DRN-5173232

The complaint

Mrs R says she became more involved in dealings with Everlong Wealth Limited/'Everlong'(which was previously named differently) since her husband passed away, in 2012. In this context, she says she was thereafter vulnerable (and remains so) and she placed her reliance and trust in Everlong's service. She mainly alleges the following:

- Everlong failed to deliver the Ongoing Advice Service ('OAS') it was paid to provide; there were no meaningful reviews and no portfolio realignments happened, no updates were conducted on fact-finds and risk profiles, there was a lack of reporting and any work that was completed was charged for separately; it arbitrarily increased the Ongoing Advice Charge ('OAC') for the service from 0.5% to 0.6% to 0.75%; Initial Advice Fees ('IAFs') were also unnecessarily applied to her account; these service and fees matters mean there should be a full refund of fees paid. [issue 1]

- Everlong's advice was poor and, in some cases, it was not in her best interest – in particular, advice in February 2014, April 2014, July 2018, and November 2021. [issue 2]

- Everlong's advice on withdrawing from her pension to meet her need for cash did not mention the associated liability to pay marginal 45% tax on the withdrawal. Had she been made aware of this before the withdrawal she would have considered and used an alternative solution. It is therefore responsible for her loss in this tax liability. [issue 3]

Everlong disputes the complaint. It says the allegations in issues 1, 2 and 3 are unfounded, that Mrs R received the OAS at all times, that she agreed all OACs and IAFs applied to her account, and that she received suitable advice from her Everlong advisers at all times. It also disagrees with the context she presented. It says there is extensive evidence that she was directly and routinely involved in, and led, dealings with Everlong on her and her late husband's behalf before he passed away, that she continued to lead those dealings thereafter and that other than her vulnerability at the time of bereavement she has mainly presented a distinctly capable, assertive and fully informed approach throughout.

What happened

One of our investigators looked into the complaint and concluded it should not be upheld.

He did not find merit in issue 1. He cited Client Agreements ('CAs') signed by Mrs R confirming the 0.5% OAC (CAs of 5 February 2013 and 20 February 2014), the 0.6% OAC (CA of 18 July 2018) and the 0.75% OAC (CA of 29 November 2021), so he was satisfied that none of the OACs were arbitrarily applied and that they were all disclosed to and agreed by her.

He noted that the 2014 CA set out the components of the OAS (annual reviews, regular updates and ongoing administrative support). He then referred to documentary evidence of reviews, and recommendations from Everlong to Mrs R, in February and June 2013, April 2014, April and November 2015, March and April 2016, January 2017, May and July 2018, June 2019, February and July 2020, January, October and November 2021, September and November 2022, and January 2023 – each of which included reviews of her profile at the relevant times (meaning it was updated). In addition, he said, there is evidence of other assistance Everlong provided her over the years. The investigator also said Mrs R had not claimed any change in her circumstances that was missed by Everlong, and that her assertion that there were no portfolio realignments in 2015, 2016, 2017, 2019, 2020 and 2022 is unsupported by the lack of evidence that realignments were needed at these times (because they cannot reasonably have been expected in the absence of such need).

With regards to issue 2, the investigator treated evidence on each of the allegedly poor advice Mrs R referred to, and he set out reasons why none of them were unsuitable for her in her circumstances at the time.

On issue 3, he referred to Everlong's record of its telephone conversation with Mrs R on 8 January 2021 in which it noted advise to her about a need to reduce her spending, including the impact of her withdrawals on her income level and the likelihood that any further withdrawal would attract additional rate tax. He considered this evidence that she was informed about potential tax liability when she was advised on the pension withdrawal she sought to make.

Mrs R disagrees with the investigator's findings. She stands by her original complaint submissions.

In response to some of the findings, she mainly said – the telephone call record cited by the investigator in issue 3 is disputed, it is highly questionable, it is a handwritten note about a telephone conversation but neither it nor its contents were ever shared with her, the drawdown advice happened in person not by telephone, and it was witnessed by her accountant (who was present and who agrees that no advice was given on the tax implications of the withdrawal); the 2014 fact-find on which Everlong continued to rely in its service had errors within it; some of the pension transfers recommended to her were supposedly for the sake of savings, but savings could have been made within the existing plans; and the benefit of paying the OAC remains unclear, given the significant extent of what Everlong did not do in the OAS.

The matter was referred to an Ombudsman.

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.

Issue 1

I do not uphold this issue.

Available evidence is conclusive on the fact that the OACs and IAFs applied to Mrs R's portfolio were disclosed to and agreed by her. Therefore, none of them were applied without her knowledge and agreement, with the latter confirming that she was prepared to pay the relevant fees for the associated services from Everlong.

On 20 February 2014 she acknowledged, by signature, receipt of and agreement with Everlong's advice letter of 19 February 2014. The letter reviewed the Prudential Trustee Investment Plan ('TIP') in her pension that was due to mature in the following month, it recommended reinvestment of its maturity proceeds in the 7IM Personal Injury ('PI') fund, and as far as Everlong's fees were concerned it confirmed a 1% IAF and 0.5% OAC. The letter was closely followed by further advice on 24 April 2014, which Mrs R confirmed (by her signature on 29 April 2014) receiving and agreeing with. This advice recommended investing the TIP maturity proceeds in the same 7IM PI fund, but directly through 7IM's Discretionary Fund Management ('DFM') service instead of through her pension wrapper platform. It referred to a slight annual product cost saving from this approach, and it reconfirmed the 1% IAF and 0.5% OAC.

On 7 August 2018 Mrs R acknowledged, by signature, receipt of and agreement with Everlong's advice of 6 July 2018. The previous pension holding in the 7IM fund had been liquidated, upon her instruction, in January 2018. The July advice was focused on reinvestment of the liquidation proceeds – in addition to advice on moving her Individual Savings Account ('ISA') from 7IM to Prudential, and reinvestment of cash derived from her General Investment Account ('GIA') and a mature Investment Bond ('IB') in another IB. Everlong recommended reinvestment of the pension's liquidated cash in another Prudential TIP (within the PruFund Cautious Fund ('PCF')), and investment of the ISA in the same fund. The document confirmed that a 1% IAF applied to the pension and ISA transactions and a 2.49% Adviser Service Charge to the Investment Bond transaction, and that a 0.6% OAC applied to all three transactions.

The client agreement she signed on 18 July 2018 confirmed the same OAC stated in the 6 July advice.

Mrs R also signed Everlong's letter to her dated 5 October 2021, which was followed by the financial planning report it prepared for her on 16 November 2021 (which she confirmed, by signature on 29 November 2021, receiving and agreeing with). Both documents stated a 1.5% IAF and a 0.75% OAC associated with the recommendations made in the report. Those recommendations were to switch her pension provider (from AJ Bell, as it had been up to that point, to Transact), liquidate the previously invested Prudential TIP because the PCF it was invested in mismatched her revised risk profile (which had changed from cautious, as it had been in the previous years, to 'balanced'), reinvest the proceeds in the Betafolio Tracker 50 managed fund (the 'BT' fund), through the Transact platform, and make a pension contribution for the current tax year at the time, invested in the same fund.

The client agreement she signed on 29 November 2021 confirmed the same OAC stated in the 5 October letter and 16 November report.

The terms of service agreed by Mrs R included provisions for IAFs at different rates in relation to new investment advice (on existing money or new money), hence the separate IAFs she agreed for the new investment transactions conducted in her portfolio. The OAS and OAC related to reviews of existing investments. All the fees/charges were transparent to her and agreed by her, and there is evidence of the new advice from Everlong for which the IAFs were charged.

With regards to Everlong's work in the OAS, on balance I am satisfied that the OAS was delivered through the years and, as such, the OAC was justified. As stated above, the OAS was comprised of annual reviews, regular updates and ongoing administrative support.

Evidence of the ongoing advice related engagements between the parties, from 2013 to 2023, that the investigator listed in his view is indeed depicted within the documents that have been shared with our service. All the engagements are essentially and broadly rooted in reviews of past advice, some stop there whilst others go further with the provision of new advice (such as the engagements in 2014, 2018 and 2021).

In terms of reporting, I have seen periodic documents titled "Summary of Policies" which set out information on the investments and valuations of Mrs R's holdings, including her pension and non-pension investments. Based on the copies shared with us, and following the new advice in 2014, they were issued for the following periods – April 2015, November 2015, March 2016, April 2016, January 2017, May 2018, June 2019, February 2020, July 2020, October 2021, January 2021, September 2022, and January 2023. Mrs R changed her advisers in 2023.

With regards to rebalancing of her investments/portfolio the new advice she received in 2014, 2018 and 2021 amount to evidence of Everlong determining cause to realign her portfolio (including its pension and non-pension components) at each time and making recommendations for that purpose. As the investigator said, such realignments cannot reasonably be expected without good reasons behind them, so it does not follow that there must have been OAS failures in the years that no such recommendations were made. In the absence of good reason, they did not have to be made every year. Indeed, it is likely that Mrs R would have been given cause to complain if realignments in the portfolio were recommended in years when there were no good reasons for them.

I note her point about fact-finding, but as the investigator broadly explained, the advice letters sent to her over the years shows that her circumstances were kept under review. The annual reviews and new advice issued to her were based on those circumstances as they were each time. Furthermore, we have been provided with copies of internal Everlong documents titled 'Ongoing Service Review Fact Find Update', which capture both review related discussions with her and confirmation of her profile at the points of reviews. I appreciate that she probably did not have sight of these documents, but they nevertheless evidence the ongoing fact-find reviews that were conducted by Everlong as part of the OAS. We have copies of these documents for the following periods – February 2014, April and November 2015, March and April 2016, January 2017, May 2018, June 2019, February 2020, July 2020 and January 2021.

For all the above reasons, I do not find merit in any of the components of issue 1.

Issue 2

Mrs R doubts the suitability of Everlong's advice in 2014, 2018 and 2021. As summarised above, these were essentially new recommendations arising from reviews of her portfolio (her pension, ISA and GIA) at the times. The first, in 2014, was focused on her pension, the second, in 2018, addressed all three parts of her portfolio, and the third, in 2021, focused again on her pension.

The first was prompted by maturity of the Prudential TIP and the need to reinvest the maturity proceeds, for which the 7IM fund was recommended. The second was prompted by the 7IM fund holding (in the pension) having been liquidated months earlier, with the proceeds sitting in cash thereafter, and the need to reinvest that cash. That led to the recommended return to Prudential and another TIP. It was also prompted by the need to reinvest the maturity proceeds of the previously held IB and cash derived from the GIA. In addition, Everlong took the view that moving the ISA to Prudential, alongside the pension's TIP holding, was advisable, hence the ISA transfer advice. The third advice was prompted by a change in Mrs R's risk profile, which meant the TIP/PCF in which the pension was invested (which had a cautious profile) mismatched her newly determined balanced risk profile.

The above summary shows that each recommendation was mainly dictated by changes in circumstances and was needed to address those changes.

In the absence of evidence that Mrs R wanted to hold cash, and with evidence confirming that, as stated in the advice letters and reports (all of which she agreed), she wished to reinvest the cash from liquidation and maturity proceeds, I am satisfied that new investment advice was required for the pension in 2014 and 2018, and that the same applied to the money from the GIA and matured IB.

I am also satisfied with evidence that she agreed the change of her risk profile to balanced. Therefore, and as the PCF was defined, by name and description, as a cautious fund, new investment advice was inevitably required in 2021 to address the patent mismatch and to realign her pension investment with her new risk profile.

The ISA transfer in 2018, from 7IM to Prudential, is the only matter that does not appear to have been initiated by circumstances. Instead, it was recommended by Everlong as a way for the ISA to share the prospect of better performance in the same PCF that had been recommended for the pension. It summed up the performance comparison graph and table presented in the advice letter by saying – "*The PruFund Cautious Fund has achieved a better return when compared to your existing 7IM Funds and the sector average over the last 5 years, whilst taking less risk*". On balance, this was a fair objective to raise in the ISA's best interests.

For the above reasons, I am satisfied that there were legitimate and reasonable objectives behind the recommendations in 2014, 2018 and 2021.

Fact sheet information about the 7IM PI fund at the time it was recommended to Mrs R says it was defined as a broadly lower risk fund. It had been primarily designed for the investment of personal injury awards – though it was not restricted to that purpose – and it is generally considered that such awards are not to be exposed to high risks of loss, given the commonly medium to longer term injury related purposes they are meant to serve for the award recipients. It invested significantly in bonds and fixed income securities, which are also generally considered to bear lower risks than, for example, equities. Overall, I am persuaded that its recommendation, within the 7IM DFM, for the pension in 2014 matched Mrs R's cautious profile and her reinvestment objective. As I mentioned above, the investment through the DFM was also slightly cheaper for her in terms of fund charges.

The 2018 recommendation maintained the match with her cautious risk profile. I repeat, the PCF presented itself to be a cautious fund by name and by description. For the reason I already addressed, it also met the objective for the pension and ISA at the time. It was more expensive for Mrs R and the advice letter made this clear. However, the smoothing facility within it – which offered added mitigation against volatility and further observed her cautious risk profile – was viewed as added value, in addition to the prospect of better performance and slightly lower risk, in comparison to the 7IM fund holding that had been liquidated earlier in the year. The increase was by around 0.2% per year for the pension and around 0.5% per year for the ISA. The recommendation was that these added costs were worth the prospect of reducing exposure to volatility by around half (based on a comparison between the PCF and the PI fund over the previous five years) and the prospect of increasing performance by around 4% to 7% per year (based on the same comparison). Overall, on balance and in the circumstances, I do not consider this to have been an unreasonable approach.

The fund for the IB recommended in 2018 (for reinvestment of the maturity proceeds from the previous IB and the cash derived from the GIA) was also cautious by name and description, it also had a smoothing facility to provide added mitigation against volatility, and it also presented (based on a comparison with its benchmark over the previous five years) significantly better prospect for reducing exposure to volatility and notably better prospect for performance. It also had a capital guarantee feature. It was slightly more expensive than the GIA – 1.50% per year annual charge compared to the GIA's 1.46% per year – but Everlong considered this worthwhile for the prospective benefits in terms of performance and risk reduction. Again, overall, on balance and in the circumstances, I do not consider this to have been an unreasonable approach.

The 2021 advice needed to happen because, as I addressed above, Mrs R's risk profile for her pension had changed and that meant the TIP/PCF also had to be changed. The November 2021 report confirms that an alternative within Prudential – the PruFund Growth Fund – was considered as an option to match her balanced risk profile at the time. However, it was discounted because its performance since 2018 had not been as good as the benchmark performance or the BT fund's performance. The report provided analysis showing that the BT fund had outperformed the PCF and two relevant benchmarks over the same period.

The report also acknowledged that the portfolio underlying the BT fund could be held through Mrs R's existing AJ Bell pension, but at the time that could not be done within the associated 'BT' service, whereas it could be held as a 'BT' fund through Transact, hence the pension switch recommendation. One of the highlights of the recommendation was presented as its lower product costs – 0.95%+£780 per year for the TIP and AJ Bell pension compared to 0.5% per year for the BT fund and Transact combination.

In other words, the recommendation came with realignment to match Mrs R's balanced risk profile, reduced product costs and the prospect of improved performance. Overall and on balance, I do not consider it to have been unsuitable.

For all the above reasons, I do not find merit in issue 2.

Issue 3

Based on Mrs R's submission, her accountant was present in the meeting(s) in which she says Everlong failed to advise on the tax implications of the pension withdrawal(s) she sought to make.

My initial observation in this respect is that her primary source of specialist tax related advice would probably have been her accountant. I have also seen that Everlong's advice to her over the years has noted its limitation with regards to tax matters. For example, the November 2021 report stated the following – "*We are not tax specialists and therefore are unable to provide you with specific tax advice. If you do require tax advice you will either need to speak to a tax specialist or an accountant*". She attended the relevant meeting(s) with her account, so in this respect and in terms of the tax implications of the pension withdrawal she sought, she appears to have been in good hands.

Beyond the above observation, I acknowledge that, depending on the circumstances, an advising firm could still reasonably be expected to highlight foreseeable general tax implications of its investment advice. I am persuaded that Everlong did this as part of its OAC and/or new advice on the pension withdrawals.

I have seen evidence of emails between the parties touching on the matter of the tax implications of her withdrawals. Everlong has reminded us that, as far as its records show, Mrs R made a £40,000 withdrawal from her pension in August 2020, a £130,000 withdrawal in May 2021 and a £55,000 withdrawal in February 2023. There is an email from her adviser to her dated 28 August 2020 which includes the following –

"… *I have left you a message explaining that we aimed to target a net payment from your pension of £24,000. As you are a higher rate tax payer the gross withdrawal needed to be £40,000. AJ Bell have applied at a tax rate of 13.75%? and deducted tax of £5,498, instead of £16,000, this leaves a potential future tax liability of £10,502 which will need to be paid by 31 January 2022*."

There is also an email from her to her adviser dated 8 April 2021 which includes the following –

"… *I have been trying to work out exactly how much I require … I think in the region of £70/75000.00 – if possible! This would really sort things out but I realise that I will be taxed at 60%*."

"*I also attach copy of my tax return details … I paid £26,464.40 in January not sure how much I will be paying in July this year? I want to take this into account so that I am fully covered*."

The above shows that between August 2020 and April 2021 the tax implications of the pension withdrawals were firmly within Mrs R's awareness and considerations, and that her adviser addressed them. Returning to my initial observation, I also consider it important to note that this happened in the context of her having the support and presence of her accountant in the matter.

Overall, on balance and for the above reasons, I do not find merit in issue 3.

Vulnerability

I have considered whether (or not) Mrs R's claim in this respect creates and/or adds merit to any of her complaint issues. I acknowledge that, as Everlong appears to concede, she would have experienced a period of vulnerability around the time of her bereavement in 2012. However, Everlong also appears to dispute the notion of such vulnerability thereafter. Bereavement is an inherently personal matter, and it is possible she continues to cope with it to date. She alone will know if that is the case. I am not in a position to determine that. However, I also have not found grounds in any of the complaint issues that show identifiable and relevant vulnerability related reasons to alter my findings.

My final decision

For all the above reasons, I do not 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 14 April 2025.

Roy Kuku
Ombudsman