

complaint

Mr J's complaint is about advice given by Curo Advisers Limited (Curo) to transfer to a new pension plan to access discretionary fund managers. Mr J's now found out that a similar service was available with his previous plan. So he doesn't think he needed to transfer and reduce his pension fund by the fee charged (£4,995).

background

Mr J had an existing personal pension plan and the agency was transferred to Curo on 17 February 2014.

The fact find completed said Mr J was 50 and earning £23,000 per annum. He owned a property valued at £150,000 with a mortgage outstanding of £30,000. He was recorded as having a medium attitude to risk.

The suitability report of March 2014 indicated Mr J had limited knowledge of investments and pensions. He would always look to a professional for advice in this area. One of the reasons given for the transfer was to allow him to access discretionary management service. This involved a higher ongoing fess with the new pension plan.

The transfer went ahead and Curo's fee of £4,995 was deducted from the pension plan.

Mr J later complained. Curo rejected the complaint. It said the full discretionary management was not available under his existing plan, only via a managed portfolio service.

When he referred his complaint to us Mr J pointed out the portfolios options are very similar to those offered by his existing plan via the same discretionary fund manager, which he could have accessed and not been charged a fee.

The adjudicator established from the previous pension provider that it did offer access to fund managers via model portfolios although not a full bespoke discretionary fund management service. Model portfolios were mentioned. But that option hadn't been expanded upon. So Mr J wasn't able to make an informed decision. He didn't know he could access a very similar portfolio under his existing plan at an extra cost of 0.3% per annum without the need to transfer

The adjudicator thought Mr J would have chosen the lower cost option had it been explained. She set out redress based on a return of the additional costs – she didn't think Curo was responsible for the investment decisions made by the discretionary fund managers. She explained this was an alternative to comparing transfer values and/or using indexes.

Curo replied and said in summary –

- Mr J and another complaint that has been made are identical and had been made on behalf of the complainants and to discredit Curo's adviser.
- Full bespoke discretionary fund management wasn't available.
- The fee charged wasn't unreasonable. It was unfair to add interest at 8% per annum.

The adjudicator didn't change her view. She acknowledged that the complaints were identical. But she said that didn't mean a complaint couldn't be made or referred to us. She agreed that any fees charged after Mr J changed advisers shouldn't be included in the redress.

Mr J replied jointly with the other complainant. They were close friends. They'd previously been advised to transfer final salary pension scheme benefits and other colleagues had received compensation from the Financial Services Compensation Scheme (FSCS). It was via these colleagues they'd found out that their existing plans offered model portfolios and these are the same as under their previous plans. They consider the advice to transfer was unnecessary. They also expressed doubt about whether the adviser was authorised.

The complaint was referred to me. I agreed it should be upheld. I've set out my reasons below. The adjudicator shared with both parties the slightly revised redress award that I proposed. Neither party had any comments.

my findings

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 agree with the adjudicator, and for the reasons she gave, that the complaint should be upheld. Essentially I don't think the transfer was necessary. Mr J's objectives could have been met under his existing pension plan.

And, broadly, I agree with the redress suggested by the adjudicator. Curo wasn't responsible for investment decisions after Mr J had transferred. So I think basing redress on the extra fees and charges Mr J incurred is a fair and reasonable way of compensating him. It puts him back in the position he'd have been in if he'd kept his existing pension plan.

Curo should refund in part at least the fee it charged Mr J. I recognise Curo would have reviewed Mr J's pension even if Curo had told him to remain with his existing provider but switch to one of its model portfolios.

So I think Curo is entitled to some of the fee. But the fee actually charged was £4,995, which included the transfer to the new plan. The adjudicator suggested a reduced fee of £1,000. I think that's reasonable. So Curo should refund the difference of £3,995.

I've awarded interest on that. I've noted what Curo's said about adding 8% interest. But our usual approach, where a consumer has been 'deprived' of money – that is, not having it available to use – is to award interest at that rate.

I recognise that, as the money was in a pension fund, Mr J couldn't have accessed it directly. But I don't think using 8% in those circumstances is unfair. And even if Mr J might not have got that return if the money had remained in his pension fund – although Curo seems to suggest that sort of return wasn't entirely unrealistic. But as I've said I'm not awarding compensation based on investment loss. I don't think it's unfair to say that interest should be added at 8% to Curo's fee and any initial set up costs incurred.

Curo should also pay the difference between the fees Mr J would have paid if he'd stayed with his previous provider and the fees he was charged under the new plan – up until Mr J changed advisers.

But I think Curo should be able to take into account the extra fee that Mr J would have been charged if he'd have used the model portfolio service offered by the previous provider – an extra 0.3% per annum. So the charges comparison should factor that in. Again I've said interest at 8% simple should be added

my final decision

I uphold the complaint.

Curo Advisers Limited should return any setting up costs of the new plan and the difference in the charges between the new plan and the previous plan (and taking into account the higher charges I've said above would have applied to the previous plan) up to the date Mr J changed advisers.

Interest at 8% simple per annum should be added from the date of each deduction from the new plan to the date of payment. Those dates may be different from the dates when the corresponding deductions would have been made from the previous plan. But to keep things simple the deduction history from the new plan can be used. .

In addition Curo should return £2,785 of the fee plus interest at 8% per annum simple from the date the fee was deducted from the pension plan to date of payment.

The total redress should be paid into Mr J's existing pension plan so his transfer value is increased by the total redress figure. The payment should allow for the effect of any charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If the payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr J as a lump sum after making a deduction of 15%. The payment would otherwise have been used to provide pension benefits, 25% of which would be tax free and the rest would have been taxed according to his likely tax paying status in retirement – presumed to be 20%. And so the 15% deduction adequately reflects this.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 2 January 2018

Lesley Stead
ombudsman