DRN-4799957

The complaint

Mr F complains that Robert Bruce Associates Limited trading as RBA Financial Planning (RBA) gave him unsuitable advice to switch his existing personal pension with a provider I'll refer to as provider O to a Self-Invested Personal Pension (SIPP) with a provider I'll refer to as provider N.

What happened

I understand that Mr F was an existing client of RBA and that it arranged a review of his pensions in late 2020. The review took place by phone on 3 December 2020.

On 3 December 2020, the adviser carried out an ATR assessment with Mr F. Based on his answers to the risk questionnaire, he was assessed to have a 'Moderate to Adventurous' risk profile. The document shows that after the initial assessment had been completed, RBA asked Mr F further questions so that it could better understand his risk profile.

At the same time as it assessed Mr F's ATR, RBA also discussed his chosen investment term with him. Mr F selected a long investment term of 15 years plus.

RBA completed a document: 'Review Document and Financial Planning Guide' during the review meeting. This recorded the following about Mr F:

- He was aged 51 and in good health at the time of the advice.
- He was married, with a financially independent daughter.
- He was employed and earning £36,000 each year. His and his wife's monthly expenditure was £1,568 each month.
- He and his wife rented a property from his wife's mother for £600 each month. They'd sold their own property to buy an overseas property seven years ago. This had cost 100,000 euros seven years ago, but hadn't gone up in value. They were considering retiring there.
- He had £5K in cash savings.

The review document recorded that the adviser discussed the option of transferring to provider N. And that he completed a new risk profile to ensure Mr F remained in an appropriate investment strategy. It recorded that he wanted to maintain his current "*moderately adventurous*" risk profile. It also noted the following:

- The adviser recommended that Mr F started to contribute to his pension to build up as large a pension savings pot as possible for his retirement and to provide death benefits.
- It noted Mr F had experienced a fall in the value of his pension. It said that coronavirus had affected markets, although there'd been a bounce back. And that Mr

F wanted to continue with his moderately adventurous strategy because he understood*: "that to see your valuations return to previous levels you need to sit tight, which is what you have done throughout this period."* It also said: "*you continue to be prepared for any continued volatility there might be, because your long term goal and aim remains growth and for your investments to keep ahead of inflation*.

We discussed the lowest and highest valuation points over recent months and continue to be prepared to tolerate this level of risk."

- He continued to value RBA's service and his annual reviews.

- His capacity for loss was assessed as medium.

The review document also noted that Mr F had contacted RBA in the first instance because he'd received a recent statement from provider O and was concerned about the current charges applicable to his plan. The adviser had made Mr F aware that since the plan was set up in 2014 he'd seen a real return on his investment.

RBA sent Mr F a detailed follow up email after the December 2020 meeting which confirmed what had been discussed.

The adviser sent out a recommendation letter dated 10 December 2020. This recommended that Mr F switched his provider O pension, which was invested in the Wealth Select Fund, to a SIPP with provider N. It recommended that this should be invested in the Robert Bruce Wealth 4 fund.

The reasons given for the recommendation were as follows:

• "*Lower overall charges, meaning more money remains within your plan and invested for your future benefit.*

• *Access to a new range of bespoke investment portfolios, built and managed specifically for Robert Bruce clients...*

• *More functionality in terms of the tools available to us with the [provider N] platform to continue to offer you a holistic financial planning proposition*."

The letter noted a single disadvantage of the recommendation. It said that Mr F's funds might be disinvested from the markets for around 15 days as the switch would need to be done as cash.

The letter stated that there would be cost savings from the proposed switch, as the provider O pension had an annual charge of 0.48%, whereas the charge for the provider N SIPP would be 0.3%. And the current investment charge was 0.77% but would be 0.61%. RBA estimated a cost saving of approximately £98 a year.

The letter also stated that the proposed portfolio had achieved superior performance over the past five years. But said that this wasn't guaranteed. It further stated that if Mr F didn't want to proceed with the recommendation, RBA would continue to monitor and review his existing provider O pension.

I understand that a transfer value of £30,034.60 was paid to the SIPP with provider N on 30 March 2021.

Mr F's representative complained on his behalf to RBA on 27 September 2023. It made the following points about the advice:

- It was negligent to advise Mr F away from his “safe” pension with provider O to a SIPP with provider N. Mr F was induced to transfer on the promise of greater growth in his pension if he moved to provider N.

- A SIPP wasn’t suitable for Mr F as he had no previous investment experience and a low attitude to risk and low capacity for loss. It also felt that RBA had failed to demonstrate it had undertaken an adequate assessment of Mr F’s investment experience, his financial situation and his attitude to risk (ATR).

- RBA didn’t explain the high costs involved including charges on some of the investments in addition to the SIPP charges.

RBA responded to the complaint on 6 November 2023. It noted that Mr F hadn’t mentioned any concerns directly to it. It felt that the advice was suitable. It made the following points:

- It had made Mr F fully aware of the risk level he’d agreed to. It said Mr F had himself pushed for more risk. It strongly refuted the allegation that its adviser had promised better investment performance.

- The recommended SIPP was a suitable investment for Mr F. It didn’t require him to be a High Net Worth or Sophisticated Investor. It said that the benefits in terms of the options available, lower charges and flexibility are/were the key drivers. It also said that its records showed that Mr F did have previous investment experience. And that his capacity for loss at the time of advice had been discussed and documented. RBA said that Mr F’s ATR was certainly not low.

- RBA questioned what Mr F’s representative meant when it referred to the high costs of the SIPP.

RBA asked for further clarification on this, and other issues, so that it could help further.

On 21 December 2023, RBA issued its final response to the complaint. It said that as Mr F’s representative hadn’t provided the clarification it had requested, it couldn’t assist further. It provided referral rights to this service.

Mr F’s representative brought his complaint to this service on 12 January 2024.

RBA told this service that Mr F was still a client and that he still held the investment in question. It provided the evidence to confirm that the SIPP with provider N and the recommended investment was cheaper than the existing arrangement.

Our investigator didn’t think the complaint should be upheld. He felt that the recommendation to switch Mr F’s pension arrangement wasn’t unreasonable. He felt that overall, the new arrangement allowed Mr F to invest into a portfolio that was in line with his risk profile at a lower cost.

Mr F’s representative didn’t agree that Mr F had a ‘moderately adventurous’ risk profile. It felt that - despite RBA’s assessment - Mr. F's lack of investment experience and his stated low capacity for loss indicated a more cautious approach to risk. It also felt that RBA had failed to adequately disclose the potential impact of the charges on Mr. F's pension fund over the long term. It felt the decision to switch to the provider N SIPP should’ve been accompanied by a comprehensive analysis of the overall cost implications, including any potential hidden fees or charges.

Mr F’s representative noted that there had been some growth in the SIPP value, but felt that we should also consider the potential returns that could’ve been achieved with alternative investment strategies.

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 not going to uphold it, for largely the same reasons as our investigator. I know this will be disappointing for Mr F. I’ll explain the reasons for my decision.

To make a recommendation, a business must obtain the necessary information regarding the consumer's:

- knowledge and experience in investing
- financial situation
- investment objectives

To do this, the business must obtain enough information from the consumer in order to understand essential facts about him; and the business must believe that:

- the service or recommended transaction meets the consumer's investment objectives - including their ATR, the purpose of investing and how long they want to invest for;
- the consumer is able to financially withstand the investment risks; and
- the consumer has the necessary experience or knowledge to understand the risks involved.

In practice this means looking at the investor's ATR, the purpose of investing and how long they want to invest for.

From what I’ve seen, I’m satisfied that RBA met the requirements I’ve outlined above when it made its recommendation to Mr F in December 2020. I’ll explain why.

Knowledge and experience in investing

RBA said that its adviser notes, emails, know your client information, and risk profiler, all confirmed that it had a very good understanding of Mr F’s experience, capacity for loss and attitude to investing.

I acknowledge that Mr F’s representative said that Mr. F lacked the investment experience he’d need for the recommendation to be suitable. But I don’t agree. I say this because the recommendation wasn’t for a non-standard investment. And Mr F himself noted during the ATR assessment that he did have investment experience, as he’d held his existing pension scheme. And he’d purchased an overseas property. I’m satisfied that this shows he had sufficient investment experience for the recommendation.

Risk appetite

I also acknowledge that Mr F's representative felt that he didn't have a 'moderately adventurous' risk profile. It felt that "*his stated low capacity for loss indicated a more cautious approach to risk*".

From what I've seen, Mr F never stated that he had a low capacity for loss. On the contrary, his responses to the 3 December 2020 risk questionnaire indicate that he had a moderate capacity for loss. I say this because of Mr F's responses to the following questions:

2. I would go for the best possible return even if there were risk involved.

Always

6. I am looking for high investment growth. I am willing to accept the possibility of greater losses to achieve this.

I tend to agree with this statement

7. If you had money to invest, how much would you be willing to place in an investment with possible high returns but a similar chance of losing some of your money?

More than half

10. Imagine that you have some money to invest and a choice of two investment products, which option would you choose?

A product with a higher average annual return but some risk of losing part of the initial investment.

I'm also satisfied that RBA made Mr F aware that it felt he had a medium capacity for loss. And there's no evidence that he ever disagreed.

In terms of RBA's assessment of Mr F's ATR as 'moderately adventurous', I've seen no evidence that it reached the wrong conclusion here. I say this because of Mr F's responses to the December 2020 ATR assessment, which clearly showed that he was willing to take on a substantial degree of risk in order to increase his potential investment return. I also agree with our investigator that the level of risk of Mr F's previous portfolio was broadly similar to the new one.

I can see that RBA then carried out the updated risk assessment in 2020 so that it could ensure that if Mr F agreed to the recommended transfer to the provider N SIPP, it could recommend the appropriate investment strategy. Therefore I'm satisfied that RBA obtained enough information from Mr F at the time of the advice to understand his ATR so that it could ensure its recommendation was suitable for him.

Charges

Mr F's representative felt that RBA had failed to adequately disclose the potential impact of the charges on Mr. F's pension fund over the long term. It also had concerns over any potential hidden charges.

The evidence shows that the recommendation did set out the charges on the old and new arrangements. It also explained that the charges were lower on the SIPP with provider N and the new investment.

From what I've seen, there's no evidence of any hidden charges. I'm satisfied that the charges under the new arrangement were lower than the existing ones. And I don't consider that there was any requirement for RBA to produce any additional analysis about the affect of the charges over time, given they would be an improvement on the existing arrangement.

Performance

Mr F's representative felt that this service should consider the potential returns that could've been achieved with alternative investment strategies.

On 9 April 2024, RBA told this service that, since inception, with no further contributions invested, Mr F's investment had seen a return on the performance of 9.84%, against a challenging investment background. It also said that Mr F was only three years into an investment he'd envisaged holding for more than 15 years. It pointed out that there is a huge difference between market volatility and actual loss. It said its terms of business, advisory process and client documentation all make it clear that investments can go up and down and that it wasn't able to provide a guarantee of absolute short-term stability.

I agree with our investigator that RBA included past performance statistics within the December 2020 recommendation which showed it'd outperformed his existing investment. But there's no evidence that any guarantee was given that the new arrangement would outperform the previous one.

Although it seems the fund performance wasn't as good as Mr F had hoped, this doesn't mean that that the advice was unsuitable. I'm satisfied that RBA made Mr F aware that there was no guarantee that the future performance of the recommended fund would exceed that of the old one.

In summary, I'm satisfied that the evidence shows that RBA understood Mr F's background and experience. And that, in the first instance, it tried to assuage Mr F's concerns about his provider O pension, rather than simply recommend a different product to him.

Based on the evidence, I'm satisfied that RBA obtained the necessary information about Mr F to make the recommendation. And that the recommendation wasn't unsuitable. Therefore I can't reasonably uphold the complaint.

My final decision

For the reasons explained above, I don't uphold Mr F's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 September 2024.

Jo Occleshaw
Ombudsman