DRN-4276675

The complaint

Mr R complains about the incorrect information he was given by Forester Life Limited (Forester Life) which he says prevented him from transferring his pension fund to another provider before it lost around £20,000 in value. He says the "lifestyling" option to which his funds ought to have been switched should have better protected the value of his funds and didn't preserve his capital as he expected it to do. He would like Forester Life to reimburse him for the investment loss he says he's suffered.

What happened

Mr R held a stakeholder personal pension plan with Forester Life which had an intended retirement date (IRD) of 25 December 2033. In March 2021 Mr R contacted Forester Life for a plan valuation. He then says he wrote to Forester Life in June 2021 and asked for his IRD to be changed to 25 December 2023. He says he didn't receive a response until he subsequently provided the same information by letter and email. Mr R says he called Forester Life in August or September 2021 to ask when the "lifestyling" option of his plan would commence. He said he was told that half of the fund would be switched in December 2021 and the other half in December 2022. He says he wasn't provided with – nor could he find online, any details of the fund used under the lifestyle option.

In January 2022 Mr R contacted Forester Life to confirm that some of his plan would be switched from December 2021 and then the remaining amount in December 2022 – as had previously been confirmed to him. But he was informed that "lifestyling" was due to begin in December 2022 and hadn't been set up that way from December 2021. So he asked for confirmation that it would be completed as previously stated.

Forester Life explained that, as Mr R had changed his IRD less than five years before the lifestyle option was due to begin, the option had been disabled. He was told that the switch could be completed manually if he requested it by letter and made another request for the remaining part of the fund to be switched in December 2022. This information was incorrect as Forester Life later accepted that its systems hadn't picked up that Mr R's plan should have been automatically "lifestyled" when he changed the IRD.

Mr R requested further information from Forester Life but says it didn't respond to him. So in April 2022 he transferred his funds to another provider where they were held as a cash fund. But the transfer value was only £320,109.80 - whereas the value of his plan in December 2021 had been around £343,00.

By November 2022, when he reiterated his complaint that Forester Life had made errors and not looked after his plan properly causing it to fall in value, he said he would take his complaint to an ombudsman. He said if Forester Life had been truthful and honest with him in explaining that the "protection fund" used in the lifestyling option didn't actually "protect" the funds, he would have transferred his plan elsewhere in January 2022 – thereby not suffering the reduction in the fund value.

Subsequently Forester Life provided its final response on the matter. It said the rules of

Mr R's stakeholder plan meant that it should have switched him to a lifestyling option when he changed his IRD. However, because the new IRD was less than five years away its system didn't automatically carry out the switch. It then gave Mr R the option of leaving the fund invested as it was or backdating a switch to the lifestyle protection fund.

It said at that point his funds hadn't yet been switched, so any subsequent investment losses were not because of a switch to the lifestyle fund but because of general volatility in the markets. It offered £150 compensation for both the delay in responding to Mr R's request for information and for the system error in not automatically "lifestyling".

One of our investigators looked into the matter. He said that the reduction in value of Mr R's plan was largely down to general market volatility as opposed to an error from Forester Life. He said Mr R had benefitted from not being switched to the lifestyle funds when he should have been, although he accepted the funds had fallen significantly during this time. However he didn't think Forester Life had handled the complaint well and had delayed in responding to Mr R and issuing a final response letter. He thought it should pay Mr R £500 compensation for the distress and inconvenience its errors had caused.

Mr R said he'd been under the impression that "lifestyling" meant his funds were protected and that there wouldn't be any investment loss – which he said he was told during his training when was previously employed by Forester Life. He said he didn't receive any information about lifestyling prior to the switch so he couldn't have been informed that it wasn't "protected".

The investigator confirmed that Forester Life wouldn't have provided a factsheet for the lifestyle fund because it was only available to existing policyholders leading up to their retirement. He also confirmed that, as lifestyling wasn't an advised transaction, and would have automatically occurred five years (or less) before the IRD – Mr R wouldn't have been given any additional information on the fund or the lifestyling process. He would have been provided with the original terms and conditions of the plan when he first took it out.

Mr R said he understood he wasn't given advice by a financial adviser, but he was given incorrect and conflicting information by Forester Life and along with its prolonged responses resulted in him incurring a significant financial loss.

Forester Life said the recommendation to pay £500 was "excessive" and offered to pay a total of £300 compensation.

So as no resolution could be found the complaint was passed to me to review.

My provisional decision

In my provisional decision I said that Forester Life wasn't responsible for any investment loss Mr R said he'd suffered, but I thought it should pay £300 compensation for the distress and inconvenience that had been caused. I made the following points in support of my findings:

- Lifestyling wasn't an added option to be discussed and possibly added to Mr R's plan, but it was a process that was part of the terms and conditions. When Mr R changed his IRD in August 2021 60% of the fund needed to be switched to "lifestyling" at that time with further tranches in December 2021 and 2022.
- But Forester Life's systems didn't pick up the change and didn't implement the switch to lifestyling at the times – and by the amounts - it should have done.

- Forester Life did carry out a calculation to see if Mr R had been disadvantaged as a result of not enabling the switch. It offered him either the option to 'backdate' a switch to "lifestyling" so that he would be as close as possible to the position he ought to have been in had Forester Life not made an error, or he could remain within the managed fund – where he would maintain a higher fund value. So it wasn't fair for me to tell Forester Life to carry out a corrective backdated switch as Mr R would be financially worse off. So I didn't think Forester Life had acted incorrectly regarding its calculation.
- But Mr R said the delay in resolving the matter led to a significant fall in the value of his fund. He said if he'd been aware that the "lifestyle protection fund" as it was known could be so volatile then he would have transferred elsewhere in December 2021. I thought there was no evidence to support the idea that Mr R might have transferred his funds before his plan suffered a fall in value.
- I understood that Mr R might still have seen the value of his plan fall after August 2021, but it wasn't possible to now know what level of financial loss might have caused him to consider transferring – or even if he would have transferred.
- I wasn't persuaded that Forester Life could have provided the information Mr R requested – and might have made him aware that his money was at greater risk than he thought - much sooner than it did, and by then the fund had already fallen by over £26,500.
- I then looked at the level of "protection" the lifestyle protection fund offered. As Mr R thought its name indicated that it should have provided much more capital "protection" than it did. But I didn't believe the drop in fund value was caused by the make up of the fund but instead by unusual movements within the bond market arising from the global pandemic. In addition, I hadn't seen any evidence to show that Forester Life "guaranteed" the value of the protection fund or had given any advice regarding the lifestyling process.
- I went on to consider the impact Forester Life's errors had on Mr R. I thought there was some impact, although I didn't think it would have altered the outcome of Mr R being able to offset the fall in the value of his pension fund. But I thought the errors caused Mr R some degree of frustration and distress and the delay in confirming Forester Life's position would also have raised his expectations of having his investment loss corrected.
- So I thought compensation of £300 was appropriate.

Forester Life didn't provide any response, but Mr R disagreed with my findings and made the following points in response:

- I had stated that there was no evidence that he would have transferred his pension had he known that it wasn't going to be protected and fall in value after December 2021. I'd said his desire to transfer had only been made in hindsight.
- So he provided a copy of an email he received from another provider in June 2021 following his request of how to transfer his personal pension with Forester Life and then to switch to a cash fund. He said this proved his intention of "protecting" his pension fund at the same time that he contacted Forester Life to change his retirement date. He said the information he was given by Forester Life at the time – namely that his fund would be switched to lifestyling in December 2021, led to him decide not to transfer his pension.
- He said the new plan offered far more flexibility and online access than Forester Life's plan – and would have been more suitable for him. But he was only persuaded not to transfer because of the "promises" that his Forester Life fund would be switched – in two tranches, into the lifestyle Protection fund from December 2021. He thought this protection meant he didn't need to transfer.

- His fund didn't start to drop in value until the end of January and more considerably during February 2022. If he had been provided with the correct information about the lifestyling fund in June 2021 then he would definitely have transferred elsewhere.
- Or if Forester Life had provided the information it should have, following his request in January 2022, he could have transferred at that point – before the significant fall in value.
- The name of the fund as a "*protection fund*" is misleading and doesn't offer the protection that is suggested. Also there is no information about the fund on Forester Life's website.
- It wasn't until March 2022 that Forester Life made it clear to him that the fund didn't actually "protect" his capital. By this time the fund had fallen significantly. It was he that told Forester Life not to switch his fund into the lifestyle fund – so he hadn't benefitted financially as Forester Life should have switched his funds when it said it would.
- He hadn't received any communication from Forester Life following its letter of 5 April 2022 in which it said it would provide a final response to his complaint. In fact the final response only came when he brought his complaint to us. He thought Forester Life had been "*intentionally ignoring me*."
- He didn't think my compensation award was in any way sufficient and only served to encourage Forester Life to continue treating customers poorly.

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.

And having carefully considered Mr R's further submissions I see no reason to depart from my provisional findings. I have some sympathy for Mr R's position here because clearly Forester Life made an error and didn't do what it said it would do with his money. But I think the resolution it offered following that error, which is the same as the compensation award I've recommended, is a fair and reasonable solution to the matter – so I'll confirm my reasons.

Mr R held a stakeholder pension plan with Forester Life which incorporated a "lifestyling" option. This option would be implemented five years before his IRD which was originally in 2033. The terms and conditions of his plan explained both the lifestyling option and how it would be implemented.

"*In these regulations, "lifestyling" means the process, applied from the relevant date and continuing until the member's retirement date, by which an investment strategy is adopted by the trustees or manager which aims progressively to reduce the potential for significant variation in the value of the member's rights caused by market conditions from time to time."*

I know the fund that was used to switch into was called the "lifestyle protection fund", but the definition I've set out above doesn't make reference to any guarantees or "capital protection" of the fund – simply that it aims to progressively reduce the potential for significant variations that might occur from time to time. So there was no suggestion that the fund couldn't fall in value, although the composition of the fund should ultimately expose Mr R to progressively lower risk as he approached his IRD.

When Mr R called Forester Life to bring his IRD forward to 2023 the lifestyling option needed to be implemented. Some of the fund needed to be switched in August 2021 with further tranches switched in December 2021 and 2022. Unfortunately, Forester Life's systems didn't pick up the change in the IRD and so the option wasn't implemented. Mr R became aware of that failing in January 2022.

So there's no dispute that Forester Life made an error – which it accepts. The question therefore is how Forester Life ought to have resolved that issue and what financial loss may have suffered as a result. In order to answer that question, I need to look at what would have happened if it hadn't made the error.

What should have happened?

When Mr R contacted Forester Life in August 2021 it should have switched 60% of his fund into lifestyling at that time. Some of the remaining fund ought then to have been switched in December 2021 and the remainder in December 2022. So in order to put Mr R back as close as possible to the position he should have been in without its error, Forester Life needed to calculate Mr R's position had the switches been made when they ought to have been. As it eventually carried out a loss assessment in March 2022 that needed to include the implementation of two of the three switches.

Forester Life said that its calculation showed that Mr R was better off following its error as the fund was now greater having not been switched according to its terms and conditions than if it had been switched to "lifestyling". But it said Mr R could still ask for the switch to lifestyling to be backdated or indeed he could even change the IRD again so that the lifestyling option wasn't appropriate. But if he chose to leave the fund where it was he would be better off.

Mr R said he asked Forester Life not to transfer his money to the protection fund, but he didn't accept he had benefited financially from those actions. He said it was Forester Life's error that it didn't carry out the switch. I can understand Mr R's frustration here because it would appear that Forester Life hasn't had to put anything right even though it caused the problem in the first place. But there's no suggestion that Mr R has *benefitted* here, simply that his fund is greater as a result of the money being left in the fund it was originally invested in rather than being switched.

But Mr R says that, while Forester Life did carry out a loss calculation to assess whether he'd suffered financially, he had incurred an investment loss because of Forester's Life slowness in providing him with information about the lifestyle protection fund in early 2022 and also because the fund didn't provide him with any kind of "protection". He says if he'd been made aware of how the fund worked – either in August 2021 or around January 2022 – he would have transferred it elsewhere so that he could have better protected his money. He says all the problems that he's experienced here have occurred because the fund, which wasn't supposed to be "volatile", fell significantly after December 2021 when he was waiting for Forester Life to correct its error.

Mr R's claim for investment loss

As I said previously the terms and conditions of the plan noted that lifestyling "*aims progressively to reduce the potential for significant variation in the value of the member's rights caused by market conditions from time to time."* There's nothing to support the idea that the fund value would be guaranteed or fully protected against market forces. The fund that was used for the lifestyling option principally consists of bond and cash funds – so without any equity content its aims would have been to reduce the risk of the fund losing value prior to an IRD.

Unfortunately, the rather unusual circumstances around the global pandemic caused difficulties in the bond markets, so the assets within the fund fell in value in early 2022. But I don't think it was possible to have foreseen these circumstances and therefore I wouldn't have expected Forester Life to have been able to warn Mr R about the situation that unfolded. As Forester Life has explained there isn't any fund information or fact sheets available for this fund as its only available to existing pension plan holders and isn't a fund that other consumers can invest into. So I'm unclear as to what further relevant information Forester Life could have given Mr R after its email response of 11 February 2022 when it confirmed the composition of the fund.

Mr R says he would have transferred his plan if he'd been made aware of the potential volatility of the fund, but I don't think there was any particular volatility that he needed to be told about. The terms and conditions didn't guarantee that the fund value couldn't fall and the composition of the fund, not holding any equities, was consistent with assets that *ought* to reduce the risk of a fund losing its value.

But I have to consider what Mr R has told us he would have done, especially in light of his new evidence of an email to another provider enquiring about switching his Forester Life pension to new plan invested into cash funds. However, that option was still open to Mr R at all times during this process. I know Mr R says he was persuaded not to transfer because of the "promises" of a switch to a "protection" fund, but I haven't seen any evidence to support the idea that Forester Life either made those promises or persuaded him not to transfer. Forester Life didn't offer any advice to Mr R on what he should do, it simply provided the relevant information – albeit not as quickly as Mr R would have liked. But I don't think the information I've seen about the lifestyle protection fund was misleading or incorrect – so I can't say that Forester Life caused Mr R not to take actions which might have secured a greater value to his plan.

I can understand Mr R's frustration here as he believes he was given misleading information about the volatility of the lifestyle fund which led him to conclude he didn't need to transfer to "safer" cash funds. He says the delay in providing this information in January 2022 only made the financial loss he has suffered worse in preventing a transfer sooner. But I don't think Forester Life did provide misleading information or didn't make Mr R aware of particular volatility within the lifestyle fund. I think what happened was an unfortunate situation in the markets brought about by unknown and unforeseen circumstances at the time.

Ultimately, despite Mr R's evidence of his prior interest in switching to a cash fund elsewhere – which I have carefully considered – I'm not persuaded that Forester Life's actions were responsible for Mr R not transferring his fund elsewhere either in August 2021 or January 2022 – before the fall in the fund's value.

Putting things right

Although I've decided that I don't think Forester Life is responsible for any of the investment loss Mr R suffered, it is clear that it made some errors during this time. It didn't implement the lifestyling process when Mr R changed his IRD – which meant it provided Mr R with incorrect information in December 2021. If it had implemented the option then Mr R could have concentrated on whether he wanted to continue with his investment when it lost value in 2022. That would have been a matter for Mr R to consider and act upon himself.

In addition Forester Life didn't return Mr R's call of January 2022 or respond in a timely fashion to a follow up email. If it had done so Forester Life may have been able to provide Mr R with some information slightly sooner and might have made him more aware of the ongoing performance of the protection fund – or that his plan hadn't in fact been switched to the lifestyling option.
Looking at these two errors I think they did impact Mr R, although I don't think they would have altered the outcome of whether he would have been able to offset the fall in the value of his pension. But I think this would have added to his frustration while he was trying to obtain the relevant information, as well as raising his expectations of getting a resolution that would have put him back into the best position he could have been in. I think Forester Life's

delay in confirming its position to Mr R was likely to have given him more belief that it would agree to make up his investment loss.

So, based on the evidence I've seen, I think Forester Life's errors would have impacted Mr R's situation to some degree. And so, I've considered the appropriate amount of compensation for that impact. I've decided that Forester Life's subsequent offer (post assessment) of a total of £300 is within the range of what I would have recommended and is fair and reasonable in all the circumstances.

My final decision

Forester Life Limited has already made an offer to pay £300 to settle the complaint following our investigators assessment and I think this offer is fair in all the circumstances.

So my decision is that Forester Life Limited should pay £300.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 October 2023.

Keith Lawrence
Ombudsman