DRN-4550155

The complaint

Mr G complains that the advice Castra Financial Ltd provided to switch his personal pension with Royal London to a replacement plan on the Elevate Platform was inappropriate, and he has incurred unnecessary charges as a result.

Mr G's complaint has been brought on his behalf by a third party but in order to keep things simple I will refer to all correspondence as being received from Mr G.

What happened

In April 2021, Mr G met with his adviser in order to discuss his pension. At that time, he held a personal pension with Royal London, invested in the Royal London Governed Portfolio 7. It was valued at approximately £91,800. He had no other savings or investments recorded. His objectives at that time were stated to be;

- *"Transfer your plan to a modern platform arrangement which will provide you with a place where you will also have the opportunity to add other investments at a later date*
- *Access a couple of multi-asset type of investment funds that also invest ethically in order to provide diversification for your investments*
- *Continue to provide the facility for ongoing advice to be paid for from the fund*
- *Ensure that fund choices are consistent with your attitude to risk*
- *Make sure the funds work harder for you by accessing the best funds from the best fund managers. This is important to you so that you can try and achieve a reasonable level of growth within the level of risk that you are prepared to take."*

His attitude to risk was 7 out of 10 (growth), and he had a preference to include ethical investments.

The adviser recommended that he switch his Royal London pension to a Pension Investment Account on the Elevate platform, invested in Liontrust's Sustainable Future Managed Growth fund (50%) and Royal London's Sustainable World Trust fund (50%).

In November 2022 Mr G became unhappy with the service being provided by Castra, and changed to a different adviser. Upon meeting with the new adviser, Mr G became aware that the switch may not have been in his best interests, and complained to Castra.

Mr G complained that the transfer had been recommended on the basis that appropriate ethical funds were not available with Royal London although he now believes that to be untrue. He also said, in summary, that he was advised that he would be able to hold other investments on one platform with Elevate and take advantage of their tiered charging system, however as he had no other investment holdings and due to the value of his pension, the tiered charging did not apply to him. He therefore stated that he didn't believe there was any justification for transferring his pension and that the product had been mis-sold. He believes that a fund switch would have met his objectives.

Castra did not uphold Mr G's complaint. They stated that whilst they agreed that ethical funds were available within the existing contract, they did not accept that the same risk-managed blend of ethical investments could have been arranged via the Royal London plan. They stated that the Royal London plan, whilst having ethical options, did not carry sufficiently diverse options to meet Mr G's risk profile, and the approach available within that plan would have been unsuitable. They stated that the recommended Elevate plan provided flexibility in terms of investments, which they believed was key in recommending a plan.

Mr G was unhappy with Castra's response and so he referred his complaint to this service where he set out the same concerns. The complaint was considered by an investigator. Having considered the evidence available, they didn't agree that the advice to transfer Mr G's Royal London pension to Elevate was in Mr G's best interests, primarily due to the additional charges incurred, and considered that he would have been better to be recommended to switch funds within his existing Royal London pension. The investigator stated that Castra should compare the performance of Mr G's new investment with the notional value if it had remained with the previous provider, and if the notional value was greater than the actual value, pay him the difference plus interest.

Castra disagreed with the investigator's findings. They reiterated their point that Mr G had specifically wanted to invest ethically, but wanted to ensure diversification within his portfolio. They explained that the only way to do this was to transfer due to the limited availability of ethical funds within the Royal London offering. In relation to the tiered charging structure, they stated that although Mr G did not benefit from it immediately, the plan was for him to make large regular contributions, meaning that within the short to medium term, his fund would have increased to the size to qualify for a reduction in charges. They also did not agree with the investigator's proposed redress, which was to carry out a comparison of Mr G's fund, with what his fund would have been if he had remained in his existing investment. They stated that this was not consistent with the finding that the recommendation should have been that Mr G carry out a fund switch within his Royal London pension

<u>Provisional findings</u>

I issued my provisional decision on 11 December 2023. It said:

"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 am in agreement with the investigator's view that the recommendation to switch his pension from Royal London Personal Pension to the Elevate platform was not in Mr G's best interests.

In reaching my decision, I've taken into account the relevant laws and regulations, regulator's rules, guidance and standards, and what I consider to have been good industry practice at that time. I have also considered the regulator's checklist for pension switching, which highlighted four key issues it thought should be focussed on;

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

- *Existing benefits (has the consumer lost benefits in the switch without good reason?)*

- *Risk (has the consumer switched into a pension that doesn't match their recorded*

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?)*

When considering the above in the context of the recommendation for Mr G to switch his pension from Royal London to the Elevate platform, there is no dispute relating to the level of risk involved in the investments recommended, nor the ongoing fund management. What is in dispute is the first two points, the additional charges incurred, and the loss of benefits (in Mr G's case, the loss of eligibility for Royal London's ProfitShare.)

Considering firstly the charges applying to both pension arrangements. If a recommendation to switch a personal pension from one provider to another will result in the customer incurring additional charges, the additional charges should be justified in terms of the benefit to the customer.

The suitability report provided to Mr G included a comparison of the charges of both the existing pension and the proposed alternative. It stated that the Royal London pension invested in the Governed Portfolio 7 incurred 0.45% charges, however the proposed alternative (disregarding the ongoing advice charge) was 1.13%, an increase of 0.68%. I have therefore considered whether Mr G's objectives were such that an increase in charges could be justified. I am not satisfied that they were.

Castra have stated that the primary reason for the switch was Mr G's desire to invest in ethical investments, alongside a personal objective of diversifying his investment fund. They state that this could not be satisfied by the Royal London contract without selecting funds which were unsuitable for Mr G's risk profile, and therefore an increase in charges incurred upon transfer was justified.

The fact find completed included a section covering the customer's financial goals, within which was the question "Do you have any social, ethical, environmental or religious considerations that you would like us to take into account in our work for you." The response from Mr G stated "yes would like to have some exposure but a mix". This response is ambiguous, as it is unclear whether the "mix" to which Mr G refers relates specifically to a mix of ethical investments, or a mix of assets within his portfolio in general. It seems to me that the key point is the extent to which Mr G wanted to include ethical investments within his retirement planning, and whether this was sufficiently important to him to mean that he would be happy to incur additional charges in order to invest only in this way.

I have reviewed the point-of-sale documents, and considered Mr G's existing investment, the Royal London Governed Portfolio 7. The Royal London investment guide relating to the Governed Portfolios states that their approach to multi-asset investing is built around six key areas, one of which is Responsible Investment, and that they integrate environmental, social and governance (ESG) factors into their investment decision making process.

Notwithstanding this, the Governed Portfolio 7 does not automatically include sustainable or ethical investments. Whilst it is not unusual for an investor to want to consider ethical investments as part of their portfolio, it would be unusual for someone to switch from a "mainstream" investment portfolio, to one which only included ethical investments. It seems to me that Mr G was interested in including an element of ethical investing within his pension portfolio, an approach which appears would have been readily available within his existing arrangement. Royal London offer a range of sustainable funds, aligned to various risk levels. Castra have stated that due to there only being one sustainable fund available for each risk level, it would not have been possible for Mr G to have remained within Royal London and still ensured an appropriate level of diversification within his portfolio whilst investing in line *with his attitude to investment risk - but I do not agree with this contention. It is not in any doubt that diversification of risk is a key area for consideration for any investment, however it seems that Royal London offered alternatives that may have been suitable for Mr G but were not considered. The Royal London Governed Portfolio range allows clients to replace the Global Managed equity fund with one of two funds within the sustainable fund range, one of which was in line with Mr G's attitude to risk. Alternatively, Mr G could have switched part of his Governed Portfolio investment into one or more of the funds within the sustainable fund range. I note that there are two which are stated to be in line with his attitude to risk. Finally, Royal London offer an external fund range which could have been utilised to provide diversification, albeit at a likely higher cost. I have not been provided with evidence that any of these alternatives were considered. I therefore do not agree that the increase in charges was justified, and therefore uphold this element of his complaint.*

Castra have stated that part of the rationale for transfer was in order for Mr G to benefit from the functionality of a platform where other investments can be consolidated, and to benefit from the tiered charging structure. I note that the first "tier" of charges that could benefit Mr G was from £150,000 to £999,999.99, and would result in a reduction of 0.05% in the annual charge, from 0.3% to 0.25%. At the time of the switch, the value of Mr G's pension fund after deduction of charges was approximately £90,000. Despite the fact that Mr G would be making monthly contributions of £400 to the pension, and planned to make a lump sum contribution of potentially up to £20,000, it would likely be a number of years before he would be in a position to benefit from the reduction in charges. Furthermore, the reduction would only apply to the fund above £150,000. He had no other investments which could be added to the platform in order to support this. I therefore do not consider that the availability of a tiered charging structure was of sufficient benefit to Mr G to be a factor in the suitability of the switch. I therefore uphold this element of the complaint.

I've also thought about the loss of any benefits that Mr G would incur as a result of Castra's advice. As I've already explained, Mr G previously held a Royal London pension, that meant he was eligible for their ProfitShare scheme. Within his plan was a separate ProfitShare account, to which a share of Royal London's profits were added each year (when available). Whilst the existing funds within the ProfitShare account would not be lost on transfer, it would mean that Mr G would not be eligible for future payments. I have considered whether this was a meaningful benefit being lost upon transfer and am not convinced that it was. The statement provided by Royal London dated January 2021 shows the first payment having been received in March 2013, and the value of the ProfitShare account to be approximately £530 over the intervening eight years. I therefore consider that whilst there is no doubt that this would have been a valuable feature available to Mr G which was lost upon transfer, given the modest payouts that he received under the scheme, I don't believe it's significant enough to be instrumental in the decision whether to switch his pension or not.

As I've already explained, there is no doubt within the file that Mr G wanted to invest ethically, at least in part. The recommendation made by Castra was for him to invest in two sustainable funds. I note that the terms sustainable and ethical have been used interchangeably within the file, however in practice, they relate to different investment styles. Whilst there can be a high level of overlap between sustainable and ethical investing, they are not the same thing. In general terms, ethical investing is based on negative screening and avoidance (ie, they do not invest in specific industries, for example animal testing, alcohol, tobacco, armaments, etc) whilst sustainable investing is based on positive screening (ie investment in companies that have socially useful products and services, and that lead their industries on environmental, social and governance management).

Mr G stated in the fact find that he wished to invest ethically. This is reiterated by him within his complaint. Castra have confirmed within the suitability report that Mr G wished to invest ethically, although the recommended funds as part of the switch were both sustainable *funds, rather than ethical funds so it seems to me that Castra's adviser has not fully understood the subtle differences between two.*

I have considered whether Mr G's objective was specifically for ethical investments, or whether he simply wanted to invest in a socially responsible manner. I was not party to any of the conversations held between Mr G and the adviser at the time of the advice so cannot be certain in relation to the level of detail covered in this area. Nonetheless, I can see that both Mr G and Castra have referred to both sustainable and ethical investing with no distinction between the two. There is no indication that Mr G had specific areas of investing he wished to avoid, or any particular beliefs to be considered within the investment. Mr G has referred to the sustainable funds recommended, and the fact that one of them was available to him within the Royal London fund, which he believes would have been suitable. Mr G has not complained that the recommended investments were not in line with his desire for an ethical approach. Due to the fact that Mr G's complaint has been made on his behalf by a third party Financial Adviser, I would have expected this to be raised if the investment approach recommended was not in line with Mr G's objectives. I have therefore considered that in referring to wanting to invest ethically, Mr G intended to invest in a responsible and sustainable way.

<u>Summary</u>

Having carefully considered Mr G's complaint, I'm upholding his concerns that Castra's advice to switch his pension was unsuitable. That's because I've not been persuaded the increased costs of the switch delivered any meaningful prospect of providing better returns than his existing portfolio, which, according to the Royal London fact-sheet I've seen, seems to have already been investing in a socially conscious manner. Allied to this, Mr G's Royal London pension was switched to a new provider but, he found himself invested in a Royal London fund, something that he could've had had he stayed where he was. The file is silent on whether Castra's adviser considered a fund switch for Mr G and I think had they explored that option, he would've been provided with a better outcome than where he found himself.

Fair compensation

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

I do not know exactly what Mr G would have done if he had not been recommended to transfer to the Elevate platform. However, I think it's likely that Mr G would have remained with his previous provider, but switched part of the investment to a sustainable fund with them. I am satisfied that what I have set out below is fair and reasonable in this situation.

What must Castra do?

To compensate Mr G fairly, Castra must:

- *Compare the performance of Mr G's investment with the notional value if it had remained with the previous provider, but replaced the RLP Global Managed equity fund with the RLP Sustainable Leaders fund. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.*

- *Castra should also add any interest set out below to the compensation payable.*

- *If there is a loss, Castra should pay into Mr G's pension plan to increase its value by the 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 Castra is unable to pay the compensation into Mr G'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 compensation 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 G won't be able to reclaim any of the reduction after compensation is paid.*

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

- *It's reasonable to assume that Mr G is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr G would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*

- *If either Castra or Mr G dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified and Mr G receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*

Income tax may be payable on any interest paid. If Castra deducts income tax from the interest, it should tell Mr G how much has been taken off. Castra should give Mr G a tax deduction certificate in respect of interest if Mr G 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*
Elevate Platform Pension Investment Account	*No longer in force*	*Notional value from previous provider, with the RLG Global Managed equity fund being replaced with the RLP Sustainable Leaders fund*	*Date of investment*	*Date of transfer*	*8% simple per year on any loss from the end date to the date of settlement***

***Despite the fact the consumer has switched their pension away, any loss Mr G has suffered needs to be brought up to date. To keep things simple for both parties, rather than asking Castra to seek out third party information from Mr G's new provider calculating what would've happened with his fund, I'm satisfied that adding 8% simple interest per year is a fair award.*

Actual value

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

Notional Value

This is the value of Mr G's investment had it remained with the previous provider until the end date. Castra should request that the previous provider calculate this value.

Any additional sum paid into the Royal London Pension should be added to the notional value calculation from the point in time when it was actually paid in."

Responses to my provisional decision

I have received responses from both Mr G and Castra. Mr G agreed with the provisional decision, and the level of compensation set out. However, he stated that he believed that the initial advice charge and ongoing advice charges that had been deducted should be refunded because the plan did not need to be transferred, and that Castra did not meet its ongoing servicing obligations.

Castra requested confirmation of the reason for selected fund to be used as the benchmark for calculation, and asked for clarification of how to calculate the compensation.

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.

I will firstly deal with the request from Mr G for the compensation award to include a refund of charges. I can confirm that by carrying out a calculation as set out in the provisional decision, and comparing the actual value of the transferred fund with the notional value of the fund as though it had remained with the previous investment (with the exception of one fund within the portfolio), this will have the effect of comparing the investment with the position it would have been had the transfer not taken place. This will also mean that the comparison will be carried out with the fund as though the charges had not been applied. It would therefore not be appropriate for me to make a further award to Mr G for the charges to be refunded separately.

Turning now to Castra's query relating to the fund indicated to be used in the calculation. I have stated that the notional value should be based on "*Notional value from previous provider, with the RLG Global Managed equity fund being replaced with the RLP Sustainable Leaders fund*". My intention was for this to state that the Notional Value from the previous provider was as though it had remained within the Governed Portfolio 7, with the RLG Global Managed equity fund within the portfolio being replaced with the RLP Sustainable Leaders fund. This reflects that fact that the Governed Portfolio 7 was broadly appropriate for Mr G, albeit that my provisional decision had concluded that Mr G wished to include an element of ethical investing within his portfolio. The Royal London Governed Portfolio Adviser Investment Guide states the following "*Clients can choose to replace the RLP Global Managed fund with one or both, of the two equity funds in our Sustainable Fund Range – the Sustainable Leaders Fund or the Global Sustainable Equity Fund. These funds invest in companies that help make a positive contribution to our society and environment, and are available at no extra charge."* I selected the Sustainable Leaders Trust as the ethical substitute to be used within the Governed Portfolio 7 when calculating a notional fund value as the Royal London website has assigned it the same risk profile as the Sustainable World Trust (which unfortunately is not available within the Governed Portfolio 7). That is not to say that I believe this necessarily would be what would have been recommended at the time of the advice in 2021, however it is an appropriate benchmark to be used for the calculation.

Castra have also asked for clarification on how to calculate the compensation payment and have set out their understanding of the steps required – a comparison should be made between the notional value of Mr G's fund if it had remained in the Governed Portfolio 7 with an ethical element as detailed above, and the actual value of the pension fund at the date it was transferred to a different adviser. If this shows that the transfer resulted in a loss, 8% simple interest should be added to that loss from the date of transfer out to the date of settlement, and the total be paid into Mr G's pension. This should be adjusted to reflect the tax relief available for Mr G, assuming that he has Annual Allowance remaining, and that the payment wouldn't affect any protections that Mr G may have in place.

Having taken into account the responses from both parties as no new information or arguments have been provided I see no reason to change my decision. So I remain of the view I set out in my provisional decision – my findings as set out above should be considered as part of my final decision. It follows that I uphold this complaint.

Putting things right

Castra Financial Limited should carry out the calculation as detailed above, and pay into Mr G's pension.

My final decision

For the reasons given above, I uphold Mr G's complaint
Castra Financial Limited will be required to pay the compensation stated above to Mr G in line with my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 8 March 2024.

Joanne Molloy
Ombudsman