DRN-5046034

The complaint

Mrs R complains that Blue Circle Wealth Management Ltd (Blue Circle) didn't manage her pension appropriately as it failed to make her aware of the significant loss to her pension fund in 2023 – or take actions to prevent or mitigate the loss. She complains that Blue Circle should have done more to review her pension more regularly considering the ongoing advice fee that she had paid it for that purpose. She says that the situation with her pension fund value has caused her more anxiety and stress which has further affected her health condition.

What happened

Mrs R held a pension which she transferred to a new provider following a recommendation from her existing adviser when he worked for another advisory firm.

In March 2021 the servicing rights of the pension were transferred to Blue Circle when the adviser joined that firm. Blue Circle continued with the same ongoing advice fee that Mrs R had previously paid for a service that would provide an annual face to face or telephone review.

Blue Circle says its adviser sent out documents for the annual review in February 2022, but despite, in May 2022, chasing the return of the documents which were needed before it could provide any recommendations, it never received them. It said that because Mrs R had been unwell and couldn't attend a face to face meeting at that time it didn't want to "*pester*" her further. Mrs R however says that it was her that instigated the request for an annual review, and she didn't receive any of the documents that Blue Circle sent out.

In March 2023 Mrs R received her annual pension statement from the provider and noted it had fallen in value to £413,921 – which was a loss of nearly £65,000 from the previous year. She contacted her adviser and an annual review was carried out in late March 2023. As a result of the review the adviser recommended switching to a temporary annuity as Mrs R's attitude to risk (ATR) had fallen to the lowest defined rating. Mrs R accepted the recommendation but complained that her pension hadn't been adequately monitored and she'd not been made aware of the fall in her fund's value. She said that as she paid an ongoing advice fee – and believed she was invested in safe funds with a "guarantee" – she should have been told earlier about the market volatility that had occurred. A complaint was raised against the provider, the original advisory firm, and Blue Circle.

Blue Circle didn't uphold the complaint making the following points:

- It can only make changes to a client's investment strategy following a financial review and making a personal recommendation. It doesn't switch funds without a client's knowledge and doesn't monitor and move investments just because of market performance.
- It accepted it was responsible for the service it had provided Mrs R since it took over the servicing of her plan in 2021 and this was based on the original recommendation her adviser had given her to transfer her pension when he acted for a different firm.

- Unfortunately, the world events of 2022 saw a global crash of all asset classes which even affected the cautious funds in which Mrs R was invested. But this recommendation was appropriate at the time and in line with Mrs R's risk profile and longer term financial objectives.
- Its adviser was aware of the effect of market volatility affecting his client's portfolios in 2022 but thought the funds into which Mrs R's pension were invested remained suitable for her needs.
- It took all the necessary steps to undertake an annual review in February 2022 but didn't receive the documents it required from Mrs R to give any further advice. It also acknowledged Mrs R's health conditions at that time and decided not to "pester" her any further. But it also didn't think conducting a review would have led to a different fund recommendation or could have prevented the downturn in the pension fund performance.
- The fund recommendation was consistent with a cautious risk approach which was in line with Mrs R's ATR. In its view the unprecedented poor performance of 2022/2023 couldn't have been avoided.
- It was aware of the events of 2022 but took the view that the recommendation for Mrs R remained suitable and that the long term nature of her investment could absorb the losses and recover over time.
- It understood how the performance of the pension might have affected Mrs R – and would have been stressful for her. But it didn't think the loss in value of the funds was its responsibility or that it should have taken action to switch funds for example.

Mrs R remained unhappy about the significant loss to her pension fund, so she brought her complaint to us where one of our investigators looked into the matter. He didn't think the complaint should be upheld as he believed Blue Circle had either carried out or tried to carry out annual reviews of the plan from 2022 – as it set out in its terms of business. He also thought its advice to switch to a temporary annuity in March 2023 was suitable. He explained that the fall in Mrs R's pension fund, while unfortunate, was as a result of unprecedented losses in all types of asset classes because of world events in 2022.

Mrs R didn't agree. She made the following points in support of her position:

- The investigator's findings set out what happened *after* she'd made Blue Circle aware of the fall in her pension fund value. She hadn't received the letters/documents that the adviser had sent in 2022 and had previously advised that all correspondence should be sent to her by recorded delivery because of a postal issue in her area. But the adviser had said the letters were sent by first class post.
- There was no evidence that the adviser had reviewed her pension before 2022 either. She didn't think she'd been advised that her funds could fall in value and believed she had a "guarantee" attached to the plan.
- She hadn't seen any evidence that Blue Circle had reviewed her pension correctly or monitored its performance. She said the adviser would have known that if he'd made her aware of even a small loss to the funds she would have moved into more secure or safe funds. It was only when she made the adviser aware of the loss that he began to act.
- Blue Circle hadn't treated her fairly in answering her complaint. It was slow to respond and didn't seem to accept the seriousness of the situation for her. She thought we had "*let them off*" with our outcome of the investigation.

The investigator obtained a copy of Blue Circle's "services and payment agreement" document which he thought set out the basis of any ongoing service and concluded that it had provided that level of service. He said Blue Circle was only contracted to review the pension annually and therefore wouldn't be expected to monitor the fund's performance outside of that arrangement. He also reiterated that any complaint about the suitability of the original pension transfer advice should be directed to the Financial Services Compensation Scheme with regards to the previous advisory firm.

Mrs R remained unhappy and thought that she should be refunded Blue Circle's ongoing advice fee as a minimum. She asked for her complaint to be reviewed by an ombudsman – so it's been passed 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.

And having done I've reached the same conclusion as the investigator. I was sorry to learn of the ongoing health issues that Mrs R has suffered throughout this whole matter, and I have some sympathy for her about the effect that losing around £65,000 from her pension fund value in a year would have had on her health. But I don't think Blue Circle has acted unfairly here or is responsible for the loss Mrs R has suffered, so I'll explain my reasons below.

The original advice

In her complaint, and also in her response to the investigator, Mrs R made a number of points about the advice she was given to transfer her pension originally. That advice was given by the same adviser but while he was working for another firm – so I can't hold Blue Circle responsible for that and I can't consider the suitability of that advice. I understand Mrs R has been directed to another service in order to make a claim against that firm for the suitability of the advice – but it concluded that she hadn't suffered a financial loss.

So what I'm considering here is the ongoing service Blue Circle was contracted to provide after 2021 and whether it should have acted differently in monitoring Mrs R's pension and making her aware earlier of falls in its value.

The annual reviews

Blue Circle's services and payment agreement document – which wasn't signed by Mrs R – said that it would provide ongoing services which included "*an annual face to face/telephone review of your current circumstances, your assets and any changes in your financial objectives or aspirations."* I've taken into account this document was unsigned, but my understanding is that reflected the service and cost Mrs R had already agreed with the previous firm – so I think she was aware of what should be offered and how much she would be paying for it. I note that in March 2023 Mrs R had said to the adviser that "*I am happy with your 0.5% I need to fully understand other charges clearly."* I also note that Mrs R first approached Blue Circle in February 2022 to ask for an annual review for her and her husband – so I think she knew about the ongoing service that should be provided.

So in the first instance I need to look at whether Blue Circle carried out the reviews as set out in the agreement. On 7 February 2022 Mrs R asked for the annual review to be sent to her. This was around 12 months after the transfer of service to Blue Circle, so I'm satisfied it was conducted within a satisfactory timescale. Blue Circle say the reviews were completed after Mrs R's approach and a number of documents were sent out which Mrs R needed to compete and return to allow the adviser to make any recommendations needed. I understand the documents required Mrs R to confirm details of her financial situation and ATR at that time, as well as signing a new "terms of business" and "service and payment" agreement.

Blue Circle says despite sending another letter some months later asking for the documents to be returned it didn't receive them so it couldn't consider if any recommendations were required. It says it was aware Mrs R was quite unwell during this time and was unable to meet face to face, so it didn't pursue the matter any further. Mrs R however denies receiving any of the documents and she has provided evidence to show that there was confusion with another similar address in her area so had asked Blue Circle to send information by recorded delivery as her post often "*went missing.*"

It's difficult to be sure what did happen here although similar problems with the mail did occur the following year with documents the adviser sent out not arriving – so this would support Mrs R's position to some extent. But I've no reason to dispute Blue Circle's position either. But I have seen evidence of the annual review letter that Blue Circle prepared, and I'm satisfied that it met its obligation as set out in its service agreement. I'm mindful that Blue Circle wasn't able to complete things in terms of any recommendation that might have been appropriate if it had been made aware of Mrs R's updated financial circumstances, but I think it did enough work based on the evidence I've seen to justify the ongoing service charge for that year.

Of course I'm also mindful that Mrs R maintains she didn't receive that review letter – which I've no reason to dispute – but I also have to take into account that it was Mrs R that first approached Blue Circle in February 2022 to carry out the review and was promised that the documents would be sent to her over the next few days. So I would have expected Mrs R to have anticipated their arrival and to have questioned why they hadn't arrived soon after. I know that Mrs R was quite unwell during this time, and I can understand that her health would have been a priority for her, but having instigated the request for a (non face to face) annual review I don't think it's unreasonable for her to have pursued this soon after if she hadn't received the necessary documents.

But I have also considered what might have happened if the documents had been returned and Blue Circle had completed the review fully to see if this might have had an effect on the situation around the fall in the pension fund – and I'll set out my findings and thoughts on that matter below.

When Mrs R received her annual statement in 2023 and she learned the value of her plan had fallen significantly she contacted her adviser. This led to the beginning of her complaint but also to the adviser carrying out the 2023 annual review. From the evidence I've seen Mrs R is right to say that the review was undertaken after she raised the issue of the significant fall in her pension fund value. But Blue Circle did subsequently undertake the review in March 2023 which was again just over 12 months since the previous review and therefore within the relevant timescale as set out in the service agreement. There's nothing to suggest Blue Circle wasn't going to conduct the review around that time but in any case, it did conduct it in line with its ongoing service standard.

So I can't say Blue Circle didn't comply with its obligations in 2023 although I have gone on to consider the recommendation that it made.
As part of that review Blue Circle completed a new risk profile questionnaire for Mrs R. The result was that Blue Circle confirmed Mrs R now had the ATR of a "cash" investor with little or no appetite for risk. I think this was understandable as Mrs R had been shocked by the fall in the value of her "cautious" portfolio so I would have expected her appetite for risk to have reduced from the previous level. In the circumstances the adviser's recommendation of a temporary annuity – as an alternative to simply switching to cash funds to provide greater security until retirement, doesn't seem unsuitable to me.

So I think Blue Circle complied with its obligations to provide ongoing advice on an annual basis to Mrs R, but Mrs R thinks Blue Circle should have done more particularly in 2022 when she thought her adviser should have monitored her pension fund and made her aware of the falls in its value. I have carefully considered this point, but I don't think Blue Circle needed to have done more. It wasn't a fund manager or the product provider but Mrs R's adviser, and it had set out the terms of its ongoing service to her in the service agreement – namely a face to face or telephone annual review. So that was its obligation to her, and I would expect it to review the suitability of her investments against her financial situation on those occasions. And any changes or recommendations that Blue Circle might have made should have been because of those reviews and not simply because of market fluctuations throughout the year.

Blue Circle didn't have authorisation to simply switch Mrs R's funds at any time. And in any case, I wouldn't expect it to make any alterations unless, during an annual review, it identified a material change in Mrs R's financial situation, like for example a change to her ATR which happened in 2023 – when it provided a recommendation to take out a temporary annuity. So I don't think Blue Circle acted unreasonably over this matter. Poor investment performance alone isn't a reason upon which I can uphold a complaint, the very nature of investments is that they can fall and rise in value depending on market conditions – even relatively cautious funds like the portfolio in which Mrs R was invested.

It's extremely unfortunate that the events of 2022 affected all asset classes in the way it did, especially lower risk assets such as gilts and fixed interest instruments. I know this will be of little comfort to Mrs R, and I have sympathy for the significant loss she suffered at a crucial time in her retirement planning, but I can't reasonably say that was Blue Circle's responsibility or that it should have done more to make Mrs R aware. Blue Circle's role here was to maintain an ongoing annual service to periodically check that her investments were in line with her ATR and any changes to her financial objectives. I wouldn't necessarily expect it to contact its clients because of market volatility as this wouldn't necessarily make its investment recommendations unsuitable. But I would expect it to test and confirm that suitability on a previously agreed basis – which I'm satisfied Blue Circle did here.

Would a review in 2022 have made a difference?

I've concluded that Blue Circle broadly acted appropriately when it conducted its annual reviews. I've also said that it wasn't obliged to have given Mrs R additional advice between 2022 and 2023 when the value of her fund was falling. But, as I've said above, I also have to consider whether anything different would have happened if the annual review of 2022 had reached its conclusion.

The annual pension statement for 2022, which reflected the period up to the end of February noted the value of the plan was £478,466.34 – an increase of nearly £17,000 on the previous year. So had the review been completed in February/March 2022 I think it's more likely than not Mrs R wouldn't have raised any issues with performance. I also haven't seen any evidence that Mrs R's financial situation or circumstances would have changed enough at that time for Blue Circle to have considered presenting any new recommendations in respect of the plan or the funds.
So, and of course I can't be certain of this, but I think what would have most likely happened is that the annual review would have concluded that the original advice remained suitable and there would be no reason to make any changes. There's nothing to support the idea that the original investment advice was no longer suitable at that time, so I think it's more likely than not things would have carried on as they were.

So my conclusion is that even if an annual review had been fully completed in 2022 it was unlikely to have resulted in any changes and Mrs R would have remained invested in the same portfolio until the next annual review was carried out in 2023. By the time of the 2023 review the significant fall in Mrs R's investment had already happened, but in any case, as I've already said the recommendation that was presented at that time wasn't unsuitable given Mrs R's change in ATR – which I think understandably was brought on by the loss in the value of her pension.

My final decision

For the reasons that I've given I don't uphold Mrs R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 28 December 2024.

Keith Lawrence
Ombudsman