DRN-4490275

The complaint

Ms B complains that Scottish Equitable Plc moved her pension funds to cash without her permission causing her investment losses.

What happened

Ms B had a self-invested personal pension (SIPP) with Scottish Equitable.

In April 2022 the details of Ms B's policy were updated to indicate that she was a US citizen or resident.

In July 2022 Scottish Equitable emailed Ms B to notify her that her SIPP held restricted assets that weren't allowed, under the terms of the SIPP, due to her residency status.

Scottish Equitable followed that up with a second email on 2 August 2022 explaining that she should consider switching her restricted funds by 29 September 2022, otherwise they would be sold and placed into cash.

Ms B phoned Scottish Equitable on 2 August 2022 to explain that she wasn't a US citizen. She explained that she hadn't responded to the email as it sounded like a scam. Scottish Equitable's call handler gave her an email address for her to email her update to. Which Ms B did on 2 August 2022.

Scottish Equitable didn't amend Ms B's profile and sold her restricted investments and placed the funds into cash.

Ms B complained to Scottish Equitable, who acknowledged her complaint but didn't give her an answer within eight weeks. So Ms B referred her complaint to our service.

Our investigator considered the circumstances and was of the opinion that the contact Ms B had with Scottish Equitable on 2 August ought to have been sufficient to let it know that she was not a US citizen. And suggested that Scottish Equitable should compensate Ms B for the full invested loss she suffered as a result of moving her investment to cash.

Scottish Equitable agreed with our investigator's opinion and have made several attempts to calculate the loss for Ms B. Ms B agreed with the outcome but had queries regarding the way Scottish Equitable should put things right. As this case could not be resolved at that stage the case was referred for an ombudsman's final 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 considered the circumstances in this case I've come to the same conclusion as our investigator and for the same reasons. So it follows that I am upholding Ms B's complaint and requesting Scottish Equitable to, as far as is now possible, put thing right for Ms B. I would like to reassure Ms B that, where there were issues she raised or commented on, I have considered them all. She will notice that I haven't commented on every specific point. That's because our service's aim is to provide a resolution with the minimum formality. So I've focused on the things that I consider had the greatest bearing on what I think is the crux of Ms B's complaint.

Ms B's original complaint related to a mistake that she says Scottish Equitable made in selling her investments to cash in October 2022. That mistake wasn't rectified until April 2023 when the cash was re-invested. During which time Ms B suffered investment losses. I have seen that she has subsequently expressed concern about the fund difference from November 2021. But this is not pertinent to the complaint raised and then referred to us and is not being considered in this decision.

I can see that it is no longer in dispute that Ms B contacted Scottish Equitable on 2 August 2022 to correct the mistake about her being a US citizen. So, irrespective of how that issue came about, it wouldn't have caused a loss had it been corrected at that stage. This means that Ms B's funds should never have been disinvested. So Scottish Equitable is responsible for putting her SIPP into the position that it would be in if it had not been taken out of the funds.

Putting things right

To put things right my aim is, as far as is now possible, to put Ms B back into the position that she would most likely have been, had her funds not been disinvested from October 2022 until the reinvestment date on 28 April 2023. Ms B's loss would not just be the fund loss up until the point of reinvestment but also the ongoing investment returns on that loss up until the present.

I've decided that the means of redress proposed by our investigator is a fair and reasonable way to account for that loss. I agree that there is no evidence to suggest that Ms B would have deviated from the managed portfolio that her SIPP was invested in. I accept that it is fair and reasonable for Scottish Equitable to assume that the SIPP investments would have been the same as those that were disinvested up until 28 April 2023. After which it is fair and reasonable to assume that the managed fund movements that followed would have still been made, as part of Ms B's model portfolio, and should be accounted for in the loss calculation.

So Scottish Equitable should calculate the notional value of her SIPP, on the above basis, up until the date that Scottish Equitable is told that Ms B accepts my final decision. The amount by which that figure is greater than the actual value of Ms B's SIPP on the same date will be a fair and reasonable reflection of the loss Ms B experienced to that date.

If the calculation determines there is a financial loss, compensation is payable. The compensation amount should if possible be paid into Ms B's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the SIPP if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Ms B as a lump sum after making a notional reduction to allow for future income tax that would otherwise have been paid.

If Ms B has remaining tax-free cash entitlement, 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional reduction of 15% overall from the loss adequately reflects this.

It's clear this situation has caused Ms B considerable distress. She's explained the value of her SIPP has been considerably impacted as a result of the funds being moved to cash. To acknowledge this – in addition to putting right any financial loss determined from the calculation above, Scottish Equitable should additionally pay Ms B £250 compensation.

My final decision

For the above reasons I uphold Ms B’s complaint and direct Scottish Equitable Plc to compensate Ms B as set out under ‘Putting things right’ above.

If payment of compensation is not made within 28 days of Scottish Equitable Plc receiving Ms B's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Scottish Equitable Plc deducts income tax from the interest, it should tell Ms B how much has been taken off. Scottish Equitable Plc should give Ms B a tax deduction certificate in respect of interest if Ms B asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms B to accept or reject my decision before 1 March 2024.

Gary Lane
Ombudsman