

complaint

Mr S complains that the advice he received from Friends Life Limited to transfer pension benefits from his former employer's final salary scheme to a personal pension arrangement was not suitable.

background

In April 2000 Mr S was advised to transfer pension benefits from a former employer's final salary scheme to a personal pension arrangement. Mr S was advised to transfer to the personal pension on the basis that it was likely to provide greater benefits than his former employer's scheme.

The transfer value analysis provided to Mr S at the time showed that the rate of return required to match Mr S's existing pension benefits was around 7.5%. So in order to match the benefits Mr S was giving up his pension pot would need to grow at approximately 7.5% each year.

Based on the information available, it does not appear that Mr S's attitude to investment risk was recorded at the time the advice was given. It appears Mr S's family were financially dependent on him and, there is nothing to suggest Mr S was an experienced investor.

In 2016 Mr S complained to Friends Life as he did not think the advice he had received was suitable.

Friends Life did not uphold Mr S's complaint. It said, in summary, that it felt the growth rate, of around 7.5% per year, needed to match the benefits Mr S would have received from his former employer's scheme, would have been considered achievable at the time the advice was given.

Mr S wasn't satisfied with Friends Life's response and brought his complaint to this service.

Our adjudicator was of the view that Mr S's complaint should be upheld. He explained that he had reached this view because he felt that the rate of growth needed to match the benefits Mr S would have been entitled to from his former employer's pension scheme made this a high risk strategy. He said there was no evidence to show Mr S was willing to take such a risk.

Friends Life confirmed it had received our adjudicator's view. But it did not respond to several reminders from our adjudicator for a response on whether it accepted the view. As this is the case Mr S's complaint has been passed to me to be determined.

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, and in the absence of any further submissions from Friends Life, I have reached the same view as our adjudicator and for much the same reasons. I'll explain why.

At the time Mr S was advised to transfer pension benefits from his former employer's final salary scheme to a personal pension arrangement the standard investment growth rate projections prescribed by the industry regulator were 5%, 7% and 9%.

The transfer value analysis carried out at the time, showed that the rate of return required to match Mr S's existing pension benefits was around 7.5%. So in order to match the benefits Mr S was giving up his pension pot would need to grow at approximately 7.5% each year.

However, Mr S was advised to give up his guaranteed final salary benefits in order to achieve a *higher* pension than that available from his occupational scheme on retirement.

The adviser said:

*I recommended you transfer your [name of employer] Group pension scheme to a personal arrangement with Friends Provident, As you were prepared to forego your Guaranteed Minimum Pension **for a potentially improved pension** I recommended that you transfer the Protected Rights element to a Personal Pension Transfer Plan and the balance of the transfer value to a Pension Buy-Out Plan. Placing the non-protected rights element of the transfer in the Buy-Out Plan gives you the opportunity to maximise the level of cash available from the plan at normal retirement age.*

(bold is my emphasis)

I think that to achieve this objective Mr S's pension pot would have required a growth rate at least 1% higher than the critical yield identified (of around 7.5%), to make it worthwhile for Mr S to take the risk associated with transferring.

On this basis, Mr S's personal pension would have needed to achieve a growth rate in the region of 8.5% per year to provide sufficient benefit for the risk of the transfer.

The suitability report does not describe Mr S's attitude to investment risk, so it is not possible to say with any certainty how much risk Mr S wanted to take with this pension pot. But even if Mr S had been categorised as having a high, or speculative attitude to investment risk I think the adviser should have taken account of the impact on Mr S's income in retirement if a high risk investment strategy was to leave Mr S worse off. Based on the fact find information I have seen I don't think Mr S was in a position to take a high level of investment risk in the hope of beating the benefits he would have been entitled from his former employer's scheme.

I have taken into account that at the time the advice was given interest rates were much higher than they are today. I accept that it may not have been unreasonable in 2000 to anticipate growth rates of around 8.5%. But, I must also take into account that Mr S's pension fund needed to achieve returns of at least 8.5% growth per year in order for him to achieve a better income in retirement.

I think Friends Life should have assessed this as too high a risk when assumed investment returns of 5%, 7% and 9% were used in pension illustrations.

Having carefully considered this matter I don't think the advice Mr S received was suitable. I think the investment risk associated with the transfer was too great for Mr S's personal and financial circumstances.

what the business must do to put things right

My decision is that I uphold the complaint. A fair and reasonable outcome would be for the business to put Mr S, as far as possible, into the position he would now be in but for the unsuitable advice.

Friends Life must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this final decision, and using the most recent financial assumptions published, as at the date of this decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr S's acceptance of the decision.

Friends Life may wish to contact the Department for Work and Pensions (DWP) to obtain Mr S's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr S's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation in respect of any past loss (i.e. extra net income or tax-free cash Mr S would already have received from the occupational scheme) should be paid to him as a lump sum.

The compensation in respect of any future loss should if possible be paid into Mr S's pension plan. The payment should allow for the effect of 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 future loss payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr S as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, if Mr S would have been yet to take a tax-free cash sum from the occupational scheme, 25% of the future loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

But if a tax-free cash sum from the occupational scheme has already been taken into account in the payment for past loss above, the remaining future loss is in respect of taxable income only. So it would be appropriate to make a notional deduction of 20% in full.

The compensation resulting from the loss assessment must where possible be paid to Mr S within 90 days of the date Friends Life receives notification of his acceptance of my final decision.

Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Friends Life to pay Mr S this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 July 2018.

My decision is that I uphold this complaint. In order to resolve this matter Friends Life Limited to calculate and pay any redress due as set out above.

Suzannah Stuart
ombudsman