DRN-4333661

The complaint

Mr P complains that AISA Financial Planning Limited (AISA) failed to select the product and investment solution to meet his retirement needs. He says this meant he paid higher charges than he needed to and, ultimately, he saw a decline in the value of his plan due to the unsuitability of those investments. He would like to be compensated for his financial loss.

What happened

In 2020, just over a year before his 60th birthday, Mr P spoke with AISA regarding his retirement planning following a personal recommendation from a friend. He held a number of pensions – principally final salary schemes - but also held two stakeholder pension plans with another provider. In October 2020 he agreed to transfer those plans, valued at £229,985.36, to a new provider using AISA. Mr P says the idea was that AISA would invest his funds into an appropriate portfolio which it also managed. It was hoped this would provide some investment growth but without unnecessary risk, so that Mr P could withdraw funds of around £40,000 each year to live off until his final salary pensions became payable from age 65.

AISA says it didn't make a recommendation in line with this objective. It says its objective was to invest Mr P's fund for potentially greater investment returns.

In May 2021 Mr P had a review meeting with AISA. He later summarised the main points back to AISA from that meeting. He said his understanding was that the current fund value showed growth of 6.99%, and that the risk level of the portfolio was "4", where "1" was the lowest risk and "10" was the highest risk, but that he wanted to increase to level "6" for some of the fund. He also confirmed that it would still be possible to obtain the £45,000 that he wanted to draw each year by "burning through" the capital within the plan but without touching his final salary pension schemes.

In November 2021, during another conversation with AISA's adviser, Mr P expressed concern about the returns from his plan and thought they could be increased. But no changes were made to the composition of his plan.

In February 2022 Mr P withdrew £40,000 from the investment to fund some healthcare he needed.

Soon after Mr P became concerned about the performance of his plan and contacted his adviser to discuss what he should do. In June 2022 he decided to move the funds to cash. In agreement with Mr P, AISA also stopped taking its servicing payments at that time.
In July 2022 Mr P complained about AISA's management of his investments within the pension. He made the following points in support of his complaint.

- The suitability report that AISA completed noted his objective to "*implement an investment strategy with an aim to achieve some growth without exposing the money to unnecessary risk".* This led to his funds being invested into a cautious growth portfolio, but it had performed badly particularly when compared to other similar risk rated portfolios.

- He thought the reason for this poor performance was AISA's failure to track the markets and make necessary changes to the investments. He thought AISA lacked the required forward thinking to take corrective actions in a timely manner.
- If he hadn't moved his money into cash in June 2022 it would have most likely lost another 5-7% in value by this point.
- He calculated that he'd lost £14,473.65 – as well as the investment growth he would have received from an appropriately managed comparable portfolio – which he thought would have been around 5%. He wanted that full loss to be refunded to him.

AISA didn't uphold the complaint and made the following points in response.

- There was no dispute that Mr P was defined as a cautious (level 4) investor. Nor that the risk and the likelihood of investments falling and rising over time were also discussed during a zoom meeting.
- It was unable to agree that its adviser agreed with Mr P's intention to "burn down" the pension funds over a period of five years. It also said there was no evidence that the adviser had "guaranteed" investment returns to Mr P.
- However, it thought it feasible that, even using fixed interest instruments, Mr P's objective of "burning though" the money could have been achieved. So it wasn't reasonable to complain that the objective hadn't been met only a year or so into the "plan".
- It felt it had provided Mr P with a good level of overall service for which it had charged a discounted service fee.
- Mr P had failed to provide the information it requested in order to provide a full complaint response. It also thought that he had failed to engage and follow its further advice not to remain in cash – which would have rectified the previous negative position of his fund.
- It didn't think there was any evidence to show it had failed to proactively manage Mr P's investments, nor that it agreed to be compared to other third parties or that it provided any investment guarantees.
- A pension was the only product which would have allowed Mr P to take such large, tax efficient withdrawals. In addition, it believed Mr P had been advised to invest in funds which were appropriate for his aims and attitude to risk (ATR).
- It offered to provide Mr P with a further 12 months service at no cost.

Mr P and AISA subsequently exchanged further communications – but as Mr P remained unhappy with the outcome he brought his complaint to us. He said AISA had:

- Failed to select the right investment profile or product to meet his needs.
- Failed to select a solution for his objective of drawing down his funds over a five year period.
- Failed to provide him with any alternative product ensuring he incurred higher operating costs than other products which could have been chosen.
- Failed to provide accurate and factual advice.
- Failed to manage his investments which meant their value declined rapidly.

One of our investigators looked into the matter but didn't think the complaint should be upheld. She said we wouldn't usually uphold a complaint about the performance of investments apart from considering whether they were suitable for a consumer. In this case she thought the investments were in line with Mr P's ATR. She said AISA hadn't guaranteed the portfolio's performance or said it would outperform similar risk rated funds and portfolios from other providers.

She was satisfied AISA had managed Mr P's investments fairly and didn't think it was reasonable to compare past performance of other investments during short periods nor to expect a business to guarantee a certain growth rate.

Mr P didn't agree. He said he had many more emails which supported his claim and he reiterated what he thought AISA had failed to do regarding his investments. He thought AISA had poorly managed his money and given him poor guidance. He said this had affected his "*future and family life*" and undoubtably contributed to his current poor health. He also reiterated the five areas that he thought AISA had failed in which he had communicated to it when he made his complaint.

He wanted his complaint to be looked at by an ombudsman – so it was passed to me to review.

My provisional decision

In my provisional decision I said I'd reached a different conclusion to the investigator and that Mr P's complaint ought to be upheld. I made the following points in support of my findings:

- We wouldn't usually uphold a complaint on the basis of poor investment performance – but could consider this in the context of whether the recommendation was suitable. I thought that AISA had probably recommended an investment that was in line with Mr P's ATR, so I went on to look at the composition of the investment.
- Based on the asset allocation of the fund in 2020 and 2021 I thought the composition of the fund wasn't consistent with what I'd expect to see recommended to a cautious investor.
- I then went on to consider the general suitability of the transfer in the first place. I noted that Mr P wanted to draw around £40,000 each year from his plan until his 65th birthday. And looking at AISA's correspondence with Mr P I thought it accepted his reason for transferring. So I thought it was important that any recommendation should aim to put Mr P in a better position by transferring and drawing his income than by remaining in his existing plans. I looked at the advice across a number of areas.
- I wasn't persuaded that the diversification of funds that AISA offered through its portfolio was a good enough reason for Mr P to transfer considering his position at that time. I also noted that the charges on the new plan were higher and that it was unlikely they would have been recouped before Mr P began drawing his income. I didn't think Mr P had been made fully aware of the full effect of the charges and believed AISA ought to have provided him with a comparative illustration which would have given him an idea of which plan would have provided greater returns based on charges alone.
- I thought Mr P could then have carried out his own research of the historic data AISA provided which would more likely than not have led him to choose the plan which appeared to be in his best interest financially.
- I thought Mr P was equally as likely to have kept in touch with his existing provider as he might have kept in touch with his new adviser – so I didn't think this was strong reason to transfer.
- Likewise Mr P could have continued to make regular contributions to his existing plans as well as any new plan.
- I wasn't persuaded that there were sufficient compelling reasons for Mr P to have transferred and I thought he could have achieved his objectives by remaining where he was. I said AISA should compare the value of his pension against a benchmark

which reflected his ATR – as I couldn't be sure which funds he might have invested in had he remained within his existing plans and simply switched funds.

Responses to my provisional decision

Mr P accepted the provisional decision and reiterated that he believed he'd been misguided by AISA in respect of the products it recommended to meet his objectives and retirement strategy. He made three further points which he thought needed to be addressed in my decision.

- He wanted to know who would carry out the redress calculation as he thought it should be conducted by an impartial third party.
- Had he been provided with a comparison of the costs between the two pension alternatives he believed he would have chosen to stay with his existing provider. He wanted that outcome to be considered within my decision.
- He thought that, as he had no intention of remaining with AISA as a client, the offer of a free year's management fee ought to be included within his overall compensation award.
- While recently looking to switch his funds from cash to an alternative strategy he'd discovered an NS&I bond which has no risk and offers a steady growth in line with what he had expected. He believed this further undermined the investment strategy he held following AISA's recommendation.

AISA didn't agree with the decision. It made the following points in support of the view that its advice was suitable.

- It was clear that Mr P was dissatisfied with the performance of his existing funds and AISA had qualified that with reference to historical performance data. The potential for Mr P to remain within his existing funds was discussed and it also provided information on alternative funds that he could switch into within its report.
- It didn't believe that Mr P's (valid) concerns could be addressed by remaining within his existing plan and switching funds, but in any case he had rejected that idea so he wouldn't have accepted such advice.
- Mr P said he didn't want to take "unnecessary risk", but it was never agreed that he wouldn't take any risk. In fact, Mr P had agreed to a risk definition and accepted that he had the capacity to lose 15% of his fund value before he would "*feel uncomfortable*".
- On transferring Mr P would benefit from further financial advice and could become more actively involved in his investments.
- My comment around Mr P's actual retirement date was incorrect. AISA's suitability report stated that the date was "less than two years' time", but in any case the investment would continue for up to six years when the five year period over which Mr P wanted to make withdrawals was taken into account.
- Although I had extended the scope of the complaint to include suitability, both AISA and Mr P agreed that a switch away from the existing plan was appropriate and met his objectives.
- The regulator states that if a client requires ongoing advice then the recommended product should lend itself to that advice rather than being transactional – which would have been the case if Mr P remained with his previous provider. He would then have had to pay AISA ad-hoc fees for ongoing advice on his investments.
- I had incorrectly calculated AISA's charges by including the initial advice charge twice. I had also ignored the fact that AISA's 1% adviser charge would still need to be paid if it simply advised Mr P to switch funds within his existing plan. And Mr P would need to pay an additional charge every time he wanted additional advice regarding

his existing plan – which would have been considerably more than the ongoing adviser charge he paid following the transfer.

- It didn't accept my premise that Mr P would be unlikely to see the extra charges on his new plan recouped over the investment horizon. It thought that it was reasonable to transfer in the expectation that the relatively small increase in charges would be offset and greater performance potentially delivered.
- However, had Mr P continued with AISA's advice and not disinvested his funds, his portfolio would have outperformed the previous plan by around 3.18%.
- It was aware that, if he had stayed with his previous provider, when Mr P retired he would have had to seek advice if he wished to use his funds in a more flexible way. In fact, with the addition of adviser fees at that point it was likely that the transfer would have ended up being less expensive overall. It said that this type of transactional charging was seen by the regulator as an unsuitable method for the provision of an ongoing service and undermined the suggestion that suitable advice would have been for Mr P to remain in the previous plans regardless of whether he switched funds internally.
- There was no regulatory requirement for AISA to provide a comparative illustration. It didn't accept that, faced with the relevant information, Mr P would have chosen "*the path which would have appeared to be financially in his best interests"* as it wasn't clear what that path would be – especially as it had now proven that it was likely that his new portfolio would have provided potentially greater overall returns.
- It didn't think the issue here was whether the transfer was unsuitable as it thought its clarification around fees had demonstrated that it was in Mr P's best interest.
- It provided lots of evidence to demonstrate that the portfolio it recommended was in line with Mr P's ATR and that my assumption of its composition not being appropriate for Mr P's risk profile was incorrect. It also thought that Mr P had demonstrated he was prepared to take some risk and indeed had regularly "*looked at higher risk potential investments and raised queries around various potential investments, including Bitcoin."*
- It believed the only reason Mr P had brought his complaint was because of the losses he suffered due to global investment performance and then disinvesting against its advice.
- It disagreed with the benchmark I had used in my redress methodology because I'd suggested that Mr P should have remained with his previous provider and may not have needed to switch at all. It therefore believed the benchmark to be used ought to be Mr P's existing funds.
- It also believed I needed to consider Mr P's own actions when disinvesting and should adhere to principle 4 of the regulator's "*principles of good regulation."* It thought I hadn't taken into account Mr P's failure to adhere to AISA's further offer of advice and a risk review which would have allowed his investment objectives to still be achieved.

Having considered these additional points I was persuaded to review the redress formula that I'd originally set out. I proposed to revise my recommendation so that any losses would be capped up to the point AISA subsequently offered to review and reinvest Mr P's funds – which was July 2022.
I then had to consider how to bring any loss up to date and, in this case, because I was unsure what funds Mr P would have invested into – even if he'd stayed with his existing provider, I said the loss should be brought up to date using the benchmark that I applied in my provisional decision from July 2022 to the date of any final decision.

AISA continued to disagree with the reasons I'd given for upholding the complaint. It said it would require a full explanation for my decision including a response to the points it raised following my provisional decision. With regards to my proposed changes to the redress methodology, it thought that any attempt to bring the losses up to date after July 2022 should be on the basis of substantive reinvestment, which would support the use of the FTSE UK Private Investor Income Index at that point, as opposed to a 100% bond return.

Mr P explained that the reason he switched his investments to cash was because they appeared "*destined to continue (to spiral) at an ever decreasing pace".* He says he took the opportunity to monitor the funds he'd been invested in when he switched to cash and can now confirm they continued to fall, in some cases at an even faster rate than previously. He also made the following points in response:

- AISA had simply failed to respond effectively to changes in the markets over a number of trading quarters.
- AISA only offered to review his circumstances and re-establish his ATR when he complained. That was supported by its offer to provide the next 12 months of servicing at no cost. He thought this offer was an admission of AISA's own failings.
- He had lost faith and trust in AISA at this point in any case.
- He provided a pension report and wanted to demonstrate that his original investment was £241,680.26 not the figure I had stated. He wanted to ensure this figure was used in any comparative loss calculation.
- He hoped that AISA might review its practices and methods as a result of this decision as underlined by the experience and journey he had suffered.

I'll replay my provisional decision in full below as it forms part of this final decision, I'll then set out my final decision responding to the subsequent points that have been raised.

"AISA's investment advice and management of the funds

Two of Mr P's complaint points were that AISA failed to select the right investment profile or product to meet his needs, and that it failed to manage his investments properly which led to the reduction in his plan's value. So effectively this part of the complaint is about investment performance, and we wouldn't usually uphold a complaint on the basis of poor performance alone because the very nature of investments is that they can fall and rise in line with external market factors – for which I couldn't hold AISA responsible. Indeed in his email of 6 August 2020 to AISA where he set out his pension objectives, Mr P conceded that his pensions were around £17,000 short of where they needed to be to have fully recovered following losses incurred during the global pandemic – so I think Mr P was also fully aware that investments could fall as well as rise.

But I can consider whether the investments were suitable and in line with Mr P's ATR – so I've started by looking at that aspect of AISA's advice. Looking at the risk profile questionnaire that was completed by Mr P he was defined as a "balanced" investor, but a subsequent clarification was set out in the suitability report which said that after discussion it was agreed to change to risk grade 4 – which was "cautious".

So I looked at AISA's investment recommendation which was into a "cautious growth" portfolio. This would seem to be in line with Mr P's slightly amended ATR, however I've looked further into the composition of the fund at the time of the recommendation.

On 11 May 2020 the asset allocation of the fund was around 13% in property, cash, and "others". A further 41.88% was invested in equities, 16% in fixed interest and 29% in "commodities and energy". But from what I can see 25% of "commodities and energy" was "physical gold". With only a total of under 20% in cash and fixed interest, I'm not persuaded that the composition of the fund was broadly in line with someone with a cautious attitude to *growth. With nearly 42% in equities and nearly 30% in what appear to be other funds involving commodities – principally gold – and energy, I think this is more in line with an above "moderate" or balanced investor.*

And although I note the fixed interest element had risen to 32.52% by June 2020 and the energy/infrastructure part had reduced to 20.64%, I've also taken into account that the pension report that was sent to Mr P on 9 August 2021 would suggest that the asset allocation at that time was 62.62% equities, 20.43% bonds, 3.52% cash and 13 either "other" or "not classified". This wasn't dissimilar to May 2020 – if the energy and infrastructure sectors were included in the general equity category - so this would suggest that was a typical composition of the fund - which in my view wasn't consistent with the sort of recommendation I'd expect to see for an investor with a cautious ATR.

But I have to be mindful of the fact that I haven't been provided with a breakdown of the portfolio at the time of AISA's recommendation or at other points between October 2021 and early 2022. And I'm aware of the change in its composition between May and June 2020, so I can't discount similar changes happening along the way which might have shown the portfolio to be more "cautious" in its makeup.

The general advice to transfer Mr P's pensions

But there is in my view a more significant issue to be decided which arguably renders any debate relating to a subsequent portfolio which was used somewhat moot. And that is whether it was right for Mr P to transfer away from his existing arrangement in the first place. So before I decide to look in more detail at the cautious growth portfolio after the point at which Mr P invested, I've looked at the suitability of the overall recommendation to transfer. Mr P's complaint encompassed the question of whether AISA had provided a product to meet his needs and a solution to meet his objective of drawing income from the plan over a period of five years.

So, using our inquisitorial remit, and in order to get to the heart of Mr P's complaint about the suitability of AISA's recommendation, I've looked at the initial advice to transfer based on the information provided in the fact find and suitability report that AISA completed – as well as the illustrations.

Mr P says he made it clear to AISA what his retirement objectives were and it was agreed he would most probably draw down his pension funds, at the rate of around £40,000 net each year, over the course of five years from his 60th birthday. AISA says its main objective was simply to provide Mr P's pension fund with the potential for greater growth. It says his "original goals were to improve the performance over and above the funds that you had previously invested in yourself."

So I've started by looking at the retirement planning objectives as set out in AISA's covering letter for its suitability report of September 2020. It said:

1 -You would like your existing Pension money of £229,996 to be managed by an Independent Financial Adviser you trust and a firm who can offer competent customer service. You would like to be kept up to date on the performance of your invested money and be able to easily speak to your adviser by phone and email.

2 - You are considering using this Pension money to provide an income over the 5 years from age 60 to 65, at which point your Final Salary Pension schemes will begin paying a yearly income.

3 - You are not looking to make Pension contributions to this Personal Pension money at the current time but would like the ability to do so in the future if you wish.

4 - You would like to implement an investment strategy with an aim to achieve some growth without exposing the money to unnecessary risk.

Within the full body of the suitability report the adviser confirmed Mr P's existing situation and provision. He said he would "recommend a suitable strategy regarding your aim to building up funds ready for your retirement in less than 2 years' time, at some point around your 60th birthday. You are planning on stopping work and then living on the money held in your Personal Pensions to take you through to your 65th birthday, at which point you will begin to receive yearly income from three Final Salary Pension schemes."

In an email to Mr P dated 25 August 2020 the adviser said that "I appreciate that in the area of investment it will be speculative, but an indication based on my risk is ideally what is needed to see what the expected return would be. Key to this is the fact that this value of approximately £240K will be degrading by £40K (after tax) year on year and as such I have built in input boxes such that the related numbers can be reflected".

And in its replacement contract form document, AISA said Mr P "would like to obtain improved investment fund management within his pension as he is 58 and would like to retire at age 60. He plans to use the money built up in these Personal Pensions to provide an income of £46,200 per year for 5 years…"

These references are consistent with what Mr P says were agreed and what his objectives were. It seems clear the adviser accepted the pension would be eroded by around 20% each year and that the withdrawals would start in little over a years' time on Mr P's 60th birthday. All the evidence I've seen would support the idea that this was Mr P's clear retirement strategy as he would then be in a position (at age 65) to live off the far greater benefits from his defined benefit occupational schemes. I think this is important as I believe any recommendation AISA made needed to ensure he was likely to be in a better position by transferring and drawing his income than he would be by leaving his funds where they were and taking the same course of action.

It should be repeated that – although the adviser referred to Mr P's situation in two years' time at age 60, he was in fact only just over one year away from that position.

So I've looked at the reasons for transferring in more detail to see whether I think the transfer was justified.

<u>The breadth of funds and diversification</u>

AISA said that Mr P's existing pensions were invested across just two funds – bonds and diversified markets. It said this didn't offer sufficient diversification and the principal fund had underperformed against its peers.
It also said there were only a small number of alternative funds available for each plan, however AISA's own research states there were 30 funds available, and the plan provider has confirmed that same information.

But AISA's recommendation was primarily about building up Mr P's funds in just two years before the drawdown began, although I note the report talked about taking income from Mr P's 60th birthday – which was in fact, as I've said above, only around one year away. So with the possible extra costs involved, and the cautious ATR, I'm not persuaded that such diversification would have made a significant difference over such a short investment horizon.

And there were still a number of alternatives with the original provider which I think would have been suitable for that period of time – especially as switches between funds would have been free. I've looked at those funds and I think there is enough choice amongst each level of risk to be able to invest into a fund, or a number of funds, which would have been broadly in line with Mr P's cautious ATR.

Following a year or so of investment Mr P was looking to draw income at around £40,000 net per annum and was seemingly content with the notion of the fund being depleted by the income withdrawals. So in my view the preservation of invested capital which would enable such withdrawals would have been a more important factor in investing at that time than anything else – which wouldn't have required the level of diversification AISA had set out and could have been amply met by the funds offered by Mr P's existing arrangements. I'm not persuaded that the diversification of funds that AISA offered through its portfolio was a good enough reason for Mr P to transfer considering his position at that time.

Charges

Because of the limited investment horizon, and the need for AISA to justify the transfer in terms of Mr P being better off financially, the level of charges for each plan was crucial to putting Mr P in an informed position about the recommendation. I've seen that the charges of new plan were:

- *Annual provider's charge of 0.25%.*
- *An average of 0.64% fund manager charges.*
- *An initial adviser charge of 1% (£2,299) and an ongoing advice fee of 0.75%.*

I've calculated that to be 2.64% in the first year at least – which is £3,734.23 plus £2,299, or £6,033.23 in total. This is based on the charge that would have been levied on the full fund and then on the remaining fund after advice fees were deducted.

With regards to the previous plans there were no fees except for the annual management charge and "other" fees which made up the total expense ratio. AISA showed this to be around £1,150 within its own comparison figures.

AISA also accepted that its recommendation was more expensive by 0.46% of the fund. This amount of around £1,150 is money that would be lost from the pension and unlikely to be recouped over time due to the income withdrawals and planned depletion of the fund over five years. From the evidence I've seen – which shows AISA's recommendation to be more expensive, I'm also not persuaded the transfer was in Mr P's best interests from a charge's perspective. Because of the limited investment horizon and the cautious ATR Mr P demonstrated – which ought to have reduced the capacity for such a fund to provide greater investment returns, I think it's unlikely that the charges would have been recouped before Mr P began to withdraw the significant sums from his plan.

But the principal way that the issue of charges – and their effect on the plan - could have been resolved, was for AISA to have provided Mr P with a comparative illustration of the two plans. I know AISA said that it doesn't usually carry out such quotations because it doesn't think it's a fair comparison – and I accept that the regulator's guide to illustrations only allows for the same prescriptive growth rates to be used. But such illustrations do require each provider to set out all the charges involved so this would have provided Mr P with an idea of what plan might have given him greater returns based on charges alone.

Mr P could then have looked at the historic returns for AISA's recommended portfolio and compared this against the previous provider's funds – including any that he might have *considered switching into. This research would then have allowed him to incorporate that information with what was available from the illustration, which I think would have put him in a more informed position. Based on that process I find it more likely than not that Mr P, with his objectives already set, would have chosen the path which would have appeared to be financially in his best interests.*

The objective of "Wanting to be kept up to date on the performance of your invested money and be able to easily speak to your adviser by phone and email".

Whilst I accept that this could be seen as one of a number of "other" factors to consider when recommending transferring, I don't think Mr P would have seen this to be as important as being financially better off – as I've already explained. So, I would find it difficult to conclude that the transfer was appropriate simply because of AISA's ability to keep Mr P updated about his plan. Further, I'm not persuaded that AISA were likely to provide more information about Mr P's plan that his previous provider was able to do so by way of annual statements, or ad hoc investment information if requested, and there's nothing to suggest he was finding it difficult to contact his previous provider when necessary.

I think it's fair to say that Mr P was approaching a phase of his retirement where he wanted to be more involved in his plan – which included planning for the subsequent annual withdrawals. But in my view there's nothing to suggest he wouldn't have contacted his existing provider during this time had his pension remained with it.

Future pension contributions

AISA said that Mr P wanted the facility to make future pension contributions if needed but didn't intend to do so currently.

I can understand that Mr P might want this option available to him, but I've not been presented with any evidence to suggest this option wouldn't have remained available to him with his existing provider. So it's not clear to me that this was another reason to transfer with AISA which Mr P couldn't in any case have achieved with his existing previous provider.

Ongoing reviews and communications

Mr P spoke with AISA again in the summer of 2021 to review the position of his plan. At this time he was three months away from his objective of retiring and "burning through" his pension fund. During the review Mr P seemed disappointed with his returns and wanted to know if he could obtain greater growth - although no fund changes were subsequently made. But Mr P's email of 29 July 2021, which said "whilst I appreciate mine are set with a low risk profile", would suggest that he thought he was invested in low risk funds, and I note this assertion wasn't challenged by the adviser in his responses.

Indeed, an email from the adviser the following day said "If we were to move you in to a Balanced or Growth portfolio, risk grade 5 or 6 rather than 4, then you would have potential for a higher return but you'd have to accept that you could lose more money if markets fall. This is a big risk for you as you're looking to use this Pension money to pay a specific amount of money over the next few years."

I think this exchange showed that, while Mr P was perhaps misguided about what returns he could expect from a "cautious" investment in just over a year, there was an understanding and agreement between him and AISA that he didn't want to take too much investment risk and that he would be drawing significant levels of income from the plan each year regardless. I think this is important because it goes back to the original reasons for *transferring and reinforces that, with the objectives Mr P held, there needed to be a strong justification for this transfer. AISA needed to show that Mr P would most likely be better off after transferring and then be able to meet his objective of drawing down the entire fund within five years."*

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.

And having carefully considered the further submissions and evidence from both parties I see no reason to depart from my provisional findings. So I'll set out my reasons in full below.

Mr P's complaint to AISA was that, for a number of reasons, it hadn't implemented and then failed to manage an appropriate investment strategy to achieve his objectives. He said this resulted in poor investment performance and led to a financial loss to his pension plan. He wanted that loss to be refunded to him. In my provisional decision I said that we wouldn't usually uphold a complaint solely about investment performance because of the very nature of investments being that they could fall and rise according to a number of primarily external factors. But I said we could, under our inquisitorial remit, look at what lies at the heart of a complaint and consider the whole picture. In this case that meant I considered the suitability of AISA's transfer advice in respect of whether that might have caused the loss Mr P complained about.

So I first looked Mr P's ATR – which was agreed as "risk grade 4" after some discussion following completion of a risk profile questionnaire. This led to a recommendation of a "cautious growth" portfolio – which I think was broadly in accordance with Mr P's considered ATR. So I was satisfied that AISA had accurately defined Mr P's risk profile, based on the questionnaire and what else was known about his previous investment experience and his capacity for loss. So I think AISA's investment portfolio recommendation was broadly suitable although I then looked at the composition of the portfolio that was recommended.

In my provisional decision I expressed some concern that on certain dates the asset allocation of the portfolio didn't appear to be broadly in line with a cautious ATR. But I accepted that the makeup of the portfolio may have changed during those dates for which I hadn't been provided with a breakdown of its assets. But before I considered looking at the composition of the portfolio in more depth, I looked at the overall suitability of the recommendation to transfer and whether it was right for Mr P to transfer away from his existing arrangements in the first place. I thought this was a more significant issue to consider and rendered the discussion about the risk profile of the portfolio less material to the outcome of the complaint.

AISA has said that it was clear Mr P was dissatisfied with his existing provision and, after some discussion around alternative funds he could switch into through his existing provider, rejected that idea and wouldn't have accepted advice to do so. I can see that Mr P was introduced to AISA by a friend and I'm satisfied that he did want to speak with AISA to discuss his retirement options.

But Mr P had a clear vision of his objectives - which were to use up his existing personal pension provision in the five years leading up to when he could access his final salary scheme benefits. Of course, Mr P was interested in finding out whether a possible transfer and investment elsewhere would help him achieve that objective but provide greater growth on his funds in the meantime. But I haven't seen any evidence to support the idea that he was adamant he wanted to transfer and had rejected the alternative of switching funds within his existing provision out of hand.

AISA'S suitability report set out an appraisal of his existing plans, but it simply presented the reasons why it thought a transfer would be in Mr P's best interests. For example, the report stated that the plans only have "*a small number of alternative funds available in each Pension plan should you wish to diversify your money further. Now that the total pensions are worth more than £229,000 it would be advisable to introduce a larger range of funds and an actively managed investment strategy."* However, it also noted that there were 30 investment funds available through the existing provider.

Of course, I'm mindful that Mr P accepted the recommendation, but I'm not persuaded that he would have rejected an alternative recommendation to switch within his existing funds if he had been presented with more information about the actual funds available and their suitability to his agreed ATR. It's not possible for me to know the details of the conversation Mr P and the adviser would have had about the alternatives here – and I don't dispute that the matter was discussed as it was replayed in the suitability report, but I haven't seen any evidence to support the idea that Mr P was closed to the idea of remaining with his existing providers and potentially switching funds.

But AISA's recommendation was based on its belief that it was suitable for Mr P and that his objectives wouldn't be met by remaining with his existing provider (and funds), so it's the suitability of this recommendation that I've considered further.

Charges

AISA made a number of points in response to my view that the additional charges Mr P would pay on transferring were a principal reason for the recommendation being unsuitable. It said:

- I had "double counted" the initial advice charge Mr P would have to pay. I'd also ignored that he would have needed to pay the 1% advice charge to AISA even if he remained with his existing provider and switched funds. And he would have needed to pay ad-hoc fees every time he wanted further advice over the following years – which would have been more expensive.
- It thought the extra costs of transferring would have been recouped over the term and offset by greater performance.
- If Mr P had taken its advice to review his portfolio in July 2022 his portfolio would have outperformed the previous funds by over 3%.
- Mr P would have needed to seek advice about his (flexible) options with his existing provider when he retired. That provider, as far it knew, didn't offer advice so Mr P would have had to pay for further independent advice which would probably have meant the transfer would have ended up being less expensive

So I've carefully considered the documents which set out the charges of the existing plans and the new portfolio. In the illustration Mr P was provided with, within the section entitled *what are the charges*, it was noted that the initial adviser charge was 1%, the annual adviser charge 0.75%, and the custody charge 0.25% (£579).

In the suitability letter it said, "*the charges on the above plans are competitive but we are not moving the money based on charges and therefore did not project returns to a retirement age."* It noted the existing plans had fund annual management charges of 0.5% in both cases. So AISA accepted and confirmed the charges would be greater on transferring.

For the new recommendation the plan charges were a 0.25% annual platform charge, and an average yearly fund manager charge of 0.64% for the portfolio in question. I haven't included these charges as they're broadly negated by the existing plan's annual management charge.

So this leaves the AISA summary of charges as directly stated in the suitability report as:

"Summary of Charges

I explained the AISA Retirement Planning Initial Fee regarding this advice would be 1% of the invested amount, therefore based on a total of £229,996 this would be £2,299. The remaining total invested would be £227,697.

Ongoing Fee

AISA Retirement Planning will receive an ongoing fee of 0.75% which pays towards regular portfolio management and ongoing reviews. Based on a total investment of £227,697 this would be an ongoing fee of £1,707 per year, paid directly from the Pension.

All Key Features documentation was given to you. Your illustration was included and they detail the fee being received by AISA Retirement Planning for having given this advice."

Including the first annual custody fee of 0.25% would mean that in the first year a total of 2% would be taken from the fund simply in relation to additional charges on top of the annual management charges – which I haven't included for the reasons stated. So I don't agree that I've "double counted" the new fees that Mr P would have paid in the first year. That's because the first year would have included the initial charge, one ongoing adviser fee charge and the custody charge. It's coincidental that the last two charges total 1%, the same as the initial charge. So 2% would been taken from Mr P's pension by the end of the first year.

AISA has made a number of points about its adviser charge. It says that the regulator makes it clear that if Mr P requires ongoing advice then it should recommend a product that lends itself to this requirement. It also says that, as the previous providers didn't offer the option of adviser charging, then Mr P would have had to use AISA on a transactional basis for advice on those products – which would have led to an overall higher charging structure throughout the term of the plan. It even pointed to the fees he would need to pay in retirement in order to draw his benefits flexibly if he remained with his existing provider. Ultimately AISA concluded that it would be reasonable to recommend a transfer on the basis of a cost increase of between just 0.22-0.46%.

Much of AISA's justification about the charges came from its understanding that, whether he wanted to draw his benefits fully or simply make the withdrawals he intended to, Mr P's previous provider would have required him to seek financial advice to do those things – which would have led to him incurring "transactional" advice charges at a greater level than the ongoing charges that AISA set out as part of its recommendation to transfer.

So I asked Mr P's previous provider to confirm its position around these "events" that Mr P would have been likely to request. It confirmed that, because both Mr P's plans had fully flexible retirement options, he could have withdrawn any sum he wished without charge or without any advice being required.

It went on to state that it also offered an in house drawdown service which would have allowed Mr P to switch to a flexi access drawdown plan if required – again without the need for advice or any charge. So in fact, Mr P could have carried out his objectives of "burning through" his funds at the rate of around £40,000 per annum until the fund was exhausted. This not only means that he wouldn't have incurred any costs to meet those objectives, but because he would have exhausted his funds at retirement he wouldn't have had any requirement for any of the retirement advice or advice on "how to retire flexible" that AISA suggested he would need to pay for. There simply wouldn't have been any funds left to take advice on.

Indeed, because Mr P's objectives were so straightforward, I think that once he'd switched into more appropriate funds at inception – if he wanted to do that, Mr P would have been unlikely to require any further advice except to make his yearly request for income. The previous provider has already confirmed this could have been achieved without any charges. So I don't agree with AISA's suggestions that, over the five year term, Mr P would pay more in "transactional" charges than he had on transferring.

AISA also states that the ongoing adviser charge was ultimately 0.6% instead of 0.75% so again believes my calculations are wrong. But I can only base my decision on the evidence that I've been provided with and, in this case, the information that Mr P would have been provided with from the suitability report and the illustration – which both confirm the adviser charge at 0.75%.

Even if AISA has demonstrated these fees might not have been correct, Mr P could only have based his decision on the information he received at the time of the recommendation – which in my view showed that the new plan was significantly more expensive than the existing plans.

It then went on to conclude that had Mr P not switched to cash funds and continued to take its advice he would have seen an above 3% growth on his portfolio after that point in July 2022. AISA said it didn't think I'd taken into account Mr P's actions in switching to cash or his failure to adhere to its offer of further advice and a review.

But I don't think it was unreasonable for Mr P to switch his funds to cash at that point as I think that was as a result of "taking fright" at the position AISA had placed him in. And Mr P has told us that AISA's offer was only brought about by his complaint. He says its suggestion that it would also offer him 12 months free servicing supports the idea that the review was simply an attempt to keep his business. But in case that point isn't material with regards to the overall suitability of the recommendation, and I've made an allowance for Mr P's actions at that time by capping any liability of financial loss within my redress methodology.

The other reasons for transferring

AISA's recommendation was based on several other reasons it gave for the transfer. These were set out within my provisional decision. The first one was being kept up to date with investment performance and being easily able to speak to an adviser, and the second one was being able to make further pension contributions. And I accept that these are legitimate factors to consider when appraising the suitability of a transfer.

But I haven't been presented with any evidence to show that Mr P was unable to do these things through his existing provider. Mr P would have received annual statements about his plans which would have shown the investment performance and I think he would have been able to contact the provider if he needed any additional support– such as making his annual withdrawals. And there's nothing to support the claim he couldn't make additional contributions to the plans if he wished to – although Mr P's circumstances and goals would suggest this was unlikely to be a requirement in any case.

AISA said Mr P didn't want to take unnecessary risk but didn't suggest he wouldn't take *any* risk. It provided us with evidence to show that its recommended portfolio was in fact in line with his ATR (risk rated 4) and Mr P had spoken to it about "*higher risk rated investments* *including Bitcoin".* But I've already accepted that AISA's recommendation was probably in line with Mr P's "cautious" ATR and was suitable in that respect. I have raised doubts about the overall composition of the portfolio with regards to such a risk profile but, as I explained, I haven't considered this any further as I regard it as less material to the outcome I've reached than the other factors I've set out above.

I have though taken into account Mr P's ATR when setting out my redress formula and I'm mindful about what's been said about his capacity for loss and that he would "feel comfortable" losing around 15% of his fund value. But I can't ignore the fact that his ATR was agreed as "cautious growth" (rating 4) in the questionnaire that he completed, and this has been accepted and agreed by all the parties involved. Subsequent discussions were had around higher risk rated investments, but I think these were because Mr P was disillusioned with the investment performance he was achieving and was focused on ways to improve it. I haven't seen any evidence that would persuade me that Mr P's circumstances had changed between 2020 and July 2022 to the extent that his ATR would have altered significantly.

AISA said that the comments I had made around Mr P's actual retirement age were incorrect. It said its suitability report stated that the date was "*less than two years' time",* but in any case the investment would continue for up to six years when the five year period over which Mr P wanted to make withdrawals was taken into account. I did highlight what I believed to be an inconsistency in AISA's report as on the date it was written Mr P was one year and six weeks away from his retirement date. But I accept that the investment of his funds would be over an additional five years from his retirement date while he withdrew his funds at around 20% per year. I think I've already set out in detail why I believe that advice not to be suitable in this case.

AISA also said that there was no regulatory requirement for it to provide an illustration and it didn't think that, if it had, Mr P would automatically have opted to remain with his existing providers because of the information contained within the quotation. But, as I said previously, Mr P wasn't presented with a comparison of the likely investment growth from the two different schemes, which I believe would have given him an idea of what he could expect – using prescriptive growth rates set by the regulator, but based on the actual charges applied to each respective plan. I think that if Mr P had seen that he would be better off financially – albeit without taking into account the potential returns of the various portfolios and plans – he would have more likely than not chosen the path which showed him to be potentially better off financially, particularly as his objective was to make significant annual withdrawals from his fund. I think Mr P's primary reason for transferring would have been if it were shown to be in his best interest financially.

<u>*Summary*</u>

In my opinion, when looking at the overall transfer here, I don't think it was in Mr P's best interests. I don't think the available evidence supports the position that he would more likely than not be better off by transferring.
And I don't think Mr P was presented with information –such as an illustration for example, which would have put him in a more informed position to make his decision. I think the transfer resulted in Mr P incurring higher initial and ongoing costs and I think it's unlikely that these increased costs would have been recouped over the relatively shorter investment horizon.

I think Mr P could have quite amply achieved his objectives simply by remaining where he was. The provider has confirmed his plan had the flexibility to be able to withdraw the funds he wanted over the five year period. It's also provided a list of alternative funds – some of which were appropriate for his ATR - which would have been free to switch into. I find it difficult not to conclude that switching to another fund within his existing arrangement for just over a year until he started to draw his income wouldn't have been a better option for Mr P in the circumstances.

And as I've already explained in detail above, I'm not completely persuaded, based on the evidence I have seen, that the portfolio Mr P was recommended was composed of investments which were completely in line with his ATR.

For these reasons I think AISA should carry out the calculation below to see if Mr P has suffered a financial loss as a result of its transfer recommendation.

Putting things right

My aim is that Mr P should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I think that Mr P could have remained with the same provider and continued to use his stakeholder plans – but I can't be sure which investments he may have switched to, if indeed he needed to switch at all. So, as it's not possible to say *precisely* what he would have done, I've used a benchmark to reflect the cautious investment profile Mr P held. I'm satisfied that what I've set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

What must AISA do?

To compensate Mr P fairly, AISA must:

- Compare the performance of Mr P's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

- If the fair value is greater than the actual value there is a loss and compensation is payable.

- AISA should also add any interest set out below to the compensation payable.

- AISA should pay into Mr P's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If AISA is unable to pay the total amount into Mr P's pension plan, it 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 total amount 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 P won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age.

- For example, if Mr P is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr P would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If AISA deducts income tax from the interest it should tell Mr P how much has been taken off. AISA should give Mr P a tax deduction certificate in respect of interest if Mr P 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 plan	Still exists and liquid	Average rate from fixed rate bonds	Date of investment	Date that AISA said it would review Mr P's risk profile and funds in July 2022. That loss should then be brought up to date using the same benchmark (average rate from fixed bonds)	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant'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.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, AISA should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the Pension plan should be deducted from the fair 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 AISA totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

Both parties have put forward alternative suggestions for how I should bring any financial loss up to date, suggesting that Mr P wanted to take more risk after July 2022. But I haven't seen anything to show that Mr P's actual ATR had changed, I think his instincts were to discuss whichever investments he thought might improve the "poor" returns he was receiving

– not a reflection of his actual risk profile. I think the fact that he had switched to cash at that time confirmed his concerns. I think the loss should be updated by the same ATR that was agreed between Mr P and AISA in 2020 – which was a “cautious” ATR.

I note Mr A wanted us to confirm that the starting value of his pension in 2020 was in fact £241,680.26 as set out in a pension report he provided us with. But that report was from August 2021 – a year after the transfer was completed. All the evidence I’ve seen would suggest the value of the transfer was around £229,985, so I think this is the figure that will be applicable. Although AISA should be able to confirm this in its calculation by including copies of the actual transfer application or any other documents from the time which confirmed the actual amount transferred.

So I think Mr P wanted to achieve a reasonable return without risking much of his capital. The average rate for the fixed rate bonds would be a fair measure given Mr P's circumstances and objectives. It doesn’t mean that Mr P would have invested only in a fixed rate bond. It’s the sort of investment return a consumer could have obtained with little risk to the capital.

My final decision

For the reasons that I’ve given I uphold Mr P’s complaint. My decision is that AISA FINANCIAL PLANNING LIMITED should pay the amount calculated as set out above.

AISA FINANCIAL PLANNING LIMITED should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 8 January 2024.

Keith Lawrence
Ombudsman