DRN-4851853

Financial Ombudsman Service

The complaint

Mr H complains that Suttons Independent Financial Advisers Limited did not manage his Self-Invested Personal Pension (SIPP) proactively, despite him paying for ongoing advice. As a result, Mr H says Suttons have caused him a financial loss.

What happened

In 2007, Suttons advised Mr H to consolidate his pension holdings into a SIPP. At the time, Mr H was 56 years old and planned to retire at 75. At the time, Suttons assessed Mr H's attitude to risk as 'moderate,' though Mr H says he does not recall ever being asked to complete an attitude to risk questionnaire or discussing the outcome of it with an adviser to establish his attitude to risk. Suttons advised Mr H to transfer part of his pension holdings into a SIPP.

In its submissions to our Service, Suttons confirmed the SIPP set up for Mr H was *"subject to a payment of Fund Based Renewal Commission (FBRC)."* Suttons said there were no changes to charging arrangement until October 2020, when further additional pension contributions commenced, resulting in a switch from FBRC to Ongoing Adviser Charges from December 2020. Suttons also sent us documentation from 2007 onwards, which I will now refer to in summarising the background to this complaint.

It appears Mr H's remaining pension holdings held elsewhere were consolidated into his SIPP – Mr H says he has no record of agreeing to this and I have not been provided with a copy of any advice or reports from this time.

The SIPP provider sent Mr H annual statements giving him the value of his SIPP and confirmation of which funds he was invested in. From then, Suttons produced a portfolio report and met Mr H most years to review his SIPP. Mr H's SIPP remained invested in the SEI Core and Moderate and Sterling Wealth funds from 2010, as evidenced by the SIPP provider's annual statements and Suttons' portfolio reports.

In September 2018, Suttons produced a portfolio report for Mr H. This contained copies of Mr H's answers to questions Suttons says it asked to assess his attitude to risk. Suttons assessed Mr H as having a moderate attitude to risk, and his existing portfolio had a moderate risk position. Suttons met Mr H again in June 2019. Suttons sent Mr H an email that outlined he was 68 years old, still working and had an interest-only mortgage. The email said Mr H was considering downsizing to reduce his mortgage debt. The email went on to say:

> *"From our recent conversations you confirmed to me that you have a fair understanding of investing and have experience of investing across a broad range of investments. We have previously discussed at some length your attitude to risk and in particular the relationship between risk and reward. My firm classifies investment attitude risk on a scale of 1(Cautious) to 5(Adventurous).*

Your investments have been aligned with a profile of a Moderate investor (3). During our recent meeting we again revisited your ATR and your objectives. We agreed to keep your profile as a Moderate (3) investor over the short-term horizon of 3-7 years…

Our renumeration

Ongoing fees of 0.75% per annum, paid monthly (~ £234) will be charged by my firm for servicing your pension portfolio.

The payment of our ongoing adviser charge will be taken directly from your investments on a monthly basis…

Ongoing services can be cancelled at any time by simply informing us in writing…

Ongoing Investment Reviews

It is important that the selected investments are reviewed regularly to ensure that they continue to meet your objectives and attitude to risk. Your service status entitles you to a portfolio report and review every twelve months. In addition, you can contact me at any time to arrange ad-hoc meetings."

Suttons recommended a fund switch to FEI Hybrid Risk Level 3, Short term fund. Suttons said this fund had delivered a performance of 22.46% over the last three years with an ongoing fund charge of 0.81%.

In March 2020, Mr H's SIPP provider sent him his plan value on 1 March 2020, which was around £463,000. The statement showed Mr H had paid £9,245.00 in charges over the previous year, including £2,977.74 in advice charges.

Suttons produced a portfolio report in September 2020 that showed Mr H's SIPP was valued at around £452,500 in June 2020. Suttons provide an accompanying Portfolio Summary Report that says it considered Mr H to be a '2' on its scale of 1-5, with a portfolio designed *"for a cautious to moderate investor looking to make a positive return on their initial outlay, but for whom capital preservation remains a principle concern."* The report showed investment growth had outperformed the benchmark, achieving 4.39% growth against a benchmark of -0.63%.

In September 2020, when Mr H was around 70 years old, Suttons produced a 'portfolio switch report' for Mr H. It proposed to maintain Mr H's existing portfolio risk position as 'cautious to moderate' and diversify his fund selection. Suttons' portfolio report dated 25 September 2020 recorded the following:

"Adviser Notes

We made the following notes after our discussion:

You will want to access the tax free cash element in the next three years to pay down an outstanding mortgage but other than that the term is suitable and as the risk is moderate to cautious which mitigates some short term volatility."

Suttons produced a further portfolio report dated 30 September 2020, which says:

"Adviser Notes

We made the following notes after our discussion:

Agreed moderate to cautious level of risk with [Mr H] may be wanting to access tax free cash."

On 30 September 2020, Suttons emailed Mr H to say the recommended portfolio in the report has a discretionary management fee of 0.3% per annum and the ongoing adviser fee is 0.75% per annum. Mr H accepted the adviser's recommendation.

In March 2021, Mr H's SIPP provider sent him a letter, which showed his plan value was around £452,871.17 on 1 March 2021. The annual statement said Mr H had paid £9,245.00 in charges, including £2,977.74 in advice charges. Suttons' documentation says it completed a face-to-face meeting with Mr H in September 2021. Suttons' notes say there was an *"annual review of risk and funds" and recorded* Mr H was still working and considering downsizing or accessing tax-free cash to repay his mortgage.

In March 2022, the SIPP providers annual statement shows Mr H had withdrawn £50,000 from his plan in the previous year. The statement said Mr H had paid £8,507.89, including £3,310.79 in advice charges.

In August 2022, Suttons sent Mr H a portfolio report. This valued Mr H's SIPP at £380,653.82. It sent Mr H an attitude to risk report, which said it had assessed his attitude to risk as being cautious to moderate and recommended a fund switch.

In September 2022, Mr H's SIPP provider notified Suttons it had been removed as Mr H's financial adviser. Mr H raised concerns about Sutton's management of his SIPP. On 1 November 2022, Mr H complained to Suttons. He said he was deeply disappointed at how his SIPP had been managed by Suttons in the recent past. Mr H noted that in 2018, his SIPP was valued at £439,608.77. Whilst he withdrew £50,000 from the SIPP in 2021, his SIPP was worth £377,677 on 1 September 2022. Mr H said this meant his portfolio had lost £12,000 in value since 2018, despite contributions totalling £18,550 being made to the SIPP over the same period. In total, this meant Mr H's SIPP had decreased in value by around £30,000. Mr H concluded his fund had achieved a paltry investment growth of £82,544 since April 2010. So, Mr H said he wanted to complain about the poor service, lack of advice and poor investment guidance receive from Suttons.

Suttons issued its final response to Mr H's complaint on 21 December 2022. In summary, Suttons said it would not consent to our Service considering its original advice in 2007 to invest into a SIPP as the complaint was referred too late. Suttons turned to Mr H's complaints about the ongoing advice it had provided – Suttons said Mr H's funds were invested in line with his attitude to risk, which Mr H had never questioned. Suttons said Mr H's investments were agreed with him and were managed correctly in accordance with Mr H's aims and objectives.

Unhappy with this response, Mr H referred his complaint to our Service. Mr H said:

- His annual review meetings were *"more of an informal chat rather than a deep exploration of circumstances, performance and confirmation that I remained on track to meet my objectives."* Mr H later added that in 2007, he would have wanted at lease a medium risk portfolio as he planned to continue working to 75.

- His complaint is not about performance *"per se but the manner in which my portfolio was managed and had it been proactively managed – a service I was paying for- investment performance could and should have been greater."* Mr H said his attitude to risk was assessed in 2007 and not formally considered again until 2020, when it increased.

— To resolve matters, Mr H wanted a return of the ongoing advice charges paid to Suttons and to be compensated for the lack of investment performance of his SIPP *“had it been aligned to my correct level of risk and invested in funds, within my tolerance level, which could have given better returns.”*

One of our Investigators reviewed Mr H’s complaint. In summary, our Investigator said our Service did not have the power to consider events that occurred more than six years prior to Mr H’s complaint in November 2022. Our Investigator thought Mr H ought reasonably to have known he had cause to complaint about the advice received following his annual reviews and receiving the SIPP provider’s annual statements.

Our Investigator reviewed the service provided by Suttons that she thought we had the power to consider. Having done so, our Investigator noted Suttons reviewed Mr H’s attitude to risk in 2019 and it was agreed this was still moderate. Our Investigator noted Suttons emailed Mr H in July 2019 to let him know his service status entitled him to a portfolio report and review every twelve months. The email included the ongoing fees of 0.75% per annum. Our Investigator did not think Suttons’ revision of Mr H’s attitude to risk from moderate to cautious to moderate in 2020 was unreasonable or that Suttons was responsible for the fund’s performance after the recommended switch. Overall, our Investigator did not think Suttons had done anything wrong and had provided the service it had offered Mr H.

Mr H did not accept our investigator’s view. He said Suttons did not review his attitude to risk between 2010 and 2020 and left his fund unchanged. Mr H stressed Suttons only reviewed his circumstances properly in 2020 after he prompted them. Mr H said the annual portfolio reports did not meet Suttons obligations – he paid for an annual review, which he was not provided with.

Mr H said his attitude to risk from 2007 was moderate and should have remained as moderate to the present day. Mr H says he had no record of any discussion with Suttons in 2020, when it assessed his attitude to risk as cautious to moderate. Mr H said he did not receive a suitability report of new questionnaire. And in 2022, Suttons switched him back to a ‘moderate’ attitude to risk. Mr H said that if he had been invested in a moderate risk fund, his fund would have grown by over £286,000, which Suttons should compensate him for. Mr H reiterated Suttons should refund the ongoing advice charges he had paid. So, this has come to me for a 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.

Mr H's complaints about events that occurred prior to November 2016

Mr H has complained about the advice he was given in 2007 and the ongoing advice he has received since then.

The regulator has set rules for this service about when we can look at complaints, the Dispute Resolution (DISP) rules. We have no discretion and can only operate within these rules. We cannot consider every complaint that is referred to us; it depends on what the rules say. The relevant rules which outline when complaints need to be raised are set down by the regulator and can be found in DISP 2.8.2R:

> *"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:*
>
> *(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication; or*
>
> *(2) more than:*
>
> *(a) six years after the event complained of; or (if later)*
>
> *(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;*
>
> *unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received;*
>
> *unless:*
>
> *(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R or DISP 2.8.7 R was as a result of exceptional circumstances…"*

DISP 2.8.4 says:

> *"An example of exceptional circumstances might be where the complainant has been or is incapacitated."*

Suttons has not consented to our Service considering events that fall outside of the above time limits. This means that, unless there are exceptional circumstances, we are not able to consider a complaint made about events that took place more than six years before Mr H complained in November 2022 or, if later, any complaint made more than three years from the date on which Mr H became aware or ought reasonably to have been aware he had cause to complain.

Charges incurred for Suttons' advice and service before November 2016

Suttons has provided a copy of its Retirement Planning Report, prepared for Mr H on 12 February 2007. The letter is addressed to Mr H and begins *"I enjoyed our recent meeting. I am now writing to confirm the outcome of our discussions."* I note it is not signed by Mr H, but he has referred to it in his complaint. I have considered whether he is likely to have received a copy of it at the time. In this report, Suttons went on to recommend Mr H maintain one of his pension funds to avoid a transfer penalty. It then recommended Mr H transfer funds held within another pension policy be transferred into the SIPP. Mr H accepted Suttons' advice to open the SIPP in 2007, so I think it is likely some documentation was provided to Mr H. The report then says Mr H was provided with a Key Features Document and product illustration, although copies of those have not been provided to our Service. The report says full details of the charges in relation to the SIPP are contained within the Key Features Document.

But even if Mr H did not receive a copy of the documentation in 2007, Mr H provided a copy of a Key Facts document provided by Suttons. The document is undated, but it says it was "last updated" on 1 January 2009. The document goes on to say:

> *"If you buy a financial product, we will normally receive commission on the sale from the product provider. Although you pay nothing to us up front, that does not mean our service is free. You still pay us indirectly through product charges. Product charges pay for the product provider's own costs and any commission… The commission includes payment for ongoing service limited to an annual valuation and discussion on the client's request."*

And by July 2019, at the latest, I think Mr H ought to have been aware he was paying Suttons a fee for its services. The July 2019 email set out ongoing fees of 0.75% per annum would be charged, and that ongoing services can be cancelled at any time by informing Suttons in writing.

So, on balance, I think the documentation sent to Mr H by Suttons and the SIPP provider meant Mr H ought reasonably to have been aware a charge was being deducted for Suttons' at the time he received the Key Facts document in 2009, and this is entitled him to an ongoing service limited to an annual valuation and discussion on his request. By July 2019, at the latest, I think Mr H ought reasonably to have been aware he was paying Suttons a fee and was entitled to annual reviews in return. I cannot see that Mr H expressed dissatisfaction with the charges before November 2022 – more than three years after I think he ought reasonably to have been aware of the charges in July 2019. It follows that I do not think I can consider Mr H's complaint about the charges applied and level of service provided more than six years prior to his complaint in November 2022.

Suttons' service and advice provided prior to November 2016

Mr H has complained Suttons did not adequately assess his attitude to risk, his fund choices were not reviewed regularly and were not appropriate for his moderate attitude to risk and did not, as a result, achieve adequate investment growth.

I have reviewed when I think Mr H ought reasonably to have been aware he had cause to complain about Sutton's assessment of his attitude to risk, the risk-level of the funds he was invested in and the subsequent performance of those funds.

Suttons has provided a copy of its Retirement Planning Report, prepared for Mr H on 12 February 2007. As above, the report is not signed by Mr H, but it does say a meeting took place between Mr H and Suttons, in which his attitude to risk was established as being ‘moderate.’ Whilst Mr H does not recall such a discussion, the contemporaneous evidence means it is likely there was a discussion about Mr H’s attitude to risk. This is a standard part of an adviser’s process in gathering the information required to advise a client on a suitable pension product.

The 2009 client agreement referred to above set out that Suttons would provide a service limited to an annual review, which I think ought reasonably to have made Mr H aware about the level of service he should receive. I have reviewed the documentation provided by Suttons to determine what information was shared with Mr H about its assessment of his attitude to risk, the risk level of his funds and the investment performance.

On 5 July 2019, Suttons emailed Mr H. The email said Suttons had met Mr H to discuss his most recent portfolio report on 12 June 2019. The email went on to say *“we have previously discussed at some length your attitude to risk and in particular the relationship between risk and reward. My firm classifies investment attitude risk on a scale of 1(Cautious) to 5(Adventurous)…. During our recent meeting we again revisited your ATR and your objectives. We agreed to* keep your profile as a Moderate (3) investor over the short-term horizon of 3-7 years.” I acknowledge Mr H’s recollections may not include an in-depth discussion of his attitude to risk at any time, but I think the evidence from July 2019 suggests there was an in-depth discussion of his risk-profile, and that Mr H ought reasonably to have been aware that Suttons’ ongoing assessment was that he had a moderate attitude to risk.

The July 2019 email went on to say the annualised growth rate of Mr H’s SIPP since inception was 4.28%. The email reminded Mr H that he was invested in the SEI Moderate and Core Funds (as set out in previous portfolio reports). The email explained Mr H’s existing funds had chieved a return of 17.93% over the last three years. The portfolio report created in June 2019 also set out that Mr H’s existing portfolio risk position was ‘moderate’, as was his proposed portfolio risk position.

So, I think Mr H ought reasonably to have been aware of he was advised to transfer his pension holdings into the SIPP, how his fund had been invested from 2007 onwards, the risk position of his existing portfolio and how it had performed. I cannot see that Mr H expressed any dissatisfaction with the risk profile of his previous portfolio, investment returns or Suttons’ assessment of his attitude to risk prior to November 2022. This is more than three years after the July 2019 email, which is the latest point I think Mr H ought reasonably to have been aware of how his fund was invested along with the performance and risk profile of his previous holdings. So, I do not think I have the power to consider any of Mr H’s complaint about events that occurred prior to November 2016.

I could consider this complaint only if I thought the failure to comply with the time limits set out above as the result of exceptional circumstances. When asked if exceptional circumstances prevented Mr H from referring his complaint sooner than he did, Mr H explained he had suffered the very sad loss of a close family member. Mr H explained this loss meant he had no appetite for anything at all, his business suffered, and he allowed important matters to pass him by. Mr H’s wife had assumed that Suttons would be looking after his interests during Mr H’s long period of malaise. Mr H added it was only when he managed to take back control of his life and re-focus on his business that he began to focus on what had been happening to his SIPP.

Mr H has kindly shared this difficult experience and I sympathise with his loss. The rules referred to above give an example of an exceptional circumstance being when the consumer was prevented from referring their complaint sooner as they were incapacitated. I note Mr H was able to review his pension holdings at regular intervals from November 2016 until 2022, when he went on to arrange a new financial adviser in 2022. So, I think Mr H was able to review his SIPP within three years of when he ought to have been aware he had cause to complain. So, I do not think exceptional circumstances prevented Mr H from referring his complaint sooner than he did. It follows that I do not think I have the power to consider Mr H's complaint about events that occurred prior to November 2016.

Mr H's complaint about Suttons' advice and service since November 2016

As above, I am able to consider Mr H's complaint about the advice and service provided in the six years prior to his complaint in November 2022. This means I have considered the service and advice he has received since November 2016.

In February 2017, Suttons emailed Mr H to follow up on their meeting and to enquire if Mr H had completed a pension death benefit nomination form. Suttons said Mr H declined a further meeting to review his SIPP in May 2017, which may be because he had a review meeting in February 2017. So whilst Suttons has not submitted evidence that it completed a pension review report for 2017, I think the evidence suggests that a meeting and review did take place in 2017. And I note that it does not appear that Suttons recommended a fund switch. Mr H's funds were invested in moderate risk funds, which appears to be in line with his stated attitude to risk. I do not think there is sufficient evidence to show Suttons made an error or did not provide the required review here.

The 2018 portfolio reports recorded that Mr H's existing portfolio holdings were moderate risk, although Suttons' portfolio report indicates it recommended a fund switch. It is unclear why the fund switch did not go ahead, but I think it is clear there was a review of Mr H's portfolio and I do not think Suttons' decision to maintain Mr H's attitude to risk as moderate was unreasonable. Having reviewed the performance and balance of the funds, I do not think there is sufficient evidence to show the service provided from November 2016 and throughout 2017 and 2018 fell below the agreed standard or that Suttons' advice was unsuitable.

In 2019, Suttons emailed Mr H to recommend a portfolio switch. Whilst Suttons said the portfolio had achieved returns of 17.83% in the previous three years, it recommended a switch to the SEI Hybrid Risk Level 3, Short term fund. This was another 'moderate' risk fund which had delivered better performance over the previous three years. This does not make the advice given in the preceding years to remain in the existing portfolio was unsuitable – I have noted the growth his fund achieved in the previous years. And as I outlined above, I think it is likely there was some discussion of Mr H's attitude to risk in 2019 based on the email Suttons sent Mr H. I cannot see that Mr H queried Suttons' assertion that his attitude to risk was discussed at length and Mr H has agreed he should have been invested in moderate funds.

In June 2020, Suttons emailed Mr H a copy of his portfolio report. It showed the value of Mr H's investments had fallen over the previous year and noted the FTSE100 fell over the same period. In September 2020, Suttons provided a portfolio summary report that showed Mr H remained invested in the SEI Core and Moderate Sterling funds – the portfolio report said these were considered, in 2020, to be a 'cautious to moderate' risk fund.

Suttons recommended Mr H switch funds into the SEI Hybrid Standard Life Risk Level 2 Medium Term (it had recommended a 'Level 3' fund in 2019). The fund factsheet described the fund as being *"designed for a cautious to moderate investor looking to make a positive return on their initial outlay, but for whom capital preservation remains a principled concern."* Given Mr H's age – he turned 70 in 2020 – and limited capacity for risk (the contemporaneous evidence says he was contemplating accessing tax-free cash to pay off his mortgage, I do not think a small downgrade of his attitude to risk was unreasonable. Whilst Mr H may not recall an in-depth discussion of his attitude to risk, and I note there is no attitude to risk questionnaire from the time, I think the portfolio reports indicate there was a discussion about Mr H's attitude to risk. It may be that Mr H saw only one of the portfolio reports, as it is unclear why Suttons produced two, but either report indicated there was a discussion of Mr H's attitude to risk. So, if Mr H did not think Suttons' assessment of his attitude to risk or his circumstances was correct, I would have expected to see this raised with Suttons at the time. I note Mr H confirmed he reviewed the portfolio report and accepted Suttons' recommendations. Mr H says this review came about because of his prompting Suttons but I do not think this changes things – I think Suttons met the required level of service in 2020 and I do not think the advice it gave was unsuitable.

Suttons has submitted a document which I think suggests it met Mr H again in September 2021 for a review of SIPP. The document Suttons provided says Mr H was still considering downsizing or accessing pension funds to pay off his mortgage, was working less and producing less income. So, given Mr H's age and circumstances, I do not think it was unreasonable for Suttons to retain Mr H's attitude to risk as cautious to moderate. I do not think Suttons made an error in not recommending any changes to Mr H's funds. On balance, I think Suttons carried out the required review of Mr H's SIPP for 2021.

And in August 2022, Suttons produced a further portfolio report. This says Suttons thought Mr H was still a cautious to moderate investor. Mr H removed Suttons as his adviser shortly afterwards, but this does not necessarily mean Suttons' advice was unsuitable. From the evidence available, Suttons provided Mr H with an annual review.

In summary, from November 2016 onwards, I do not think Suttons made an error in its advice or failed to provide its promised level of service to Mr H. So, I cannot recommend Suttons refund charges from this period. I accept my decision will likely disappoint Mr H, but I would like to reassure him I have considered everything he has sent us. I acknowledge Mr H has said Suttons was not proactive and if he had invested his funds in a different 'moderate' risk fund he would have achieved greater investment returns. I cannot apply hindsight when making my decision, so I cannot say it would have been better for Mr H to have invested his funds differently and ask Suttons to compensate Mr H for investment growth he might have achieved if invested in other moderate risk funds. Instead, I have reviewed Suttons' recommendations (to change or not change investments) from November 2016 and I cannot conclude Suttons did not meet its obligations to Mr H to review his pension annually for the reasons I explained above.

My final decision

Whilst I realise my decision will disappoint Mr H, I have not upheld his complaint for the reasons explained above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr H to accept or reject my decision before 26 July 2024.

Victoria Blackwood
Ombudsman