

complaint

Mr C is unhappy with the advice he received in 1993 from Legal & General Assurance Society Limited to transfer the value of his deferred pension benefits to a personal pension arrangement.

background

In early 1993 a representative from Legal & General contacted Mr C to suggest that a transfer of the deferred benefits that he had accrued in a former employer's pension scheme could be beneficial. The representative refers to both increased benefits and increased flexibility.

In September 1993 having collected details of the deferred benefits available Legal & General sent Mr C a Transfer Value Analysis report ("TVA"). This showed that Mr C might be better off in retirement if he transferred the value of his deferred pension benefits from his former scheme to a personal pension arrangement. The TVA showed that if future investment returns were 13% per annum then he would receive approximately twice the level of benefit that the former scheme would have provided. On the other hand if investment returns were 8.5% per annum then he would receive only 70% of the benefits that the scheme would have provided.

The TVA report noted that a return of 9.9% a year (the critical yield) was required for the personal pension to provide benefits of equal value to those that would be given up if he transferred.

In November 1993, Legal & General partially completed a Personal Financial Analysis ("PFA") or fact find for Mr C. The majority of the sections were marked "*Client declined to answer section*".

Legal & General's representative wrote on the PFA that he had

"recommended a transfer ... to increase the flexibility and likely benefits from his pension fund and to allow all the fund to be available for early retirement."

Mr C was then aged 42 and the deferred pension benefits were in respect of 13 years pensionable service. His new employer did not provide a pension scheme that Mr C could have joined.

In May 2013, Mr C complained to Legal & General. He said that he had not been informed of the guaranteed benefits he gave up in the former scheme when he transferred to the personal pension arrangement.

Legal & General issued its final response in June 2013. It said that Mr C was given both the TVA and an illustration, which would have made it clear that the benefits from the personal pension could not be guaranteed and that he could be worse off in retirement. It was satisfied that Mr C was provided with sufficient information about the potential rewards and risks of transferring.

Unhappy with this response, Mr C brought his complaint to this service.

In February 2014, one of our adjudicators wrote to Legal & General explaining that he considered the complaint should succeed. He did not consider the advice given by Legal & General was suitable, given Mr C's circumstances. The adjudicator stated that as Mr C was recorded as having no savings or investments at the time of advice that he concluded that on balance that Mr C would have had a cautious attitude to risk.

Legal & General did not agree with the adjudicator's conclusion. It said that it considered a critical yield of 9.9% was achievable at the time of advice. It also said that the information provided on the TVA was sufficient to make Mr C aware of the risks involved in the transfer.

As agreement has not been reached the complaint has been referred to me as an ombudsman for a decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. In doing so, I have reached the same conclusion as the adjudicator, and for broadly the same reasons.

I note that the fact find in this case was completed over the telephone and in response to the questions raised Mr C was recorded as being unwilling to disclose any details. Mr C has not disputed that he did not supply answers to the points on the fact find.

After the Legal & General representative completed the form over the telephone it was sent to Mr C who initialled every page to agree with the statement that he was unwilling to discuss his personal circumstances, attitude to risk etc.

The Legal & General representative was the pension expert and as such should have been aware of the risks that an individual would be running after transferring out of the pension scheme. Mr C was not the pension expert and would have been relying on the representative from Legal & General to advise him appropriately.

However, I agree that it would not have been possible given the lack of evidence on the fact find to determine whether the advice to transfer was appropriate or not.

In those circumstances Mr C should have been treated by Legal & General as either an insistent customer or an execution only customer. In either case there should have been clear records kept and signed by Mr C to explain that he was being treated as an insistent customer. Where Mr C was transferring against the advice of the business or as an execution only transaction this should have been clearly recorded by the business. No such correspondence exists and I have therefore decided that the advice was not carried out on an execution only basis or on an insistent customer basis.

Legal & General had a duty to provide suitable advice in the context of Mr C's objectives and circumstances. So, it was obliged to assess and consider the degree of risk that the transaction represented overall, taking into account all the relevant circumstances, and only make a recommendation to transfer if it considered it was suitable. In assessing the suitability of the transfer, Legal & General should have considered Mr C's willingness and his capacity to take risks.

I have reviewed the documentation supplied and in particular the fact find. I have noted that Mr C declined to answer the majority of the fact find questionnaire, meaning the advisor did not have an accurate picture of Mr C's overall circumstances. His attitude to risk was not recorded. In addition, no information was recorded about Mr C's savings, investments or wider financial circumstances. Without this information, I consider it reasonable to conclude that the advisor could not have known if transferring was suitable.

When setting out the guidelines for the industry-wide pension review, the regulator said that businesses had to be able to show that a consumer had been made aware of the nature of the benefits that had been given up. The fact find does not give that information. I am not persuaded that the fact find and/or the illustration gave any information about the benefits that Mr C gave up when he agreed to transfer from his former employer's pension scheme. I consider that, if the transfer had been tested under the terms of the pension review, it would have failed that test because of the lack of information given to Mr C.

Legal & General said that it considered the critical yield of 9.9% was acceptable, given the growth rates seen in 1993. However in order to make taking the risks acceptable a greater return would be required to cover the risks that Mr C was taking on. Mr C was giving up a relatively secure pension in exchange for the possibility, depending on investment performance and annuity rates, of a larger pension in retirement.

Mr C gave up pension benefits built up over 13 years of service when he transferred. He had 23 complete years until retirement, if he retired at 65. Whilst I accept that he had some time to make further provision for his retirement, this was uncertain. His new employer did not provide a pension scheme that Mr C could join. The fact find does not show whether Mr C was contributing to another pension. He did not add to the pension with Legal & General.

At the time of advice to transfer, the pension benefits that Mr C had built up in his former employer's pension scheme were his only provision for retirement. In my view, Mr C should have been advised not to place that retirement provision at risk by transferring to a personal pension arrangement.

In my opinion the Legal & General representative had provided advice when he wrote to Mr C stating that he had:

*"recommended a transfer ... to increase the flexibility and **likely benefits** from his pension fund and to allow all the fund to be available for early retirement:*

my final decision

I uphold this complaint against Legal & General Assurance Society Limited.

I direct Legal & General Assurance Society Limited should perform a loss calculation using the methodology determined by the regulator for the industry-wide pension review, using the latest assumptions. The assumptions can be found on the Financial Ombudsman Service's website.

If this shows that a loss has arisen any loss incurred by the transfer I direct Legal & General to pay redress in line with the methodology set down for the industry wide pension review exercise.

If redress cannot be paid into a pension arrangement for Mr C then I direct that Legal & General pay Mr C a lump sum equal to 85% of the loss to reflect the fact that 25% of the benefits from a pension scheme are tax free and the remaining 75% of the sum due would provide income that would be taxed at the basic rate of income tax.

Adrian Hudson
ombudsman