

The complaint

Mr R complains that LEBC Group Limited (LEBC) took ongoing adviser charges from his Self-Invested Personal Pension Plan (SIPP) which it wasn't entitled to. He would like the charges returned and compensation for the lost investment return.

What happened

Mr R was advised by his financial adviser, LEBC, in respect of a pension transfer and a SIPP was established in respect of this in 2018. Mr R wanted to phase purchases of longer-term investments. He says in discussions with the adviser it was agreed that no ongoing adviser charge (OAC) would be taken on cash balances held within the SIPP and only on funds that had been invested. Mr R says the adviser confirmed this by email.

Mr R subsequently raised a complaint with LEBC about it placing investment transactions he hadn't agreed to. That complaint was referred to our service and isn't being considered here. But whilst this complaint was being considered, Mr R became aware OAC had been deducted off the cash balances of his SIPP since 2018 on a monthly basis. Mr R raised a further complaint about this.

When LEBC couldn't complete its investigation of this complaint within eight weeks, Mr R referred it to our service. Our investigator looked into and thought it should be upheld.

Our investigator said the suitability letter sent to Mr R setting out recommendations said that LEBC would make an OAC of 0.75% of the portfolio. And "once agreed this fee would be collected automatically" from the plan. However, he said Mr R had subsequently asked for and obtained agreement from the adviser that the OAC wouldn't be charged on any cash held in the SIPP.

He said LEBC hadn't been able to provide any evidence to contradict the agreement confirmed by the adviser's email. He noted that the adviser had confirmed Mr R was an experienced investor, who wanted to make his own decisions on timing investment purchases. Because of this our investor said Mr R was unlikely to have proceeded with the transfer through LEBC had the adviser charge on cash holdings not been waived.

Our investigator said LEBC should put Mr R back into the position he would have been in if the error hadn't occurred. And it should do this by calculating the notional value of the SIPP each time a charge had been deducted and allow for growth on each one. It should then make a payment to increase the value of Mr R's SIPP to the total notional value identified. He said if payment into Mr R's SIPP wasn't possible, then it should pay this amount directly to him allowing for any tax implications. Our investigator said he didn't think it was appropriate to award compensation for distress and inconvenience as Mr R hadn't been previously aware of the problem and was to be fully compensated for his financial loss.

LEBC accepted our investigators view. But said it didn't think it would be able to obtain the information needed to calculate the notional value as our investigator had specified. It proposed an alternative method of calculation, which it said was still fair and that it would pay Mr R directly rather than to his SIPP. The calculation proposed was to work out each

overpaid OAC amount and add interest to date based on the interest rate offered on SIPP cash balances. This calculation showed on 28 June 2022 that Mr R was owed around £7,141 before tax. It provided a copy of the calculation and an acceptance form for Mr R to sign.

Our investigator said he thought the calculation method was reasonable. But he said there was an oversight in that redress hadn't been included for the funds invested without Mr R's consent which should have been in cash instead. Mr R said he was happy with a payment directly to him but wanted to see the basis of calculation before accepting the offer. Our investigator provided a copy of the initial calculations and Mr R raised some queries about these which our investigator raised with LEBC, and its response was provided to him.

LEBC said it would update the calculation to include the wrongly invested funds and advised it had done so on 21 July 2022. However, it said this would now need to be signed off by senior management before it could be formally offered to Mr R. Despite several reminders to and promises from LEBC to clarify the position it hasn't provided the calculation and no redress has been paid.

So, it has come to me to decide.

My provisional decision

I issued my provision decision on 17 February 2023; I explained the reasons why I was planning to uphold the complaint. I said:

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'm planning to uphold the complaint.

The available evidence shows that LEBC did agree that no OAC would be charged on cash held in the SIPP. This was in the form of an email of 5 April 2018, replying to a direct question from Mr R about the matter. LEBC said:

"I can confirm that the advisory charge of 0.75% p.a. will only be applied to the funds invested in our portfolios, and not to funds held in cash."

LEBC hasn't been able to provide a copy of any ongoing service agreement where some other arrangement was agreed. Even if it had I think it would need to have been accepted by Mr R after the date of the above email to be valid. So, I don't think LEBC was entitled to take the charges it did.

As Mr R has been overcharged it's fair that these charges be refunded. With appropriate compensation for his lost investment return in the meantime, to put him back in the position he would have been in but for the error. Mr R was phasing purchases of investment funds and appears to have maintained a significant cash balance in his SIPP throughout the period. So, I think it's reasonable that he was satisfied with the interest rate being paid on the SIPP, which appears to have been Bank of England Base rate less 0.05%.

LEBC says the initial calculation it made added interest from the date of each deduction to the date of calculation at appropriate interest rates for the SIPP account, although it hasn't shown evidence of this. But assuming this is correct this seems reasonable as it should put Mr R back into the position, he should have been in had the error not occurred.

The calculation basis used was proposed by LEBC itself and I think our investigator was correct in saying it should reflect what the cash balance should have been. As there were

separate errors that reduced this, but only if compensation for any loss here hasn't already been paid. Mr R has indicated he is happy with the proposed compensation method, a direct payment to him, but wanted to see the revised calculations first. So, as the parties have essentially agreed with this overall approach, and I see no merit in diverging from it.

However, I need to make Mr R be aware that our service isn't able to calculate redress. LEBC proposed the calculation basis and initially agreed there was an omission with our investigator. So, it isn't clear why the revised calculation hasn't been made available, so that Mr R can appraise it and the matter be resolved. I don't think it is fair for LEBC to keep Mr R waiting for his money.

Putting things right

At this stage I think the following is fair:

- *The original redress figure was calculated to 28 June 2022.*
- *LEBC should provide a revised redress calculation to the same date, using the same method as the first to identify the excess OAC deducted and to calculate the interest loss caused.*
- *The calculation should include any lost interest on cash balances used to incorrectly purchase investment funds unless such compensation has already been paid on these amounts. If so, LEBC should provide evidence of this.*
- *The calculations should reflect the interest rates payable on Mr R's plan and the interest accumulation period. LEBC should provide evidence that the interest rates used are those applicable at the time.*
- *As payment is to be made directly to Mr R the calculation will be reduced to notionally allow for any income tax that would otherwise have been paid on the income had Mr R drawn it from the pension instead.*
- *This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr R won't be able to reclaim any of the reduction after compensation is paid.*
- *The notional allowance should be calculated using Mr R's actual or expected marginal rate of tax at his selected retirement age.*
- *It's reasonable to assume that Mr R is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr R would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.*
- *If either Mr R or LEBC dispute that this is a reasonable assumption, they must let us know as soon as possible so that the assumption can be clarified, and Mr R receives appropriate compensation. It won't be possible for us to amend this assumption once any final decision has been issued on the complaint.*
- *LEBC should add interest at 8% per year simple to the revised redress figure calculated to 28 June 2022, until it either settles the complaint informally, or to the date our service tells it Mr R has accepted a final decision I may make along these lines.*

- *LEBC should provide the details of the calculation to Mr R in a clear, simple format.*
- *Ideally LEBC should provide this information to Mr R as soon as possible. If Mr R confirms he accepts the redress calculated, it should settle this without delay, enabling the matter to be settled informally at this stage. If LEBC doesn't respond to my provisional decision it should be aware that I will issue a final decision along the same lines which will be legally binding on it if accepted by Mr R.*

I asked both parties to send me any further information or comments they would like me to consider.

Response to provisional decision

Mr R broadly accepted my provisional decision but made a number of points in respect of the proposed redress. These were:

- He agreed the proposed calculation method and that this be paid directly to him.
- He said the redress calculation should be calculated to 8 December 2022 as he may still have been suffering OAC deductions until then, when he transferred his funds from the SIPP.
- He said he was taking a break from work and wasn't currently a taxpayer but expected to be a basic rate taxpayer in future and he intended to take his tax-free cash soon.
- He thought it wasn't fair not to award compensation for the distress and inconvenience caused, given LEBC's failure to address the complaint after it was referred to our service.

LEBC didn't respond to my provisional 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.

Having done so, I've decided to uphold the complaint.

As set out in my provisional decision LEBC had clearly agreed that no OAC would be deducted on cash held within the SIPP. It should reimburse all OAC deducted on the prevailing cash balance of Mr R's SIPP and calculate the interest loss on the basis already agreed by the parties and set out in the provisional decision above.

In terms of compensation for the distress and inconvenience caused, Mr R is correct that LEBC's handling of the complaint after it was referred to our service has been poor. It has repeatedly failed to respond to requests for updates. Normally our service can't consider complaints about how a complaint has been handled as this often falls outside our jurisdiction. However, the delays Mr R complains about here are about the ongoing failure to resolve the original problem, so I think I can consider it here.

Had matters been resolved promptly I think the inconvenience caused would have been minimal. But it hasn't been resolved promptly and this has delayed Mr R being put back into

the position he should have been in. So, I think he has been caused inconvenience over many months and I think it's fair that LEBC should pay compensation of £150 in respect of this.

Putting things right

- LEBC should provide a revised redress calculation to 8 December 2022, when Mr R transferred his funds from the SIPP to include all OAC incorrectly deducted, using the same calculation method as the first to identify the excess OAC deducted and to calculate the interest loss caused.
- The calculation should include any lost interest on cash balances used to incorrectly purchase investment funds unless such compensation has already been paid on these amounts. If so, LEBC should provide evidence of this in its calculations.
- The calculations should reflect the interest rates payable on Mr R's plan and the interest accumulation period. LEBC should provide evidence that the interest rates used are those applicable at the time.
- As payment is to be made directly to Mr R the calculation will be reduced to notionally allow for any income tax that would otherwise have been paid on the income had Mr R drawn it from the pension instead.
- This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr R won't be able to reclaim any of the reduction after compensation is paid.
- Mr R has said he expects to be a basic rate taxpayer in the future, so the reduction would equal 20%. However, as Mr R would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.
- LEBC should add interest at 8% per year simple to the revised redress figure calculated to 8 December 2022, until it makes payment to Mr R.
- LEBC should provide the details of the calculation to Mr R in a clear, simple format.

My final decision

For the reasons I've given above and in my provisional decision, my final decision is that I uphold this complaint against LEBC Group Limited.

I direct LEBC Group Limited to calculate the redress as set out above and add interest at 8% per year simple from 8 December 2022 until the date it makes settlement.

I direct LEBC Group Limited to pay Mr R £150 in compensation for the distress and inconvenience he has been caused.

LEBC Group Limited must pay this compensation within 28 days of the date on which we tell it Mr R accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If LEBC Group Limited considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr R how much it's taken off. It should also give a

certificate showing this if Mr R asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 2 June 2023.

Nigel Bracken
Ombudsman