DRN-3828554

The complaint

Mr L has complained that Liverpool Victoria Financial Services Limited (LV) didn't ensure his retirement funds were invested in line with his instructions, resulting in a significant proportion of the funds being held in a cash account.

What happened

I issued my provisional decision on this complaint on 17 November 2022. The background and circumstances to the complaint and the reasons why I thought the firms offer was fair and reasonable were set out in that decision. I've copied the relevant part of it below, and it forms part of this final decision.

Copy of provisional decision

"What happened

One of our investigators sent his assessment of the complaint to both parties on 21 September 2021. The background and circumstances to the complaint and the reasons why the investigator thought that the complaint should be upheld were set out in that assessment. But in summary, Mr L transferred four pensions into the LV Flexible Transactions Account (FTA) in July 2014 through his Independent Financial Adviser (IFA). The application form stated an amount of £112,500 was to be invested in the Balanced Consensus Fund (Balanced Index s2) and £112,500 in the Protected Retirement Plan (PRP) with £12,991 per annum income taken.

The income payment details section said 100% of any lump sum was to be taken from the Balanced fund, and 53% income to be taken from that fund. An asterisk and hand-written note said 'total income required £12,991, less income from PRP £6,091, income from fund £6,900'.

Mr L's IFA sent a letter to LV on 4 July 2014 giving the approximate transfer value and saying the income from the PRP was to be £6,091 and the income from the fund was to be £6,900 per annum. The completed application forms were included.

An LV Internal movement authorisation form was signed by an LV representative on 29 August 2014 and authorised by a further LV representative on 30 August 2014. The authoriser had ticked and signed 'check correct completion of documentation'.

On 13 October 2014 Mr L signed a form to make an additional contribution of £18,750. His IFA sent a letter to LV on 30 October 2014 which included Mr L's cheque and completed application forms.

On 10 November 2014, LV's internal check log detailed 'mistakes' stating 'confirm in e-mail that the monies will be invested in the insured funds unless advised otherwise' and confirm this to IFA also'. A further note detailed 'now to be left on cash account'. LV subsequently e-mailed the IFA saying the additional contribution had been applied and left in the SIPP bank account (it was subsequently discovered this was to an incorrect email

address).

On 12 November 2014, an internal LV e-mail trail shows an LV staff member asking another how the funds should be invested as 'the IFA hasn't confirmed this' – with the response being 'SIPP Bank account for now'.

LV issued Mr L with confirmation that his plan was up and running on 24 November 2014, confirming tax-free cash of £63,501.26 had been paid and income of £1,082.59 would be paid monthly, before tax.

On 15 July 2015, LV issued a statement to Mr L. Several further statements were sent to Mr L over time.

In 2019, Mr L's new adviser alerted him that substantial funds with LV were held in a cash account. Mr L subsequently raised a complaint.

LV apologised for what had happened, and accepted there had been mistakes. However it said it was reasonable that after Mr L had received the statement in 2015, his IFA would have undertaken its annual review with Mr L and the cash balance amount would have been discussed. It noted Mr L had confirmed that he did have yearly reviews with his IFA. LV said on further investigation it would have been given the opportunity to rectify this situation. So it said it would calculate the position of the PRP fund and the additional contribution from inception to the end of July 2015. The difference amounted to £806.65. LV also offered a goodwill payment of £250. Mr L didn't accept the offer and the complaint was referred to this Service.

Our investigator didn't think it was fair to calculate the loss as at July 2015. In brief, he said it was likely Mr L would only have considered the high-level overview provided in the July 2015 statement. And although Mr L could have had a conversation with the IFA about the cash balances, there was no evidence that a conversation had taken place. He thought in any event, the IFA's responsibilities were another matter, and that Mr L's losses flowed from the errors made by LV in the first place.

The investigator thought that the plans should have been set up correctly by LV and if there was any uncertainty (as apparent from the internal communications) this should have been clarified at the time. He thought it would have been reasonable for Mr L to have understood the income would have been paid from the relevant funds as he'd instructed in the application form. And that the cause of the build-up of cash funds was due to LV's errors. So he didn't think it was reasonable for LV to only calculate the position as at July 2015.

What I've provisionally 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.

LV has said that its system didn't allow for income to be paid from the two plans that it had been instructed to provide it from in the application form. And the full amount of income was paid by disinvesting from the balanced fund, whilst income from the PRP account was held in the SIPP bank account in cash. This led to the build-up of cash. In my view LV should reasonably have alerted Mr L and/or his adviser that it wasn't able to do what had been requested. However LV has accepted it made an error and, as explained above, offered to calculate any loss that Mr L has suffered as at July 2015.

LV has also acknowledged that it should have invested the gross contribution of £18,750 in the same way as the initial investment when it received the application on 4 November 2014.

But it said one of its advisers had spoked to the IFA on 11 November 2014 to check where the money should be invested. And the IFA asked it to place the funds in the SIPP bank account as it was still considering where to invest. LV said it e-mailed the IFA to confirm the money had been put in the SIPP bank account but has acknowledged that this was sent to the incorrect email address.

So it's not in dispute that LV has made errors. What needs to be decided here is at what date LV should calculate Mr L's losses.

I contacted Mr L, through the investigator, explaining that I thought LV should calculate the position as 12 October 2015. This was because when Mr L had complained to his IFA, the IFA had said, amongst other things:

"We did discuss risk at the annual review meeting on 12 October 2015, and, whilst I have no specific record, I am sure that the holding of cash would have been discussed, as any discussion would have been meaningless otherwise. As a result of the review meeting, we did review the repositioning of your investment in the Balanced Index fund, and actioned suggested changes, to produce further diversification in the investment strategy."

So the IFA said that it carried out a review. But not until October 2015. It would have considered Mr L's overall cash position – including the extra cash resulting from both the issue of the incorrect source of payments, and the additional contribution been invested in cash. I therefore considered October 2015 was the appropriate date to calculate compensation.

However, on reflection, I now don't think that's right. I note the IFA also said, regarding the single contribution:

"My understanding of the investment strategy was that the single contribution should have been invested in the Balanced Index fund as per the previous contribution investment strategy, which appears in accord with the wording on the relevant page/section of the application form.

I have to say that I did not pick this up until the annual review statement dated 14 July 2015….

The monies remained uninvested, and I apologise for not picking this up earlier." My emphasis in bold.

The IFA went onto explain why he didn't think Mr L had lost out as a result of being invested in cash (due to falling market values up to February 2016). And that "Notwithstanding the investment in the Protected Retirement Plan (PRP), holding some cash was commensurate with your investment requirement, and indeed, as you had not withdrawn all of your permitted tax free cash entitlement, the cash would be a safe haven for any future tax free withdrawal, without the need to be withdrawing from investments in the markets, in a turn down environment.

Indeed, in my email of the 10 October 2014, I stated that the "Investment decision not overly important – take your time."

On the one hand LV was responsible for the efficient administration of Mr L's pension. As explained above, it made some mistakes, and I agree it didn't provide an efficient level of service to Mr L. Mr L has said he thinks LV should have insisted on confirmation in writing from him that he was happy to leave the single payment contribution in cash. But I don't think was required – it had spoken with the IFA, and this is consistent with the e-mail

referred to by the IFA dated 10 October 2014.

However on the other, the IFA also had its own responsibilities. It was involved in giving instructions to LV and had ongoing input on the suitability of the investments. The IFA has acknowledged that it was alerted to the cash position by the July 2015 statement. In my view it should have been alerted to the cash position overall, and should have discussed it with Mr L at that point rather than waiting until October 2015.

Mr L has said he has no recollection of a discussion about the particular issue taking place. And that he wouldn't have instructed his IFA to leave that amount of money in cash; he said it wasn't in accordance with his attitude to risk and investment strategy.

However either the IFA did have a discussion with Mr L who agreed to keep that level of cash (which could be suitable for a number of reasons); it had a conversation, but Mr L thinks it wasn't a suitable strategy to have that amount in cash; or no such conversation took place. Either way, I think if Mr L doesn't agree with what the IFA said, or its actions at the time, he needs to take that matter up with the IFA (or now FSCS).

LV has accepted that it made a mistake both in how income was paid and also in how the additional contribution was invested. I think the mistake about the income was clearly causative; if it resulted in losses they were caused by LV's error. I understand it accepts the errors connected to the additional contribution were its failure to follow the original instructions (and invest it in the same manner as the original funds). And in sending a confirmation e-mail to the incorrect address. In my view it's arguable whether those errors caused the losses that Mr L has claimed (given the evidence that the IFA instructed LV to hold the additional contribution money in cash at that time – albeit shortly after LV had received the instructions).

LV offered to calculate loss as at July 2015 – I understand taking into account what Mr L's position would have been assuming the income had been paid as instructed (even though it wasn't able to do that in reality). And that the additional contribution had been invested as aligned to the original funds (i.e. as initially intended). It also offered Mr L £250 as a goodwill payment. In my view that offer is fair and reasonable in all the circumstances."

Accordingly, my provisional decision was that LV's offer to calculate loss (on my understanding as set out above) was fair and reasonable in all the circumstances. I said I therefore intended to order that LV paid Mr L compensation in line with that offer.

I asked Mr L and LV to let me have any further evidence or arguments that they wanted me to consider before I made my final decision.

Mr L said, in summary, that LV had accepted that it hadn't acted on his instructions, through his IFA, in administering the pension payments or when investing the single contribution. He said LV didn't need to seek the opinion of his IFA as to what it needed to do. He said LV should have instead put immediate measures in place to correct its mistakes and informed him of what had happened. He said if LV believed the money should be left in cash it should have insisted on written confirmation from him that it was ok, as it insisted on any request for a change in investment arrangements to be confirmed in writing.

Mr L said with regards to payment of his income, there doesn't appear to have been a clear point in time when LV informed the IFA, if it did, that its system didn't allow the payment structure the IFA had requested. He said LV should have taken remedial action or at least have requested written confirmation that he agreed what was happening.

The IFA had agreed LV had made mistakes, but didn't accept its own liability for the

investment loss. The IFA accepted LV had made them aware of the issue with the single payment, but that they weren't aware of the issue with the pension payments and had no clear record of what it had discussed with him. The IFA thought he might be better off as a result of the mistakes and resulting accumulation of cash, but it provided no evidence. It also thought the accumulation of cash was commensurate with his overly cautious attitude to risk.

Mr L said he had initially complained to the IFA about the mismanagement of his pension and had referred the matter to us. Our investigator didn't disagree with his arguments, but didn't think the IFA had caused his losses and so could not be held responsible. Given the investigator's opinion, Mr L said he didn't refer his complaint against the IFA to an ombudsman.

Mr L said the e-mail from the IFA to him dated 10 October 2014 I'd referred to in my provisional decision was general in nature. The IFA didn't receive the Completion Summary until after 13 November 2014. Mr L said I hadn't said whether I thought the IFA was liable for his loss (or part of). And that I'd said he should take the matter up with the IFA (or now the FSCS). He'd already had a Final Response from the IFA denying responsibility. Mr L said he thought I'd consider the complaints against the IFA and Liverpool Victoria in tandem.

Mr L summarised by saying it was clear that his pension plan had been mis-managed and he'd suffered an investment loss as a result. He said both Liverpool Victoria and the IFA had played a role, he'd issued complaints against both to the Ombudsman Service and he thought he would receive full compensation for his losses.

Liverpool Victoria said it had nothing further for me to consider.

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.

Having done so, I've seen no reason to depart for the findings set out in my provisional decision.

In my view it was reasonable for LV to contact the IFA to check how the additional contribution should be invested in the circumstances, and act on its confirmation. I don't think it did anything wrong in doing so. I don't agree it needed to also get this confirmed with Mr L himself in writing; the IFA had been dealing with LV on Mr L's behalf. In my experience that is quite normal where a pension provider is dealing with its client through their IFA.

Whilst there might not have been a clear time when the IFA became aware of the problem with the income, the IFA has said it was alerted to the cash position of the additional contribution by the 14 July 2015 statement. In my view it ought reasonably to have been alerted to the cash position overall – including that resulting from the way that income was being paid. Any in any case by October 2015 at the time of the review.

If the IFA hadn't gone into liquidation I could have looked at Mr L's complaint against it alongside his complaint against LV. However it's no longer in a position to pay any award made against it; so any complaints about the role of the IFA now need to go to the FSCS. The FSCS will consider the matter in line with its own rules. The investigator can help Mr L if he wants to refer the matter to the FSCS.

My decision here is to consider what's fair and reasonable in respect of LV's role in the matter - I haven't determined whether the IFA did anything wrong. Whether it did or not will depend on the circumstances of what went on between the IFA and Mr L. I realise that Mr L

considers he's lost out as a result of being invested in cash. But being in cash isn't, in itself, unsuitable. It's not unusual for investors to move to cash in certain circumstances. So whether Mr L's pension was mismanaged by the IFA, or the IFA did anything wrong, will depend on the circumstances. It may be that it was suitable for Mr L to have been in cash from July 2015 (including that part built up from the income), so it doesn't necessarily follow that Mr L's pensions were mismanaged after July 2015. Or that Mr L made a loss as a result of it. I make no finding about it here as I haven't considered either in detail. This decision is about the actions of LV and any losses reasonably flowing from them.

My final decision

For the reasons outlined above and in my provisional decision, my final decision is that Liverpool Victoria Financial Services Limited's offer to calculate loss (on my understanding as set out in my provisional decision as above) was fair and reasonable in all the circumstances. Liverpool Victoria Financial Services Limited should calculate and pay compensation to Mr L in line with that offer as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 December 2022.

David Ashley
Ombudsman