DRN-5440375

The complaint

Mr R has complained about the advice he received from Thornton & Baines Independent Financial Advisers Limited ('TBIFA') to transfer his pension from Royal London to Quilter.

Mr R has stated that the advice was unsuitable, that the recommendations made by TBIFA have underperformed and that TBIFA guaranteed that if he was not better off as a result of the transfer, he would be put back into the position he should be in.

I would note here that at the time of advice TBIFA also made recommendations in relation to Mr R's investment ISA, this is not the subject of this complaint and as such any advice given in relation to this product has not been considered here.

What happened

Mr R and TBIFA held several discussions during September 2021 regarding his pension planning.

The TBIFA advice was documented in their suitability report dated 28 October 2021. This confirmed Mr R's circumstances at that time and his objectives regarding the pension held with Royal London. The document stated that Mr R was 62 years of age, married and retired.

Mr R's Royal London pension had a value of around £371,000 with other investments held totalling around £151,000.

With regard to the pension, the letter documented that this had been in place since 2018, had total annual charges of 1.4%, and was invested in the Royal London Governed Retirement Income Portfolio 5.

The adviser stated that the Quilter pension had been chosen over other alternatives given its competitive platform and fund charges. The underlying monies were invested into mix of 25 underlying investment funds to match Mr R's attitude to risk ('ATR').

The new Quilter plan had a 0.2% platform fee, a 0.61% fund fee, and a 0.6% adviser fee. The transfer was being recommended by TBIFA on the basis that the new plan would better match Mr R's required asset allocation given his low medium attitude to risk, that the new policy had a *"better chance of performing better"*, and that the ongoing advice provided by TBIFA regarding this new policy would benefit Mr R.

An 'understanding solutions' document was completed and signed by Mr R at this time. This confirmed that the main objective was to review his existing pension to see if he could get *"better management with returns advice and risk".* Additionally, the document noted that Mr R wanted a *"safe plan, less risk than I am exposed to on my Charles Stanley plans, good charges, better performance".* With regard to performance, it said *"Past performance you can't go on, what I want to know going forward is going forward you can beat them. If you are benchmarking and beating, I will be happy."* Finally, the charges applicable to the TBIFA advice were documented as being 2.4% initial advice fee and 1.41% ongoing including adviser fees.

Following the implementation of TBIFA's advice regular reviews of the pension were undertaken.

At the May 2022 review it was agreed that it was too soon to judge the performance of the new pension, with the overall target being a 5-year timeframe.

In October 2022 performance remained a concern for Mr R. The review document states that Mr R was aware it had been a difficult year for investments with the potential for a move to a lower risk Defensive Portfolio discussed at this time.

At the January 2023 review Mr R requested that statements were to be emailed monthly, so that the performance of the investments could be compared to those previously held at Royal London.

At a review meeting in September 2023 Mr R explained he was not happy with the performance of the Quilter pension with other options being discussed. These alternatives included changing to Quilter's Model Portfolio Service and altering the risk profile of the funds.

Having become concerned about his pension Mr R registered a complaint with TIBFA in November 2023 with this subsequently being referred this service in February 2024.

TBIFA issued their complaint response in March 2024. This rejected the complaint stating that they considered the advice suitable. TBIFA stated that the fees and costs involved in the transfer were fully considered before the transfer was agreed, with the new pension better aligning the underlying investments with Mr R's attitude to risk.

Our investigator looked into things, upheld the complaint, and provided both parties with redress recommendations.

TBIFA did not agree and restated their opinion that the advice had been suitable. TBIFA said that they believed the costs of advice were appropriately considered with their advice being clear that future performance of the recommended investments was not guaranteed, that their advice had appropriately considered Mr R's age and retirement strategy, and that the transfer of Mr R's pension from Royal London to Quilter was sufficiently justified.

Our investigator was not minded to change their outcome and as no agreement could be reached the case was forwarded to me.

I initially issued a provisional decision which stated:

"The first thing I've considered is the extensive regulation around transactions like those performed by TBIFA for Mr R. The FCA Handbook contains the principles for businesses, which it says are fundamental obligations firms must adhere to.

These include:

- *Principle 2, which requires a firm to conduct its business with due skill, care, and due diligence.*

- *Principle 6, which requires a firm to pay due regard to the interests of its customers.*

- *Principle 7, which requires a firm to pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair, and not misleading.*

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like TBIFA.

Further, COBS 2.1.1 R requires a firm to act honestly, fairly, and professionally in accordance with the best interests of its clients and COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments.

Additionally, in 2009 the Financial Conduct Authority (FCA), then the Financial Services Authority, published a checklist for pension switching. It highlighted four key issues it thought should be focussed on. These were laid out by our investigator, but I have included these again here:

- *Charges - has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?*

- *Existing benefits - has the consumer lost benefits in the switch without good reason? This could include the loss of ongoing contributions from an employer, a guaranteed annuity rate or the right to take benefits early.*

- *Risk - has the consumer switched into a pension that doesn't match their recorded attitude to risk (ATR) and personal circumstances?*

- *Ongoing fund management - has the consumer switched into a pension with a need for ongoing investment reviews but this was not explained, offered, or put in place.*

In firstly considering the charges incurred as a result of the TBIFA advice, the Quilter pension recommended had policy charges of 0.81% with an additional adviser charge of 0.6%.

The Royal London policy had charges of 1.4%.

Whilst the new pension is marginally more expensive overall, this includes the 0.6% adviser charge. What must be compared here are the pension specific costs themselves.

There are no Royal London documents on file which provide a breakdown of the 1.4% total cost of the pension (as noted in the suitability letter) however my own research indicates the Governed Portfolios typically have a fund charge of around 1% and as such I see no reason to doubt the accuracy of the overall policy costs quoted.

As such, considering pension specific costs only, the new pension specific charges of 0.81% applicable to the Quilter pension were actually lower than those which applied to the ceding Royal London scheme.

I appreciate that both the initial and ongoing advice charges would have an impact on the performance / value of the pension over time, however TBIFA are entitled to charge for their initial and ongoing advice in relation to the pension, with the documentation on file showing that these charges were given significant consideration by Mr R before the advice was accepted.

As I have said above, the existing Royal London pension was invested into the Governed Retirement Income Portfolio 5, with this being inconsistent with Mr R's low medium attitude to risk.

The documentation from October 2021 confirms this inconsistency is something Mr R was aware of, with taking less risk being recorded as one of his objectives for his pension. The solution recommended by TBIFA diversified the pension between 25 investment funds, with the overall fund mix being considered appropriate for a low medium risk level.

The Royal London documentation on file confirms that no guarantees or benefits were lost upon transfer with the new Quilter pension providing the same access to his pension monies as the ceding scheme. There were also regular reviews of the pension to ensure its ongoing suitability.

Overall, I can find nothing unreasonable with the TBIFA advice, with this moving Mr R from a more expensive pension policy to a cheaper one, with the new pension better matching his attitude to risk.

I have considered whether TBIFA should simply have recommended Mr R stay within his Royal London pension and switch away from the Governed Portfolio 5 to a lower risk portfolio.

However, for this to have occurred, TBIFA would still have had to assess Mr R's circumstances, objectives, attitude to risk, assess the options available at Royal London, and recommend an appropriate portfolio. As such, it would still have been reasonable for them to charge advice fees, with the only material difference being Mr R would then have a more expensive, lower risk, Royal London pension rather than the Quilter one ultimately recommended.

I can see that since the implementation of the new Quilter pension, Mr R has used the ceding Royal London pension to benchmark the performance of the TBIFA recommendation. However, such a comparison is unfair, as the underlying investments held within these pensions are materially different, with the Royal London scheme exposing Mr R to a higher level of investment risk.

I appreciate that the performance of the new pension has been disappointing to Mr R, and I can see from the documentation on file that improving the performance of his investment was also a key objective, however the documentation also states in several places that there is no guarantee that the new investments will outperform the old.

I have carefully considered the content of the communications between Mr R and TBIFA both before and after advice.

It is clear from the content of the calls between Mr R and TBIFA, especially those in September 2021, that Mr R was giving serious thought to any potential transfer of his investments. Both the costs of any potential transfer, and the possible future returns generated by any new pension were considered in detail.

Mr R and TBIFA discussed and negotiated on the fees that would be applicable to any advice which may have been provided, with additional discussions being held around Mr R's other options, including using Vanguard funds or another advice firm with differing charges.

It is clear from these calls that Mr R and TBIFA had fully discussed the charges that would apply should he decide to proceed, and that Mr R was in a fully informed position about the costs applicable to TBIFA's advice should he decide to proceed.

I have specifically considered the email provided to this service by Mr R in which TBIFA state:

> *"The cost of the advice covers the reassurance that the advice is cast iron, which means if we have recommended the wrong solution for you, we would have to compensate you back and put you in the position you should have been in."*

Regarding this email, I would note that suitable advice does not automatically equate to profitable advice. Which investments will make a customer the most money over time is not something any adviser can know, which investments will prove most profitable is something which can only be known with the benefit of hindsight. As such this is not a standard I can reasonably hold a business to. What I must consider is whether the advice provided was suitable – not whether alternative advice would have provided better returns.

The "cast iron" statement made by TBIFA above related to the suitability of their advice. Had that advice been unsuitable, I would have expected TBIFA to uphold any complaint and return Mr R to the position he should have been in.

However, in this case I have concluded that their advice was suitable, and as such no further action is required of them.

I appreciate that this is not the outcome Mr R wanted however I hope the rationale above adequately explains why I have reached this decision."

In addition to the above I asked both parties to provide any additional commentary or evidence they wanted taken into consideration before a final decision was issued.

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.

In response to the provisional decision TBIFA simply confirmed their agreement with what I had said.

Mr R did provide further commentary which I have considered below.

Mr R has stated that TBIFA's advice was only accepted on the basis that he would recoup any advice fees payable and that the new investments would outperform the old. Mr R also believes benchmarking the investments recommended by TBIFA against the old investments held with Royal London is a fair comparison as it was these pre-existing Royal London investments which TBIFA advised him to leave. Finally, Mr R stated it was the email stating he had a "cast iron" guarantee which convinced him to move and that TBIFA should have recommended he remain with Royal London.

In line with what I said in my provisional decision, I can see that the future performance of the pension funds (alongside the costs of any advice / transfer) was a key issue for Mr R at the time of the advice, with this being discussed at length both in writing in over several telephone calls between Mr R and his adviser. I can also see that the past performance of the recommended investments and the ceding Royal London investments were also compared, with the TBIFA investments outperforming the Royal London investments in the past.

However, during these conversations, and within the suitability letter which documented the TBIFA advice, it is clearly noted that the new investments do not have any guarantees and that past performance is no guarantee of future performance. As such, whilst I fully accept that Mr R moved his pension in the hope that it would outperform the Royal London policy, and that the performance of the new pension has not been as anticipated, this is not something which I can hold TBIFA responsible for.

I would also repeat here that I do not consider it reasonable to compare the new TBIFA investments with the old Royal London investments. These two investments exposed Mr R to materially different risk levels and as such differences in their performance are to be expected.

Finally, I have considered Mr R's commentary that this was only the "cast iron" guarantee email from TBIFA which convinced him to transfer his pension and that he should have been told to remain with Royal London. In line with what I have said in the provisional decision above I have concluded that this statement was made in relation to the suitability of the advice. Had TBIFA recommended an unsuitable pension I would fully expect them to put things right. However, in this case the TBIFA advice left Mr R with a cheaper pension than his ceding arrangement and one which more accurately reflected his reduced capacity for risk. I also do not consider it reasonable to conclude that Mr R should have been told to remain in his existing pension and the advice file is clear that this pension (in the existing investment fund) were not aligned with Mr R's low medium ATR.

Overall, the additional commentary and evidence provided by Mr R has not persuaded me to alter the outcome I communicated in my provisional decision. As such I am not upholding this complaint.

My final decision

In line with the commentary above I am not upholding this complaint and require no further action from Thornton & Baines Independent Financial Advisers Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 April 2025.

John Rogowski
Ombudsman