DRN-4947949

The complaint

Mr W complains that Augustine Limited trading as Augustine Financial Planning (Augustine) provided him with unsuitable advice for his pension, leading to a financial loss.

Mr W feels that his adviser failed to take his attitude to risk (ATR) into consideration. He said he wanted a bespoke plan with a lower percentage of his pension invested in equities, but his adviser didn't recommend that.

Mr W has also made a number of complaints about the poor service he felt he received from his adviser.

What happened

I understand that Augustine has been Mr W's pension adviser since 2016. Mr W has a Self-Invested Personal Pension (SIPP) which is currently held in a wrap with one provider and administered by another. I understand that his pension is fully crystallised and in capped drawdown.

Augustine wrote to Mr W on 25 October16 with its Client Agreement. This stated that it would provide Mr W with its Private Client Service. It also said that it would carry out the following ongoing work in respect of Mr W's SIPP:

- *"Bespoke investment portfolio management*
- *Access to an adviser in person or by telephone as required*
- *Two meetings per year or more if required, including:*
    - *Full valuation reports for your investment portfolio*
    - *Portfolio performance reviews — are we on track?*
    - *Review and agreement of personal and financial goals/objectives — is your financial planning achieving what you want?*
    - *Review of risk tolerance — can you afford to take more or less risk? How much risk do you need to achieve your objectives?*
    - *Tax efficient wrapper reviews*
    - *Update on legislative changes*

Other Aspects of Financial Planning

We will be available to discuss your financial planning with you as and when required within reason."

The letter referenced Augustine's Terms of Business. These explained that the Private Client

Service – or “Ultima” service included the following:

- “*independent financial advice*
- *Augustine interaction with your tax and other professional advisers*
- *Bespoke investment Portfolio Management*
- *2 meetings per year or more, if required, including:*

  - Review of financial goals/objectives

  - Review of risk tolerance/asset allocation and potential re- balance of portfolio

  - Performance review

  - Tax efficient wrapper reviews

  - Update on legislative changes
- *Quarterly update*
- *Quarterly valuations*
- *Access to your Portfolio and Secure Messaging via our online Portal*
- *Access to an adviser, as required*”

The Terms of Business stated that the initial fee for this service would be 1% of the money invested, subject to a minimum initial fee of £2,500. And that the ongoing fee would be 1% of funds under management, subject to a minimum ongoing fee of £5,000.

The Terms of Business also explained that Augustine offered a “Prima” financial planning service. This included the following:

- “*independent financial advice*
- *Choice of investment Portfolios built around your own attitudes to risk and investment*
- *Quarterly update*
- *Annual Review meeting at our offices including:*

  - Full valuation report

  - Review of financial goals/objectives

  - Review of risk tolerance/asset allocation

  - Performance review

  - Tax efficient wrapper reviews

  - Update on legislative changes

- *Access to your Portfolio and Secure Messaging via our online Portal.*

- *Access to an adviser, regarding your portfolio, as required. There may be a fee applicable to all other enquiries*."

The ongoing fee for the Prima service would be 0.75% of funds under management, subject to a minimum ongoing fee of £2,500.

In April 2020, Mr W met with his adviser. Augustine's meeting notes recorded:

"*His attitude to risk is 5 but the portfolio is showing as 3*

I explained that this was largely because of the following 2 reasons

1. Equity values had fallen so reducing in % terms his equity exposure

2. He needed quite a bit in cash/structures for his required high level of income

He understood and agreed with that."

In March 2018, Mr W completed a risk questionnaire which recorded his risk level as medium. He was assessed as a level 6 within a range from 1 to 10, with 10 being the highest level of risk.

In September 2019, Mr W completed a further risk questionnaire which recorded his risk level as medium. He was assessed as a level 5.

In August 2021, Mr W met with his adviser to carry out an investment review. The meeting notes recorded:

"[Mr W] was concerned that the risk had gone outside his boundary (4) which it has to just in 6

I explained that this is a combination of falling cash (as it is taken for income) and the very high volatility that we have experienced over the last 12 months

I went on to explain that he has sufficient cash/structures to cover the 5 or 6 years of income and that the balance of fund must necessarily take some risk as his income level is 5-6% pa (reduced from closer to 8)

He was in full agreement with this"

Mr W said that his adviser didn't bring a valuation or a risk questionnaire to this meeting.

In July 2022, Augustine met with Mr W. It carried out a fact find, but it didn't carry out a risk review. Mr W said that he wanted to move to lower risk investments at this point. Mr W said that his adviser made pencil notes correcting some of the printed information he'd brought to this meeting.

On 3 November 2022, Augustine emailed Mr W with its recommendation from the July 2022 meeting. It also sent him a risk questionnaire to complete. Mr W said he found a number of errors in the report which he asked Augustine to correct. He also felt that he'd been given unsuitable advice as he felt his adviser hadn't recommended investments that matched his ATR.

The recommendation said that Mr W's primary objective was to ensure he had sufficient income and capital to maintain his lifestyle for the rest of his life. It noted that he'd last completed a risk questionnaire in September 2019, when he'd been assessed as a medium risk investor. But that his preference was to take a lower ATR than this level, although he realised he'd need to take some risk in order to generate a return.

The report went on to state that Mr W's pension was around 70% invested in the Augustine Growth Balanced portfolio, which it said was managed to a risk level of 5. And that the remainder of Mr W's pension was in cash. The adviser therefore felt that Mr W's portfolio was managed to a moderate risk level, in line with his reviewed tolerance to risk. He therefore didn't propose any change.

The adviser asked Mr W to complete the enclosed risk questionnaire so that it could ensure he remained invested in line with his ATR.

The report also explained that although Mr W was currently engaged on its "Ultima" service, Augustine now felt its "Prima" service would be more suitable. It said its fees would be 0.75% each year, with a minimum fee of £2,500. Augustine enclosed a client agreement so that the new service arrangement it'd recommended could be formalised. It asked Mr W to review, sign and return that to it.

Mr W wrote to Augustine after received the report as he'd found a number of mistakes in it which he wanted to be corrected.

In July 2023, Mr W completed a further risk questionnaire which recorded his risk level as low. He was assessed as a level 2.

Mr W complained to Augustine in August 2023. He made the following complaint points:

1. He felt that his adviser had been unprepared for his August 2021 review meeting. He said he hadn't brought a pension valuation report with him. He asked Augustine to pay him £200 for this failure.

2. He couldn't remember why his adviser had made significant corrections to his 11 July 2022 report during the 13 July 2022 review meeting. He asked Augustine to pay him £200 for this failure.

3. Mr W said his adviser hadn't offered him a risk assessment every year. He questioned whether this was reasonable and in line with the Terms of Business.

4. Mr W said that during the July 2022 meeting he'd told his adviser that he'd become more risk averse. And that his objective was to protect his pension from losses rather than to seek large gains. But he said that his adviser didn't assess his risk as he didn't have a copy of the risk questionnaire with him. He said this was only sent to him on 3 November 2022.

   Mr W's main complaint point was about his adviser's failure to reduce his investment risk in a timely fashion after he said he'd asked for help on this during the July 2022 review meeting. He asked Augustine to pay him £13,259 in respect of the investment loss he felt he'd suffered because of this.

5. Mr W wasn't happy that the adviser had taken until 3 November 2022 to send him his recommendation for the investment review they'd discussed on 13 July 2022. He also noted that the review letter he'd been sent included several errors and that there were omissions. He said even after he'd asked for the review letter to be corrected, one error remained. Mr W asked Augustine to pay him £500 compensation for his

adviser failing to take the correct notes about his health and lifestyle choices during this meeting.

6. Mr W also asked Augustine to confirm how it'd complied with money laundering legislation for over three years, as he felt it'd noted that it held an out-of-date copy of his driving licence. He asked Augustine to pay him £200 for this failure.

Mr W explained that some of the complaint points noted above had led him to question why he'd been paying around £200 each month for this level of service. He said his faith in his adviser plummeted. He wanted Augustine to pay him £1,071 in part repayment of the adviser charges it'd taken from 30 November 2022 to 30 June 2023, because he didn't think he'd received the full service he should've received. He also wanted it to pay him £30 for loss of interest due to the delay in his adviser removing himself from one of his pension accounts.

Mr W's compensation claim totalled £15,460.

Augustine issued what this service refers to as its final response to the complaint on 7 November 2023. It addressed Mr W's complaint points as follows:

1. Although it agreed that its adviser could've been better prepared for the August 2021 meeting, it said the adviser would've posted a printed valuation to Mr W if he'd requested that.

2. Augustine explained that its adviser had corrected the errors in a third party's report in order to provide Mr W with an accurate total return. It said the adviser had carefully explained the manual adjustments he'd made. And that Mr W had understood at the time.

3. It said that its Terms of Business stated that Mr W would receive a review of risk tolerance (amongst other things) at his review meetings. It said that his adviser had discussed risk with him at every review meeting. It therefore felt that the risk questionnaires/reports it'd sent along with this had satisfied its policy on assessing and reviewing risk.

4. Augustine said that the adviser recalled discussing investment risk with Mr W every time they met. And that it was satisfied that the adviser didn't simply assume that his risk level hadn't changed between April 2020 and 13 July 2022. It said he'd discussed Mr W's ATR with him and felt that his investments were invested at a level consistent with this. And that Mr W both understood and was comfortable with the overall moderate level of risk. Augustine also said that its practice was to ask its clients to complete a new risk questionnaire at least every three years. It said Mr W's previous questionnaire was dated September 2019, which was why it'd sent a new questionnaire in November 2022.

5. Augustine acknowledged that its adviser had been too slow to respond with this follow up. It felt it could've provided a timelier response to Mr W in this regard. But it didn't think that he'd suffered any loss because of this.

   Augustine apologised for its oversight in failing to correct the one remaining mistake in the review letter.

6. It said it was satisfied that it'd met the appropriate legislative and regulatory requirements.

Augustine felt that Mr W's adviser understood his objective was to protect his investments and that he'd been working to achieve that. It said that the actual result for the period in question showed a modest gain in excess of what Mr W might've made had the pension funds been switched 100% to its Defensive portfolio (risk 2). It also said that it's adviser had suggested Mr W considered an annuity.

Augustine also noted that it used risk questionnaires to help understand how a client felt about risk at a particular time. But that this didn't necessarily mean that it would automatically recommend an investment solution that directly correlated to the score generated by a risk questionnaire. It said that the process it used to assess risk tolerance and capacity for loss was more complex.

Augustine also said that although its Terms of Business stipulated a minimum annual charge, it didn't necessarily apply that minimum. It said that Mr W's adviser had stated in his 10 July 2023 email to Mr W that although its minimum for the service he was receiving was £2,500 each year, it'd agreed to an annual fee of 0.75% of the fund. It accepted that Mr W's adviser should've explained the difference between the services it offered and communicated better with him to ensure he fully understood the service and its associated costs and charges. And upheld this part of the complaint. But it felt that its adviser had arranged for his removal from one of Mr W's pension accounts in a timely fashion.

Augustine rejected Mr W's individual compensation claims. It said its adviser had made detailed notes of his health conditions and lifestyle choices. It also said that there'd been no financial loss to Mr W when it'd asked him for an updated copy of his driving licence, or for his adviser failing to bring a valuation report to a meeting.

Augustine said it'd carried out detailed calculations to consider whether Mr W would've benefitted from a change to a lower risk investment strategy in August 2022. It said these calculations showed that Mr W was in a better financial position having retained his existing investment strategy.

Augustine offered Mr W £1,500 compensation for its service errors and the upset caused.

Unhappy, Mr W wrote a further complaint letter to Augustine on 27 November 2023. He didn't think it'd fully considered all of his points and rejected its compensation offer. Augustine felt that Mr W hadn't raised any materially different complaint points from before, so it didn't add to its complaint response.

Mr W brought his complaint to this service in April 2024. He still felt he'd suffered a substantial financial loss. And said he'd suffered significant stress and anxiety, which had made his health worse, since he'd received Augustine's post-review letter on 3 November 2022. He didn't think the compensation offer reflected this.

Mr W didn't think his adviser had been sufficiently prepared for his meetings. He also said the adviser hadn't regularly conducted risk reviews. But Mr W's main complaint was that his adviser hadn't provided him with the low-risk investment portfolio he said he'd discussed during his July 2022 review meeting. Mr W felt that he'd suffered a substantial financial loss as a result of his adviser's failings.

Our investigator didn't think that Augustine needed to take further steps to put things right. She felt the £1,500 compensation it'd offered Mr W was reasonable under the circumstances of the complaint. She felt Mr W's adviser had provided him with clear reasoning about why he was recommending the pension product. She also felt that product was in line with Mr W's needs and objectives. She acknowledged that Mr W felt that his adviser hadn't properly considered his ATR or his health issues in 2022. But said she was satisfied that the information contained within the fact find, suitability letter and the risk assessment did take these into account.

Mr W didn’t agree with our investigator. He made a number of detailed points about where he felt his adviser’s service had fallen short of what he could’ve reasonably expected. These included:

- He said it’d taken his adviser three months from the July 2022 meeting until 3 November 2022 to provide him with the suitability letter. He felt by then it was no longer suitable. He also said that he hadn’t been able to take timely actions against a falling market.

- Mr W felt that the suitability letter hadn’t addressed the needs and wishes he’d discussed in the July 2022 meeting. He felt he’d made it clear that he was keen to reduce his exposure to equities. He said despite his main concern being that 75% of his pension was invested in equities, the adviser didn’t reduce his exposure to those.

- He said the suitability letter contained many errors. He also noted that Augustine couldn’t provide proof of delivery. He therefore felt that it’d never sent him a hard copy.

- Mr W said that if his adviser had sold all of his equities to cash, he would’ve made a risk-free gain. He said that if his adviser had suggested in July/August 2022 that he left his pension in cash he would’ve agreed.

- He felt some of the wording in the suitability letter showed that his adviser had lacked attention during their discussions. And felt that this indicated a lack of attention at all of their review meetings since 2016.

- He felt he was being charged for services which Augustine didn’t provide.

- Mr W felt that when Augustine had suggested he move from its “Ultima” service to its “Prima” service, he’d lose the convenience of home visits. And he might have to pay for certain advice. He didn’t think this suggestion was in his best interests.

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 persuaded that Augustine needs to take further steps to put things right. I’m going to uphold the complaint as I understand that Mr W has yet to accept Augustine’s offer. But I agree with our investigator that the £1,500 compensation it has offered Mr W is fair and reasonable under the circumstances of his complaint. I know Mr W will be disappointed by my decision. I’ll explain the reasons for it.

As our investigator noted, Mr W’s main complaint is that his adviser didn’t tailor the recommendation he made in November 2022, following the review meeting in July 2022, in light of Mr W’s stated wish to lower his equity investments in his pension.

So I’ve first considered whether I think the adviser acted reasonably.

Was the adviser’s November 2022 recommendation suitable?

The fact find from the 13 July 2022 meeting recorded that Mr W wanted to maintain his current lifestyle and preserve his current income for the rest of his life. His ATR was noted as being medium. Mr W said this wasn't in line with his wishes at that time.

Augustine said that Mr W was fully aware at the time of the July 2022 meeting that some risk was needed to ensure that his fund could survive with the high level of withdrawals he was taking from his pension. It said that 70% of Mr W's funds were invested in a balanced portfolio, with a risk level of 5, with the remaining 30% held in cash deposits. It said that given Mr W had other substantial cash assets outside his pension, this meant that his overall risk level was significantly lower than risk level 5.

I've carefully considered both parties' testimony and what the November 2022 report and the other documentary evidence from the time of the July 2022 review meeting recorded. I note that the November 2022 report stated that although Mr W's preference was to reduce his ATR, he realised he'd need to take some risk in order to generate the return he needed in order to continue to take his required withdrawals.

I can also see that the adviser noted that Mr W's portfolio was managed to a moderate risk level, in line with the discussions they'd held about his tolerance to risk. In November 2022, he also asked Mr W to complete a new risk questionnaire so that he could ensure he remained invested in line with his ATR.

From what I can see, Mr W didn't complete a new risk questionnaire until July 2023. This showed that his risk level was around a level 2, or low. I've not been provided with an explanation about why Mr W didn't complete this risk questionnaire at the time his adviser sent it to him in November 2022. I'm satisfied that if he had, his adviser would've further considered whether his investments were right for him.

Augustine provided this service with a copy of its adviser's detailed notes from the July 2022 meeting. These recorded:

- "*We looked at his pension fund and discussed his concerns that the fund has not performed well*
- *I explained that markets have been very difficult and although the fund has lost a shade over 2% over the last year or so (after accounting for income) this is not a bad result as the fund has been quite defensive with its high cash holding*."

I'm satisfied that these notes, alongside the contents of the November 2022 report, evidence that the adviser took reasonable steps to discuss the level of risk Mr W wanted to take with his investments, in light of his need to continue to take his income from his pension. And that the adviser also explained to Mr W that the level of risk he was actually taking in his pension was quite defensive given the size of his cash holding. I'm persuaded that having discussed these points with Mr W, he decided that he didn't want to change his investments at that point, despite his concern that his equity funds hadn't performed well.

I can see that these kinds of discussions also took place at previous review meetings. For example, during the April 2020 meeting the adviser's notes recorded that Mr W's ATR was a level 5 but his portfolio was a level 3. Following discussions, Mr W understood and agreed that his portfolio was still right for him, despite the apparent mismatch. The same is true for the August 2021 meeting. At that point the notes recorded that Mr W was again concerned that his investments didn't match his ATR. Again, after discussion with his adviser, Mr W agreed not to change his investments.

In any event, Augustine has carried out calculations to assess if Mr W would've been better off if he'd moved to a strategy in line with a risk level of 2. These evidenced that Mr W's actual investments performed better than the funds Augustine would've recommended to Mr W if he'd completed a new risk questionnaire in August 2022, been assessed to have a level 2 ATR, and had then decided after discussion with his adviser to reduce the risk he was taking with his pension investments. Therefore, even if I agreed with Mr W that his adviser had failed to consider his investment objectives at the July 2022 review – which I don't – I wouldn't be able to recommend that Augustine paid Mr W any compensation in respect of any financial loss, as there's no evidence that he's suffered one.

I do acknowledge that Mr W said he would've invested fully in cash if his adviser had recommended this in July 2022. But I'm not satisfied that this would've been a reasonable recommendation for the adviser to have made. I say this because Mr W needed his fund to generate an income for the rest of his life. And I'm not persuaded that a 100% cash investment would've been likely to do this.

Having considered all of the evidence, I'm satisfied that the adviser's November 2022 recommendation was suitable for Mr W.

I next considered the service issues Mr W has raised, including his point that Augustine recommended a different service agreement with him that wasn't in his best interests.

Service issues

Mr W felt he was being charged for services which Augustine didn't provide. And that its recommendation to move to its "Prima" service wasn't in his best interests.

Having carefully considered the Terms of Business against the service Augustine provided Mr W with over the period in question, I'm persuaded that Augustine largely provided the service it had outlined to Mr W from the start.

I say this because I'm satisfied that the evidence shows that Augustine provided Mr W with the service it'd explained it would provide. And that it made the applicable charges clear to him.

I acknowledge that Mr W doesn't consider that his adviser took his ATR or his health issues into account during the July 2022 review. But I'm satisfied that the evidence shows that he did. As I noted earlier in my decision, I'm also satisfied that the adviser explained to Mr W why he'd come to his recommendation.

I also acknowledge that Mr W doesn't consider that Augustine has carried out all of the risk reviews it should've. But based on the evidence, I'm satisfied that it has. The Terms of Business also explain that Augustine will conduct a suitability review at least once a year. From what I've seen, Augustine has done this.

There were a few service issues which I'll consider below. But I'm not persuaded that Augustine acted against Mr W's interests when it recommended the "Prima" service to him.

I say this because I consider that the Prima service was suitable for Mr W. And that it might've saved him fees over time if Augustine had ever decided to enforce the full fees outlined in its Terms of Business, which it was entitled to do.

I can see that Augustine's service fell short in some areas. For example, when it took the adviser three months to issue his recommendation after the July 2022 meeting. And when the report he then issued contained some mistakes. I can see why this made Mr W feel that his adviser had lacked attention during their discussions. But, having been provided with the detailed notes from the July 2022 meeting, I'm satisfied that the adviser took notes at the level of detail I would've expected. And there's no indication that his attention was lacking either during that meeting, or the previous ones.

I agree with Augustine that its adviser should've better explained the difference between the services it offered to Mr W, and ensured that he fully understood the associated costs and charges. I think if he had, Mr W would've been much more comfortable with the suggestion that he might want to move to the "Prima" service.

Mr W made a number of specific compensation requests which I've detailed above. This service wouldn't normally award such specific amounts for shortcomings like these. But we can consider these failings overall. Having done so, I'm of the view that the £1,500 compensation Augustine has offered Mr W, but which he has rejected, is fair.

Therefore, while I'm going to uphold this complaint as I understand Mr W has yet to accept the £1,500 Augustine has offered him, I'm not going to ask Augustine to take any further steps to put things right.

Putting things right

Augustine Limited trading as Augustine Financial Planning must pay Mr W £1,500 compensation. If it has already paid Mr W any compensation, it can deduct the amount it has paid from this figure.

My final decision

My final decision is that I uphold Mr W's complaint. Augustine Limited trading as Augustine Financial Planning must pay Mr W £1,500 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 15 November 2024.

Jo Occleshaw
Ombudsman