DRN-3929951

The complaint

Mr P is unhappy about the advice he received from Lowndes Halsden & Partners Limited ('LH') to transfer benefits from his defined benefit ('DB') pension with British Steel ('BSPS') into a personal pension.

What happened

On advice of LH, Mr P transferred his BSPS benefits into a personal pension in 2017. In 2022 he complained that he had been given unsuitable advice.

LH conceded in July 2022 that they should not have advised Mr P to transfer and agreed to compensate him in accordance with the regulator's guidance on how to calculate redress for unsuitable DB pension transfers (FG17/9).

LH sent Mr P a redress offer on 15 July 2022 which said the loss had been calculated as £27,643.06. This amount could be paid into his pension or alternatively £23,643.06 could be paid directly to him. This was the loss amount with a notional income tax deduction of 15% (assuming 20% income tax on 75% of the funds).

Several emails were exchanged the same day. Mr P asked LH to provide a breakdown of the calculations. LH asked Mr P to make an appointment during which a full breakdown of calculations would be provided and explained. They offered a couple of days the following week or otherwise, due to absence of the compliance officer, to meet a couple of weeks after that. Mr P responded to say he wasn't available the next week and asked LH to simply send a breakdown of the calculations to him.

LH said the calculations were complex and insisted they wanted to explain them to Mr P either in person or over a video call. Mr P said he wanted to see he calculations in writing and asked again for them to be sent to him.

LH responded to say that Mr P had previously confirmed he still wanted to remain a client, but if he was unwilling to engage and let them explain the calculations to him, they would terminate the client relationship. They said this would mean they would retract the offer which was based on their continued service and reissue a new offer based on not receiving LH's ongoing service.

Mr P agreed to a later meeting on 10 August and Mr P said he received calculations on 15 August. The offer explained LH had made allowances for 0.23% in product charges and 0.75% ongoing adviser charges despite Mr P paying ongoing adviser charges of 1.5% to LH. The overall loss was calculated as £27,643.06 (the same as in July as the same personal pension value was used). How the redress would be paid differed slightly. LH said they would either:

- pay £12,000 into Mr P's pension which they say would attract £8,000 tax relief from HMRC plus a lump sum of £6,496.60 paid to Mr P in cash

or

- pay £23,496.60 directly to Mr P (as before)

Mr P queried the use of lower ongoing adviser charges and also noted that an incorrect date of birth for his spouse had been used. LH agreed to change the date of birth but didn't agree to change the ongoing adviser charges.

LH terminated their service agreement with Mr P with letter of 26 August 2022 with effect of the same day. Another offer was produced on 25 August. It's not clear whether this was ever received by Mr P, however it was essentially on the same basis, albeit with a slighter higher loss calculation due the pension values used being from August and not July.

LH said Mr P could have chosen a cheaper ongoing advice service from LH and 0.75% was used as an assumption based on what other BSPS clients were paying once they had changed advisers. They said the product charges of 0.23% were based on averages as well. They offered to pay more if Mr P provided them with evidence that any new adviser service he was now using was more expensive.

Our investigator thought the ongoing charges of 0.75% used by LH in their offer had been fair. She said LH had told Mr P in July that if the agreement was terminated redress would have to be recalculated taking into account that he wasn't receiving their continued service any longer. She also noted the assumed ongoing charges of 0.75% was a reasonable figure and in line with average charges in the industry.

Mr P disagreed. He also provided evidence that the product charges of 0.23% LH used were only the platform charges and didn't include fund charges which were 0.85%.

The investigator pointed this out to LH who responded to say they would agree to recalculate an offer with product charges of 0.75% (which is the cap on product charges in FG17/9) and 0% ongoing adviser charges as Mr P had confirmed he didn't have a new adviser. LH pointed out, however, that these would be overall lower assumptions than previously used by them.

As no agreement could be reached, 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.

I previously issued a provisional decision in which I upheld Mr P's complaint. Mr P accepted the decision and requested for payment of any redress to be made in cash.

LH said they were disappointed that my decision disregarded the investigator's thoughts and recommendations and that this matter could have been sorted out before going to an ombudsman for a decision. They said the tax relief element in their previous offer had been incorrect but this would have obviously been amended. However, LH said they accepted the decision 'under protest'.

In response to LH's comments I would like to say that as an ombudsman I'm reviewing any complaint completely afresh and independently. Of course I have considered the investigator's assessment. However, I disagreed with her findings and I've set out in detail why this is the case.

In my view a timely resolution to this complaint without a decision did not seem likely. LH seems to ignore the fact that whilst I mentioned the tax relief issue in their offer, the main disagreement between the parties was about charges. And this has been ongoing for some time.

As both parties have accepted my provisional decision, my final decision remains the same. I've set out my findings again below.

There is not dispute that unsuitable advice was given, so I have focused on whether the redress offered by LH is fair.

The regulator published further guidance on their website to set out their with regards to termination of client contracts and how ongoing adviser charges should be accounted for in DB redress calculations. They say [my emphasis]:

'*Firms should allow for ongoing adviser charges in redress calculations if the consumer is currently paying these charges, or was doing so to the firm that advised them to transfer before making a complaint or participating in a past business review (PBR).*

If the consumer terminated the contract with the firm that advised them in connection with the complaint or PBR, the firm should have given the consumer a clear explanation of the effect that this would have on the redress calculation.

If the firm that advised the consumer terminated the contract after or in anticipation of a complaint, the ongoing adviser charges prior to the complaint or PBR should be used in the redress calculation.

In line with Principle 6 and the requirement to handle complaints fairly under DISP, firms should not withdraw or change the cost of ongoing advice services without good reason. For example, if a consumer is paying for ongoing advice services prior to a complaint or past business review, it may not be appropriate for the firm to withdraw services or change their cost unless requested by the consumer, and with a clear disclosure of the effect that would have on the consumer's redress calculation.'

Before Mr P complained to LH he was paying 1.5% ongoing adviser charges which is the amount that LH should have used in my view. Given that the financial loss amounts in LH's offers in July and mid-August were the same, it's clear that the same assumptions for charges were used in both offers. This means even before LH was telling Mr P they might terminate their client relationship with him if he wasn't engaging about the redress calculations, they were using the lower ongoing adviser charges of 0.75%. So the eventual termination of the client agreement is not what changed this.

I also think it was unreasonable for LH for telling Mr P the same day he received their first offer they would end their relationship with him if he didn't allow them to explain the calculations. Mr P reasonably asked to see the breakdown calculations in writing and there was no indication he wouldn't engage with LH on his pension going forward.

In my view LH's actions were likely aimed at reducing Mr P's redress offer. I appreciate the ongoing adviser charges Mr P was paying LH were relatively high, however it wasn't fair for LH to allow for lower charges than Mr P was paying them. And I think it's likely in my view that if it wasn't for the complaint Mr P made, the service would have continued at this level. I appreciate Mr P is currently paying no adviser charges and I acknowledge that he is likely able to find another adviser charging him up to 0.75% on the open market. I also note LH's previous offer to pay higher adviser charges if Mr P provided evidence he was paying higher adviser charges elsewhere now.

However, ultimately, taking into account FCA guidance, I think LH should include the ongoing adviser charges in their calculation Mr P was paying before he made the complaint which was 1.5%. LH says Mr P wanted a higher service level which is why he was using their discretionary management service. However, he was entitled to do so and given he was using LH's services this way, he might want to take on similar services to manage his pension outside the DB scheme in future.

With regards to the product charges, I agree that only allowing for platform charges is insufficient and given the evidence provided, it's clear Mr P is paying product charges which exceed the product charge cap set out in FG17/9 of 0.75%. So product charges of 0.75% should be used.

'**Putting things right**

The regulator has published a policy statement setting out new guidance on DB transfer redress which is due to come into effect on 1 April 2023. However, Mr P has stated he would like his redress calculated in line with FG17/9 and given this is still the current guidance applicable, LH should follow this.

LH should recalculate their redress offer at the date of this final decision in line with FG17/9 allowing 0.75% for product charges and 1.5% for ongoing adviser charges.

My recommendation would usually be that as much redress as possible is paid into Mr P's pension. as any redress is intended to help provide as much as possible the retirement provisions Mr P would have had in the DB scheme (here BSPS2). As noted in my provisional decision, a cash lump sum will not achieve this if not invested prudently.

However, LH previously offered to pay redress as a cash lump sum and Mr P has confirmed that this is his preferred option. So LH should pay any redress to Mr P as a cash lump sum after making a notional deduction to allow for income tax that would otherwise have been paid if the redress payment had been paid into the pension and then withdrawn.

Typically, 25% of the loss could have been taken as tax-free cash 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 loss adequately reflects this.

LH should do their calculations as soon as possible and pay any redress due to Mr P within 28 days of the date LH receives notification of his acceptance of my decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my decision to the date of settlement for any time, in excess of 28 days, that it takes LH to pay Mr P.

Details of the calculations should be provided to Mr P in a clear and simple format.

My final decision

I uphold Mr P's complaint and require Lowndes Halsden & Partners Limited to do an up to date calculation of Mr P's redress with the charges as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 24 February 2023.

Nina Walter
Ombudsman