Financial Ombudsman Service

The complaint

Mrs B complains about advice given by Wren Sterling Financial Planning Limited trading as Wren Sterling (Wren) to transfer her pension into a new arrangement with the same provider.

What happened

Mrs B and her husband met with an adviser from Wren in September 2021, primarily for advice about investing cash held on deposit. Mrs B also had a pension plan with Royal London arising from when she'd been contracted out of SERPS (State Earnings Related Pension Scheme). It was invested in Royal London's Pension Equity Series 1 Fund. The transfer value was £19,114.35. Mrs B wasn't making any contributions to the plan.

At the time of the advice Mrs B was 57, married and employed. Her husband was 56 and self employed. Their income comfortably covered their expenditure. In addition to their home they had two rental properties, with a combined value of £520,000 and no debts plus around £178,000 in cash deposits. Mr and Mrs B had no specific retirement date but said it would likely be around age 65 and they'd look at it annually from age 60. Mrs B's attitude to risk (ATR) had been assessed as Risk Group 4 which indicated a preference for investments which include an equal balanced mix of lower and medium risk investments such as cash and fixed interest and higher risk investments such as shares.

Wren produced a suitability report on 30 September 2021. It included investment and pension recommendations. Wren recommended that Mrs B transfer her existing pension to a new pension arrangement with Royal London and invest 70% in the Royal London Sustainable Diversified Trust and 30% in the Royal London Sustainable Managed Growth Trust. Mrs B's main objectives were recorded as to have a clear picture of her retirement provisions; have all her funds invested in line with her current risk profile and in a socially responsible manner; and to benefit from ongoing advice.

The transfer was completed on 21 November 2021.

After an annual review meeting Mrs B complained to Wren that she'd never seen the suitability report, didn't know how much she'd been charged and had only been told her pension was being moved to a more modern product with the same provider. Mrs B also said she had no wish to be invested in a socially responsible manner and wasn't told this meant extra costs with less chance for growth. She said that idea was pushed by the adviser from the start.

Wren responded on 31 March 2023. Wren didn't uphold the complaint. Wren said the evidence showed Mrs B wanted to review her pensions in line with her ethical approach and all the charges were made clear.

The complaint was referred to this service. One of our investigators considered the advice about Mrs B's pension and if the advice to switch had been suitable.

The investigator referred to the then regulator's 2009 report about pension switching (which remained applicable today) and which identified four main areas where consumers could lose out, including where they'd been switched to a more expensive pension without good reason.

The cost of the new plan was 0.1% cheaper than Mrs B's existing plan. But ongoing advice formed part of the recommendation, the cost of which was 1% pa. And when the initial advice fee was included, the recommended plan was more expensive than Mrs B's existing plan and so would need to achieve higher growth just to match her previous pension. Assuming growth of 2.9% pa Mrs B's pension would be worth £22,000 if it was left where it was or £21,700 if switched to the new product. Even with growth of 4.1% after charges the fund would only be £21,800. The new arrangement would have to significantly outperform the existing one for the transfer to be financially viable.

The main driver seemed to be investing the fund in a socially responsible way. Mrs B would've known she'd be investing in that way – emails sent by the adviser specifically mention that. But it seemed the suggestion had come from the adviser. An email sent after the first meeting didn't read as if ethical investing was a concern before the meeting, nor did the fact find suggest that was Mrs B's aim before she took advice. And Mrs B had no need to access any benefits in the short/medium term. Although flexible access was a nice to have, it wasn't a priority.

Mrs B accepted the investigator's findings. Wren didn't. Wren pointed to the documentation as consistently confirming the clients' objectives – reviewing their existing pensions, receiving ongoing advice as they approached retirement and investing ethically – and which set out Wren's charges.

Wren also said the recommended pensions were lower cost. Mrs B's new pension cost 0.9% pa compared to 1% pa for the original pension. Wren used the industry standard O&M tool which allowed like-for-like comparison of projections for investments with opaque charges.

Mrs B and her husband wanted to review their pensions for which there'd have been an initial advice charge, regardless of the final recommendation. They also wanted ongoing advice which Wren would've provided and which was optional and had since been cancelled. The new pensions facilitated adviser charging, which is more tax-efficient than paying from savings/income.

Wren said the performance data for the recommended funds suggested that, even if the new pension was more expensive (which it wasn't), the new funds had the potential to generate sufficient outperformance compared to the original fund to make up a reasonable critical yield before retirement. Wren also pointed to a further issue with Mrs B's pension – it was invested entirely in equities and not aligned to her risk profile.

The investigator considered Wren's comments but he wasn't persuaded to change his view. He maintained that Mrs B would likely be worse off in retirement. An advice charge – a minimum of £1,000 – would've been made if the advice was to leave the pensions where they were. It would've been paid from existing deposits and wouldn't have had an impact on the pension and future tax efficient growth. The investigator maintained that the evidence showed that ethical investing had been adviser led. The investigator pointed to an email from Mrs B sent on 10 October 2021. Although she'd asked a lot of questions, ethical investing isn't mentioned. The investigator also referred to the adviser's comment about not having '*really pushed*' ethical investments too much.

In response Wren said, while there was a minimum fee of £1,000, the fee for the services requested was confirmed as 3%. If, after completing a review, Wren had advised Mrs B to retain her existing pension plan, the fee would've been the same. Wren also reiterated previous comments.

Mrs B's husband has also complained. His complaint has been dealt with under separate reference. But, as advice was given to Mr and Mrs B together and their complaints and Wren's responses are similar, the decisions are much the same in many respects.

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 agree with the investigator that the complaint should be upheld.

I'm not persuaded that the advice to switch was suitable for Mrs B. I don't think the reasons put forward by Wren – ethical investing, flexible access and lower charges – justified the recommendation to transfer. The likely outcome of the recommendation was a reduction in yield which meant Mrs B's fund at retirement – and the benefits it would provide – would be lower.

I've considered first what's been said about ethical investing. Wren has said, if Mrs B hadn't wished to invest ethically, it's highly likely Wren would've still recommended a transfer as the new pension was lower cost than the existing plan. I've considered the charges below. But it's clear, as things happened, that ethical investing played a large part in the recommendation.

Wren's position is that Mrs B wanted to invest ethically and couldn't have done so via her existing pension plan. Whereas Mrs B says that ethical investing was suggested by the adviser and wasn't a priority for Mrs B. The suitability report mentions socially responsible or ethical investing several times but Mrs B says she didn't see the report.

Where, as here, there's a dispute I decide what's likely to have happened on the balance of probabilities, taking into account all the available evidence and information and the wider circumstances.

As to whether Mrs B saw the suitability report, I agree with the investigator it's unlikely Mrs B would've agreed to make changes to her pension arrangements without having something in writing. So I've proceeded on the basis that Mrs B did see the report even if she doesn't now recall it.

Mrs B also suggests the suitability report doesn't properly reflect the discussions with the adviser. I haven't really gone into that as I think, based on what the suitability report did say, the advice to switch was flawed anyway.

The suitability report said Mrs B wanted all of her funds to be invested in line with her current ATR and in a socially responsible manner. It seems that type of investing had been brought to Mrs B's attention by reading a brochure supplied by Wren. I don't think Mrs B had decided, before she was advised by Wren, that she wanted to invest ethically and, as those type of funds weren't offered in connection with her existing plan, that she wanted to change her pension arrangements to accommodate socially responsible investing.

I further note it was Wren who'd suggested a review of Mrs B's pension, Mrs B having initially sought advice about investing a cash sum. So Mrs B wasn't actively seeking advice about her pension. She may have been happy, all things being equal, with the idea of investing ethically, but I don't see that was a 'key interest' for Mrs B or a genuine driver for the switch.

Wren has also pointed to the flexibility offered by the new pension arrangement. But Mrs B was only 57 at the time of the advice. She had no immediate plans to retire and she thought, although she'd review it along the way, that might not be until she reached age 65. So, as things stood, she wouldn't be accessing her pension for some time. How she wanted to do that and if she needed to switch to a product that permitted flexible access could've been considered nearer the time and when Mrs B's exact requirements were known.

As to the costs of the new arrangement, I note that Mrs B would've had to pay Wren's advice fee in any event and even if Wren had advised Mrs B to retain her existing plans. And Wren says the new plan was 0.1% cheaper than Mrs B's existing plan. The platform charge for the new plan was 0.90% pa and there were no further fund charges. But Wren's ongoing adviser fee was 1% pa which made the overall total ongoing charges 1.90% pa and so the new plan would be more expensive.

Wren says Mrs B wanted ongoing advice. Mrs B has since cancelled that facility which might suggest that she didn't fully understand how much it would cost her. But I've said that I think she'd have got the suitability letter which did set out the annual ongoing charges – the platform charge and the ongoing adviser fee, both in percentage and money terms. The section headed 'Reduction in Yield' also said that the additional 1% ongoing service charge meant the total cost of the new plan would be more expensive than the existing plan. But that Mrs B was 'more than happy' to accept that in return for the service that would be provided. On the basis that Mrs B did get the suitability report, she'd have known she'd be paying more because of the ongoing advice facility.

But the fact that Mrs B had said she wanted ongoing advice didn't mean she needed it or that Wren should've recommended a switch to facilitate ongoing advice being provided. Especially if the other reasons for switching – ethical investing and flexibility – weren't made out. The concept of ongoing advice is attractive to most investors. But the cost will obviously increase the charges and reduce the yield and won't be justified in all cases.

The reduction in yield on Mrs B's pension under the proposed new plan was 2.2% pa, after inflation. Her fund size was modest which can make it more difficult to justify paying for ongoing advice. Ultimately the overall aim in switching was to increase the level of Mrs B's retirement benefits. I think the reduction in yield was significant. The new funds would have to do well if Mrs B's pension fund wasn't going to be less when she reached retirement than if she'd have remained in her existing plan. I don't think it was safe to rely on past performance data as to how well or otherwise the recommended funds might do.

I note what's been said about the fund Mrs B was invested in not being consistent with her ATR. And I've seen that the suitability report noted that the fund Mrs B was invested in (Royal London's Pension Equity Series 1 Fund) was a predominantly equity-based fund, with growth assets in excess of Mrs B's risk profile.

I haven't looked into exactly how that Fund was made up and if it was suitable for Mrs B given her ATR. If it was too high risk I'd usually expect that could be addressed by way of a fund switch. But here the report went on to say, although there were a couple of other available funds Mrs B could switch into, none met her ATR or objective to invest in a socially responsible manner and so had been discounted.

I've seen that Mrs B's existing plan offered a limited selection of only four funds. But I'm not convinced, if the existing fund was unsuitable and had things been further explored, that none of those funds – or a combination – would've met her ATR. Wren seems to have dismissed the prospect of a fund switch largely on the basis that ethical investing wasn't possible. But, as I've indicated, I'm not persuaded that Mrs B had a firm objective to invest ethically and so I don't think a fund switch should've been ruled out on that basis. I further note that, although, as I've said, the issue is mentioned, the unsuitability of Mrs B's existing fund and the lack of any suitable alternative fund(s) isn't relied on as a reason for recommending that Mrs B switch. So it would appear that Wren wasn't convinced that, of itself, justified Mrs B transferring.

All in all, for the reasons I've explained, I'm not persuaded that the advice to switch was suitable. I don't think the chances of Mrs B increasing her pension at retirement were improved by the switch.

Putting things right

My aim in awarding fair compensation is to put Mrs B as far as possible back in the position she'd likely be in if Wren Sterling Financial Planning Limited trading as Wren Sterling hadn't given unsuitable advice. I think Mrs B would've retained her existing pension arrangement.

Wren Sterling Financial Planning Limited trading as Wren Sterling should determine if Mrs B has suffered a loss by obtaining the notional transfer value of her previous pension from Royal London and assuming Mrs B had remained in the same fund. That notional value should be compared with the actual value of her Royal London Pension Portfolio at the same date. If the notional value is higher than the actual value, Mrs B has suffered a loss and compensation is payable. If the actual value is higher than the total notional value Mrs B hasn't suffered a financial loss and compensation isn't payable.

If there's a loss it should be paid into Mrs B's pension plan, to increase its value by the amount of the compensation and interest. The payment should allow for the effect of charges and any available tax relief. It shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If it can't be paid into Mrs B' s pension plan, it should be paid direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the compensation 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 Mrs B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs B's actual or expected marginal rate of tax at her selected retirement age. It's reasonable to assume Mrs B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if she would've been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Wren Sterling Financial Planning Limited trading as Wren Sterling should pay Mrs B £150 for the distress and inconvenience of transferring her pension and the impact this has had on the value. This sum is payable regardless of whether there's any financial loss.

Details of the calculation should be provided to Mrs B in a clear, simple format.

Any additional sum paid into the new plan (Royal London Pension Portfolio) should be added to the notional value calculation from the point in time when it was actually paid in. Any withdrawal should be deducted from the notional 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 all those payments are totalled and that figure deducted at the end to determine the notional value instead of deducting periodically.

If Royal London is unable to calculate a notional value, Wren Sterling Financial Planning Limited trading as Wren Sterling will need to determine a fair value for Mr B's pensions instead using this benchmark: FTSE UK Private Investors Income Total Return Index. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

I uphold the complaint. Wren Sterling Financial Planning Limited trading as Wren Sterling must redress Mrs B as I've set out above.

My final decision

I uphold the complaint. Wren Sterling Financial Planning Limited trading as Wren Sterling must redress Mrs B as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 1 November 2023.

Lesley Stead
Ombudsman