentum was paid fees totalling £470. Ongoing advice fees of 1% pa were also paid to Inter-UK. On 20 December 2018 Momentum transferred £46,970.69 to SVS for investment.

In August 2019 Special Administrators were appointed to SVS because of concerns on the part of the regulator, the Financial Conduct Authority (FCA), about the assets in which SVS invested its clients' money. SVS subsequently entered into liquidation.

By 2020 the value of Mr B's portfolio had fallen to under £17,000. With assistance from his representative, Mr B complained to Inter-UK on 31 August 2022 that the switch to the SIPP was unsuitable. Amongst other things, it was unnecessary as his existing Aviva pension had adequate investment flexibility and was well diversified. The switch had generated disproportionately high fees which weren't justified by likely increased returns. Any concern about European investments could've been addressed by fund changes to Mr B's existing pension.

About the portfolio with SVS, Mr B's representative said it included a high weighting of long term and illiquid fixed interest holdings which shouldn't have been promoted to Mr B. They were in specialist and non mainstream sectors and carried a high default risk. There was also a significant level of investment in SmallCap shares. Prior to Momentum acting on Inter-UK's instruction to invest with SVS, there'd been an exchange of emails between Inter-UK and Momentum where the latter had expressed concerns about SVS's administration systems, communications and investment selections. But Inter-UK instructed Momentum to proceed with investing with SVS. Mr B shouldn't have been advised to transfer out of his existing Aviva scheme but to invest in a low risk, well diversified portfolio within that pension. But for Inter-UK's advice Mr B would've remained with Aviva.

I haven't seen that Inter-UK issued any final response.

Mr B referred his complaint to us in December 2022. We contacted Inter-UK about the complaint and it sent us its business file. We asked several times for a copy of the final response letter and Inter-UK's comments about the complaint but Inter-UK didn't respond.

The investigator upheld the complaint. He said it was Inter-UK's responsibility to carry out research on any DFM recommended, including looking into the current breakdown of assets in any proposed model portfolio and how the DFM managed those assets. As a minimum, Inter-UK should've looked at the SVS portfolio and what was in it, prior to recommending that Mr B invest and after the investment was made. Had Inter-UK done so, it would've been clear that the portfolio and its holdings weren't suitable for Mr B, given his attitude to risk. Inter-UK had a duty to provide suitable advice and ongoing oversight of Mr B's investments. That hadn't happened and Mr B had suffered a considerable loss. The investigator set out how Inter-UK needed to redress Mr B.

Inter-UK didn't respond to the investigator's view. We explained that the complaint would be referred to an ombudsman. We made several attempts to contact Inter-UK but without success.

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 upholding the complaint and in the main for the same reasons as the investigator. Essentially I agree that Inter-UK had a responsibility to undertake due diligence on any DFM recommended, including looking into the breakdown of the assets in any proposed model portfolio and making sure the risk profile was in line with that of the investor. Here the portfolio was too high risk for a balanced investor such as Mr B and was unsuitable for him. The SIPP was recommended because it allowed Mr B to access the services of a DFM. But, as I don't think a DFM was necessary, it follows that the SIPP wasn't either.

As Inter-UK hasn't responded to our request for comments, I don't know exactly what, if any, due diligence Inter-UK carried out on SVS and its model portfolios, including the one in which Mr B was invested. And I'm not sure exactly how Mr B's portfolio was made up at the outset. Inter-UK's suitability letter doesn't include a breakdown and refers to SVS's Mixed Model Portfolio. But SVS's application form says Mr B would be investing in SVS's Balanced Model Portfolio. I'm not sure if the two are the same.

I also find the attitude to risk questionnaire that Mr B completed somewhat confusing. I recognise he signed it and that the results were set out in the suitability report which said the outcome had been discussed with Mr B and he understood the scoring. Mr B also signed the suitability report. But I don't think the position was clear. The risk questionnaire says Mr B's answers to the questions posed would lead to one of five portfolios: Cautious; Cautious to Balanced; Balanced; Balanced to Adventurous; and Adventurous. Mr B's score (46) indicated a Balanced portfolio (applicable to a score of 41 – 52 points). But on the next page the five categories don't correlate to that and different scores are assigned. The Balanced category applies to a score of 19 – 40 points and a score of 46 points is in the Balanced to Adventurous category (41 – to 52 points).

The Balanced description says:

'*A Medium Risk Investor is looking for a balance of risk and reward seeking higher returns than those available from a high street deposit account and willing to accept a certain amount of fluctuation in the value of their investments as a result. Medium risk investors are happy to invest in a mixed portfolio consisting of global equity, property and fixed interest securities. Their investment objective is to seek to generate moderate growth through a combination of capital returns and the accumulation of income over the medium to long term*.'

The Balanced to Adventurous description says:

'*A high medium investor is willing to accept a real possibility of capital loss, and significant fluctuations in value. High Medium risk investors are comfortable investing substantial parts of their portfolio in major overseas markets. Their investment objective is to seek to generate capital growth over the long term*.'

So, on the one hand, Mr B had been assessed as a Balanced investor but that had then become Balanced to Adventurous. I think the descriptions show there's a fairly significant difference between the two categories. I've not seen anything to indicate that Mr B was prepared to accept any significant capital loss. Even if he was willing I don't think his financial position and circumstances were such that he could afford, or should've been advised, to take that degree of risk. As the suitability letter noted it wasn't just about how much risk Mr B was willing to take but more importantly about how much risk he could afford to take. I've proceeded on the basis that Mr B was a Balanced investor and that Inter-UK's recommendations needed to be suitable for that type of investor as described.

Mr B's existing pension was with a major provider and offered a wide range of funds. There's no indication from the suitability letter as to why it might no longer be suitable for him. If, as Mr B recalls, there was some suggestion that his exposure to European investments might, post Brexit, be unsuitable, that could've been remedied by switching funds. And from the breakdown of the funds in which Mr B was invested with Aviva I've seen it seems that only a small percentage of Mr B's fund had any European element. Given the modest size of Mr B's fund I don't think he had any real need for a DFM service.

Mr B says he's received minimal information from SVS and Momentum. He did get a statement issued by the Special Administrators on 18 May 2020. Mr B's representative says the statement shows that the portfolio included a high weighting of long term, illiquid fixed term holdings, including Angelfish plc preference shares, Corporate Finance Bonds Limited, Ingard Property Bonds and Queros Capital Partners plc. There was also a significant element of investment in SmallCap shares.

The Corporate Finance Bonds Limited holdings made up a substantial element of the portfolio. Fixed interest investments in bonds might sometimes be regarded as lower risk – for example, most UK government bonds (and those of other financially stable countries) are considered low risk as its unlikely that the government will default on payments due to investors. So investors are virtually guaranteed to get the fixed interest payments and their money back at the maturity date. But corporate bonds are riskier. The level of risk will depend on the issuing company. Bonds issued by a well known, established and profitable company will be regarded as less risky than those issued by, say, a smaller company in an emerging market. Riskier bonds may offer higher potential returns but with an increased risk of investors not getting their money back.

I've mentioned above the FCA's concerns about SVS and which led the FCA to investigate and identify serious issues about the way in which SVS was operating. It seems the FCA's concerns centred on the high exposure to corporate bonds issued by Corporate Finance

Bonds Limited within SVS's model portfolios and which led the FCA to issue a First Supervisory Notice on 2 August 2019. It sets out the results of the FCA's investigations and enquiries and the precise nature of the FCA's concerns about the bonds and which included clear conflicts of interest between SVS and the seller of the bonds.

I think, if Inter-UK had undertaken proper due diligence on SVS and the model portfolio, Inter-UK would've realised that the bonds were likely to be unsuitable for Mr B and that they didn't provide the level of security and reduced risk that other types of fixed interest investments would've done. I think Mr B was exactly the type of investor that the FCA was worried about and for whom the inclusion in the model portfolio of this type and proportion of fixed interest investment was unsuitable.

I think other investments were unsuitable too. Mr B also had a holding in Angelfish Investments plc Preference Shares. I've seen some literature which includes the following:

'*The Preference Shares are complex financial instruments. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should only invest in the Preference Shares if they have the expertise (either alone or with a financial adviser) to evaluate how the Preference Shares will perform under changing conditions, the resulting effects on the value of the Preference Shares and the impact this investment will have on the potential investor's overall investment portfolio.'*

It's clear that the investment was specialist and designed for experienced investors whereas Mr B was an ordinary retail investor with limited investment experience. Again the May 2020 statement shows that Mr B's holding in Angelfish Investments plc had been lost.

Mr B's portfolio also included a significant proportion of equities, with the investments in smaller or less established companies – SmallCap shares. Such stocks can be a good investment opportunity as they can have the potential for growth and so may deliver a better return. But they tend to be volatile and riskier than shares in larger (blue chip) companies which are better known and have more of a track record. So I don't think any significant level of investment in this type of holdings was suitable for Mr B. And, viewed alongside the rest of the portfolio, it seems there was a lack of diversification and balance which increased the risk further.

Overall I don't think the portfolio was suitable for an investor in Mr B's circumstances and who wanted to take a medium or balanced investment approach. At the time of the advice Mr B was aged 57 and employed full time earning around £16,000 pa. He owned his own home subject to a mortgage. He was a member of his employer's pension scheme. He had no savings or investments, aside from his pension fund with Aviva. That pension was invested across a range of funds. I think the overall risk level was probably on the low side of medium. The new SVS portfolio was higher risk. I think it was too high risk even if Mr B's membership of his employer's statutory scheme meant he could afford to take some degree of risk with his other pension fund.

The May 2020 statement showed the total value of Mr B's SVS portfolio was £16,369.52 against £46,970.69 which had been transferred to SVS's management in December 2018. That's a fall in value of about 65% in some two and a half years and which is more than would be expected for a medium risk portfolio even during a period of stock market volatility and would tend to confirm the portfolio was too high risk.

I note that there was also correspondence between Inter-UK and Momentum before the bulk of Mr B's pension fund was passed to SVS for investment. I think there were clear warning signs about SVS which Inter-UK seems to have ignored.

I recognise that Inter-UK wasn't the only regulated business involved. SVS was regulated too and it seems that its part in the matter has contributed to Mr B's losses. But I'm only considering the complaint against Inter-UK. In my view, Inter-UK failed to undertake any or sufficient due diligence and was unaware that SVS's portfolio was too high risk for Mr B. And I don't see that Mr B needed a SIPP or to be able to access a DFM service. But for Inter-UK's unsuitable advice in recommending the SIPP and SVS as DFM, Mr B wouldn't have suffered the losses he did. So I'm satisfied it's fair and reasonable to say that Inter-UK should compensate Mr B in full for his losses. I think without Inter-UK's advice Mr B would've remained with his existing provider.

I've adopted in the main the redress set out by the investigator and which allows for the possibility that Aviva might be unable to provide a notional fund value. I've also said that redress should be based on the transfer value paid into the SIPP. As I've said I don't see that Mr B had any need for a SIPP or a DFM service. The investigator also suggested Inter-UK's fees should be repaid. My understanding is that fees were deducted from Mr B's fund and not paid by him direct. The redress I've set out takes into account what Mr B's fund would've been worth if it had remained with his existing provider. So fees are taken into account and no separate award is required. That's with the exception of future SIPP fees if the SIPP can't be wound up because some of the investments are illiquid.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr B as close as possible to the position he'd probably be in now if he'd been given suitable advice. I think Mr B would've remained with his previous provider. But I can't be sure a notional value will be obtainable for what Mr B's previous pension would've been worth. So I've included a benchmark as an alternative and if a notional value can't be obtained. I'm satisfied what I've set out below is fair and reasonable, taking this into account and given Mr B's circumstances and objectives when he invested.

To compensate Mr M fairly Inter-UK Financial Services Limited should:

- Compare the performance of Mr B's investment with the notional value if it had remained with the 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.
- If there's a loss, it should be paid into Mr B's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Inter-UK Financial Services Limited is unable to pay the compensation into Mr B's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would've have provided a taxable income. So the compensation 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 B won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr B would've 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%.

- Details of the calculation should be provided to Mr B in a clear, simple format.

Investment/Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Momentum SIPP/ SVS Securities portfolio	Some liquid/some illiquid	Notional value from previous provider/ FTSE UK Private Investors Income Total Return Index	Date of transfer to SIPP	Date of settlement	Not applicable

actual value

This means the actual amount payable from the investment at the end date. If, at the end date, any investment in the portfolio is illiquid (meaning it cannot be readily sold on the open market), it may be difficult to find the actual value of the portfolio. Inter-UK Financial Services Limited should take ownership of any illiquid investments within the portfolio by paying a commercial value acceptable to the pension provider. This amount paid should be included in the actual value before compensation is calculated.

If Inter-UK Financial Services Limited is unable to purchase any illiquid investment the value of that investment should be assumed to be nil when arriving at the actual value of the portfolio. Inter-UK Financial Services Limited may wish to require that Mr B provides an undertaking to pay to Inter-UK Financial Services Limited any amount he may receive from that investment in the future. The undertaking must allow for any tax and charges that would be incurred on drawing the receipt from the pension plan. Inter-UK Financial Services Limited will need to meet any costs in drawing up the undertaking.

notional value

This is the value of Mr B's investment had it remained with the previous provider until the end date. Inter-UK Financial Services Limited should request that the previous provider calculates this value.

Any additional sum paid in should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal 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 is a large number of regular payments, to keep calculations simpler, I'll accept if all those payments are totalled and that figure deducted at the end to determine the notional value instead of deducting periodically.

If the previous provider is unable to calculate a notional value, Inter-UK Financial Services Limited will need to determine a fair value for Mr B'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.

The SIPP and the SVS portfolio only exist because of the illiquid assets. In order for the SIPP and portfolio to be closed and further fees prevented from being charged, those investments need to be removed. I've set out above how this might be achieved by Inter-UK Financial Services Limited taking over any illiquid investments in the portfolio. Or this is something that Mr B can discuss with the provider directly. But I don't know how long that will take. Third parties are involved and we don't have the power to tell them what to do. If Inter-UK Financial Services Limited is unable to purchase any illiquid investments, and to provide certainty to all parties, I think it's fair that Inter-UK Financial Services Limited pays Mr B an upfront lump sum equivalent to five years' worth of wrapper fees (calculated using the fee in the previous year to date). This should provide a reasonable period for the parties to arrange for the SIPP and SVS portfolio to be closed.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr B wanted capital growth and was willing to accept some investment risk.
- 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's 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 B's circumstances and risk attitude.

My final decision

I uphold the complaint. Inter-UK Financial Services Limited must redress Mr B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 September 2023.

Lesley Stead
Ombudsman