DRN-4222469

The complaint

Miss T complains that Profile Financial Solutions Limited trading as Profile Pensions (Profile) gave her unsuitable advice to transfer her two Personal Pension (PP) plans held with a provider I'll refer to as provider R, to a Self-Invested Personal Pension (SIPP) with a provider I'll refer to as provider A.

Miss T is represented in her complaint. But I'll only refer to her in my decision.

What happened

Some of the information provided by Miss T's CMC conflicts with the information provided by Profile. Where there is a conflict that I've not been able to confirm, I've included both sets of information.

Miss T said she was cold-called by Profile in 2014, and offered a pension review.

Profile said that it hadn't cold-called Miss T. It said Miss T contacted it in November 2017. And that it then called her and sent a pre-populated letter of authority for her to authorise it to get information about her pensions with provider R.

Miss T had two With-Profits (WP) PPs with provider R. She'd opened one in 1987 and the other in 1989. The total value of both plans at the time of the advice was £13,196.83, including the Terminal Bonus (TB).

Profile carried out an analysis of Miss T's PP plans with provider R to determine the possibility of a switch. And on 4 April 2018, produced a Pension Switch Report. This projected the benefits from Miss T's PP plans with provider R and compared that with the projected benefits from a SIPP with provider A, using the value of Miss T's PPs as of 29 March 2018.

Profile's analysis showed that the projected combined value of Miss T's two existing PPs was estimated to lie between £13,540 and £25,900 at age 60, depending on the assumed growth rate being used for the projections. It also showed that if Miss T were to transfer to a SIPP with provider A, the projected value of her SIPP at age 60 was estimated to lie between £9,850 and £18,500. Or that an additional annual rate of return of between 2.92% and 3.19% would be required each year to age 60 before the SIPP with provider A would provide the same expected benefits as the PPs with provider R.

Profile carried out a fact find with Miss T on 6 April 2018. The fact find showed that Miss T had suffered from health issues which had led to her stopping work. And noted that she wanted to access the benefits from her PPs from age 55.

The fact find also recorded the following information:

- Miss T's personal objectives were just to consider pensions and retirement planning. Her personal finances weren't discussed. But it was noted that she didn't want to make additional contributions to her pension.

- She was 49 at the time of the advice and wanted to take her retirement benefits from age 55. She had no financial dependants.
- She had a cautious Attitude to Risk (ATR)

The adviser also recorded Miss T's responses to certain questions, as follows:

- She'd last received financial advice about her pensions around 2010.
- She'd last received an annual statement in 2015.
- She didn't know how her PPs had performed in recent years, or what funds she was invested in, or how risky they were.
- She said it was important to her to have flexibility in how she drew her pension. But she thought she make take her fund at age 55.
- She didn't know what her main aims for retirement were. She said it was: "*too early to say. Lives each day as it comes".*
- She owned her own home. She thought she might downsize in retirement.
- She didn't understand the charges that were deducted from her existing PPs.
- It was important to her that she received ongoing advice on how her pension was performing and how her money was invested. She felt she would benefit from a simple jargon-free annual telephone review of her pensions.

Profile had a telephone conversation with Miss T to discuss its recommendation. It talked about risk. And explained that the initial advice charge would be 2.95% of the amount transferred, or £388.90. The adviser said: "*If obviously it's not going to be cost effective to look to get you that back, over the longer period, then of course we've got to take that into consideration in our recommendation. If it's not going to be worthwhile, there's no point in doing that*".

The adviser also discussed TBs with Miss T. She said she didn't know anything about her investment funds. The adviser said: "*Terminal bonus can jump up but it can also jump down again*". Later on in the call, he also said that a provider: "*could increase, decrease or can take it [the TB] off you completely*. And: "*Those figures are out of your hands*". He then went on to explain that the TB formed a major part of Miss T's fund value, saying: "*The majority of the money is in the hands of provider R*".

The adviser asked Miss T a number of questions. For example, after explaining what drawdown was: "*Would you want the flexibility of drawdown?*". Miss T said she would. The adviser then said that Miss T's PPs with provider R didn't have drawdown as they were older plans.

The adviser then went on to explain WP and unit-linked pensions. He said that with WP plans: "*If they [the pension provider] don't want to pass on the bonus, they don't have to*". He then went on to say that both Miss T's plans were in cautious investments so they were right for her ATR. But that the performance had been very poor compared to other cautious unit-linked plans over the same period. He said: "*11.36% over 5 years is not very much in the scheme of things. Overall, not great performance, even though you're cautious*". And a bit later: "*Purely because of what they [the pension provider] pass on. They're not legally committed to pass on those cash reserves*".

Later on in the call, the adviser stated: "*When you get to five years from retirement [in one year] you need to start to reduce risk. So WP a bit of an issue*". He said that provider R: "*will have 100s of PPs and some of those will have drawdown on them*", but that Miss T might need advice in order to access them.

The adviser said he would "*strongly recommend moving*" based on the following points:

- Just one pension, not two

- Miss T would get drawdown

- Profile would give her clear annual charges. She'd know exactly what she was paying and she'd get ongoing advice within that charge.

- She'd be put in: "*a more modern unit-linked pension that's been performing a lot, lot better than where you are at the moment. So we'd look to try and get a bit extra out of it for the next few years then start to de-risk you*".

- The TB then couldn't be taken off Miss T in the future. The adviser said: "*They might increase it a little bit but they can also turn it down as well. That's a bit troubling for me as an adviser, especially with only six years to go*".

The transfer forms from provider R to provider A were completed on 10 April 2018. And Profile wrote to confirm to Miss T that it had processed her pension switch to provider A on the same date. It also said that Miss T had confirmed that she'd received its Terms of Business. And that it had sent her its Suitability report and key features document.

The Suitability report was dated 10 April 2018. Profile said that it had discussed Miss T's understanding of financial services products, and her previous experience with advice she'd taken and products purchased. And that it had established that she had previous pension investment experience, but that she wasn't receiving regular investment advice. It said Miss T's prime objective was to review her existing PPs to assess whether it would be appropriate to switch the benefits to a pension that would:

- Have clear annual charges.

- Lock in her terminal bonus.

- Have a low ongoing service fee.

- Consolidate her two existing PPs into a new PP.

- Provide fund choices which met her current circumstances and were aligned to her ATR and capacity for loss.

- Provide the ability to take flexible benefits including Drawdown.

- Provide ongoing advice including monitoring of funds for performance, quality and suitability.

The report also stated that Miss T wanted to maximise the potential retirement income available to her. It recorded her ATR as Cautious. And recommended that she transferred to a PP with provider A.

The report stated that £8,864.16 of Miss T's existing plan value was in respect of the TB.

And noted that the TB wasn't: "*guaranteed and the rates can fluctuate depending on market conditions at the time benefits are taken. It can be reduced or suspended at any time. By switching benefits, you are effectively 'locking in' this value*".

The report listed the following "Reasons Why" the recommendation had been made:

- Low on-going charges. It said the maximum annual management charge (AMC) with provider A was 0.45% (from a 0.22% fund charge, and a 0.23% provider A management charge). And that when the 0.60% ongoing service fee Profile would charge for its ongoing advice service was included, the total annual charge would be no more than 1.05%.

- The range of funds available with provider A which were targeted to match Miss T's ATR. It said it had agreed with Miss T that the Vanguard 60% equity fund would best suit her needs.

- The fund performance. It said that all funds in Profile Portfolios were monitored on an ongoing basis for quality and suitability.

- The availability for online access.

- The option of taking flexible benefits.

- To lock-in the TP with provider A.

The report also detailed the charges that Miss T would have to pay for the recommendation to be implemented. It said that an initial fee of 2.95% of the transferred amount would be payable. Based on the current fund value, this would be £388.90. It also said that the 0.6% ongoing adviser fee equated to £76.76 based on the current fund value.

Profile provided Miss T with regular updates about her pension over the following few years. It also recommended a change to her investment funds in 2022. And another one six months after that. Miss T's fund had reduced significantly in value between the two updates in 2022.

On 30 November 2022, Miss T complained to Profile through her CMC. It raised the following relevant complaint points:

- Miss T shouldn't have been advised to transfer her PPs from provider R to provider A. The advice was negligent. Miss T had little time to rebuild her pension if she incurred large losses.

- Profile didn't assess her investment experience, ATR, capacity for loss, financial situation or her investment objectives.

- She'd suffered a financial loss due to the unsuitable advice to transfer.

- She'd been induced to transfer her PPs to provider A as Profile had promised investment growth at a rate in excess of any growth if the PPs stayed with provider R.

It said that Miss T would like to be restored to the position she would be in had she not transferred her pensions.

Profile issued its final response to the complaint on 12 January 2023. It didn't think it had provided negligent advice. It repeated the reasons it had recommended the transfer. And made the following points:

- Its advisor had discussed Miss T's ATR and capacity for loss with her. And had also carried a risk assessment on 6 April 2018 which looked at her previous involvement with investments and the risks she was prepared to take. It said it established that her ATR was cautious, which she'd agreed with. It had then advised that she should invest in a cautious fund in line with her ATR.

Profile said that it had assessed Miss T's investment objectives. It said the 6 April 2018 fact find had recorded that Miss T wanted an ongoing advice service. And that she didn't understand the charges being taken from her pensions. It also said that it'd assessed Miss T's financial situation. But that she hadn't wanted to discuss her assets, liabilities, mortgages or loans, as she'd only wanted a pension review at that stage. It said it had fully explored the impact of Miss T losing her pension or it falling in value as part of its capacity for loss discussions.

- Profile didn't agree that the advice was responsible for any loss on the value of Miss T's pension. It acknowledged that the value of her pension had fallen that year, but felt that was due to stock market conditions, that had affected many savers nearing retirement. It said that since it had advised Miss T on her pension it had increased by £388.

- Profile said it was concerned that an allegation had been made that Miss T had been induced to make the transfer after its adviser had promised that the value of her fund would grow at a better rate than her investments with provider R. It said it had never guaranteed this. And that it had specifically stated in its Suitability reports of April 2018, March 2021 and July 2022 that past performance is no guarantee of future returns and investment values can go down as well as up.

Miss T was unhappy with this reply. So she brought her complaint to this service. She said she felt that Profile had greatly let her down, as she'd seen her pension lose money. She was now only a year away from drawing her pension benefits and didn't feel they would last very long. She said she'd felt the policy held no risk, as she couldn't afford any loss under her personal circumstances. She also said this was her last savings pot that she needed to rely on. She felt her PPs with provider R had been making good money. And that she'd been advised to put it into a safer place. She said it hadn't been safer.

Miss T wanted to be put back to the position she would've been in but for the unsuitable advice, with 8% annual interest added. And compensation for the distress and inconvenience caused.

Our investigator felt that the complaint should be upheld. She said that she hadn't seen any evidence to suggest that a pension switch was in Miss T's best interest. And that the advice to switch to provider A was unsuitable. To put things right, she felt that Miss T should be put back to the position she would've been in had she stayed with provider R.

Miss T agreed with our investigator.

Profile didn't agree with our investigator. It made the following points:

- It said that the Pension Switch report had noted: "*This analysis does not, on its own, show whether or not switching your funds is advisable, as that also depends on many other factors, such as your "attitude to risk" and your personal circumstances and objectives" all of which we have discussed and assessed with the customer*".

It also said that it considered other factors for the switch such as Miss T's requirement to have access to flexible retirement benefits, secure the TB on her pensions with provider R and to receive an ongoing monitoring service on her pension benefits.

So it didn't consider that the figures included in the Pension Switch report should be considered in isolation.

- It also said that the value of the SIPP with provider A as of 19 June 2023 was £13,549.24. But the total transfer value from the provider R plans, less the initial adviser charge of £389, was £12,793.

- It didn't consider that the initial adviser charge of 2.95% was a significant proportion of the total transfer value of £13,182.

- It said that Miss T's immediate goal at the time of the advice was to get a better level of service on her PPs with updates on how her pension was performing. Because of this goal, she'd agreed to Profile's 0.60% ongoing adviser charge. It said the charges had been fully explained in the Suitability report and in an illustration.

- It said that the total charges with provider A, even allowing for its annual ongoing advice charge of 0.6%, were lower than those with provider R. It said that the total charges with provider A were an AMC of 0.23%, and a fund management charge of 0.22%. When the annual ongoing adviser charge of 0.6%, which Miss T had wanted, was also taken into account, the total annual charges with provider A were 1.05% each year. But they'd been around 1% each year with provider R, when she'd not received an ongoing advice service.

- Profile said it had provided focused advice on switching the two provider R plans and not investing any new monies at Miss T's request, as the fact that she'd said she had no other priorities was confirmed on page 1 of the fact find.

- It also said that although it had recorded during the fact find that Miss T wanted to access her pension from age 55, she would've had flexibility to take her pension benefits in stages after 55 and enter drawdown. So it felt the time horizon for taking pension benefits was potentially longer than the period between the advice and age 55 (six years). Profile also noted that the existing PPs with provider R didn't provide flexible retirement options.

- It said that Miss T's ATR and capacity for loss were established during the fact find call with the adviser in April 2018. And that the adviser had directly asked Miss T about her ATR/capacity for loss. It said Miss T had a low to medium (Cautious) ATR and a small/medium capacity for loss could be tolerated. It also said that the Suitability report had stated: "*You are satisfied that the attitude to risk agreed upon is within your stated capacity for loss*". It acknowledged that this discussion and the documenting of it could've been more detailed. But said that the discussion did take place and had been sufficient for a focussed advice recommendation to be made.

- Profile said that at the time of advice, the bonus rate with provider R on both pensions was 2.68%, while the performance of its recommended investment with provider A net of charges was 3.31%.

In summary, Profile felt that Miss T's situation had been assessed sufficiently, including her needs and objectives, ATR and capacity for loss, based on the advice being focused on switching her two PPs with provider R.

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

What I've decided – and why

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

Having done so, I'm going to uphold it. I agree with our investigator that the advice was unsuitable.

I agree with our investigator that we would normally take the approach that if a suitable investment hasn't grown as much as expected, or has lost value, that's not a sufficient reason for a complaint to be upheld.

However, in this case, I'm satisfied that the advice to transfer wasn't suitable for Miss T. For me to be satisfied that the transfer was suitable, I'd need to be persuaded that there was reasonable potential for Miss T to be better off after the transfer. And, based on what I've seen, I'm not persuaded that this was the case here. I'll explain why.

I first considered the charges Miss T would pay.

Charges

I acknowledge that the annual charges with provider A were lower than the annual charges with provider R – 0.45% rather than around 1%. But if Miss T went ahead with the recommended transfer, she'd also have to pay an initial advice charge of 2.95% of the transferred funds. Additionally, she'd have to pay an annual charge of 0.6% for the ongoing advice service Profile had recommended.

Overall, Miss T's annual charges would be slightly increased if she decided to transfer, from around 1% to 1.05%. But she'd receive an ongoing advice service. But she'd also see the value of her funds reduce by 2.95% due to the initial fee.

Miss T said she wanted to access her pension benefits at age 55, which was less than six years away at the time of the advice. So she only had a short timeframe in which to make up the initial advice charge.

I acknowledge that Profile doesn't consider that the 2.95% charge was significant, but I don't agree. Miss T said she wanted to access her pension benefits at age 55, less than six years from the time of the advice. The advisor noted that her current WP investment was appropriate to her ATR, but that it would become less appropriate as she approached her selected retirement age, and she'd need to de-risk when she was five years away from that.

Miss T would reach the point that the adviser said de-risking would need to start in less than a year from the advice. So this shows that the recommended investment would only be suitable for less than a year. But the adviser explicitly didn't tell Miss T this. She would need to be confident that her new investments with provider A would make up for more than the 2.95% initial advice charge in a very short period of time, or she'd be worse off. I can't see that Profile established that she would be likely to be able to do that.

I say this because the Pension Switch Report highlighted that the proposed fund wasn't likely to perform better than Miss T's existing investment. And as the adviser had told her she would need to de-risk, this would become even less likely over time as she would inevitably be advised to move into lower risk, lower expected return investments.

I also say this because I agree with the adviser when, after he'd noted that the initial advice charge would be 2.95% of the transferred fund, he told Miss T: "*If it's not going to be worthwhile, there's no point in doing that*". From the evidence, the transfer wasn't worth doing based on the numbers alone.

I do agree that the transfer would make Miss T's annual charges clearer. And that she'd potentially benefit from the ongoing advice service while paying only a little more overall. But I've not seen enough evidence that the ongoing advice service, costing 0.6% each year, was likely to leave Miss T better off.

I say this because, as I noted earlier, there was very little time for Miss T to invest in "riskier" assets and potentially get enhanced returns compared to her WP investment with provider R. The 2018 Suitability report stated that Miss T wanted to maximise the potential retirement income available to her. I consider it reasonable for a customer to expect that an ongoing advice service would help to ensure that their pension is better in the end than without that ongoing advice. But I can't see that there was sufficient scope here for that to be the case.

I next considered the Pension Switch report.

Pension Switch Report

This compared the PPs with provider R with the SIPP with provider A. It was produced to assess the likelihood of Miss T being better off after the recommended transfer.

As I detailed in the background section, Profile's analysis showed that the projected combined value of Miss T's two existing PPs was estimated to be significantly higher if she stayed with provider R than if she transferred to provider A. So, looking at this analysis alone, I wouldn't have expected Profile to recommend the transfer.

I acknowledge that Profile felt that the Pension Switch report shouldn't be considered in isolation, as it didn't show whether or not the transfer was advisable, as that also depended on many other factors. It said these included Miss T's requirement to have access to flexible retirement benefits, secure the TB on her pensions with provider R and to receive an ongoing monitoring service on her pension benefits. I agree with this sentiment in principle. So I've also considered whether those reasons were sufficient to have made the transfer worthwhile.

Was it likely that Miss T would be better off if she transferred her PPs?

I've considered all of the documentary evidence provided by all parties, as well as the recording of the 2018 advice call. Although I've mostly detailed what was said in the advice call below, I've also considered the information included in the 2018 Suitability report.

As noted above, Profile said that Miss T needed to have access to flexible retirement benefits, secure the TB on her pensions with provider R and to receive an ongoing monitoring service.

Having listened to the call between Miss T and the adviser, I'm not persuaded that she really did want all of these things. Instead, I think she agreed with the adviser that they would be good after he'd explained what they were and then asked her if they would be useful to her. I'll explain further.

I'm not persuaded by the argument that the transfer would benefit Miss T because it would allow her to access her benefits through drawdown. I say this because even if Miss T did eventually want to drawdown her pension benefits, she had no legal access to them until she turned 55, so she could've transferred into a drawdown arrangement later on, when she was much closer to age 55, and more certain of her pension needs. She could've also considered transferring into a drawdown arrangement with provider R at this time.

Regarding the "locking-in" of the TB, the adviser discussed the TB on Miss T's existing PPs with her at the time of the advice. He said that provider R: "*could increase, decrease or can take it [the TB] off you completely*. And explained that the majority of Miss T's funds were made up of the TB. He said that provider R could decide not to pass on the bonus. And that the performance of the WP fund had been very poor compared to other cautious unit-linked plans over the same period. The adviser also used the fact that if Miss T transferred, the TB then couldn't be taken off her in the future as a reason for recommending the transfer.

The 2018 Suitability report stated that £8,864.16 of Miss T's existing plan value was in respect of the TB. And noted that the TB could be: "*reduced or suspended at any time".* The report didn't mention that the TB might go up. In general, whether a TB is paid or not, and how big it is, depends on how well the fund does over the whole time the investment has been in place. But I can't see that Profile explained this to Miss T.

The adviser also told Miss T that if she transferred she'd be in a pension that had been: "*performing a lot, lot better than where you are at the moment*".

I acknowledge Profile's point that its adviser didn't induce Miss T to transfer, as he didn't promise that the value of her fund would grow at a better rate than her investments with provider R. But I consider that he presented a relatively one-sided view that would've encouraged Miss T to consider transferring to secure the TB and to access better performance.

The Suitability report largely included the same "Reasons Why" for the recommendation that the adviser had stated during the advice call. But it also noted that provider A had a range of funds available that would meet Miss T's needs. However, the adviser had told Miss T on the advice call that provider R would also have hundreds of plans that would suit her. It also noted that Miss T would get online access with provider R. I can see that this would be helpful. But I'm not persuaded that the benefit of online access was enough to make the transfer worthwhile for Miss T, especially as she would be paying for an ongoing advice service, so Profile would be monitoring her pension's performance.

I also acknowledge that the adviser "*strongly recommend moving*" on the basis that Miss T could consolidate her two PPs into one. But I'm not persuaded that this was a sensible reason to move. It made no difference whether Miss T had one pension or two, and the adviser should've explained this to Miss T, not encouraged her to transfer to consolidate.

Overall, I'm not persuaded that the adviser didn't influence Miss T's decision to transfer. I say this because he told her she was in an old-fashioned type of plan which had bonuses which were outside of her control, and could be taken away at any point, although it was possible they might increase a little bit. And he was "troubled" about that. He also told her that the performance of her WP plans over the last five years had been poor when compared to other cautious funds. So, even though I acknowledge that various reports Profile sent Miss T over the years stated that investment performance wasn't guaranteed, I'm not persuaded that Miss T understood that she was being advised to move to a pension that could have worse performance that her existing plans.

In summary, the analysis of the pension switch showed Miss T would likely be better off staying where she was. I'm not persuaded that the other benefits of transferring that Profile has highlighted did enough to mitigate what appeared to be a likely reduction in Miss T's eventual retirement benefits, especially given the not insignificant initial advice charge and the short time left for Miss T to recover the transfer costs before she planned to take her retirement benefits.

Therefore I don't consider it was likely that Miss T would be better off if she transferred her PPs to provider A. Therefore I'm satisfied that the advice was unsuitable. And I uphold the complaint.

Putting things right

Fair compensation

My aim is that Miss T should be put as closely as possible into the position she would probably now be in if she had been given suitable advice. I take the view that Miss T would've remained with provider R.

What must Profile do?

To compensate Miss T fairly, Profile must:

- Compare the performance of Miss T's pension with provider A with the notional value if it had remained with provider R. 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.

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

- Profile should pay into Miss T'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 shouldn't 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 Miss T's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would've 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 Miss T won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Miss T's actual or expected marginal rate of tax at her selected retirement age.

- For example, if Miss T 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 Miss T would've 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 Profile deducts income tax from the interest it should tell Miss T how much has been taken off. Profile should give Miss T a tax deduction certificate in respect of interest if Miss T asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start	To ("end	Additional

			date”)	date”)	interest
SIPP with provider A	Still exists and liquid	Notional value from provider R	Date of investment	Date of my final decision	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 pension with provider A at the end date.

Notional Value

This is the value of Miss T's pension had it remained with the provider R until the end date. Profile should request that the provider R calculate this value.

My final decision

I uphold the complaint. My decision is that Profile Financial Solutions Limited trading as Profile Pensions must pay the amount calculated as set out above.

Profile Financial Solutions Limited trading as Profile Pensions should provide details of its calculation to Miss T in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss T to accept or reject my decision before 17 August 2023.

Jo Occleshaw
Ombudsman