DRN-4275880

Financial Ombudsman Service

The complaint

Mr R complains that Profile Financial Solutions Limited (Profile) gave him unsuitable advice to transfer one of his pension plans with a provider I'll refer to as provider R to a Self-Invested Personal Pension (SIPP) plan with a provider I'll refer to as provider S.

Mr R is represented in his complaint. While I'll only refer to him in my decision, I'd like to make the following point.

Mr R's representative made a complaint on his behalf that included a number of incorrect allegations about Profile. It would be helpful if in future Mr R's representative could ensure that each of the complaint points it raises are actually relevant to the individual complaint it is making at the time.

What happened

I understand that Profile initially contacted Mr R to ask him if he wanted to have a pension review. Mr R agreed.

The evidence shows that Profile carried out some investigations into Mr R's existing pension plans in the early part of 2014. This included a comparison of pension plan providers in February 2014. This showed that at a proposed retirement age of 65, and allowing for Profile's initial advice charge, Mr R would potentially achieve better benefits with provider S than he would if he stayed with provider R.

On 3 June 2014, Profile carried out a fact find with Mr R. It discussed Mr R's existing pension plans with him and assessed his Attitude to Risk (ATR).

The fact find recorded the following information about Mr R:

- Retirement planning was the only important issue for him. Although a full financial review was recommended, Mr R only wanted a pension review.

- He was divorced with no dependants. And in good health.

- He was employed.

- He had a target retirement age of 60. But didn't know what income he required in today's terms.

Profile said it discussed the benefits of transferring Mr R's pension to provider S, including the associated risks of doing so, the initial charges for switching and the ongoing fees, including the ongoing service fee. Profile also sent Mr R a Suitability Letter dated 3 June 2014.

The Suitability Letter stated that Profile had discussed Mr R's understanding of financial services products. And had established that although he had previous pension investment experience, he wasn't receiving regular investment advice. It said Mr R's prime objective was: "*to review his existing Pension contract(s) in order to assess whether it would be appropriate to transfer the benefits*". And that he particularly wanted Profile to investigate a transfer which would provide:

- *"A reduction in your existing fees and charges*
- *Greater flexibility and options*
- *Fund choices which meet your current circumstances and are aligned to your attitude to risk and will gradually move into lower risk investments as you approach your selected retirement date"*

The Suitability Letter noted that Mr R had five pension plans with provider R. Due to the guarantees one of these policies provided, and the poor transfer values offered for three of the others, Profile recommended that these four plans were left with provider R. But it recommended that the fifth policy be transferred to provider S. It said this was for the following reasons:

- The current annual management charge for the fifth plan was 1% each year. But Mr R said he didn't receive much for this fee. He told Profile he'd not received any pension advice for many years. And agreed that it was important that his funds remained invested in line with his ATR and retirement objectives. Profile said Mr R could benefit from significantly lower charges if he transferred to provider S. And that even with an ongoing advice charge for Profile of 0.3%, the total annual charge would then be 0.68% each year. But it would then be able to review Mr R's ATR annually to ensure his investments remained suitable for his needs.
- Provider S could provide a range of funds targeted to match Mr R's medium ATR.
- Although fund performance with provider R had been reasonably good, the recommended investment strategy would move Mr R's investment into lower risk funds as he approached his selected retirement date, which was appealing to him.
- Provider S could provide Mr R with online access to his pension. Profile would also provide Mr R with regular updates on his pension. And with other more general areas of financial planning.

The Suitability Letter confirmed that Profile would charge Mr R an initial fee of 4.13% of the amount transferred, which would be around £1,635, to meet the costs and implementation of its recommendation. And stated that the illustration it had provided showed the effects of the initial fee on Mr R's projected benefits. Profile also sent Mr R a Key Features Document. It also stated that the ongoing adviser charge would be 0.3% of the value of Mr R's pension plan with provider S.

The transfer to provider S completed in June 2014. £39,528.68 was invested in balanced funds on Mr R's behalf. And £1,632.53 was paid to Profile for the initial adviser charges.

I understand that Mr R appointed a new Independent Financial Adviser (IFA) with effect from 13 November 2015, with an increased ongoing advice charge of 0.4%. And that provider S informed Profile that it had been removed as Mr R's IFA on 2 December 2015.

I also understand that Profile again became Mr R's adviser on his pension with provider S with effect from 8 February 2017. But that it was removed again with effect from 31 March 2017, when a new adviser was appointed. The evidence shows that the new adviser amended the ongoing annual charge to 1% with effect from October 2017. That adviser was also removed from Mr R's PP with provider S with effect from 9 September 2020, so the plan became self-administered.

I understand that Mr R took the final benefits from his plan on 28 July 2022.

In 2022, Mr R felt that the advice was unsuitable. And that it hadn't taken account of his circumstances at the time of the advice. So he complained to Profile through his representative. He also brought his complaint to this service. Mr R made the following complaint points:

- He shouldn't have been advised to transfer his Personal Pension (PP) plan with provider R to a SIPP with provider S. He felt he'd been induced to transfer his PP to provider S with the promise of higher growth than he would achieve with provider R.

- The SIPP wasn't suitable for him as he wasn't a high earner.

- His investment experience and objectives, his ATR and his capacity for loss weren't assessed.

- He felt he'd suffered a loss on the value of his pension.

- It was alleged that Mr R's pension had been invested in high-risk unregulated overseas property investment.

When our investigator asked Profile for its complaint file, it said it hadn't yet received a complaint request on behalf of Mr R. So it hadn't replied to him. It asked for a copy of the complaint to be shared with it.

Mr R said he wasn't aware that he might have cause for complaint until his representative had contacted him regarding a potential claim.

Profile didn't give its consent for this service to review the complaint.

Profile told this service it wouldn't uphold the complaint. It said that it had assessed Mr R's

investment experience, ATR and capacity for loss. And that Mr R had agreed with the assessment.

Profile also said that Mr R had discussed his personal and financial circumstances with it during the call on 3 June 2014. It said it hadn't recommended Mr R transfer his other four policies with provider R. Nor had it recommended that he transfer the benefits from his former Occupational Pension Scheme (OPS).

Profile acknowledged that it hadn't reviewed Mr R's assets and liabilities as part of its advice. But said that it'd explored the impact of Mr R losing his pension, or it falling in value, as part of its capacity for loss discussions.

Profile said that it had discussed Mr R's investment objectives with him. It said his prime objective was reviewing his existing pension plans with provider R. And that he wanted to pay low charges, but receive an ongoing advice service, which he'd never had in the past. It said Mr R had been paying fees of 1% each year with provider A. But that the total fees with provider S, including an annual charge of 0.3% for ongoing advice, were 0.68% each year. It also said its charges were fully explained in its Suitability Letter.

Profile said it had discussed the performance of Mr R's existing schemes with him. It said he'd said he wanted his pension to have greater flexibility and options in retirement. And that he wanted regular updates on his pension. He also wanted to invest in a fund that would meet his current circumstances and ATR but would gradually move him into lower risk investments as he approached retirement. It also said that Mr R had agreed that a lower to medium risk portfolio would best suit his needs, which was why it had recommended the Balanced Governed Investment Strategy with provider S. It said it had fully explained to Mr R the risks associated with this investment and that there were no guarantees of future returns. And that the investments were simply a mixture of bond and equities, not complex or non-mainstream.

Profile didn't agree with Mr R that either his SIPP, or the investments that'd been recommended for him, weren't suitable for his needs and objectives. It said that his SIPP was simply a PP plan, which wasn't an expensive or complex contract. And that both met his requirements. It also said that Mr R's SIPP was invested in the cheapest and simplest form of investment. Profile said that the allegation that Mr R had been invested in a high-risk unregulated overseas property investment wasn't correct.

Regarding ongoing pension reviews, Profile said that Mr R had received a suitability assessment on 13 August 2015. It said he'd thought the pension was performing well and had declined the review.

Profile said it wasn't able to assess whether Mr R had suffered a loss on the value of his pension, as it hadn't been the servicing agent for him for some time. And didn't have access to his PP details. It also said that at no point in its recommendations did it guarantee the value of Mr R's pension with provider S would grow at a higher rate than his previous pension with provider R. It said that it had specifically stated in its Suitability Letter that past performance was no guarantee of future returns and investment values could go down as well as up.

Profile asked this service to consider whether the complaint was in our jurisdiction. It said that the advice had been provided more than six years ago. So it felt it may have been brought out of time.

Our investigator said she had no evidence that Mr R had become aware, or ought reasonably to have become aware, of cause for complaint more than three years before his complaint. Therefore she felt that the complaint was one this service could consider.

Our investigator felt that the complaint should be upheld. She felt that Profile had failed to assess Mr R's capacity for loss alongside its assessment of his ATR. She acknowledged that the ongoing charges under the recommended arrangement were lower than those with the existing plan. But didn't think that there was enough time for Mr R to make up for the cost of the initial advice. She also didn't think that the projected pension illustration had shown the effect of the initial advice charge.

To put things right, our investigator felt that Profile should put Mr R back into the position he

would likely have been in, had it not been for the unsuitable advice. She felt Mr R would've stayed with invested in the managed fund with provider R.

Mr R accepted our investigator's view.

Profile didn't accept the view. It made the following points:

- Regarding whether the complaint should be time-barred, it said that it had carried out an annual review call for Mr R on 13 August 2015. But that as Mr R had felt the pension was performing well, he'd declined the review. It said that as it had subsequently been removed as Mr R's pension advisers later in 2015, except for a brief period in 2017, it couldn't provide any evidence about whether there'd been any drop in fund value which would've alerted Mr R of a potential complaint.

- Regarding the merits of the complaint, Profile said that it had provided focused advice, at Mr R's request, to only review his pensions. As the advice was simply on existing arrangements, with no new monies being invested, it didn't consider that expenditure versus income was relevant in this case. It said this was because in this case, such information would've had little bearing on the suitability of the advice.

- Profile said that as Mr R had no plans to invest new money into his pension plans, and as he had around ten years to invest his existing pension funds, his capacity for loss was a less important factor than his ATR. It said this was because he didn't plan to access this money for around ten years or more. And his capacity for loss would change as he approached his estimated retirement age. It also said it had full information about Mr R's other pension arrangements which were also to be used for his retirement. And that his immediate goal had been to get a better level of service and reduce charges for the potential of better income from these plans.

- Profile didn't agree with our investigator that its projected pension illustration hadn't shown the effect of its initial advice charge. It said that the illustration had included the initial adviser charge and the ongoing adviser charges.

- Profile carried out an estimated loss assessment. It compared its calculation of the notional value of the pension with provider R as of 5 April 2023 (£57,687) with its calculation, allowing for the deduction of its initial fee of £1,632.53, of the notional value of the pension with provider S as at 5 April 2023 (£58,739). It said it didn't have access to a true current value or whether Mr R had taken his pension benefits. Profile said its assessment showed that Mr R was better off by £1,051 because of its advice.

Our investigator considered Profile's points, but still felt that the complaint the complaint was one this service could consider. She also still felt that it should be upheld. She still considered that the transfer hadn't clearly been of much benefit to Mr R.

Our investigator didn't consider that the loss assessment Profile had carried out was accurate. She said this service would normally expect a business to get exact calculations from the relevant providers to assess whether there was a financial loss. So she didn't feel that she could be confident that an accurate assessment would also show no loss.

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

I issued my provisional decision on this case on 18 July 2023. It said:

I've considered all the evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having done so, I don't intend to uphold it. I agree with our investigator that this is a complaint we can consider. But I don't agree that the transfer wasn't suitable. I consider that there were enough reasons that the transfer would be beneficial to Mr R to make the advice suitable. I know my decision will disappoint Mr R. I'll explain my reasons for it.

I first considered whether this complaint is one this service can consider.

Is this a complaint we can consider?

I agree with our investigator, and for the same reasons, that Mr R first became aware that he had cause for complaint when he was contacted by his representative.

I acknowledge why Profile is unable to provide any evidence to support its claim that Mr R's complaint might be out of this service's jurisdiction. It said this was because it had been removed as Mr R's servicing agent with provider S for most of the time since 2015, therefore it couldn't identify if a fall in his pension value should've made Mr R aware that he had cause to complain more than three years before he actually did.

But I've not been provided with any evidence that shows Mr R ought reasonably to have become aware that he had cause to complain before his representative contacted him.

In the absence of any evidence that Mr R ought reasonably to have become aware that he had cause to complain more than three years before he actually complained to Profile, I can't reasonably conclude that the complaint is out of this service's jurisdiction. Therefore I'm satisfied that this service can consider the merits of the complaint. I've gone on to consider those merits.

Was the transfer suitable?

I've considered the documentary evidence from the time of sale, including the fact find, Suitability Letter and Profile's telephone discussion with Mr R.

I've also taken into consideration the Financial Conduct Authority's (FCA) 2009 report and checklist for pension switching, as it's still applicable. The 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 (GAR) 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 ATR 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.*

Our investigator felt that the adviser shouldn't have recommended the transfer, But I don't agree. I'll explain why.

In order for this service to conclude that the advice to transfer was in the consumer's best interests, we'd have to consider that there was reasonable potential for the consumer to be better off to make the advice suitable.

In this case, Profile provided illustrations which showed that a comparison was made between the pension with provider R and the one it was recommending with provider S. The comparison showed that, even when the initial advice charge was taken into account, a transfer to provider S was likely to result in a largely pension fund for Mr R at his retirement, than the alternative of leaving his pension with provider R.

In any event, Mr R wanted other things from his pension provider than he was getting from *provider R. He wanted regular pension advice so that he could ensure that his funds remained invested in line with his ATR and retirement objectives. He also wanted more regular updates from his provider, which online access would help him to achieve. Profile's recommendation would meet these requirements, as its ongoing advice would provide Mr R with regular updates on his pension. He also wanted his investment to be moved into lower risk funds as he approached retirement.*

Although there was a significant initial advice charge of 4.13% of the funds being transferred, Mr R benefitted from significantly lower annual charges with provider S. These totalled 0.38%, rather than the 1% he was being charged by provider R. Therefore, over the ten years Mr R expected to remain invested, the lower future charges would more than offset the initial advice charge.

I acknowledge that when Profile's annual ongoing advice charge of 0.3% is also taken into account, the total annual charge then increases to 0.68% each year. And the 0.32% annual saving then isn't quite sufficient to offset the initial advice charge. But the ongoing advice service was an additional service that Mr R said he wanted, valued and hadn't received before. From what I've seen, the cost of the service was clearly explained to Mr R. And he was happy to pay the charge to ensure that his investments remained suitable for his needs.

Although Mr R's representative complains that Profile induced him to transfer his PP to provider S with the promise of higher growth than he would achieve with provider R, I've found no evidence that it did. I say this because Profile stated in its Suitability Letter that fund performance with provider R had been reasonably good, but that the recommended investment strategy would move Mr R's investment into lower risk funds as he approached his selected retirement date. This was accurate. It was also something which appealed to Mr R, and which I've seen no evidence was available with provider R at the time of the advice.

I also note that during the telephone call between Profile and Mr R, he stated the following: "That's the reason I'm transferring. Because I wasn't looked after by [provider R]. I didn't receive a statement from them annually, only since I've been dealing with transferring my pension have they started to send me a statement".

Profile then explained that it was recommending the transfer to provider S for the following reasons. It said: "I have to look at charges, investment performance, whether it's suitable for your ATR and the service you've been getting. You've said no service. The annual management charge is 1% each year". It then went on to explain that Mr R could pay significantly lower annual fees if he transferred, even if he also paid 0.3% annually for an ongoing advice service.

Profile then clearly stated during the call that the initial charges also had to be considered. These were a standalone fee of 4.13%, or £1,635 for implementing the recommendation.

Overall, I'm satisfied that the investment was suitable for Mr R at the time it was recommended. I say this because the recommended investment matched Mr R's ATR. And provided him with the type of de-risking as he approached his selected retirement age that he valued. The recommendation also ensured Mr R paid lower annual charges for the period to retirement than he would've paid if he'd stayed with provider R. Had he not also wanted to take Profile's offer of an ongoing advice service, I'm satisfied that the annual charge savings would've more than offset the initial advice cost if Mr R had retired at his selected retirement age.

I've also found no evidence that Profile's advice led to any of the four points listed on the FCA checklist.

I consider that it wouldn't be fair or reasonable to assume that Mr R didn't value the ongoing advice Profile offered him for an annual charge of 0.3%. I say this because if he hadn't valued it, he wouldn't have agreed to take the advice and pay the charge.

I acknowledge that Mr R considers that the SIPP wasn't suitable for him as he wasn't a high earner. But I don't agree. I'm satisfied that the SIPP was simply a PP that allowed Mr R to get the information he wanted for his pension. And which provided him with appropriate and cost-effective investment choices which matched his ATR.

I also acknowledge that Mr R feels that his investment experience and objectives, his ATR and his capacity for loss weren't assessed. But I can't fairly agree. I say this because the evidence shows that Mr R's investment experience and objectives were fairly discussed. And his ATR was properly assessed. And while I acknowledge that his capacity for loss wasn't directly considered, I agree with Profile that this was much less significant under the circumstances that a proper assessment of Mr R's ATR. Profile was going to review his position on an annual basis, so it could assess how his ATR and capacity for loss might change as he approached his selected retirement age. I also agree with Profile's point in the Suitability Letter, that: "As the funds to be invested will be met via a transfer of existing benefits, affordability is not an issue".

I've not seen any evidence that Mr R has suffered a loss on the value of his pension due to Profile's advice. Therefore I don't intend to uphold the complaint.

Response to my provisional decision

Profile had nothing further to add to my provisional decision.

Mr R didn't respond to my provisional 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.

As no new information has come to light to change my opinion, I remain of the view I set out in my provisional decision.

My final decision

For the reasons set out above, I don't uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 1 September 2023.

Jo Occleshaw
Ombudsman