DRN-4340550

The complaint

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

What happened

Mr B and his wife met with an adviser from Wren in September 2021 primarily for advice about investing cash held on deposit. Mr B also had two personal pensions with Royal London, both invested in with-profits with a selected retirement age of 65. Mr B was making monthly gross contributions of £78.32 to one of the plans, valued at £34,883.31 with a transfer value of £72,171.19. The other plan was paid up, valued at £4,209.74 with a transfer value of £14,253.94.

At the time of the advice Mr B was 56, married and self employed. His wife was 57 and 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. Mr 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 Mr B transfer his two existing pensions 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. Mr B's main objectives were recorded as to have a clear picture of his retirement provisions; have all his funds invested in line with his current risk profile and in a socially responsible manner; and to benefit from ongoing advice.

The transfer was completed on 22 November 2021.

After an annual review meeting Mr B complained to Wren that he'd never seen the suitability report, didn't know how much he'd been charged and had only been told his pension was being moved to a more modern product with the same provider. Mr B also said he had no wish to be invested in a socially responsible manner and wasn't told this meant extra costs with less chance for growth. He 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 Mr B wanted to review his pensions in line with his ethical approach and all the charges were made clear.

The complaint was referred to this service. One of our investigators considered the advice about Mr B's pensions 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 difficult to compare as both with-profits funds had implicit charges and one plan had a £2 pm charge as well. But the investigator concluded that, when the initial advice fee was included, the recommended plan was more expensive than Mr B's existing plans and so would need to achieve higher growth just to match his previous pensions.

The main driver seemed to be investing the funds in a socially responsible way. Mr B would've known he'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 Mr B's aim before he took advice. His existing ISA (Individual Savings Account) wasn't invested in that way. And Mr 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.

Mr 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. Mr B's new pension cost 0.45% pa compared to around 1% pa for the original pensions. Wren used the industry standard O&M tool which allowed like-for-like comparison of projections for investments with opaque charges.

Mr B and his wife 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 and the bonus information for the existing with-profits investments suggested that, even if the new pensions were more expensive (which they weren't), the new funds had the potential to generate sufficient outperformance compared to the original funds to make up a reasonable critical yield before retirement.

The investigator considered Wren's comments but he wasn't persuaded to change his view. He maintained that Mr 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 Mr B's wife 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 Mr B to retain his existing pension plans, the fee would've been the same. Wren also reiterated previous comments.

Mr B's wife has also complained. Her 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 Mr 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 Mr 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 Mr B hadn't wished to invest ethically, it's highly likely Wren would've still recommended a transfer as the new pensions were lower cost than the existing plans. 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 Mr B wanted to invest ethically and couldn't have done so via his existing pension plans. Whereas Mr B says that ethical investing was suggested by the adviser and wasn't a priority for Mr B. The suitability report mentions socially responsible or ethical investing several times but Mr B says he 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 Mr B saw the suitability report, I agree with the investigator it's unlikely Mr B would've agreed to make changes to his pension arrangements without having something in writing. So I've proceeded on the basis that Mr B did see the report even if he doesn't now recall it.

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

I further note it was Wren who'd suggested a review of Mr B's pension, Mr B having initially sought advice about investing a cash sum. So Mr B wasn't actively seeking advice about his pension. He 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 Mr B or a genuine driver for the switch.

I don’t agree with what Wren says about Mr B not choosing to review his ISA – in my view, if Mr B’s priority was ethical investing, he’d have wanted to take that approach with his ISA as well and even if the fund was relatively small.

Wren has also pointed to the flexibility offered by the new pension arrangements. But Mr B was only 56 at the time of the advice. He had no immediate plans to retire and he thought, although he’d review it along the way, that might not be until he reached age 65. So, as things stood, he wouldn’t be accessing his pension for some time. How he wanted to do that and if he needed to switch to a product that permitted flexible access could’ve been considered nearer the time and when Mr B’s exact requirements were known.

As to the costs of the new arrangement, I note that Mr B would’ve had to pay Wren’s advice fee in any event and even if Wren had advised Mr B to retain his existing plans. And Wren says the new plan was cheaper than Mr B’s existing pensions – Wren says the charges on those with-profits plans would’ve been in the region of 1% pa, compared with 0.45% pa for the new plan. That’s the provider’s platform fee with no further fund charges. But Wren’s ongoing adviser fee was 1% pa which made the overall total ongoing charges 1.45% pa and so the new plan would be more expensive.

Wren says Mr B wanted ongoing advice. Mr B has since cancelled that facility which might suggest that he didn’t fully understand how much it would cost him. But I’ve said that I think he’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 plans. But that Mr B was ‘more than happy’ to accept that in return for the service that would be provided. On the basis that Mr B did get the suitability report, he’d have known he’d be paying more because of the ongoing advice facility.

But the fact that Mr B had said he wanted ongoing advice didn’t mean he 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 flexible access – weren’t made out. The concept of ongoing advice will be 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 Mr B’s pension under the proposed new plan was 1.8% pa, after inflation. Ultimately the overall aim in switching was to increase the level of Mr B’s retirement benefits. I think the reduction in yield was significant. The new funds would have to do well if Mr B’s pension fund wasn’t going to be less when he reached retirement than if he’d have remained in his existing plans. I don’t think it was safe to rely on past performance data as to how well or otherwise the recommended funds might do.

Wren seems to have started from the position that Mr B’s existing with-profits arrangements were no longer suitable for him – I note Wren’s comments about the need to move Mr B’s pension funds to a modern, lower cost arrangement with transparent charging. Wren also refers to Mr B’s existing with-profits plans as opaque and anachronistic and says that declared bonuses for with-profits funds had been deflated for a prolonged period.

It is the case that with-profits funds have attracted criticism for their lack of transparency, particularly as to charges. And in recent years annual bonuses, if paid at all, may have been reduced. But terminal bonuses can be added at maturity to reflect the policyholder’s fair share of the profits made by the fund over the entire period of investment. I don’t think the switch was justified on the basis that Mr B’s existing arrangements had become inherently unsuitable for him due to the nature of the with-profits funds.

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 Mr B increasing his pension at retirement were improved by the switch.

I've set out below what Wren needs to do to compensate Mr B for any loss he's incurred as a result of switching. It follows what the investigator suggested.

Putting things right

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

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

If there's a loss it should be paid into Mr 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 Mr B' s pension plan, it should be paid direct to him. 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 Mr B won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if he 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 Mr B £150 for the distress and inconvenience of transferring his 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 Mr 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.

My final decision

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

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

Lesley Stead
Ombudsman