DRN-6202606

Financial Ombudsman Service

The complaint

Mr R complains that Profile Financial Solutions Limited (Profile Financial) provided unsuitable advice when it recommended transferring his existing pension plan to a new self-invested personal pension (SIPP). He thought that when considering the value of his existing plan and his cautious attitude to risk (ATR), it was unlikely the SIPP would have achieved the growth required to put him in a better financial position. He would like to be returned to the position he'd now be in if he hadn't been advised to transfer.

What happened

In 2019 Mr R met with Profile Financial to discuss his retirement planning. He was a member of his work-based pension scheme but also held a personal pension separately. Following the meeting Mr R agreed to transfer the personal pension to a new SIPP. It was felt this would give him more flexibility around access, lower fees and charges, fund choices to match his ATR, and the opportunity for ongoing advice. Mr R also indicated that he might like to withdraw tax free cash (TFC) from the SIPP.

The SIPP was opened in May 2019 and Mr R received around £10,148 of TFC with the residual balance invested into a "Life strategy 40% equity fund."

As part of its ongoing advice proposition and annual reviews, Profile Financial recommended that Mr R switched to a conservative portfolio in May 2021 then to a balanced portfolio in December 2021 before reverting to a conservative portfolio again in May 2023.

But over the years Mr R became concerned that his investment was losing value and after comparing its value against the notional value of his previous plan – which suggested he may be worse off by around £5,500, he decided, using a professional representative, to complain. He said that Profile Financial's advice to transfer had been unsuitable as it hadn't fully considered his circumstances and risk profile. He said that as a result, he'd suffered a financial loss because of his pension plan's performance.

Profile Financial said it had completed a full "fact find" noting Mr R's circumstances and had discussed his ATR. It had recommended a fund which aligned to his agreed "cautious to balanced" risk profile and so, although it acknowledged the fund hadn't performed as well as expected, this was due to market forces outside of its control and not because the fund was unsuitable for Mr R.

Mr R wasn't happy with the response, so he brought his complaint to us where one of our investigators looked into the matter. They thought the complaint should be upheld in part making the following points:

- The SIPP was marginally more expensive than the previous pension plan when taking into account the ongoing adviser charge, but less expensive when comparing like for like pension costs. But these charges were set out, and Mr R was able to see the effect of the adviser's charges on future returns.
- But one of Mr R's objectives was to take TFC from his plan straight away and as his previous plan didn't offer a drawdown facility he would have needed to transfer regardless to achieve that objective. And Mr R did access his TFC when the plan

was transferred.

- The investigator had considered the suitability of the funds that Mr R held in his existing plan and concluded they might not have been entirely suitable. So Profile Financial would still have needed to assess Mr R's circumstances and make a fund switch recommendation for which it was entitled to charge fees. And because this still wouldn't have allowed Mr R to access his TFC they concluded the advice to transfer wasn't unreasonable.
- But they then looked at the suitability of the funds Profile Financial recommended and thought they were too high a risk for Mr R's ATR and more in line with a balanced or medium risk investor.
- So they recommended that Profile Financial should work out any investment loss by comparing the current value of his SIPP against a benchmark of cautious investments with only a small risk to his capital. Any loss should be paid into Mr R's pension plan where possible.

Mr R accepted the assessment but Profile Financial didn't. It said:

- It noted the investigator accepted that its transfer advice had been suitable and met Mr R's objectives.
- But it didn't agree that its investment recommendation had been unsuitable. It thought its recommendation met Mr R's timescale objectives, his growth objective, it matched his profile and aligned to his ATR, and it aligned to the regulator's rules and guidance on suitability.
- It didn't think the investigator's redress benchmark suggestion was consistent with Mr R's circumstances as it wouldn't have provided the growth potential needed from a 50% cash equivalent.

The investigator wasn't persuaded to change their view, stating that Mr R was assessed initially as having a cautious ATR, but they didn't believe the fund that was recommended met that definition – being more for a balanced investor. They also highlighted the subsequent recommendation in 2021 to switch to a conservative portfolio which seemed to suggest the initial recommendation wasn't suitable.

Profile Financial said it wasn't fair to highlight the annual review of May 2021 to justify the investigator's outcome. It thought this demonstrated the benefit of ongoing advice which was to make suitable changes in advice following new information or a reappraisal of risk following major markets events. It pointed to the market volatility caused by the global pandemic as a reason for Mr R to have a different ATR in 2021 – so it thought any recommendation to switch portfolios was a suitable response to the facts at the time. It asked for an ombudsman to review the complaint and so it was passed to me to review.

Profile Financial made the following submissions alongside that request:

- Our assessment was based on the idea that the recommended investment strategy wasn't suitable for Mr R's cautious ATR. But its suitability report from 2019 did confirm Mr R was a "cautious" investor and it had recommended a portfolio which aligned with that risk profile.
- We had used the 2021 annual review – when Mr R was advised to switch to a conservative portfolio – as justification for our assessment. But that change in Mr R's ATR and investment strategy, which was defined by major market events at that time, didn't invalidate the original advice from 2019.
- All the various investment recommendations it had made were suitable, in its view, at the time they were made. This also highlighted the benefit of its ongoing annual review service.

My provisional decision

I issued a provisional decision in which I said that the complaint should be upheld but I thought Profile Financial should put things right in a different way. I said:

- There were additional benefits Mr R would enjoy as a result of the recommendation to transfer. But the main reason for the transfer to be in his best interest was because of costs. Based on the pure plan costs the SIPP would seem to be cheaper than the existing plan – although the adviser fee changed that dynamic. But the adviser fee wasn't mandatory and if Mr R decided to pay that fee he would benefit from ongoing advice, which he hadn't received with his existing plan.
- And Mr R was likely to want to use a drawdown plan at some point in the future and would have needed to take advice at that point to transfer to an appropriate plan – so it's more likely than not he would have paid an initial adviser fee at that time.
- Overall I thought that, with the cost differential being marginal, Mr R's desire to access his TFC meant that Profile Financial's transfer recommendation was suitable.
- I went on to consider the suitability of the investment strategy that was used and how that worked alongside Mr R's ATR. I thought the initial investment recommendation could be described as medium or balanced risk and was outside of Mr R's cautious risk profile. So I didn't think that was suitable. But I was satisfied that when Profile Financial switched investment strategies after June 2021, each switch was to a portfolio which was in line with Mr R's circumstances and his ATR at the time. His ATR had been determined by the completion of annual risk profile questionnaires.
- I said Profile Financial should put things right by comparing the value of Mr R's plan with a notional value, using the benchmark I set out, up to the point of the first switch to a conservative portfolio. Any loss should be paid into Mr R's pension where possible.

Responses to the provisional decision

Profile Financial didn't respond to the provisional decision but Mr R said he didn't agree. His representative made the following points as a further submission:

- It didn't agree with my decision to limit Profile Financial's redress liability from 2019 to a point in 2021. It didn't think I'd considered the wider impact of Profile Financial's conduct.
- It didn't think it was reasonable for Profile Financial to switch Mr R to a portfolio that held around 48% of global equities – with the increased volatility that involved – simply off the back of an annual pension review. Mr R had always considered his circumstances and views on risk to have remained the same and was unaware that providing slightly different answers to the risk profile questions would significantly alter the investment strategy of his plan.
- Mr R accepted Profile Financial's expertise and knowledge of the market and therefore felt "pressured" to accept all its recommendations. In 2021 Mr R was more focused on his own personal situation than trying to "take advantage of the markets".
- He was unaware of how the financial markets worked and, as he paid for ongoing advice, it was reasonable to assume that Profile Financial would act in his best interest and in line with his circumstances and ATR.
- And it didn't seem that Profile Financial's pension reviews had been carried out consistently. There was gap of 24 months before the first review, only six months before the second one, and then 18 months until the third. This wasn't in line with a consistent approach, especially when the expectation was that Profile Financial

would continually monitor and review Mr R's position.

- It thought that Mr R should have been advised to remain invested in a conservative portfolio throughout the term of his pension plan with more regular reviews to ensure this met his performance expectations. It didn't think Mr R received the level of service he'd paid for and an opportunity to manage and mitigate his plan had therefore been missed by Profile Financial.

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 fully considered the further submissions and points raised on behalf of Mr R I see no reason to depart from my provisional findings. So I'll set out my final reasons below.

The initial transfer advice

Mr R met with Profile Financial in 2019 to discuss his retirement planning options. Profile Financial set out a recommendation to transfer his existing personal pension plan to a SIPP. The recommendation was based on Mr R's desire to draw tax free cash from the plan – having reached the age of 55 – to "*treat himself*", to ensure the benefits of the plan were passed to his wife on his death, and to potentially achieve better returns with the assistance of ongoing reviews.

I began by looking into whether this transfer advice was suitable and in Mr R's best interests. It was understandable that as he already held a workplace pension of some years Mr R might like to draw some income – in the form of TFC – from his personal pension. He'd reached the age at which that was now possible. It's also not unreasonable that he might like to draw the remaining fund more flexibly up to and through his retirement. His existing plan didn't offer these options, so I think that was some justification for the recommendation.

But to be appropriate advice the transfer also needed to potentially benefit him financially. This might be through greater returns or lower charges. So I compared the charges of the two plans. The annual management charges (AMC) of the SIPP were 0.34% whereas the overall AMC of the personal pension were between 0.59 and 0.62%. So the SIPP was cheaper in respect of ongoing product charges. However to set up the SIPP Profile Financial charged 2.95% of the existing fund. This cost would potentially have reduced the overall returns on the SIPP over the shorter term, but at the same time I think it's more likely than not that Mr R would have considered a transfer to a SIPP at some point in the future in order to draw his TFC – so I think he would have incurred a similar initial advice fee at some point.

There was also an ongoing advice fee to consider at 0.6% of the fund each year. This would seemingly have made the SIPP more expensive, but it wasn't a mandatory fee and Mr R could have chosen not to have ongoing advice. So a like for like comparison would still see the SIPP as being marginally cheaper.

And if Mr R chose to pay the ongoing advice charge, he would be receiving advice for that fee. Because the suitability report suggested Mr R valued such a benefit I would have expected him to choose to include it as it wasn't something that had been available on his existing plan. So I think when taken overall the charges can be seen as positive reason for the recommendation and, when added to the benefit of being able to draw his TFC, I think this provided sufficient justification for the recommendation. I don't think therefore the advice to transfer can be said to be unsuitable.

The investment advice

But the transfer to the SIPP was only part of Profile Financial's advice because it also had to recommend an investment strategy for Mr R's funds. So I've gone to consider the suitability of the investment advice.

Profile Financial needed to consider Mr R's circumstances and objectives when making its investment recommendation. But the most important part of providing suitable advice was to align Mr R's risk profile or attitude to risk to the risk attached to the investment. In order to do that Profile Financial asked Mr R a number of questions which assessed his risk profile. In 2019 answers to these questions included, that he was unwilling to "*take risk*" and preferred an investment to "*increase by 5% but an equal chance of reducing by 2.5%.*" Along with the other answers this led to Profile Financial defining Mr R as a cautious or lower risk investor.

But its first recommendation was into a fund which comprised 40% equities with an objective of "*seeking to achieve income and/or capital returns through a portfolio comprising approximately 40% stocks and 60% bonds.*" I don't think the composition or objective of this fund was in line with a cautious investor as Mr R had previously been defined as – so I don't think this investment strategy was appropriate for his needs or in his best interest.

Thereafter Profile Financial conducted the ongoing reviews that it said it would, which included a reappraisal of the risk profile questionnaires. I know Mr R's representative has questioned the inconsistency of these *annual* reviews, but I've seen evidence to confirm that the risk profile at least was reassessed in December of each year from 2020.

However, in June 2021 Profile Financial recommended that Mr R switch to a conservative investment portfolio in line with his updated risk profile questionnaire answers. I think this was more suitable for Mr R's circumstances at that time because his answers showed him to be cautious investor at that point and, looking at the composition of the portfolio, I think it was more suitable and in line with such a risk profile. Indeed apart from a period between December 2021 and June 2023 – which I'll cover below – Mr R remained in a conservative portfolio, based on his updated ATR profiles. So I think for these periods of investment the recommended investment strategy was suitable and appropriate for Mr R's circumstances.

The balanced portfolio recommendation

So I've reached the conclusion that the initial investment advice for Mr R was unsuitable – and I'll set out below what Profile Financial needs to do to put that right below – but for the period from June 2021 Profile Financial's revised investment recommendations became suitable for his overall objectives. But in December 2021 Profile Financial recommended that Mr R switch to a balanced portfolio and this recommendation remained until June 2023 when it switched back to a conservative portfolio.

So I've looked carefully into the circumstances behind this recommendation. I note the risk profile questionnaire answers changed somewhat at this point.

In response to a question about "the choice from a range of types of investment scenarios" Mr R said he would accept an "*increase by 10% but an equal chance of a reduction by 5%*" and that he'd be "*willing to take a little risk with some of my portfolio.*" He also confirmed that he "*wants the best long term returns I can get. I can tolerate periods where the value of my pension might suffer extended falls.*"

So based purely on the responses – and the change that made to the overall questionnaire

profile – I can understand why Profile Financial recommended that Mr R switch to a balanced portfolio. But equally it's right, as Mr R has done, to question why he would have changed his ATR when it had remained consistent throughout the term and he regarded himself as cautious investor. And his representative has said that Mr R relied on Profile Financial to provide advice and didn't have any understanding of the markets or changes in risk profile. It said Mr R felt pressured to simply accept Profile Financial's recommendations and didn't realise the effect that providing slightly different answers to the risk questions would have.

I have thought carefully about Mr R's responses and, as I said in my provisional decision, I think this is a finely balanced matter. But I do think Profile Financial acted fairly in respect of the recommendation to switch and I say that for the following reasons.

While I understand Mr R's assertion that he was focused on his own personal situation at the time and wasn't looking to take advantage of "opportunities within the market" – and didn't realise the implication of giving slightly different answers to the risk profile questionnaire – there were events that had happened in world markets that might have influenced his thinking and led to him accepting more risk in his investment strategy. It wouldn't be unreasonable to think that Mr R provided responses akin to how viewed investments within the prism of world events – past and present – at that time.

And I also think it was reasonable for Profile Financial to recommend the change of investment strategy based on the reassessment of his ATR. Mr R says he thought it reasonable that as he paid Profile Financial for ongoing advice it would act in his best interest and in line with his circumstances and objectives at the time, but I would suggest that's what it did here. In my view Profile Financial followed its own process of asking questions about a clients view on investment risk and acted accordingly upon the results that came about. There's nothing to suggest Profile Financial didn't follow its process correctly nor that this wasn't sufficiently robust to lead to a defined and justifiable conclusion – which led to a recommendation that was aligned to those outcomes. So I don't think Profile Financial acted unfairly or incorrectly in making the new recommendation in 2021.

But crucially Profile Financial didn't simply switch Mr R's funds into a new investment strategy without setting out its recommendation within an accompanying letter. It set out details of the existing portfolio, the new recommendation portfolio, and details of the associated costs and charges. I've also seen evidence to support the claim that Mr R was asked to confirm his acceptance of previous portfolio changes, so in this case I think Mr R was made fully aware of any proposed changes – and wasn't pressured into agreeing to them without the opportunity to consider what was being recommended and giving him the opportunity to question or ultimately to decline any such recommendation.

I understand that Mr R says he didn't fully understand the implications of these changes and simply relied on the advice he was given at the time. But there was an opportunity to question them if he thought for example that a balanced portfolio didn't reflect his own cautious approach to investing. I would have expected him to at least have raised that issue with Profile Financial if he thought there was a clear difference between the two.

Mr R would also have had the chance to simply cancel the recommended switch using his cancellation rights if he didn't want to discuss the matter with Profile Financial but didn't think the recommendation was appropriate to his circumstances and risk profile. So, based on the evidence I've been presented with, I don't think Profile Financial acted unfairly in December 2021 and I think its recommendation was suitable at the time based on Mr R's questionnaire responses.

Fair Compensation

My aim is that Mr R should be put as closely as possible into the position he would probably now be in if he had been given suitable investment advice at all times.

I take the view that Mr R should have been advised to invest differently initially. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr R's circumstances and objectives when he invested.

What must Profile Financial do?

To compensate Mr R fairly, Profile Financial must:

- Compare the performance of Mr R's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

- If the fair value is greater than the actual value there is a loss and compensation is payable.

- Profile Financial should also add any interest set out below to the compensation payable.

- Profile Financial should pay into Mr R's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If Profile Financial is unable to pay the total amount into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr R won't be able to reclaim any of the reduction after compensation is paid.

The *notional* allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.

For example, if Mr R is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal the current basic rate of tax. However, if Mr R would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation.

Income tax may be payable on any interest paid. If Profile Financial deducts income tax from the interest it should tell Mr R how much has been taken off. Profile Financial should give Mr R a tax deduction certificate in respect of interest if he asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP	Still exists and liquid	For half the investment: FTSE UK	Date of initial investment	Date that the first switch to a conservative	Any loss identified to the end date needs

		Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds		portfolio took place.	to be brought up to date by applying the percentage growth on the overall plan.

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, Profile Financial should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal from the SIPP should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if Profile Financial totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Profile Financial must pay the compensation within 28 calendar days of the date on which we tell it Mr R accepts my final decision.

If Profile Financial fails to pay the compensation by this date, it should pay 8% simple interest per year on the loss, for the period following the deadline to the date of settlement.

Why is this remedy suitable?

I've decided on this method of compensation because, while I think the subsequent switches from June 2021 were suitable, Mr R should initially have been invested into a more cautious portfolio. I thought that Profile Financial's conservative portfolio could have been a benchmark to use here but, as I've noted that each portfolio Mr R was recommended had a different portfolio number (except for January 2024 onwards), I can't be sure what conservative portfolio would have been recommended in 2019 or what its fund composition would have been. The reasons behind the benchmark I've used are:

Mr R wanted Capital growth with a small risk to his capital.

The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

The FTSE UK Private Investors Income ***Total Return*** index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with

different asset classes, mainly UK equities and government bonds. It’s a fair measure for someone who was prepared to take some risk to get a higher return.

I consider that Mr R's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr R into that position. It does not mean that Mr R would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr R could have obtained from investments suited to his objective and risk attitude

My final decision

I uphold the complaint. My decision is that Profile Financial Solutions Limited should pay the amount calculated as set out above.

Profile Financial Solutions Limited should provide details of its calculation to Mr R in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 2 May 2026.

Keith Lawrence
Ombudsman