

## The complaint

Mr W complains that advice given by Tailored Retirement & Investment Planning Limited ("TRIP") to switch his pension to a self-invested personal pension ("SIPP") wasn't in his best interests and led to a financial loss.

To put things right Mr W wants a refund of all fees and losses plus compensation to cover the cost of seeking alternative advice.

Mr W has been helped in his complaint by his wife Mrs W.

## What happened

At the relevant time Mr W had been a client of TRIP since 2010. He was classed as self-employed (although he hadn't actually been working since lockdown) and had been contributing to a personal pension held with Aegon, as well as a paid-up workplace pension. Mrs W also had a personal pension with Aegon, plus a workplace pension with another provider, to which she and her employer contributed. They owned their home with no mortgage, could live comfortably on Mrs W's earnings, and had around £100,000 in cash savings (held mainly in ISAs and premium bonds).

In early 2021 aged 58, Mr W wanted advice from TRIP on using £75,000 of their joint savings to make a lump sum pension contribution, and general retirement planning. Mrs W contacted TRIP to arrange the meeting as an IT upgrade in 2020 meant the usual annual review invitations weren't issued.

Ahead of the meeting TRIP provided various documents for Mr and Mrs W to consider, including a joint financial planning report with a recommendation that Mr W switch his Aegon plan to a SIPP to be managed via a platform, details of the plan charges, and ISA and pension illustrations for them both. TRIP's initial advice fee would be £350.

At a meeting in April 2021 TRIP explained the recommendation that Mr W transfer his pension from Aegon to a SIPP with Standard Life ("SL"). The rationale for the switch was that Mr W's plan had already benefitted from a loyalty bonus, and the fees were 0.14% cheaper than his Aegon plan (1.17% compared to 1.31%), plus it would be managed via a platform, provide more flexibility about how he took benefits and offered a wider fund choice. Based on an "aggressive" 7/10 attitude to risk ("ATR"), being the average of Mr W's own 8/10 and Mrs W's 6/10, the adviser recommended a range of funds in different proportions for the transferred funds and his contributions going forward. TRIP suggested Mrs W should also transfer her Aegon plan to SL once a loyalty bonus was paid the following year. The adviser also recommended the couple invest their substantial cash savings, that Mr W release a 25% tax-free lump sum to recycle and invest in an ISA, and as Mr W was a non-taxpayer he could transfer his personal allowance to his wife, saving the couple tax.

In June 2021 Mr and Mrs W expressed reservations about TRIP's choice of SIPP provider based on feedback from friends and online reviews. But after a discussion they agreed to go ahead, provided they weren't charged more than the 0.5% ongoing advice fee they'd been

paying. The adviser explained usually such advice would attract a separate charge but on this occasion he agreed to waive the fee.

Mr W accepted the advice to transfer his Aegon pension to a SIPP with SL but as their ISA savings were fixed until August 2022, he decided against the lump sum pension contribution. The transfer of the Aegon plan valued at around £158,335 to SL took place in August 2021, and Mr W redirected his pension contributions to the new plan.

The September 2022 annual review valued Mr W's SIPP at around £143,814, a fall of 10.43%, whereas Mrs W's Aegon personal pension and her stakeholder plans had both grown. TRIP attributed the fall to external factors such as the war in Ukraine. Mrs W was reminded she should switch her Aegon personal pension to SL once the loyalty bonus was paid in October. Finally TRIP said if Mr W had no relevant earnings that financial year, HMRC rules meant his pension contributions would be limited to £3,600, and reiterated the recommendation that their available cash should be invested in an ISA.

In March 2023 Mrs W let TRIP know that there had been a "*slight*" change in their circumstances. Rather than resuming work as originally planned, Mr W had decided to retire early due to a health diagnosis and was receiving income from benefits, so would no longer be contributing to his pension. They wanted advice from TRIP on accessing Mr W's pensions earlier than originally anticipated and had obtained quotations from his workplace and state pensions. But didn't want TRIP to review other aspects of their finances or Mrs W's pensions, and she'd already transferred a personal pension without their advice. A meeting was arranged to discuss Mr W's options, in which he compared the performance of his SIPP with Mrs W's Aegon plan and suggested he'd have been better off not switching and felt the contributions he'd made were wasted. TRIP said they weren't prepared to limit their advice in that way, as appropriate advice could only be based on a full understanding of clients' financial circumstances, so they suggested terminating the relationship.

Mr and Mrs W were unhappy with this, and in April 2023 complained to TRIP, about their refusal to assist Mr W when he really needed it, and the adviser's lack of preparation for the meeting. But they also raised some service issues – the failure to send the review invitations or notify them of the closure of an Aegon fund, two separate calculation errors, and ignoring their concerns about SL which was then known as Abrdn. To put things right they requested a refund of all management fees since August 2021, compensation for the fall in Mr W's pension since it was switched to Abrdn, and a refund of contributions he'd made since then.

TRIP responded to the complaint in July 2023, apologising that the IT upgrade had meant annual review invitations weren't sent, and for the "*human errors*" in the calculations for which feedback had been provided. They'd amended their contact strategy so that all affected clients will be notified of fund changes going forward. TRIP stood by the switch to Abrdn, as the fees were lower, and a SIPP met Mr W's objectives by allowing flexi-access drawdown in the future as he hadn't wanted to purchase an annuity which his Aegon plan didn't allow. And they reminded Mr W they'd waived their usual fee for arranging the transfer.

In terms of comparative performance, TRIP said both plans had delivered negative performance in the relatively short 20-month time period, although admittedly Abrdn had performed slightly worse than Aegon, but they calculated Mr W would only be slightly better off had he remained with Aegon. They explained that providing appropriate advice following a substantial change of circumstances required detailed analysis which isn't covered by the ongoing advice fee. And while their website may have suggested TRIP offers limited advice, this is not the case for retirement planning. So overall they didn't uphold the complaint and confirmed Abrdn and Aegon had been instructed to remove TRIP as servicing agents of Mr and Mrs W's plans with effect from 1 August 2023.

Mr and Mrs W were unhappy with this, so they referred their complaint to this service. As the advice related only to Mr W's pension our investigator split their joint complaint into separate complaints for each of them. Mrs W's complaint focussing on the poor service was upheld by the investigator and is resolved.

Mr W's complaint focussed on the switch to Abrdn, the performance of his pension and TRIP's termination of the advice relationship. The investigator considered the switch was suitable, as Mr W's Aegon plan wouldn't have allowed flexi-access drawdown, the fall in value over a relatively short period didn't make it unsuitable, and the investments appeared to be in line with Mr W's attitude to risk. And he thought it was reasonable for TRIP to only provide advice based on full disclosure of Mr and Mrs W's financial circumstances.

TRIP accepted the investigator's view, but Mr W didn't. He pointed out the investigator had awarded Mrs W £150 for TRIP's poor service, and as the service had been provided to them both, he felt he should also receive £150.

The investigator had awarded the compensation to Mrs W because she'd liaised with TRIP on behalf of them both, so had been put to more trouble. Nevertheless, he asked TRIP if it would be prepared to pay Mr W £150 to settle the complaint.

TRIP agreed, but Mr W then questioned the investigator's change of mind. So he asked for an ombudsman's final decision. He also complained about the way the investigator had handled things, which has been dealt with separately.

So Mr W's complaint has come to me to 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.

While we usually don't comment on another party's complaint, in this case Mr and Mrs W brought their complaint jointly to this service, but we separated it for operational reasons. As a married couple Mr and Mrs W's finances are somewhat entwined, they attended the meetings with TRIP together and the advice was given to them both, set out in joint suitability reports.

But when complaints are brought to this service which don't relate to a jointly held product, we generally set them up individually. This is particularly the case for pensions, which must be held in a consumer's sole name. It may not be clear from the outset if a complaint will be upheld, and if so, to what extent. And if a complaint is upheld the redress would be paid to the individual, usually into their own pension, and might need to be treated differently due to factors such as age, applicable allowances, or tax status.

In this case, the thrust of Mr W's complaint for which he hoped to be paid redress was the suitability of the switch from his Aegon personal pension into a SIPP, the subsequent loss of value and the impact of that and TRIP's termination of their relationship on his retirement plans. There was no suitability element to Mrs W's complaint, which focussed on the poor service provided by TRIP, including the lack of review invitations, the calculation errors and failure to issue a notification about a closed fund. The investigator felt Mrs W was more impacted by the poor service as she took the lead in liaising with TRIP on behalf of them both.

So for Mr W I'll first consider the suitability element and whether TRIP should continue to advise him now that he needs to access his pension. And then whether he should be paid compensation in relation to the service issues.

### *Suitability of the switch*

Having reviewed everything I've come to the same outcome as the investigator for broadly the same reasons. While I understand Mr W's disappointment that his plan has fallen in value in contrast to Mrs W's, I've no reason to say the switch was unsuitable.

In 2021 Mr W was considering using joint savings to make a lump sum contribution of £75,000 to his pension. His self-employment was suspended during the pandemic, but he'd intended to resume working and continue making pension contributions in addition to the lump sum. Due to HMRC rules, without eligible earnings the pension contributions Mr W can make are limited, as set out in the report. Mr W was also looking towards the future when he'd need to access his pension, and his Aegon plan didn't allow flexi-access drawdown. Mr W is around a decade older than his wife, so although he wasn't planning to take benefits immediately, I think it was reasonable for TRIP to recommend a plan which would work for the future. And as well as offering more flexibility, the charges for the SL/Abrdn plan were lower than his existing plan, which TRIP said would benefit him even if investment performance was flat.

TRIP set out its investment recommendations which were slightly different for the lump sum and ongoing contributions. These were based on Mr W's ATR of 7/10 which TRIP classed as *"aggressive"*. The report defined an aggressive investor as someone who *"would like to maximise long term returns and is not concerned by short term volatility, but still wish short term financial security to be provided by low risk investments"*. For this reason, and tax efficiency the adviser recommended putting some funds into an ISA. I've not considered whether this is an accurate reflection of Mr W's ATR, and Mr W hasn't said it was incorrectly assessed.

When recommending a switch a financial adviser must follow the 2009 regulatory checklist and guidance to ensure it's in the consumer's best interests. Advisers are required to clearly justify a switch to a higher cost fund, ensure the consumer doesn't lose valuable guaranteed benefits, the new fund must meet their ATR, and if they are paying for ongoing advice they must be offered reviews and understand the charges. In Mr W's case the switch recommended by TRIP had lower charges, his Aegon plan came with no guaranteed benefits, the investments met his ATR, and he was already paying for and receiving annual reviews, so I'm satisfied TRIP fulfilled their obligations here.

It was unfortunate timing that the value of Mr W's plan fell just when he decided to take benefits. But if Mrs W's Aegon plan outperformed Mr W's SIPP that doesn't mean the recommendation to switch was unsuitable, and as TRIP explained fair comparisons can only be made based on the same asset allocation, timeframe and cashflows. Mr W appears to have had no issue while his fund was growing in value but attributed the fall to TRIP rather than the external factors affecting markets over that period (such as the war in Ukraine, inflation, rising interest rates and the 2022 mini-budget).

Investment performance in itself wouldn't be a reason to uphold a complaint, unless the switch had been into investments which didn't meet Mr W's ATR, which I've seen nothing to suggest was the case. Although TRIP's annual reviews considered the couple's finances as a whole, including a combined total for their pension provision, investment recommendations would reflect their individual circumstances including their ages and employment status.

Mr W's ATR was determined as two points higher than Mrs W's, which is likely to mean their funds were invested differently, as can be seen from the variances in the fund switches TRIP recommended. The external factors affected asset classes in different ways, so Mr and Mrs W's portfolios may not have been impacted similarly. At the time of the switch Mr W was 58 and intending to retire at 65, so the investment strategy would've been based on that time horizon. But his deteriorating health meant he didn't actually resume working as expected, and in 2023 decided to access his pension five years earlier than planned, leaving less time for the value to recover.

Despite Mr W's reservations about SL/Abrdn which were based on reviews he'd seen and feedback from friends, I think it was fair for TRIP to distinguish between the experience of direct customers, and SL/Abrdn as a product provider accessed via a financial adviser. Although Mr W thought TRIP should've been prepared with quotes for his various options for the meeting, it seems he didn't actually want to be limited to an annuity, which necessitated switching from his existing Aegon plan to facilitate flexi-access drawdown. In recommending SL TRIP had researched the whole market, and while Aegon could offer a product which allowed flexi-access drawdown, SL's platform charges were lower. So while I understand Mr W was disappointed with the performance of his plan, particularly as he needed to access it earlier than expected, I can't say TRIP's recommendation was unsuitable based on the information available at the time. And I see no reason to say TRIP should refund the charges and fees Mr W has paid since the switch.

Mr W had originally intended using their joint savings to make a contribution to his pension. But as a proportion were held in a fixed ISA until August 2022, he decided against this, and apparently purchased a plane instead. But if TRIP had been asked to recommend a suitable ISA or other investment product, a separate advice fee would've been charged. The 2019 client agreement which was applicable at the time, provides for an initial advice fee based on a percentage of the value, with ongoing advice fees to cover services including periodic reviews. Mr and Mrs W were paying ongoing advice fees of 0.5% covering their annual reviews, but TRIP was entitled to charge a separate fee for discrete work such as recommendations about how Mr W should take his pension benefits. I note that TRIP waived the £350 fee relating to the switch to the SIPP in 2021. But I think it was reasonable for TRIP to say if Mr W wanted specific advice based on his changed circumstances of taking his benefits early, a charge would apply, and they weren't obliged to waive their fee again.

I understand Mr W may have thought TRIP could simply recommend the best and most cost-effective way for him to take benefits from his SIPP, based on the quotations he provided and what the adviser already knew about him as a long-standing client. But financial advisers are bound by stringent regulatory obligations to ensure any recommendations are suitable for their clients. They are held accountable for unsuitable advice which risks significant financial consequences. This is particularly the case in relation to pensions, which is a highly regulated area of advice, and often high value, so the potential risks are high. For this reason an adviser must demonstrate its advice is suitable based on a full and current understanding of a client's objectives, and their financial and personal circumstances.

I can see why TRIP considered Mr W's decision to retire early and take benefits from his pension to be significant change of circumstances, rather than slight as it was described. I think it was reasonable for TRIP to explain that to give appropriate advice it would need to carry out research and analysis, which would incur a fee. And if Mr and Mrs W weren't willing to proceed on that basis, I think TRIP was entitled to terminate the agreement. This is set out in the client agreement which allows that *"You or we may terminate our authority to act on your behalf at any time without penalty. Notice of this termination must be given in writing and will take effect from date of receipt"*.

Notice was given in TRIP's letter of 23 April 2023 and again in the final response to the complaint dated 5 July 2023 with effect from 1 August 2023, so TRIP gave more than a

month's notice. While it wasn't a requirement to give a month's notice I think it was courteous to do so, and I'm satisfied TRIP has complied with the termination clause.

I understand Mr W is unhappy he'll need to appoint another adviser and will incur a fee for any advice provided. But it seems he would've been liable to pay an advice fee to TRIP had advice been given. As I don't consider TRIP has done something wrong by terminating the relationship in line with the client agreement, I see no reason they should cover the cost of advice Mr W may seek elsewhere.

### *Service issues*

Even if we don't uphold the substance of a complaint, we can award compensation for the distress and inconvenience arising from poor service. If we think a business has done something wrong, we look at the impact on the consumer, we don't make awards simply to punish a business for the errors they make.

Mr and Mrs W's complaint letter listed a number of examples of poor service, including the perception that the adviser hadn't adequately prepared for the April 2023 meeting. The adviser's reply to Mrs W's notification that Mr W needed to access his pension suggested that before their next meeting he would "*crunch some numbers*". It seems Mr W and TRIP had different expectations about the purpose of the meeting, as Mr W appears to have expected the adviser to come prepared with some tailored options for him to choose from, whereas the adviser felt the meeting was an opportunity to gather information to understand Mr W's changed circumstances and objectives prior to carrying out the necessary research to make a recommendation about how best he should access his pensions. I can see the adviser's email mentioned he was just about to go on holiday, so perhaps he replied in haste and could've been clearer about the purpose of the meeting. But I don't think it's reasonable to expect an adviser to come prepared with recommended options without having the updated information they needed. Or that they should carry out the necessary research without the applicable fee being agreed with the client.

The complaint referred to two separate instances of calculation errors. One in 2021 totalled the various savings sources from which Mr W's bulk pension contribution would be paid to more than the £75,000 he intended. And the other in 2023 was an error in the annualised % return on their pensions since inception. It also cited the failure to send out the annual review invitations and pass on the notification that an Aegon fund had closed and been substituted.

I appreciate that in addition to Mr W's main concern about the fall in value of his plan just at the point he needed to access it, these errors and failings would've contributed to his overall poor impression of TRIP. And clearly businesses should provide good service and ensure the work they do is carried out following the correct process to an appropriate standard. But it's not realistic to expect errors never to occur, and I'm not persuaded these had a significant impact on Mr W. I bear in mind these examples happened over a two-year period, didn't result in any adverse consequences and TRIP has apologised and changed an aspect of its process, demonstrating their feedback was acted on.

While Mr W was present in the meetings and the advice related mainly to him, I can see that Mrs W was responsible for the bulk of the contact with TRIP. Even though the emails were signed as if from them both, I think Mrs W was likely the author, and responsible for communications including arranging the meetings, and generally took the lead in the administrative side of things for the couple. So while the service from TRIP was delivered to both of them, I think Mrs W was likely to have been put to more trouble, particularly as she was working while Mr W was not. I also bear in mind Mr W benefitted from TRIP waiving their usual £350 advice fee for the switch which would usually have been deducted from his plan.

In its response to the complaint TRIP apologised for these errors but hadn't offered any compensation. Our investigator thought £150 was the fair amount to reflect the inconvenience experienced mainly by Mrs W. Awarding compensation is never an exact science, and we generally consider awards of between £100 and £300 to cover repeated small errors, or one larger error which took a reasonable effort to sort out. While Mr W may have experienced some level of inconvenience, which is anyway to be expected in life, I've seen no evidence those errors had a particular impact on Mr W or that he was personally involved in sorting them out.

So I think the £150 which the investigator said TRIP should pay Mrs W is in line with what I'd suggest to compensate them both for the inconvenience and effort to sort things out, which mainly fell to Mrs W. So I'm not going to ask Tailored Retirement and Investment Planning Limited to make a separate award to Mr W.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 28 August 2024.

Sarah Milne  
**Ombudsman**