DRN-4489348

The complaint

Mr W is represented. He says Profile Financial Solutions Limited ('Profile') gave him unsuitable advice in 2017 to switch from his ReAssure Group Stakeholder Plan (the 'ReAssure Pension') to an Aegon Self-Invested Personal Pension ('SIPP'), and that the investments recommended for the SIPP were unsuitable mainly because –

- His investment experience, attitude to risk and capacity for loss had not been properly assessed by Profile.
- His finances had not been considered, and the advice mismatched his overall circumstances.
- He had been induced into the transfer by Profile's promise of a rate of growth greater than what he could get in the ReAssure Pension.
- His SIPP had been unsuitably invested in non-standard investments.

Profile disputes the complaint and mainly says it was engaged to give focused pension review/switch advice; its recommendation matched Mr W's investor profile; it reduced costs for him and resulted in a standard investment portfolio with better prospects; and that, within the reduced costs, the SIPP gained him the benefit of an ongoing advice service that he previously did not have in the Reassure Pension.

What happened

One of our investigators looked into the complaint and concluded that it should be upheld for the following main reasons:

- He referred to factfinding evidence that showed Profile had not obtained basic information about Mr W's personal finances in the course of its advice to him – including about his income, expenditure, assets and liabilities. As a result, it made no attempt to understand his financial capacity or investment experience and it was not in a position to know whether (or not) its recommendation was in his best interest.

- Flexibility of benefits and ongoing advice were parts of the objectives stated at the time, but they were probably not objectives worth conducting the switch for. Mr W was 23 years away from retirement, so whilst flexibility of benefits was something that may serve him in the distant future (closer to retirement) it did not justify a switch at the time of advice. Furthermore, the ReAssure Pension already had available drawdown options in this respect. With regards to ongoing advice, such a service (at a cost) seems counterproductive against the relatively modest value of the pension and Mr W's circumstances.

- On the face of it, the recommendation resulted in a reduction of costs for Mr W – from an AMC of 1% to one of 0.33% (reaching a total charge of 0.73% after adding the 0.4% ongoing advice fee). However, this was only a slight reduction (of 0.27%) and when considered in the context of £471 initial advice fee he paid Profile, it was not a cost effective switch as he was told it was.

- The fund recommended for the SIPP had a lower FE fund rating than that held in the ReAssure Pension.

Profile disagrees with this outcome.

It does not accept criticism about not assessing Mr W's finances, it says that happened because it was instructed to give focused pension review/switch advice to address his immediate goal for a potentially better performing pension at lower costs. It says that is what it did, that the task did not require an overall financial review and that such a focused approach has been accepted, as reasonable, by this service in cases with comparable facts. It also argued that an assessment of his overall finances would have had little bearing given that no new money was being invested in the switch and given that he had over 30 years to retirement, which meant his financial capacity was bound to change over time.

With regards to the flexibility of benefits, Profile says its recommendation did not turn on this, that it was part of the added benefits to Mr W from the recommended switch and SIPP which he did not previously have in the ReAssure Pension – the other additional benefits being regular monitoring of the investment fund and Profile's ongoing advice service, all at a lower cost than he faced in the ReAssure Pension.

Profile also noted that whilst fund ratings were/are not the only measure it would consider in investment advice, in 2017 the fund recommended for the SIPP actually had a higher FE fund rating than the fund within the ReAssure Pension, and the illustration conducted at the time showed that the former had better prospects than the latter.

The investigator was not persuaded to change his view, and the matter was referred to an Ombudsman.

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.

There are a number of key elements to consider in terms of suitability (or otherwise) of an investment recommendation (including a pension related recommendation). They relate to properly determining the relevant investor's profile at the time of the recommendation (mainly, his/her objective(s), Attitude To Risk ('ATR'), investment experience and affordability status (including capacity for loss)) and properly determining a pension and/or investment solution that suitably matches the profile. It is also important that the investor is put in the position of being able to make an informed decision on the recommendation, so an adviser must ensure s/he understands the basis for these determinations and for the recommendation.

It is in the above context that the investigator focused on the obvious flaw in Profile's 2017 advice to Mr W. That being its failure to conduct a full Know-Your-Client ('KYC') exercise to obtain information about his financial circumstances.

As he said, obtaining and considering such information was/is a fundamental part of the regulatory responsibility upon Profile to ensure its advice was/is suitable. It neither obtained nor considered information about Mr W's financial circumstances. Its reason(s) and argument in this respect are as summarised above – essentially, it says it was instructed to provide focused pension review/switch advice only, it stuck to this task, in doing so it did not need to conduct a KYC exercise on Mr W's financial circumstances, and there is precedent within our past decisions which recognises that such an approach, in this context, is reasonable.

I have noted Profile's reference to the past decisions from this service that it considers to be relevant to the above argument. However, as the investigator explained, each case is addressed on its own merit, and the same applies to Mr W's. Profile says its reference seeks to highlight the need for consistency in our decisions, and I understand that, but the primary task remains one to address Mr W's case on its own merit.

There is no dispute that Profile's recommendation reduced *product* costs for Mr W, but there is a distinction to be drawn in this respect and I do so further below.

I understand and agree with the investigator's observations about the part of the recommendation that favoured flexibility of benefits from the SIPP. The ReAssure Pension already gave Mr W some drawing options and, given his age at the time (and the fact that he was around 30 years away from retirement), there was no immediate need to conduct a pension switch for this purpose alone. There was no short (or even medium) term value in doing so. To its credit, Profile appears to accept this. It has explained that its recommendation did not turn on the SIPP having better flexibility of benefits, instead it addressed the collection of objectives Mr W had, so its argument is that this was just one of the positive points about the SIPP that added value to the recommendation. On balance, I consider this a reasonable point.

There is evidence in the fact find documentation and in Profile's suitability letter to Mr W confirming that one of his objectives was to have annual reviews of and ongoing advice for his pension. I have not seen any indication from the time of advice that this was not the case, or that he disagreed with this objective as stated in the suitability letter.

He was entitled to define his own objectives. I note the point the investigator sought to make about whether (or not) a desire for ongoing advice justified the pension switch. However, I consider that Profile's point about addressing Mr W's collection of objectives applies here too. Available evidence is that they included maximising returns from his pension investments, ongoing advice on his pension investments and lower fees/charges. The pension switch was not recommended only because of Profile's ongoing advice service, but it was one of the objectives that the recommendation met.

Further to the above, and with regards to the flexibility of benefits and ongoing advice, I recognise that, based on the SIPP product alone, neither component increased costs. If both were to be viewed as completely unnecessary and useless to Mr W at the time of advice, the facts were that their existence in the SIPP did not hurt him, with regards to ongoing advice he had the option of using that service at any time in the future if ever he deemed it useful, and both (that is, the flexibility of benefits and Profile's ongoing advice service) came with a SIPP that cost him 0.27% less annually than the ReAssure Pension.

Having said the above, I agree with the investigator's observation on the costs to Mr W in the wider sense, after taking into account the initial advice fee. As he said, this shows that, overall, the recommendation was not cost effective for Mr W. This is evident in the distinction I mentioned earlier, and that I explain next.

Profile's terms of service confirm that the initial advice fee only applied if a pension switch recommendation was agreed and implemented, but no fee would apply if no new pension product was arranged. As such, Mr W could have avoided the fee if the pension switch recommendation was not made and implemented. Upon consideration of the real and full effect of the fee, this is an important point.

Mr W's ReAssure Pension had a relatively modest transfer value, around £9,500. The £471 initial advice fee, which was deducted during the switch, therefore amounted to around 5%

of the pension's value – and payment of the fee at the outset could be viewed as an immediate 5% loss in the pension's value. In this context, the benefit of the 0.27% annual savings from the SIPP was essentially wiped out from the start, and for almost 20 years thereafter.

This is not based on a precise calculation. I appreciate that, with growth over the years, it could have taken less time to reach total product savings (at the rate of 0.27% per year) that met and exceeded the cost of the initial advice fee (or the 5% loss of value in this respect). Of course, growth was never guaranteed and the opposite – that is, additional time for the total savings to recover the initial advice fee – would have been the case if the SIPP's investments were to under-perform over the years.

I use the above description to broadly illustrate the point that the effect of the *product* savings presented to Mr W was not the same as the notion of making *overall* savings. The isolated product savings were distinct from the overall increase in costs resulting from the recommendation. As things were, he would not have seen any benefit, in terms of overall savings, for almost 20 years because the initial advice fee significantly eclipsed the product savings. With growth or under-performance this period could have been less or more, but the point to note is that in real terms the solution that was recommended to him was actually more expensive for him (in the short to medium term, and until the total product savings exceeded the initial advice fee).

From the perspective as it was in 2017, and given that Mr W was around 30 years away from retirement at the time, it also seems more likely (than not) that during that time he would have sought to revise his pension arrangements even further. He clearly looked into doing so in 2017, so it is reasonable to assume he could (or would) have done the same again at some point in the future (before retirement). Depending on when that happened, and on any future changes he made to his pension arrangements, it is possible – if not probable – that the same specific SIPP would not be held long enough for him to experience anything other than an overall increase in costs (one that, in the end, was never offset by the product savings).

The question that follows is whether (or not) the pension switch was suitable in the aforementioned wider, and relevant, cost related circumstances. Overall and on balance, I do not consider that it was. In the same context, and on balance, I also do not consider that having ongoing advice and flexible retirement benefits justified the switch.

The underlying investment portfolio recommended for the SIPP was broadly comparable to that which existed in the ReAssure Pension. Details about both portfolios show that they could be viewed as matching a medium/balanced ATR. Judging by the fact he had the ReAssure Pension's portfolio before instructing Profile, this appears to be the ATR Mr W had prior to Profile's advice, and evidence shows this was the same ATR Profile assessed for him. It argues that the illustrations at the time showed better prospects for the SIPP portfolio. This is true, however the illustrations in its August 2017 Pension Switch report also show that there was no available past performance data for one of the portfolio's sub-funds (which accounted for almost half of the portfolio). Therefore, this called/calls into question the extent to which the portfolio's future projections could be relied upon.

I do not consider that the availability of a broadly comparable investment portfolio justified the more expensive (overall) pension switch solution. The ongoing advice service also came in the context of that solution. There is no evidence to show that ongoing advice was so desperately needed by Mr W or so necessary for his pension arrangement that it justified the additional expense. The same applies, with arguably greater force, in relation to the notion of flexible retirement benefits. They were not needed or necessary at the time and they did not justify the additional expense at the time.

But for the pension switch recommendation and its implementation, Mr W would have avoided an immediate 5% loss in the value of his pension; one that would potentially take him around 20 years thereafter to recover, through the product savings and, hopefully (but not guaranteed), without underperformance in the SIPP portfolio; and there was nothing in the recommendation (including the product savings) which, on balance, justified that immediate loss.

For the above reasons, I do not find that Profile's recommendation to Mr W in 2017 was suitable. For the same reasons, it ought reasonably to have advised him to retain the ReAssure Pension, and I have not seen evidence to show or suggest that he would not have followed such advice. Indeed, I consider it more likely (than not) that he would have kept the ReAssure Pension if he was advised to do so. He approached Profile for its professional advice and he gave no insistent instructions in this respect, so he would probably have followed advice.

Putting things right

Fair compensation

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

For the reasons given above, I take the view that he would have retained his existing pension arrangement, the ReAssure Pension Portfolio ('RPP').

The investigator found the same, and he referred to the use of the RPP's notional value, had the switch not happened, as the redress benchmark. I agree. However, I also cannot be certain that its notional value will presently be obtainable from the previous provider. Therefore, I am satisfied that what I set out below, including provision for an alternative benchmark (based on Mr W's profile at the time of advice) if the RPP's notional value cannot be obtained, is fair and reasonable redress.

What must Profile do?

To compensate Mr W fairly, Profile must:

- Compare the performance of his investment with the notional value if it had remained with the previous provider. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- Pay the compensation into his 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 Profile is unable to pay the total amount into his pension plan, it should pay that amount direct to him. 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 is not a payment of tax to HMRC, so he would not be able to reclaim any of the reduction after compensation is paid.

- The *notional allowance* should be calculated using his actual or expected marginal rate of tax at his selected retirement age. If he would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

- Provide the details of the calculation to him in a clear and simple format.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Aegon SIPP/BlackRock Aquila 75/25 Equity and Bond Index fund	Still exists	Notional value from previous provider/RPP ; or alternative benchmark stated below.	Date of investment	Date of settlement	Not Applicable (Compensation to be calculated to date of settlement.)

Actual value

This means the actual amount payable from the investment at the end date.

Notional [Fair] Value

This is the value of Mr W's investment, based on his medium risk profile, had it remained with the previous provider (in the RPP) until the end date. Profile should request that the previous provider calculate this value between the start and end dates.

Any withdrawal from the Aegon SIPP/BlackRock Aquila 75/25 Equity and Bond Index fund should be deducted from the notional value calculation at the point it was actually paid out 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 Profile totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically. Any payment into the fund should be added to the notional value calculation at the point it was actually paid in.

If the previous provider is unable to calculate a notional value for the RPP, Profile will need to determine a fair value for Mr W's investment using, instead, this alternative benchmark (applying the same adjustments stated above) – the FTSE UK Private Investors Income Total Return Index.

Why is this remedy suitable?

- If the previous provider is unable to calculate a notional value, then I consider the measure below is appropriate.

- Mr W had a medium/balanced ATR.

- The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It is a fair measure for someone who was prepared to take some risk to get a higher return. I consider that Mr W's medium/balanced ATR is broadly reflected in this benchmark, so it can be used as a fair basis to measure the sort of return he would have received with suitable advice.

compensation limit

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, £160,000, £350,000, £355,000, £375,000 or £415,000 (depending on when the complaint event occurred and when the complaint was referred to us) plus any interest that I consider appropriate. If fair compensation exceeds the compensation limit the respondent firm may be asked to pay the balance. Payment of such balance is not part of my determination or award. It is not binding on the respondent firm and it is unlikely that a complainant can accept my decision and go to court to ask for such balance. A complainant may therefore want to consider getting independent legal advice in this respect before deciding whether to accept the decision.

In Mr W's case, the complaint event occurred before 1 April 2019 and the complaint was referred to us after 1 April 2023, so the applicable compensation limit would be £190,000.

decision and award

I uphold Mr W's complaint on the basis stated above. Fair compensation should be calculated as I have also stated above. My decision is that Profile must pay him the amount produced by that calculation, up to the relevant maximum.

recommendation

If the amount produced by the calculation of fair compensation is more than the relevant maximum, I recommend that Profile pays Mr W the balance. This recommendation is not part of my determination or award. Profile does not have to do what I recommend.

My final decision

For the reasons given above, I uphold Mr W's complaint, and I order Profile Financial Solutions Limited to calculate and pay compensation to him as set out above.

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

Roy Kuku
Ombudsman