DRN-4170925

The complaint

Mr N complains Retirement Line Limited (Retirement Line) made errors during the transfer of his funds to purchase two annuities. He says he is financially worse off as a result and asks to be compensated.

What happened

Mr N contacted Retirement Line about using part of his pension funds to set up annuities. After some discussion about the available options, he decided to proceed with two fixed term annuities with a provider I'll call "L".

One of Mr N's pension funds comprised of a large holding of cash and several equities. He authorised Retirement Line to transfer the majority of the cash holding to purchase the annuities leaving a small cash residue and all of the shares he held within his Self-Invested Pension Plan (SIPP).

Unfortunately, an error occurred, and Retirement Line submitted a request to transfer the full amount of Mr N's pension rather than requesting a partial transfer. This had the effect of the investments in Mr N's fund being sold.

Mr N discovered the error very quickly and he attempted to cancel the transfer and annuity purchase. He telephoned Retirement Line about what had happened on 28 November and on 1 December he asked them to reinstate his investments and made a formal complaint. Retirement Line investigated Mr N's complaint. It issued its final response on 19 January 2023. It agreed it had made an error by not requesting a partial transfer and offered him £250 for the distress and inconvenience caused. It also agreed to pay £287.68 which represented the fee Mr N would have incurred buying back the shares within his pension policy. But, as Mr N hadn't, at that time, bought back any of the shares that had been sold they didn't agree to compensate him for the loss of his investments.

Mr N remained dissatisfied and brought his complaint to this service.

An investigator looked into things for Mr N. She didn't think Retirement Line had acted fairly. In her view she said she thought Retirement Line was responsible for any loss Mr N experienced with the investments within his pension between the date they were sold (approximately 28 November 2022) and when Mr N could reasonably have made different investment choices. She thought a reasonable date was up to 6 February 2023 when Mr N brought his complaint to this service.

Retirement Line didn't agree. It said although Retirement Line accepted it made an error, and therefor accepted responsibility for fully disinvesting Mr N's SIPP funds, it didn't agree that it was responsible for reinvesting his funds. It pointed out that it couldn't have done this as the SIPP provider doesn't deal with intermediaries and it was Mr N's responsibility to reinvest his own funds, but he chose not to.

Retirement Line asks for an ombudsman review.

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 have independently reached the same outcome as our investigator. I'll explain why.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr N and by Retirement Line. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words, I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead, this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

There's no dispute here that Retirement Line made an error, for which it accepts responsibility. It doesn't agree that it should calculate whether a financial loss was incurred as it says the responsibility for re-investment lay with Mr N. So, what I must decide is whether Retirement Line has been fair and reasonable in its offer to put things right.
The basis of this complaint lies in the error, had it acted correctly on Mr N's instruction, the investments would never have been sold. In cases like this my starting point is, as I have said, to try and put Mr N back in the position he would have been in had the error not occurred.

I have listened to the calls between Mr N and Retirement Line. Mr N acted swiftly when he discovered the error and asked Retirement Line to put things right.

Retirement Line told this service it made it clear during one of the calls the reinvestment of the pension fund was Mr N's responsibility. I'm afraid I'm not persuaded that was the case. The representative asked questions about whether any reinvestments had been made or whether he'd spoken to anyone about this. Although Mr N didn't say he wanted Retirement Line to repurchase the shares, he does make it clear that someone from Retirement Line needs to come back to him to advise him how it was going to compensate him for the unauthorised selling of his investments. So, I think it's reasonable that he would have waited for Retirement Line to do so before he took any further action.

I take Retirements Lines point that it may not have been able to carry out the re-investment on behalf of Mr N, but I don't accept that means it wasn't able to redress the situation. As our investigator said, it could have agreed to pay the additional costs (including as a result of share price changes) to reinstate the pension's value. Whether or not Mr N would need to get involved or whether the SIPP provider would have agreed to the reinstatement is a moot point – this is about putting Mr N, as far as possible, back in the position he would have been in, had the error not occurred in the first place.

Whilst I agree it wasn't unreasonable for Mr N to wait for a response from Retirement Line, once he was aware it was not going to correct the error in the way he had asked, I'm persuaded that should be reflected in the timeline of the calculations. I think the investigators suggestion of calculating any loss up to the date Mr N brought his complaint to this service (6 February 2023) is a reasonable period of time for Mr N to have considered his options.

The fact that he has chosen not to re purchase the same stocks since then is a matter for Mr N and I'm not persuaded it makes a material difference. I say this because from the information available, its clear Mr N wanted to retain the equities within his SIPP, had Retirement Line not made the error in the first place, he wouldn't be in the position of having to determine whether it was in his financial interests to re-purchase the same shares. Having said that, because Mr N has chosen to make different investment decisions I won't be asking Retirement Line to pay any reinvestment costs.

Retirement Line has offered to pay Mr N £250 for the inconvenience this matter has caused him and I find that to be fair and reasonable in the circumstances of this complaint.

Putting things right

To put things right Retirement Line should undertake the following calculation to identify if Mr N has suffered a financial loss:

Establish the value of the investments, erroneously encashed in November 2022, as of 6 February 2023. This represents the notional value of this part of Mr N's pension assuming the investments had been retained and should include any dividends.

Determine the actual transfer value of the same proportion of Mr N's pension plan (i.e., the total value of the investments sold in November 2022) on 6 February 2023.
The difference between the two represents Mr N's financial loss (or gain).

If the 'notional' amount calculated in 1 is higher than the actual value in 2 then Mr N has suffered a financial loss as of 6 February 2023.

The loss amount represented by the difference between the amounts calculated in 1 and 2 should then be brought up to date by reflecting the actual performance of Mr N's pension fund from 6 February 2023 to the date of calculation.

If the 'notional' amount calculated in 1 is equal to or lower than the actual amount in 2, Mr N has not suffered a financial loss and no redress is due.

Any compensation due to Mr N should, if possible, be added to his pension fund. If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr N as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid.

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.

Pay Mr N £250 for the inconvenience this matter has caused him if it has not already done so.

My final decision

For the reasons I have given I uphold this complaint and direct Retirement Line Limited to carry out the redress as detailed in the putting things right section of this decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 27 July 2023.

Wendy Steele
Ombudsman