

## The complaint

Mr P complained that Profile Financial Solutions Limited (Profile) did not provide him with the ongoing services he had paid for.

He would like to be compensated for any financial loss he has suffered as a result.

Mr P is being assisted by a complaint management company (CMC), but for simplicity, I shall treat all correspondence as if it related to Mr P.

## What happened

In Summer 2016, Mr P decided to transfer his pension benefits between two providers. As part of this transaction he was given a Client Agreement by Profile, setting out the fees and services Profile proposed to undertake for him, including an ongoing advice service.

Mr P was also issued with a Suitability Report on his pension transfer, dated 26 July 2016. This included a section titled 'Charges and Remuneration' which confirmed the charges for the ongoing service would be 0.3% of the fund value and stated.

*The ongoing amount you pay will fluctuate with the value of your pension; if your pension increases in value the amount you pay us will also increase and if your pension falls in value the amount you pay us will reduce.*

On 1 August 2016, Profile contacted Mr P, who confirmed he understood the recommendations and was happy to proceed with the transfer and wished to take up the ongoing advice service with Profile. As part of the ongoing service agreement, Profile agreed to provide him with

- *Monthly monitoring of his funds.*
- *A yearly review call to assess any changes in his circumstances or attitude to risk.*
- *Yearly updates regarding his pension.*
- *Ongoing support and correspondence as and when required.*

Following the transfer being completed, Profile emailed Mr P on 15 August 2017 to invite him to arrange an annual review call. He did not reply to this email and no review took place. It subsequently emailed him in July 2018 and four times during 2019 to again invite him to arrange an annual review. Profile's records show that Mr P neither opened the emails nor responded to them.

The email Profile sent to Mr P on 8 July 2019 invited him to complete and return a form which reassessed his attitude to risk and financial objectives. This form was returned to Profile, completed and signed by Mr P.

Following receipt of this form, Profile subsequently emailed Mr P on 10 July 2019 to attempt to arrange a review meeting, but once again he did not respond.

Profile made numerous attempts to arrange a review meeting with Mr P until April 2022. Although Profiles' records indicate that he opened some of the emails, he did not respond to any of them.

Profile contacted Mr P by phone on 13 April 2022. He confirmed that he had fully encashed his pension benefits and that he didn't think there was anything remaining in the fund.

On 11 August 2022, Mr P complained to profile that he had paid for an ongoing service, including an annual review of his pension, circumstances and attitudes to risk but had not received these. He asked to be compensated for this.

Profile issued its response to Mr P's complaint on 2 December 2022. It did not uphold his complaint and said that he had been invited to arrange an annual review on numerous occasions. It stated that a suitability review was completed in 2019, as a result of the completed information form, but that no changes to his pension were recommended at that time.

It also said that it had continued to monitor his funds for quality and suitability throughout the period he was a client, and that it was also available to answer any and all queries he had about his pension.

Mr P was unhappy with this decision and brought his complaint to our service.

Our investigator reviewed the evidence and formed the view that the complaint should not be upheld. Profile accepted their findings but Mr S remained unhappy with this outcome.

Another investigator from this service subsequently reviewed the case and disagreed with the original investigator's decision and recommended that the complaint be upheld.

Profile disagreed with this second view and so the complaint has been passed to me for a final decision.

### **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.

Having reviewed all the evidence relating to this complaint, I agree with the second investigator's conclusions and uphold the complaint.

I shall now explain my reasons

In January 2013, the Retail Distribution Review (RDR) took effect, which enacted rules which govern the sale of financial services products, such as pensions and financial advice.

These rules mandate various obligations that businesses must abide by in relation to providing services to their clients. This complaint is about the provision of ongoing services that Mr P had contracted Profile to undertake, so I will confine my comments to this aspect of the service it provided.

In considering whether Profile acted correctly in this case, I have to take into account the Financial Conduct Authority's Handbook, which includes a sourcebook called the Conduct of Business Sourcebook (COBS).

In this COBS, section 6.1A relates to Adviser charging and remuneration. Within this, I consider the following element of COBS 6.1A.22 to apply, which states

*A firm must not use an adviser charge which is structured to be payable by the retail client over a period of time unless (1) or (2) applies:*

*(1) The adviser charge is in respect of an ongoing service for the provision of personal recommendations or related services and:*

*(a) the firm has disclosed that service along with the adviser charge; and  
(b) the retail client is provided with a right to cancel the ongoing service, which must be reasonable in all the circumstances, without penalty and without requiring the retail client to give any reason; or*

Firstly, I'd like to say that I consider that Profile fulfilled the obligations under (a) by clearly informing Mr P of the services to be provided and the associated ongoing charges in the suitability letter and client agreement it provided to him. I also consider that it made him aware of his ability to cancel the service, so it also fulfilled its obligations under (b).

This complaint hinges, therefore, on whether Profile fulfilled its obligations in terms of the provision of personal recommendations or related services.

To decide this, I must also consider the FCA Factsheet for advisers titled 'Ongoing Adviser Charges'. The pertinent sections read as follows

*Ongoing charges should only be levied where a consumer is paying for ongoing service, such as a performance review of their investments, or where the product is a regular payment one.*

*You must ensure you have robust systems and controls in place to make sure your clients receive the ongoing service you have committed to.*

Profile has provided a significant body of evidence which shows that it made numerous attempts to contact Mr P in order to arrange review meetings throughout the period. I have to decide whether these attempts are sufficient to fulfil the terms of its obligations to Mr P, and on balance, I don't find that they are.

In Profile's favour, it made these numerous attempts to contact Mr P by email. As Mr P responded to the email Profile sent in 2019 by returning the form it sent, I find that Profile could reasonably conclude that the email address it held for Mr P was correct and that he had received all the other emails it continued to send him.

Conversely, email was the only method that Profile used to contact Mr P. While Mr P had stated that this was his preferred communication channel, I think that it could have tried contacting him by telephone or post once it became clear that he did not respond to the vast majority of emails it sent. I would expect that the 'robust systems and controls' the FCA guidance refers to should have identified this problem and subsequently proposed the use of alternative communication channels. In conclusion, I think Profile should have done more in this respect.

Given Mr P's lack of response to the emails Profile sent him, I can't see that he was provided with the annual reviews or personal recommendations that he was entitled to as part of his ongoing service agreement, with the exception of 2019. Profile has said that it monitored his

funds for quality and suitability on an ongoing basis, but I don't consider that these activities satisfy its obligations to the extent that the FCA regulations expect, particularly as Mr P was not involved in these activities, no changes were made to his investments and no personalised information was provided to him.

Consequently, I believe that the ongoing service Profile provided to Mr P fell short of the level he was entitled to expect for every year except 2019.

I also believe it's fair to say that some inconvenience has been caused to Mr P and owing to this I believe Profile should pay £100 for the inconvenience caused.

### **Putting things right**

To compensate Mr P fairly Profile Financial Solutions Limited should:

- Compare the actual value of Mr P' LV= plan at the date that he transferred out with the notional value of the plan if the ongoing adviser charges in 2016, 2017, 2018, 2020, 2021 and 2022 had not been included.
- If there is a loss, bring that loss up to date using the index specified below.
- If there is a loss, Profile should pay into Mr P's pension plan, to increase its value by the amount of the compensation and any interest. The payment should allow for the effect of charges and any available tax relief. Profile shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Profile is unable to pay the compensation into Mr P'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 P won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age. It's reasonable to assume that Mr P is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr P 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 Profile or Mr P 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 P receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.
- In addition, Profile should pay Mr P £100 for the inconvenience caused by not receiving the service he paid for.
- Provide the details of the calculation to Mr P in a clear, simple format.

Income tax may be payable on any interest paid. If Profile considers that its required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr P how much it's taken off. Profile should also give Mr P a tax deduction certificate in respect of interest if Mr P 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 Growth
LV= Pension Plan	No longer in force	Notional Value	Date of investment	Date ceased to be held	A 50/50 combination of the average rate for 1 year fixed rate bonds as quoted by the Bank of England, and the FTSE UK Private Investors Income Total Return index

**Actual value**

This means the actual transfer value of the LV= plan at the end date

**Notional Value**

This means the notional value of the LV= plan at the end date, if the above ongoing adviser charges had not been paid.

If there is a loss at the end date, that loss should be brought up to date using the above index and the redress should be paid as set out above.

**Why is this remedy suitable?**

I've chosen this method of compensation because:

I consider it reasonable that the firm refund the cost of the ongoing service it did not provide. This should include growth on the sums paid.

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

I note that Profile assessed Mr P's attitude to risk as 'Medium to High'. Having reviewed the individual answers on Mr P's Fact Find and Risk Questionnaire which shows he was unemployed at the time, and could bear

*None, or very limited losses*

to his investment without having a significant impact on his future standard of living, I think incorporating an element of 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.

As noted above, I consider that Mr P'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 P into that position. It does not mean that Mr P 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 P could have obtained from investments suited to his objective and risk attitude.

The information about the average rate can be found on the Bank of England's website by searching for 'quoted household interest rates' and then clicking on the related link to their database, or by entering this address [www.bankofengland.co.uk/boeapps/database](http://www.bankofengland.co.uk/boeapps/database), clicking on: Interest & exchange rates data / Quoted household interest rates / Deposit rates – Fixed rate bonds / 1 year (IUMWTFA) and then exporting the source data.

### **My final decision**

For the reasons explained above, I uphold Mr P's complaint.

My final decision is that Profile Financial Solutions Limited should pay Mr P the sums calculated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 May 2024.

Bill Catchpole  
**Ombudsman**