DRN-3640647

The complaint

Ms S complains that Bankfoot Financial Services Ltd ('BFS') moved her pension several times to different providers. She says they acted without her knowledge or consent.

What happened

In July 2016, Ms S contacted BFS to ask for their help to drawdown her tax-free lump sum from her employer's group personal pension ('GPP'). She says she wanted to use the money for some home repairs. At the time she was 73 and still working. Both she and her employer were contributing to her work pension. Ms S says she was intending to retire at 75.

In August 2016, BFS advised her to transfer her GPP with a value of around £76,000 and a smaller pension worth around £2,800 to a Zurich Retirement Account. After taking a 25% tax-free lump sum of around £18,700, the rest was recommended to be left invested in cash.

A couple of weeks after the transfer, another drawdown payment of £13,000 (£8,700 after tax) was made to Ms S.

The adviser had also recommended Ms S should invest £25,000 into a Prudential Investment Plan (100% into a cautious fund). It was recorded on the application form that the funds were raised from 'tax free cash from pension'. Ms S says the adviser asked her for a cheque for £25,000, but as he couldn't explain what this was for she refused to do this. BFS has confirmed this investment never went ahead.

Several months later, in April 2017, BFS advised Ms S to switch her pension with Zurich to Prudential.

Ms S says she didn't ask for a further drawdown of £13,000 in 2016 or for her pension to be moved to either Zurich or Prudential. She said she only ever asked the adviser to help her release her tax-free cash in 2016. Ms S says the other transactions were done without her consent and when she noticed this had happened it was too late to reverse the actions.

Ms S says she paid unnecessary charges to the adviser and by being taken out of her GPP her pension didn't continue to benefit from employer contributions.

As a result she says she is left with a much reduced pension, had to continue working and is unable to retire.

Ms S complained to BFS who rejected her complaint. They said Ms S was advised appropriately and there had been several meetings with her where the advice had been discussed and agreed. All relevant documents were signed by her.

One of our investigators considered Ms S's complaint and upheld it. He said there was no good reason for Ms S to transfer her pensions to Zurich and later on to Prudential. The GPP provider confirmed that Ms S could have taken tax free cash from her pension and leave the rest invested if this is what she wanted to do.

He also thought Ms S should have been advised against taking another lump sum payment which led to higher tax payments and a reduction in her Money Purchase Annual Allowance, which given she was still working and contributing to her pension should have been mentioned. He thought if this had been explained she wouldn't have proceeded.

BFS said they had advised her to re-join her workplace pension. However there was no evidence this was explored with Ms S and assistance offered. Her payslips show that no further contributions were paid after the pension transfer in 2016. So the investigator thought BFS should compensate her for the lost employer contributions.

BFS disagreed and so the complaint was passed 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.

Where the evidence is conflicting or incomplete, I'll decide what I think happened on the balance of probabilities based on the information I have.

Ms S says she never agreed to anything other than releasing her tax-free cash from the GPP and I don't doubt that these are her honest recollections. I've also considered that she provided evidence she was at a doctor's appointment on one of the days some papers were signed in July 2016. She says she didn't go home after the appointment and would not have been able to sign those papers. I understand she strongly believes the adviser acted dishonestly.

Contrary to this the adviser says Ms S agreed to all of these transactions. And I've seen signed copies of various documents including application forms, client agreements which set out the fees that would be charged and a letter from Ms S asking for an additional £13,000 to be released from the pension. I've also seen the suitability reports which were addressed to Ms S.

I don't know what exactly was discussed between Ms S and the adviser and I've got conflicting testimonies. Having considered everything, I don't think it's likely the adviser forged Ms S's signatures on the majority of the paperwork and created a false paper trail.

On balance, I think it's more likely than not that Ms S did sign those papers. Ms S says she was surprised to hear from Zurich after the transfer as she thought she would receive her funds from the GPP provider. However, I've seen a letter sent from Zurich to her directly on 26 July 2016 which welcomed her to her Zurich portfolio and set out the expected funds from the GPP and her other pension. This was around a month before the funds were transferred, so she could have stopped this if this was something she hadn't agreed to. She also received a letter from her other personal pension provider which said before her pension could be transferred they required a transfer payment form. Ms S signed this in early August.

So whilst Ms S now says she didn't know her pension would be transferred elsewhere, I think she likely was aware and had consented at the time. However, I acknowledge there is a possibility she might not have fully understood what exactly she was signing or what she was agreeing to at the time.

I next considered whether the advice that Ms S was given was suitable.

Transfer of Ms S's existing GPP and small personal pension to Zurich

There's no dispute that Ms S wanted to access her tax-free cash from the GPP. However, she didn't need to transfer her pension for this. The GPP provider confirmed to our investigator that until the age of 75, Ms S could have taken her tax-free cash and either taken an annuity or kept her remaining funds in a drawdown plan. I acknowledge BFS says they received different information, however I haven't seen that any of this was explored at the time of the advice. And I think it's reasonable for me to rely on the information this Service was given upon enquiry.

So based on the information I have I don't think Ms S needed to transfer her pensions in 2016 in order to access benefits more flexibly. And BFS's argument in the suitability report that the GPP offered a too limited investment choice is somewhat puzzling when the investment recommendation was to put the funds in cash. I note that Ms S was later invested in a lower risk Vanguard fund. I haven't seen evidence how and when this was chosen or whether Ms S had any input on this. However, in any event, I can't see Ms S needed a wider investment range (she was a low risk investor without much experience).

I'm also not persuaded that it was suitable advice for Ms S to access her pensions for tax-free cash at all. There is again conflicting evidence what Ms S wanted the lump sum for. Ms S told us she wanted the funds for home repairs and a new car. However, the fact find which was completed in 2016 noted under advice considerations: 'son and daughter lump sum equally'. BFS says Ms S wanted £10,000 for each of her children, however no sums were mentioned in the fact find or suitability report.

Whatever the purpose of the funds was, the adviser was giving Ms S advice, so he shouldn't have just acted as an order taker but was required to advise her on what was suitable and in her best interest.

Ms S was still working and contributing to her GPP, so I think the adviser should have considered in the first instance whether she could use other funds to release some cash. The suitability report recorded that Ms S had £40,617.14 available for investment (around £15,600 in a cash ISA and the rest (£25,000) in a deposit-based account following the taking of a tax-free cash lump sum.

The £25,000 which BFS advised to put into a Prudential Investment Plan were recorded to come from 'tax-free cash from a pension'. The investigator considered that it was likely the £25,000 were planned to be made up from the tax-free cash lump sum and the additional lump sum withdrawal from the GPP. BFS said this wasn't correct and the funds intended to be used were £19,000 tax-free cash and £6,000 from savings.

Whatever way I look at this, it seems BFS was intending to direct the tax-free cash, which apparently was meant to be used for home repairs or lump sums to Ms S's children, to another investment. I don't see how Ms S would benefit from taking money from a tax-efficient pension environment and reinvest it elsewhere, particularly as the investment risk in both arrangements was similar.

Taking the tax-free cash lump sum aside, Ms S had considerable amounts in two cash ISAs (around £87,000) which she could have used instead if she needed some funds to pay her children or use on her home. I can't see that this was explored.

Overall, I think transferring her workplace pension and accessing her tax-free cash from it wasn't suitable advice.

Withdrawal of an additional sum of £13,000 (before tax)

I've seen a letter dated 24 August 2016 signed by Ms S saying she wanted to withdraw another £13,000 from her Zurich account and that she was aware of the tax implications.

BFS says they executed this on a non-advised basis.

The letter refers to previous discussions with BFS but there's no evidence when and how this was discussed and what was explained. Ms S says she didn't need the money and given her other provisions I'm minded to believe her. As I said before I think Ms S likely did sign this letter. However, I agree with the investigator that it looks like the adviser might have been planning to use the additional drawdown sum to raise the funds to invest in the Prudential Investment plan.

Even if I'm wrong about this and it was Ms S's wish to withdraw more money, I would expect BFS to be able to demonstrate what was discussed. They said they didn't advise her, but the recommendation report was only issued on 30 August which was after Ms S's letter. The advice process wasn't yet completed and so I would have expected this to be covered in the recommendation report.

I'm not persuaded that Ms S would have proceeded with this withdrawal against advice or even if proper risk warnings were given. BFS was aware of Ms S's circumstances and should have explained that taking another lump sum without evident reason was not in her best interest.

Switch from Zurich to Prudential in 2017

The reason for switching providers as per the suitability report in 2017 was that the range of funds in Ms S's Zurich pension was limited and didn't allow her to access her desired investment strategy.

The Zurich plan had only been recommended a few months earlier and would have offered a wide range of investments. I can't see there was a need to move pensions for this reason. I also can't see that the new plan offered other benefits like lower fees. BFS didn't make any cost comparison. In fact illustrations showed that factoring in adviser and product charges, returns in the new plan would be reduced by 4%.Given that Ms S was invested in a low risk manner and returns would have likely been lower than average, these charges would have had a significant impact.

The suitability report showed Ms S might be better off by switching. However, the illustrations BFS compared used different growth rates and were therefore not comparable.

Summary

I think Ms S was not provided with suitable advice and should be compensated if calculations show she has lost out financially as a result.

My aim is to put Ms S, as much as possible, in the position she likely would have been in if she had received suitable advice.

If advised properly, I think Ms S would have kept her existing pensions in 2016. Without transferring her GPP there was no real need to transfer her small personal pension either. I think she could have used different funds if she really wanted to spend money on home repairs, a new car or on her children.

I also don't think she would have withdrawn the sum of £13,000 from her pension and incurred an increased tax charge for the financial year 2016/2017.

I've seen evidence in form of Ms S's payslips that no further contributions were paid nor employer contributions were received after she transferred her pension.

I see no reason why her contributions and employer contributions would have stopped if she had not transferred her pension. I think on balance she would have received contributions until age 75 when she was planning to retire. BFS said they had discussions with Ms S and her employer and that she would auto-enrol in a new workplace pension and that they offered assistance with this. If she encountered problems, she could have come back and asked for help. They don't think they should be held responsible for lost contributions.

Again there's no evidence of these discussions which I would have expected to be part of the suitability letter or other notes or communications. So based on what I've seen I think it's fair and reasonable to hold BFS responsible for Ms S's lost contributions.

Putting things right

The calculations below will put Ms S as much as possible back into the position she would have been in if she had kept her existing pensions, received employer contributions and not withdrawn £13,000 in 2016. Any charges she paid will be accounted for in this calculation.

I would like to make Ms S aware that it is possible the calculations result in a relatively small loss or potentially even no loss. I've seen that the GPP provider previously has given her notional values which were higher than her pension. But up to date values will be needed to make comparisons to her current pensions and both her current value and the notional values will have been affected by stock market movements since then.

I understand Ms S feels she's lost out significantly by moving her pensions and making a large additional withdrawal. However, she needs to be mindful that it's possible her new pension might have performed better than her old pensions which will impact the redress amount.

To compensate Ms S fairly, BFS must:

- Compare the actual value of Ms S' current pension with the notional values if she had remained with the previous providers (GPP and small personal pension) and had not transferred in 2016. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.

- For the GPP pension, add 12.75%* of Ms S's salary at the relevant time into the notional value calculation to account for her lost employer contributions and the tax relief on her own contributions. This should be added each month for the time between September 2016 when she transferred and January 2018 (Ms S's 75th birthday).

  * 9.375% employer contributions plus 20% tax relief and 20% tax relief on Ms S's 7.5% employee contributions)

- BFS should pay into Ms S' pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If BFS is unable to pay the total amount into Ms S' pension plan (for example because it exceeds Ms S's money purchase allowance), they should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Ms S won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Ms S' actual or expected marginal rate of tax at her selected retirement age which is assumed to be 20%. As 25% of her pension would be paid tax-free, the reduction should be applied to 75% of the compensation.

Portfolio name	Benchmark	From ("start date")	To ("end date")	Additional interest
Ms S' current Prudential pension	Notional value from previous providers	Date of transfer in August 2016	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving Ms S' acceptance)

Income tax may be payable on any interest paid. If BFS deducts income tax from the interest it should tell Ms S how much has been taken off. BFS should give Ms S a tax deduction certificate in respect of interest if Ms S asks for one, so she can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Actual value

This means the actual amount payable from Ms S's current pension at the end date.

Notional Value

This is the value of Ms S' pension had it remained with the previous provider until the end date. BFS should request that the previous providers calculate these values.

Any additional sum that Ms S paid into the investment (including the contributions that should have been paid in as set out above) should be added to the notional value calculation at the point it was/would have actually paid in.

Any withdrawal from Ms S' current Prudential pension should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if BFS totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

The exception to this is the withdrawal of £13,000 in September 2016. This should only be deducted from the notional value at the end. This ensures lost returns on this sum are factored in.

Tax charge

Ms S was charged income tax on the £13,000 withdrawal in 2016 which led to some of her income being taxed at 40%. She received a rebate for some of the tax from HMRC based on her estimated income in 2016/2017. However, as her employment income then increased, HRMC offset this rebate. So she effectively never received a deduction on tax for the withdrawal amount.

Looking at HMRC’s paperwork Ms S had taxable income of £39,273.72 which led to a tax liability of £9,309.20 in the 2016/2017 tax year. Without the additional withdrawal of £13,000 her taxable income would have been £26,273.72. Her tax liability (all at 20%) would have been £5,254.75. So Ms S overpaid £4,054.45 income tax in 2016/2017.

I have taken into account that Ms S always would have had to pay income tax on this amount at some point and assume this would have been at 20% which is £2,600.

This leaves her with an overall overpaid tax amount of £1,454.20 which should be refunded to her plus 8% simple annual interest on this sum for the time the sum was withdrawn in 2016 until the compensation is paid to Ms S. This is to compensate Ms S for being deprived of this money during this time.

Distress and inconvenience

This matter has caused Ms S considerable distress and so BFS should pay £300 to acknowledge this.

My final decision

I uphold Ms S’s complaint and require Bankfoot Financial Services Ltd to calculate and pay redress to Ms S as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms S to accept or reject my decision before 18 November 2022.

Nina Walter
Ombudsman