DRN-4144634

The complaint

Mr S complains about advice given to him by Profile Financial Solutions Limited (Profile) in 2020 to switch his pension from a personal pension plan (PPP) with one provider to a new Self Invested Personal Pension (SIPP) with a different provider.

Mr S's representative says he was advised to switch from a "safe" PPP to an unsuitable investment which wasn't in line with his attitude to risk.

The representative says the recommended plan was unsuitable because of Mr S's age, which the representative says gave him little time to rebuild any losses sustained prior to retirement and his level of income which the representative indicates was modest.

The representative says Mr S didn't have any investment experience and that he had a low capacity for loss and a low attitude to risk.

Mr S's representative says that Mr S was promised by Profile that the pension plan it recommended would grow at a higher rate than the growth rate he would achieve if he remained in his existing pension plan.

What happened

In 2016 Mr S met with a financial adviser from Profile and completed a fact find detailing his circumstances and objectives. A risk profile was completed using a questionnaire. Following that questionnaire and a discussion with the adviser, Mr S was assessed as having a medium risk profile.

The adviser recommended that Mr S transfer his four existing pension plans into a new personal pension, which I will refer to as "pension plan 1". The recommendation was made in response to Mr S's concerns about the performance of his existing plans and their respective charges. The new recommended pension plan had lower charges of 0.77% which included an ongoing advice service provided by Profile.

A suitability letter was issued to Mr S in September 2016 outlining the adviser's recommendations.

In October 2016 approximately £81,000 was transferred from the four plans into pension plan 1. Pension plan 1 was invested in two funds which held mostly equities and a smaller proportion of bonds.

In August 2020 Mr S was contacted by Profile as part of its ongoing advice service. Profile's adviser asked him about his circumstances and conducted a risk profile by asking specific risk-based questions.
Mr S was assessed by Profile as being in the category of "balanced" investor. The description given for that attitude to risk was the same as that previously given for a medium risk investor.

Profile recommended Mr S switch pension plan 1 to a new personal pension with a different provider, which I will refer to as pension plan 2, invested in four funds.

A suitability letter was issued in August 2020 setting out the reasons for the recommendation.

Profile's adviser contacted Mr S again at the beginning of November 2020 to discuss the recommendation. Mr S confirmed that he wanted to go ahead with the switch. A further suitability letter was sent shortly after that call which reaffirmed the recommendation and included an illustration for the recommended investment.

On 12 November 2020 the proceeds from pension plan 1 (approximately £96,000) were transferred to pension plan 2 and invested in four funds

In 2022 Mr S's representative complained to Profile about the recommendation made in 2020.

In summary his representative said Mr S had been advised to transfer from his "safe" personal pension to an unsuitable pension plan. His representative said Mr S had been advised to take out a SIPP despite having a low income, having no financial support given he was single, and no investment experience. The representative said Mr S had a low capacity for loss and a low attitude to risk.

Mr S 's representative said the adviser had failed to consider all these factors, had failed to follow the correct certification and had advised Mr S to take out non-standard investments. The representative said Profile failed to provide independent advice in relation to the benefits and risks and failed to consider relevant factors. So it said the advice it provided did not comply with the Conduct of Business Sourcebook (COBS) rules.

Mr S's representative also said the recommended plan hadn't incurred any real growth since it was taken out and Mr S had been informed that he would achieve a greater return than if he remained in his existing personal pension plan.

Profile didn't uphold his complaint. It said it had advised Mr S to transfer his four existing pension plans to a new plan in 2016 because Mr S expressed dissatisfaction with the performance of those plans, and the charges he was incurring on them.

Profile said it recommended a new plan (pension plan 1) with lower product charges and lower overall charges but where Mr S would also receive its ongoing advice service. The service it provided would entail Profile periodically looking at his investments to ensure they were performing consistently well and were invested in keeping with his attitude to risk. Profile said it had assessed his attitude to risk and pension plan 1 was invested in funds which were in line with that risk.

Profile said following the first recommendation it had then contacted Mr S in 2020 to carry out a pension review. It said it had asked questions about his circumstances and carried out a new risk profile. The adviser had assessed his attitude to risk as "balanced".

Profile said it had recommended Mr S switch his pension plan to another provider because the costs were lower, and the make-up of the funds had a lower equity holding.
Profile didn't agree that it needed to certify Mr S as a high net-worth individual and obtain a self-certified sophisticated investors certificate. It said that requirement only applied to investors looking to invest in highly complex or non-mainstream pooled investments, which wasn't the case here.

Profile said pension plan 2 was a personal pension with a new provider invested in four index funds which were passive index trackers. Profile said these were the cheapest and simplest type of funds. So it said they weren't complex investments.

Profile acknowledged that pension plan 2 had decreased in value that year but said that was due to stock market conditions caused by world events. It said that each time it had given advice to Mr S, it had made it clear that the recommended pension investments could go up and down in value and that there were no guarantees in terms of the return.

Profile noted that since Mr S transferred his four original plans in 2016, his pension pot had increased by approximately £17,600.

Mr S's representative referred his complaint to our service.

Our investigator considered Mr S's complaint but didn't think it should be upheld. He looked at both the advice given in 2016 and the recommendation made in 2020.

The investigator said that it was clear from the phone call with the adviser in 2016, that the level of charges was important to Mr S and that he was disappointed with the performance of his four existing pension plans.

The investigator took into account that pension plan 1 had costs of 0.77 % (including the ongoing advice charge) whereas the two higher value plans within Mr S's four plans, had costs of 1% and 0.896% percent respectively. He also noted the relatively low bonus rates on those two plans.

The investigator was satisfied that the 2016 risk profile assessment of "medium risk" was in keeping with Mr S's answers to the risk questions he was asked. He also noted that Mr S agreed with the medium risk categorisation wording which was read out to him on the call. Overall he considered the 2016 recommendation wasn't unsuitable as the plan had lower charges and better potential returns and also allowed Mr S to crystalise the terminal bonuses available on his with-profit plans.

The investigator considered the recommendation made in 2020. He noted it was made as part of a pension review and as the advice provided by Profile was part of its ongoing advice service, there was no additional charge. He took into account that the charges on pension plan 2 were cheaper and the equity holdings slightly lower. He thought the adviser had properly explained the risk questions and the investigator agreed with the risk assessment.

So, he didn't think the funds selected were unsuitable for Mr S.

The investigator noted Mr S had indicated to the adviser that he was intending to retire at 67, so he still had about 10 years until retirement. He said as Mr S had also indicated to the adviser that he didn't intend to access his pension pot prior to retirement, he didn't think it was necessary for the adviser to address his income and expenditure at that stage. Because his retirement was still some time away.

The investigator also noted that there wasn't any requirement for a plan holder to have a high income or to be of a certain age to hold a SIPP.
Mr S's representative disagreed with the investigator's conclusions and said Mr S would like his complaint to be referred to an ombudsman.

As no agreement could be reached Mr S's complaint was referred to me for review.

What I've decided – and why

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

Mr S has complained about the recommendation made in 2020, to switch his PPP to a SIPP. However, I agree with the investigator that the first recommendation made by Profile in 2016, to transfer Mr S's existing plans to a new PPP, formed the background to the recommendation made in 2020. In addition, the risk exposure for Mr S's pension pot following the 2016 recommendation, was at a similar level to the level of risk posed by the SIPP recommended in 2020. So, I think it is right to also look at the pension switch recommendation made in 2016.

2016 recommendation

To recap, Mr S was in contact with Profile in 2016 to discuss his four existing pension plans. He was single, in his early fifties and had recently been made redundant from his job. He didn't have any specific recorded investment experience although he mentions making an investment in the 1990s and making a 14% return, in the phone call with the adviser. I also understand from his later contact with Profile in 2020, that he had been subject to an investment scam some years prior to the call. But in any event, I consider he had very limited investment experience.

I have carefully considered the telephone call between Mr S and the adviser, and I think it was clear that Mr S was disappointed with the performance of his existing pension plans and the charges he was incurring. He described the amount being deducted from his plan in charges as "*quite an insult*" and he also expressed dissatisfaction with the level of returns he was seeing on his annual statements.

Of the four pension plans Mr S held, two made up the vast majority of his pension pot and they were mostly invested in with-profits funds. I can see from the information obtained by the adviser at the time that the annual bonuses on those funds had decreased over the years, with no bonuses being paid in some years in respect of one plan. So, I can see why Mr S was unhappy with the returns he was achieving and was looking to find a pension plan with better potential returns.

Attitude to risk

I am satisfied on balance that the responses Mr S gave to the questions about risk were in line with the assessment of medium risk. He agreed that his goal was to maximise his long-term investment and he "*would be willing to accept significant short-term drops in value to achieve that.*" Mr S also said it was likely that he "*would take a significant financial risk*" and that he had put his money in a risky type of investment previously and made a considerable gain from it. Mr S also agreed with the statement that he would prefer his money to be safe from risk and that his friends would describe him as cautious.

The adviser informed him that his score was 32 points with 10 points being consistent with low risk and 50 points being high risk. The adviser also read Mr S a description of a medium risk investor (set out below) which Mr S confirmed he agreed with:
"*People in this category are balanced in their attitude towards risk. They don't seek risky investments but they don't avoid them either. They are prepared to accept fluctuations in the value of their investments to try and achieve better long-term returns. These portfolios will be subject to frequent and at times significant fluctuations in value*"

I am satisfied that the adviser explained the purpose of the questions and the outcome of the risk profile to Mr S comprehensively and gave him an opportunity to ask questions at various stages. I also think the assessment of his attitude to risk was reiterated in the suitability letter sent to him shortly after the call and the possibility that he could make losses on the recommended investment was also highlighted to him there.

I consider that Mr S was looking to invest in a pension plan that had the potential for greater returns, so he was willing to take some risk over the long-term to try to achieve this. I note the performance of the recommended plan over the preceding five years and the preceding year had been significantly higher than he had achieved on his existing plans. I think therefore that the funds recommended were in line with his attitude to risk and because this was a long-term investment, he had time to weather any fluctuations in value.

I also note that the adviser made it clear in the phone call that he couldn't say what the growth would be in the future, and I am also satisfied that the suitability letter reiterated that the level of return wasn't guaranteed, and highlighted that past performance wasn't a guarantee of future returns. I note this was also set out in the product illustration.

Charges

I consider the level of charges was important to Mr S and the recommended PPP investment had product charges of 0.37% . There was also the ongoing advice charge of 0.4 percent. The highest value existing plan was invested in with-profits, so the costs were implicit - however they were estimated to be 1%. The second biggest plan had charges of 0.896%. So, I am satisfied the product charges being levied on the two higher value plans he held, which made up the vast majority of his pension pot, were higher than those on the recommended plan, and the total charges were still less under the recommended plan. I also note the product charges on the two much smaller pots (both with a value under £1,500) were also higher.

In addition, the ongoing advice service was an additional benefit which would mean his plan would be kept under review to ensure it was still performing well and still in line with his attitude to risk.

I note that the recommendation and the reasons for that recommendation were set out in a suitability letter sent to Mr S after the telephone contact. I think that gave him an opportunity to consider and reflect on the recommendation he been given and satisfy himself he was happy to proceed on that basis.

I also note that there were no valuable guaranteed benefits contained within his existing plans that he would lose if he transferred them. In addition the largest of those plans wasn't accepting any further contributions, so he couldn't use it to make additional contributions to his retirement. And I think given his age he is likely to have wanted to have the option to make payments, as retirement was still several years away.

I can see one of the two smaller pots was a workplace pension where his employer had also made contributions. However, there had been very limited contributions in the preceding year. As Mr S had been made redundant, I think it more likely than not that he wouldn't have been able to make any contributions to that plan in the future and as I have said, this was a small pot with higher product charges.
I also note that the two largest plans held terminal bonus values, one of which was substantial. Those terminal bonuses weren't guaranteed so they could be reduced or withdrawn. I think therefore that by transferring those plans at that time, when terminal bonuses were being offered, Mr S was likely to lock in those bonuses.

I also take into account that the existing plan with the largest value was subject to an early exit charge. However, I am satisfied on balance that was set out clearly to Mr S in the suitability letter. I consider that Mr S was prepared to incur this charge (of about £600) because by switching he would lock in a terminal bonus worth around £30,000, reduce his product charges and have the potential to improve his returns. I note the pension switch report from that time showed the projected return on the new recommended PPP was higher than the projected return on his pension pot if he remained in his existing plans.

So, overall I am not persuaded on balance that the recommendation to transfer his four existing pension plans to a new personal pension plan was unsuitable taking into account Mr S's circumstances and objectives at the time.

<u>Pension review in 2020</u>

Profile contacted Mr S in August 2020, to provide a pension review as part of its ongoing advice service. The recommendation it gave to transfer his PPP to a new SIPP was provided as part of that service. So, there was no additional cost to Mr S in switching to the new plan. I note Profile has indicated that an advice fee was initially deducted in error but then promptly refunded.

<u>Attitude to risk</u>

I have carefully considered that review call and I am satisfied that the adviser asked Mr S about his circumstances and asked a number of questions about his attitude to risk.

I think the adviser carefully explained the meaning of the questions to enable Mr S to consider them properly and respond accordingly. Mr S confirmed that he was not looking to access his pension pot before age 67 and indicated that he was "*willing to take a little risk with some of my portfolio"* and that, he "*could cope with infrequent periods where my pension might fall in value*" in order to achieve higher long term returns than a savings account.

His assessment fell into the same category as his attitude to risk assessment in 2016. He was assessed as "balanced" which was described in the same way. The description of that risk level was read out to him by the adviser and Mr S confirmed it reflected how he saw himself and he was happy with the assessment. Overall I consider his answers fell within that category but were slightly more cautious than in 2016. This was more likely than not because Mr S was a little nearer to retirement in 2020.

Profile then sent Mr S a suitability letter which reaffirmed the description but noted that his attitude to risk had changed. I think this was an indication that he fell a little lower within that same category. And I think that is why the adviser recommended funds with a slightly lower equity holding than the plan he held at that time. Generally equities are deemed be riskier than bonds or cash given the potential for fluctuations in value - although I note that in recent years there have also been increased risks associated with bonds and cash. Overall, however I don't think the recommendation to reduce the equity holding in order to slightly reduce risk, for what was intended to be a long-term investment, was unsuitable in the circumstances.

I note that the suitability letter was followed up with a phone call in November 2020 and a further letter shortly after that call. So, I think there was ample opportunity for Mr S to consider whether he agreed with the assessment of his risk profile and to indicate to Profile if he didn't.

I also note that the make-up of pension plan 2 was that it was invested in 68.75% equities, 0.25% cash and the rest in bonds. So, the equity holding was a little lower than pension plan 1. That plan was invested in two funds with one fund (with a 70% equity holding) making up the vast majority of the plan. So although the second fund had an 85% equity holding, looking at the pension plan as a whole I consider there was a weighted average of approximately 70.3% equities over those two funds.

I note the illustration provided to Mr S with the second suitability letter in November 2020, gave an indication of the projected returns Mr S might be able to achieve and the impact of costs on the return. It was made clear in that illustration and in the suitability letter that returns weren't guaranteed and the value of his investments could go down as well as up.

Having considered the phone calls between Mr S and the adviser carefully, I am satisfied the adviser made no assertion that the returns on pension plan 2 would be higher than those in pension plan 1. I think what the adviser did say, is that *at that time* Profile was recommending that particular pension plan provider to its customers for a number of reasons which included its reputation, financial strength, and competitive charges.

<u>Charges</u>

I note the suitability letter sent to Mr S, in August 2020, also highlighted the adviser's view that the provider's charges for the new SIPP recommended by Profile were competitive. I consider that having low charges was something that had been previously raised by Mr S, in 2016, as being important to him.

I take into account that the product charges for pension plan 2 were lower than the product charges for pension plan 1 (by 0.14%). Charges have an impact on the return an investment makes, so I consider the level of charges was relevant to the decision of whether or not to switch from pension plan 1.

The adviser also pointed out to Mr S that there was an additional annual charge when income was withdrawn from the plan. However, the initial tax-free lump sum was excluded from this charge. Although, this was something to bear in mind, as Mr S wasn't intending to draw any income for another ten years, I don't consider that would have undermined the positive effect of the lower product charges for that period leading up to retirement.

I also note that the adviser made it clear that "*there was nothing wrong*" with the plan he was invested in and that he could keep that plan. So, I don't think that the adviser was negative about pension plan 1, or that they overly emphasized the benefits of the new plan.

Overall, I think the lower charges were attractive to Mr S and that was a significant part of the reason he followed the recommendation made by the adviser.

<u>Return on pension plan 2</u>

Mr S's representative has complained about the returns made on his plan since 2020. I note that the returns made between 2016 and 2020 were higher than those made between 2020 and 2022, when Mr S made his complaint. However, I think this has to be seen in the context of world events during that time, which had impacted market conditions. So, I don't think it would be fair to compare the two different time periods and thereby conclude that Mr S should have been advised to remain with pension plan 1. The recommendation was provided on the basis of what was known at that time and so I don't think it should be evaluated with the benefit of hindsight.

As I have said, the illustration provided to Mr S in 2020 set out the projected returns over the ten-year period, and those projected returns weren't as high proportionately as the return he had thus far achieved on pension plan 1.

Income, age and marital status

Mr S's representative has said his low income, age, and lack of financial support from others due to his being single, meant that a Self-Invested Personal Pension was unsuitable for him.

A SIPP is a type of personal pension which acts as a wrapper for funds invested within the pension. It can holder a wider range of investments than a personal pension but that doesn't mean that it *has* to hold unusual or higher-risk investments.

Having a lower level of income of itself doesn't mean that a SIPP is unsuitable, it really depends on what you invest within that SIPP. It may well be that self-investment isn't suitable for someone who has very limited investment knowledge and who is uncertain about what type of funds to invest in. However, in Mr S's case, Profile was advising him with regards to the initial investment and then providing an ongoing advice service. So, if the position with regards to the type of returns being achieved on those types of assets or in relation to their stability, changed, then Profile could give advice to Mr S to switch to different funds to rebalance his portfolio, or alternatively to hold onto assets in the short-term to avoid crystallising any losses.

Summary

Overall, I don't consider on balance that the advice given in 2020 to switch from pension plan 1 to pension plan 2 was unsuitable taking into account Mr S's circumstances and objectives.

I think pension plan 2 was in line with Mr S's attitude to risk and I take into account that pension plan 2 had lower charges and a slightly lower equity holding than pension plan 1. I also think that the adviser explained the rationale for their recommendation in clear terms and made it clear that Mr S could stay with pension plan 1 if he preferred.

My final decision

I don't uphold Mr S's complaint against Profile Financial Solutions Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 December 2023.

Julia Chittenden
Ombudsman