

complaint

Mr B has complained about advice he was given by Legal and General Assurance Society Limited to transfer the benefits he held in an Occupational Pension Scheme (OPS) to a personal pension plan (PPP).

background

Mr B met with an adviser from L&G in 1998. He was a member of his OPS and had about 10 years worth of accrued benefits. He was in his early forties and married with children. His attitude to risk was recorded as 'positive'.

Mr B was advised to transfer his benefits to a PPP. He was told that the growth required to match his OPS benefits was less than 8.3% per year. It was recorded that he was prepared to take reasonable risk for the possibility of greater reward and that the PPP would give him greater flexibility of benefits at retirement.

Mr B complained to L&G in 2017 but it didn't uphold the complaint. So the complaint was referred to this service where it was considered by an investigator. She thought the complaint should be upheld and set out how redress should be calculated. She said that the level of growth needed to match the existing benefits was 8.3% and taking into account charges this would have meant growth of nearer 9.3% was necessary. This would have been close to the mid-range of the growth rates the regulator set out at that time.

The investigator wasn't satisfied that it was made clear to Mr B that this level of growth would be necessary just to match his existing benefits. She went on to say that he could have stayed in the OPS and had the same flexibility at retirement.

L&G didn't agree. It said, in summary;

- It was made reasonably clear that the value of the PPP fund and the pension could fluctuate.
- Mr B was a professional with knowledge of money matters and finance.
- The growth required was recorded as not more than 8.3% (and not 8.3%).
- Enhanced transfer values were being offered and the employer was not in a strong financial position.

As no agreement has been reached the case has been referred to me for a decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

A transfer, from a defined benefit scheme, to a pension plan where the eventual benefits depend on investment performance, carries a risk that the resulting pension will be less. The documentation provided by L&G to Mr B did show that the future benefits from the personal pension were not guaranteed.

It seems that L&G determined that to match the benefits that had been accrued in the OPS the transfer value offered would have to increase at a rate of not more than 8.3%. L&G can't

say exactly what rate was required and there is a separate reference in a transfer analysis suggesting the rate required was 7%.

This was at the time below the middle assumption that a firm had to use when producing pension illustrations. It is however important to note that the purpose of transferring would be to have greater benefits payable on retirement so the transfer value would have had to increase at a rate of say 8 or 9% to ensure that the benefits after transfer were greater than the benefits being given up. I think this would have been considered a relatively high risk transaction. There was therefore a significant possibility that after transferring the benefits on retirement would be lower than the benefits that would have been provided by the former scheme.

Also, at the time the regulator was still publishing investment returns to be assumed when determining the level of any redress that was payable following a misale under the pensions review. At the time that Mr B received the advice to transfer the yield that the regulator published for redress calculations with the same term to retirement was around 7.5%. This would also indicate that the transfer was relatively high risk as a higher return would have been needed to better the OPS benefits.

Mr B was married with children. This was his main pension provision at the time. I think he was in a position to take some risk and the recorded attitude to risk of 'positive' was probably realistic. However, I think the transaction presented a higher degree of risk than he ought to have been advised to take with this asset, his guaranteed pension benefits in respect of ten years membership of a final salary scheme.

Whilst it's true that Mr B's profession may have meant he had a greater than average understanding of finance, the role of a professional adviser is to consider the overall financial position of a client and to make a recommendation which is best suited to the circumstances of the client at that time. Mr B followed the advice given by the adviser no doubt on the basis that the adviser was an expert and was acting in his best interests. The advice given to Mr B was that he should put at risk his main private pension provision (which would provide guaranteed benefits) in favour of a personal pension which carried no guarantees.

In my opinion the advice was not suitable.

putting things right

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for L&G to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice.

L&G 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 my decision, and using the most recent financial assumptions published (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 B's acceptance of the decision.

L&G may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B'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 B'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 B 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 B'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 B as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

For example, as Mr B hasn't taken 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.

Where I consider that total fair compensation requires payment of an amount that might exceed £150,000, I may recommend that the business pays the balance. I doubt that the total compensation will exceed the maximum in this case but I have included my recommendation for completeness.

determination and money award: I require L&G to pay Mr B compensation as set out above, up to a maximum of £150,000.

The compensation resulting from the loss assessment must where possible be paid to Mr B within 90 days of the date L&G 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 L&G to pay Mr B 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.

recommendation: If the amount produced by the calculation of fair compensation exceeds £150,000, I also recommend that L&G pays Mr B the balance. I further recommend interest to be added to this balance at the rate of 8% per year simple for any time, in excess of 90 days, that it takes L&G to pay Mr B from the date it receives notification of his acceptance of the decision, as set out above.

If Mr B accepts my determination, the money award is binding on L&G. My recommendation is not binding on it.

Further, it's unlikely that Mr B can accept my determination and go to court to ask for the balance of the compensation owing to him after the money award has been paid. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

my final decision

I uphold this complaint Legal and General Assurance Society Limited must calculate and pay redress as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 1 September 2018.

Keith Taylor
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