DRN-3709498

Financial Ombudsman Service

The complaint

Mrs H’s representative has complained, on her behalf, that The Pension Review Business Limited (PRB) unsuitably advised her to transfer her personal pension plan into a Self Invested Personal Pension (SIPP), and that she’s suffered financial loss as a result.

What happened

Mrs H was invited to undertake a review of her pension arrangements by PRB in early 2019. At that time, Mrs H was 47, married and employed. She had an intended retirement age of 67.

In a suitability report dated 4 April 2019, Mrs H was assessed as having a “low medium” risk attitude and her existing pension plan with Aviva was recorded as being invested in a fund with 80% equity investment. It was valued at just under £18,000 and Mrs H wasn’t making contributions to it at the time, nor did she envisage doing so in the foreseeable future.

PRB advised Mrs H to transfer to a SIPP with Intelligent Money. In support of that recommendation, it said that Mrs H’s existing plan was competitively priced in terms of charges, but that improved performance could be obtained through the replacement portfolio’s periodic rebalancing of assets. It also noted that Mrs H had been unhappy with the volatility and risk associated with her Aviva plan.

PRB recommended that Mrs H invest in the IM Optimum Growth and Income Portfolio, which had an annual management charge of 0.87%. The annual SIPP charge would be 0.95% of the value of the funds.

The suitability report indicated that there would be a slight reduction in death benefits upon transfer, due to the initial charges taken from the plan. It also noted that the performance of Mrs H’s existing plan had been 46.19% over the previous five years, whereas the recommended replacement fund had produced a return of 41.02% over the same period.

And due to the effect of charges, at the presumed growth rates of -1.3%, 1.7% and 4.7% pa, the new plan would need to outperform the existing plan by 1.01%, 1.02% and 1.07% pa respectively.

However, the report said that it had been agreed with Mrs H that this didn’t represent an unrealistic proposition. It further said that the costs of the new portfolio were significantly more than those of Mrs H’s current plan, but that the reasons for switching were clearly documented – in that she would receive ongoing advice from PRB and the benefits of the way that the new fund and investment would be managed on her behalf. The costs as set out and included in the required growth figures didn’t, however, include the further cost of ongoing advice.

The transfer completed on 18 April 2019.

Mrs H’s representative complained to PRB in August 2021, saying that Mrs H had incurred a loss of around £500 and wished to be placed back in the position she’d now be in but for the recommendation to switch. But PRB rejected the claim, saying that the recommended switch had lowered Mrs H's exposure to investment risk and maintained her required risk level through the portfolio's rebalancing feature. This resulted in her being less affected by any turbulence in the financial markets.

Further, PRB said, the replacement plan had performed well and was covered by the Financial Services Compensation Scheme.

Dissatisfied with the response, Mrs H's representative referred the matter to this service. One of our investigators considered it and thought that it should be upheld.

In support of that position, she noted that Mrs H hadn't been actively seeking to switch her pension until she'd been contacted by PRB, and then acted on its advice.

She considered the existing and recommended funds, but wasn't persuaded that the replacement portfolio was at significant variance, in terms of equity content and its "passive" nature, to Mrs H's existing fund. She also said that the existing fund's risk rating of "4 out of 7", where "7" was the highest risk, wasn't unsuitable for someone with a low medium risk attitude.

Furthermore, the investigator said, even if the existing fund was deemed to present too high a risk, the first steps should have been to determine whether there were lower risk funds in Mrs H's Aviva plan. But she hadn't seen evidence of this.

The investigator acknowledged that the SIPP portfolio gave Mrs H the opportunity to change her investment strategy over time, but this would have required ongoing management and advice for which she would have been charged.

With specific regard to the charges and fees, the investigator noted the overall 0.62% pa charge being levied on the existing plan (0.4% provider charge and 0.22% fund management charge), compared to the 0.87% pa fund charge and 0.95% pa SIPP charge of the new arrangement. In addition to this, Mrs H paid £650 in upfront adviser fees and would have paid a 0.6% pa ongoing advice fee.

According to illustrations produced, at Mrs H's retirement the SIPP would have around a 19% lower value than the Aviva plan at the same growth assumptions. Although the investigator noted PRB's comments that the SIPP would enjoy enhanced performance to counteract the effect of increased charges, the investigator was unconvinced by this argument, given what she considered to be very similar asset splits in the investment funds.

The investigator also didn't think that Mrs H would have needed the ongoing regular advice service, given that she was still 20 years away from retirement and that the replacement portfolio was meant to be managed on her behalf.

And although the investigator acknowledged that Mrs H had signed the fee agreement and had been made aware of all costs and charges, she nevertheless noted that Mrs H was an inexperienced investor who'd been "cold called" rather than having actively sought a review of her pension arrangements. She said it was clear that Mrs H relied heavily on PRB's expertise to make her decision to switch her pension.

The investigator therefore recommended that PRB compare the notional value of Mrs H's Aviva plan had she retained it with the actual value of the replacement SIPP. If there was a loss, PRB should either make this up in the SIPP, or pay it to Mrs H with a notional deduction for income tax.

PRB disagreed, however, saying that it had rated the Aviva investment fund as “6 out of 10”, where “10” was the highest risk, and that it was made up of 80% equities and 20% bonds. Mrs H’s risk rating was “5 out of 10”, and so it reduced her exposure accordingly. And a lower risk fund would be expected to have lower growth than a higher risk fund, but with diminished downside risk.

Mrs H had access to all the relevant documentation throughout the process to be able to decide whether the switch was right for her, PRB said, and at no stage did she voice concern over the proposal.

PRB acknowledged that, although it could have investigated a lower risk fund within the Aviva plan, this would have meant lower growth for the plan and Mrs H liked the idea of how “target dated” funds worked. Aviva didn’t have the option of a target dated fund which PRB would have considered suitable for her.

As to the matter of charges, PRB said that the 0.95% charge referred to in the suitability report was a mistake and that there was only a 0.87% fund charge on the plan. But this administrative error wouldn’t have caused Mrs H any loss, it said. And even if Mrs H had remained with Aviva, she had requested a higher level of service and so an ongoing adviser fee would have been payable.

PRB also said that Mrs H hadn’t been “cold called” and was in fact an existing client.

However, although PRB said that it rejected the investigator’s conclusions, it said it had nevertheless conducted the loss calculation line with the redress suggestion. This had demonstrated that, on the basis that Mrs H would have switched into a lower risk fund with Aviva – the Vanguard 60% Equity fund instead of the previous Vanguard 80% Equity fund – and including ongoing fees, Mrs H had in fact gained by switching to the SIPP, in the amount of around £900.

The investigator acknowledged the points made by PRB, but wasn’t persuaded to change her mind. In particular, she remained of the view that the actual difference between Mrs H’s Aviva investment and that in the SIPP didn’t justify the switch. She also didn’t think that the available evidence supported the position that, prior to being contacted by PRB, Mrs H had concerns about her pension arrangements.

The investigator also said that Mrs H didn’t recall being an existing client of PRB and that she was cold called. She requested evidence that Mrs H had contacted PRB to seek advice.

Regarding the loss calculation undertaken by PRB, the investigator clarified that she hadn’t concluded that Mrs H should have switched into a lower risk fund – rather that if it had been concluded that she should have moved into a lower risk fund, there would likely have been options within Aviva’s range to accommodate this. But she remained of the view that Mrs H could suitably have remained in her existing fund.

In response, PRB submitted a Services & Payment Agreement it had set up with Mrs H in 2014 when the Aviva plan was established. It said that this demonstrated that Mrs H was an existing client when it reviewed her pension arrangements in 2019.

It further considered that the change in Mrs H’s attitude to risk was a valid reason for the switch, and that the regulator took a dim view of advisers disregarding a client’s attitude to risk and change in personal circumstances. The switch was the most suitable course of action, given her change in circumstances and reduced attitude to risk.

PRB also questioned the motivation behind the complaint, saying that Mrs H remained a client and had never previously raised any concerns about the advice provided. It considered that the complaint was likely led more by the representative than Mrs H.

In subsequent correspondence, PRB wished to bring attention to a decision which had been issued which it considered was very similar to this, and in which I, as the deciding ombudsman in that case, hadn't upheld the complaint.

As agreement wasn't reached on the matter, the complaint was referred to me for review.

I issued a provisional decision on the matter on 24 August 2022, in which I set out my reasons as to why I thought the complaint should be upheld. The following is an extract from that decision.

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

I'll firstly address the comments relating to the other decision which PRB has referenced. And whilst I do accept that there will sometimes be some similarities between certain cases, as PRB rightly notes itself, each case is determined on its own merits – regardless of whether such cases have been brought by the same representative.

It's also not for me to second guess the motivation behind the complaint here. Mrs H has brought her complaint to this service, as is her right, and so the complaint must be considered on the basis of its merits.

Addressing those merits then, I don't think I need to dwell on the matter of whether Mrs H was cold called or had been an existing client of PRB. The evidence provided by PRB does suggest that it had assisted Mrs H five years earlier, but the fact remains that I haven't seen any evidence that indicates that Mrs H initiated the contact in 2019. As such, I think the investigator's comment that Mrs H wasn't herself proactively expressing concern about her existing pension arrangement is valid. And more broadly, irrespective of who contacted whom, PRB still needed to provide suitable advice.

The switch couldn't reasonably be justified by a straightforward swap of one type of pension arrangement to another, which had the same objectives and investment risk. Even if I accept what PRB has said about the 0.95% charge being a mistake, the charges in the replacement SIPP were still higher than those in the Aviva plan. And the effect of this was exacerbated by the initial fee and any ongoing advisory fee.

So there had to be a material, and crucially, justified, difference in the replacement plan for there to be a sound rationale to switch. The investigator has said that the funds were broadly the same, and that any slight difference wouldn't have justified the costlier replacement plan. PRB has countered that both Mrs H's circumstances and attitude to risk had changed, which was why the reduced risk fund was right for her.

I've therefore thought about this carefully. Firstly, I agree with the investigator that any such required reduction in risk could reasonably have been managed by simply changing the investment fund within Aviva. I don't think Mrs H's circumstances or investment experience meant that she needed a particularly exotic array of funds to choose from, and given the fairly modest fund value, I don't think the kind of elevated cost associated with "target dated" or "lifestyling" funds would reasonably have been justified. It's likely that there would have been a suitable fund from which to choose, as has in fact been evidenced by PRB's loss calculation, if it were the case that Mrs H needed to reduce her risk exposure.

PRB has said that choosing a lower risk fund within Aviva would have limited the growth *opportunities, but even in a portfolio which employed target dating and lifestyling, which as I've said above, I don't think was justified given the cost, the size of the pension fund, and Mrs H's remoteness from retirement, the reduction in risk exposure would have done the same. Lifestyling in particular can be extremely beneficial, but a more expensive plan option which included this type of facility could have been explored nearer to Mrs H's retirement date.*

I've therefore then thought about the nature of the review and what PRB has described as the changes in Mrs H's circumstances and attitude to investment risk which, it says, justified a move into a fund with reduced risk.

In doing so, I'd firstly repeat what I said above, about the evidence not supporting the position that Mrs H contacted PRB for the review. Therefore, when phrases such as "we agreed you wanted me to advise on the following" appear within the suitability report, I think it's fair to conclude that such discussion points are likely to have been introduced and led by PRB. And as to the areas for discussion themselves, I think it's again more likely than not that PRB, rather than Mrs H, introduced concepts such as portfolios which rebalance their asset holdings, or the benefits of lifestyling and "target dated" funds.

I've seen no mention of a change in Mrs H's circumstances in the suitability report. I have, however, noted that she was concerned about the volatility she'd witnessed in her pension fund. I think, given what happened to financial markets between 2014 and 2019, this is entirely plausible. So I accept that Mrs H would have been comfortable with the "low medium" categorisation, and that she may herself have discerned a difference between that and her attitude to risk five years earlier.

PRB had risk rated Mrs H's existing fund as being "6 out of 10", whilst Mrs H's "new" attitude to risk was judged to be "5 out of 10". I think this type of differentiation can be quite marginal, but I do take on board what PRB has said about needing to correctly match the fund to the expressed attitude to risk

One point (out of ten) of difference here was a significant contributory factor in Mrs H being moved to a plan which, on the face of it – due to the higher costs involved – would mean that in environments of the equivalent levels of growth, her pension fund would be almost 20% lower than it would have been had she remained with Aviva.

And Mrs H wasn't the professional here. She may have agreed with what she was being told by PRB, and consented to both the fee arrangement and the switch itself. I also note in the suitability report that PRB informed Mrs H that she should ensure that she was happy with the recommended fund and that the choice of fund could affect the charges payable.

But the option of simply switching funds within Aviva was notably absent from the suitability report. In my view, had it been explained to Mrs H that her change in risk attitude, and the proposed switch to the SIPP and recommended fund, might now result in the above outcome - but that she could switch to a lower risk fund with Aviva at no additional cost - I think it's more likely than not that she would have remained with Aviva, at least for the time being.

I also don't think that Mrs H needed a regular ongoing advice service, given the size of her pension fund and the impact that such a service would have on her overall finances. PRB hadn't reviewed Mrs H's pension arrangements for the five years since 2014, and so I must assume that it's also of the same view. As I've said above, Mrs H was 20 years from retirement. More regular reviews could have been implemented nearer her retirement date, or on an ad hoc basis as PRB thought necessary in response to changing market conditions.

Putting things right

My current view is that, in response to her concerns about the volatility in financial markets, Mrs H should have been advised to reduce her exposure to risk within the Aviva plan. The fund identified by PRB as being suitable for the purpose doesn't on the face of it seem unreasonable. It's the same type of fund, but with a reduction of the equity (so the volatile aspect) content to 60% from 80% in the previous fund. But I don't think any fees beyond those which would in any case have been taken from within the plan should be deducted within the calculation."

Mrs H accepted my provisional findings, but PRB didn't, saying the following in summary:

- It noted my comments about the motivation behind Mrs H's complaint, but said it still felt strongly about the conduct of Mrs H's representative.
- It worked for a client/individual and it therefore charged for the time and advice it had given. Mrs H had agreed that she'd like to have ongoing advice and felt that she'd benefit from it. This would have kept Mrs H regularly informed, with twice yearly statements, and provided her with the opportunity to ask questions and make changes to her plan.
- At each review, Mrs H had the opportunity to decline the service if she wasn't finding it useful. Mrs H was keen to receive the reviews, and fund size shouldn't dictate whether an individual has access to reviews. If this was the case, however, it enquired as to the cut off size for a pension fund for this kind of service.
- It had used its research to determine that 80% equity exposure was too high for someone like Mrs H with a level "5" risk attitude. This was why it recommended the intelligent money fund, which was a UK based company and would provide better service if "Brexit" affected the way people were able to contact overseas-based firms.
- It had better diversification than the other Vanguard funds, which included property, gold and cash. This meant that Mrs H was better protected in case of market declines, which was of concern to her.
- Clients with small funds should be treated in the same way as those with large funds, and everyone should have the opportunity to be well informed and looked after. Small funds in fact needed more attention as the client would be reliant on this for retirement.
- It had considered other funds available within the existing plan, but Mrs H wasn't happy with the level of service she'd received from Aviva and so it recommended a new provider. And if it had chosen the Vanguard 60% Equity fund, this wouldn't have been adding the diversification Mrs H had been interested in.
- Mrs H's remoteness from retirement was exactly why she could benefit from a target dated fund, and this was a facility employed by many employer pension scheme providers such as Royal London and B&CE.
- I'd relied upon my opinion in expressing concern over the suitability of target dated funds for Mrs H, rather than adhering to the regulator's principles and guidance. It would be surprised if an IFA "dropped" a client because their pension had fallen below £20,000. It queried whether this would be treating customers fairly and it felt the regulator would also be concerned at this stance.
- It agreed that Mrs H wasn't the profession party, which is why it had become involved. Full consideration had been given to the options to switch funds within Aviva and Mrs H had the option *"to provide [Mrs H] with the flexibility and range of options to control how [Mrs H's] retirement pension fund is invested".* Therefore, had

Mrs H wished to move funds within Aviva, she was aware that she could do so based on the Aviva key features document.

- In its suitability report, it had mentioned that Mrs H was very unhappy with Aviva and that it hadn't been able to provide her with advice, either in the past or in the future. No-one at Aviva was trying to help Mrs H, and it therefore recommended a new provider which Mrs H was happy to seek out from the "whole of market" advice.
- It disagreed that Mrs H didn't need an ongoing regular review service, as this was explained to her and she was happy to proceed. Although it acknowledged that Mrs H was 20 years from retirement, she could access the pension benefits from age 55 onwards. This therefore needed to be factored in, in terms of how it might affect Mrs H's retirement fund.

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.

I've noted PRB's further comments, and to firstly address the point relating to the ongoing advice service, I accept that this can be beneficial, and that the size of a pension fund in itself shouldn't be the determining factor as to whether this is provided. And if it's charged as a percentage of the fund rather than a fixed amount, I agree that the cost is neutral, irrespective of the size of the fund.

But what I actually said in the provision decision was the charges in the replacement plan seemed in any case to be higher than those in the previous plan, and that this had been exacerbated by the ongoing costs. Had Mrs H deemed such a service to be of value, this could have been provided on her existing plan, and with a simple fund switch into something more appropriate.

However, I did also note that PRB had seemingly not considered regular reviews to have been of importance in the years between 2014 and 2019. And as I said in the provisional decision, other than being contacted by PRB in 2019, it's unclear as to what otherwise might have prompted Mrs H to conclude that she needed that ongoing service when she hadn't in the previous five years.

And I think the same principle applies to her recorded unhappiness with the level of service provided by Aviva. Surely if Mrs H had been so dissatisfied, she would herself have sought financial advice rather than relying on an IFA to contact her.

As I said the provisional decision, it's likely that Mrs H would have been well suited to a different fund with Aviva, without needing to switch to a new, costlier plan. I've noted the comments about the enhanced customer service from a UK based company rather than an overseas one, but I think Aviva would have been able to answer most queries that Mrs H might reasonably have had about her plan or the fund in which it was invested. Again, I don't think the available evidence supports the position that, prior to being contacted by PRB, Mrs H had been particularly perturbed by any difficulties she might have had accessing information about her pension funds.

Similarly, I think the diversification that Mrs H apparently sought within her pension fund could have been adequately addressed within one of the pension funds provided by Aviva. Turning then to the matter of target dating and lifestyling, I remain of the view that, given the size of Mrs H's fund and the number of years to retirement, she simply didn't need to be paying the additional costs of these features. Lifestyling might reasonably be employed perhaps ten years out from retirement, but Mrs H was 20 years away from this and had demonstrated no inclination to access her pension benefits from age 55.

And to be clear, this isn't a matter of a client such as Mrs H having no access to financial services simply due to the size of her pension fund, as I think PRB may be suggesting that I've implied here. It's a matter of proportionality and taking into account all of Mrs H's circumstances to settle on a retirement solution that works for her. And in this instance, Mrs H was a mainstream investor, with no particular investment or pensions experience, and who would have benefitted most of all from a low cost plan which would have optimised the growth potential of her pension fund, without the additional costly features which I think have been unnecessarily, or certainly prematurely, included here.

As to the option of the fund switch with Aviva, which I said hadn't been explored in the suitability report, but would have been the rather more obvious and cost effective – and suitable - solution for Mrs M, PRB has said that the excerpt its quoted above is evidence that Mrs H was aware that she had this option. I'm afraid I disagree. This wouldn't in my view reasonably have explicitly drawn the attention of an investor such as Mrs H to the possibility of switching within the Aviva plan. This needed to be covered in the suitability as not only an option, but, for the reasons given in both this and the provisional decision, *the* suitable course of action for Mrs H.

As such, my view remains that the direction in the provisional decision is the right outcome here. I've thought carefully about the matter of reviews, but although, as set out above, I accept that they can be of value to every investor, I remain unpersuaded that Mrs H needed to pay an additional amount for these. I think fund growth was the more pressing need, and that a proportionate solution for Mrs H would have been the right type of pension fund, which could then have been revisited every few years, as had seemingly been PRB's approach previously, to determine whether this was still appropriate.

Facilities such as lifestyling could then have been discussed nearer to Mrs H's planned retirement date.

Putting things right

And so The Pension Review Business Limited should determine, as at the date of this decision, the notional value of Mrs H's pension fund had she remained with Aviva but had switched into the Vanguard 60% Equity fund at the date of the transfer to the SIPP.

This should be compared with the actual current value, again at the date of this decision, of Mrs H's SIPP. If there's a loss, the compensation amount should if possible be paid into Mrs H's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mrs H as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

25% of the loss would be tax-free and 75% would have been taxed according to Mrs H's likely income tax rate in retirement – presumed to be 20%**.** So making a notional reduction of 15% overall from the loss adequately reflects this.

My final decision

My final decision is that I uphold the complaint and direct The Pension Review Business

Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs H to accept or reject my decision before 19 October 2022.

Philip Miller
Ombudsman