

The complaint

Mr R has complained about the lack of due diligence carried out by Pensionhelp Limited ('Pensionhelp') when they gave advice on the transfer of his deferred occupational defined benefit ('DB') pension.

Advice was given to transfer the funds into Mr R's current occupational defined contribution pension held with Royal London and invest the proceeds into two investment funds. This advice was accepted and agreed by Mr R however after the transfer had been completed it transpired that the transfer proceeds could not be invested into the chosen investment funds.

As the existing monies within the Royal London pension were invested in a Lifestyle strategy, Mr R could not hold the transfer proceeds in the desired investment funds. Mr R has stated that because of this he may have suffered financial loss, in addition Mr R does not believe he should have to pay the advice fee levied by Pensionhelp.

What happened

Mr R approached Pensionhelp to assist him and provide advice on the transfer of his deferred occupational DB scheme.

Pensionhelp's advice was documented in their suitability letter dated 23 August 2022. This confirmed the advice was to transfer the DB benefits into Mr R's existing workplace pension held with Royal London.

Prior to the transfer in of the DB benefits this Royal London policy had a value of around £3,500. Regular contributions were being made into this plan by both Mr R and his employer with the monies being invested into a range of investment funds determined by the Balanced Tracker Lifestyle Strategy (Drawdown).

The advice confirmed that the transferred monies were to be split equally between the Royal London Global Sustainable Equity Pension and the Royal London Sustainable World Trust Pension funds.

Following completion of the transfer it was discovered that the transferred monies had been placed into the Balanced Tracker Lifestyle Strategy. It was subsequently clarified that the two funds recommended by Pensionhelp could not be held within the Royal London pension whilst other monies were allocated to a Lifestyle strategy.

Either all the monies within the pension would need to be allocated to the Lifestyle strategy or the existing monies within the lifestyle strategy (and the ongoing regular contributions) would need to be redirected to other funds.

Unhappy with this Mr R raised a complaint with Pensionhelp.

A response was issued on 24 January 2023.

To account for the fact the transfer funds had not been invested as intended Pensionhelp offered to complete a redress calculation comparing where the funds had actually been

invested with where they had been intended, and to pay the difference (with a notional deduction for tax) as redress to Mr R.

Pensionhelp stated that this calculation would be capped at one week from the date of the response letter and confirmed that they considered Mr R would be responsible for any further losses after that point. In addition, Pensionhelp suggested three potential solutions to the issues Mr R would face going forward.

- The funds could all remain within the Lifestyle strategy.
- The funds (including the regular contributions) could all be moved into the two funds chosen for the transfer, or,
- The funds could be moved out of the Lifestyle strategy. The transfer value could be invested into the two chosen funds and the remainder (which had been originally held within the lifestyle strategy) could be invested in individual assets and funds chosen to mirror the Lifestyle strategy.

All these options were rejected by Mr R with the complaint forwarded to this service for consideration.

Our investigator looked into things and whilst the complaint was upheld, they concluded that the redress offered by Pensionhelp was reasonable and in line with what we would recommend in similar circumstances.

With regard to the advice fee levied by Pensionhelp the investigator concluded that this was reasonable and did not believe this needed to be returned to Mr R.

Mr R did not agree and noted that the advice, as presented by Pensionhelp could not have ever been completed and as such full advice had not been received. Given this, Mr R did not believe the advice fee should be payable.

In addition, Mr R repeated that he did not consider any of the three options presented by Pensionhelp as an ongoing solution were appropriate.

Our investigator considered Mr R's additional concerns however remained of the opinion that the proposals put forward by Pensionhelp were reasonable and that their fee was fair.

As no agreement could be reached, the case was passed to me and I issued a provisional decision. This stated:

"Firstly, I would like to note that I agree with our investigator's stance regarding the suitability of the transfer advice, in that I too have not considered whether the advice received by Mr R regarding the transfer of his DB scheme was suitable.

Mr R is a qualified Financial Adviser who is well versed in DB pension advice. The pension was a deferred DB pension which the file confirms Mr R was looking to transfer and invest in an adventurous way to try and make investment gains until retirement. As per the investigators findings I believe Mr R would have found a way to transfer the pension (either with another advisory business or an on insistent client basis) had Pensionhelp advised against the transfer.

Given this I have focussed on the error made by Pensionhelp in not recognising that the recommended investment strategy for the funds once transferred could not be completed within the Royal London pension.

Regarding this error, Pensionhelp have already accepted that this is their error and made suggestions on how this could be rectified. As such I have focussed on how to put things right.

The Financial Ombudsman Service is a dispute resolution service and not the financial regulator. As such, where a business has made an error, any redress instructions I give are intended solely to place the affected consumer as close as possible to the position they would most likely be in had that error not occurred.

It is important to emphasise that it is not always possible to place a consumer into the exact position they would be in had an error not occurred. It is also important to note that any instructions I give are not intended to punish a business in any way, with my sole aim being to rectify (as much as is reasonably possible) any impact on the consumer.

Having looked at the offer made I have concluded they are broadly in line with what I would expect to see in a situation such as this.

Firstly, the offer to compare the performance of the Lifestyle strategy into which the transferred funds were placed with that of the recommended funds to establish if a loss has occurred is what we would normally recommend. As such I see no reason to amend this solution.

This would allow any losses to be calculated at a point in time, with alternative investments made from that point onward.

Whilst Pensionhelp's initial response to the complaint sought to cap this calculation at one week from the date of the offer, I do not consider this reasonable.

Mr R did not accept the follow up solutions put forward by Pensionhelp and is entitled to disagree with the response issued and bring the complaint to this service. I appreciate Pensionhelp's point that consumers should take steps to mitigate their losses, however as the advice itself could not be actioned as intended Mr R did not have an option to change the investments in line with Pensionhelp's original recommendation.

Given this, the redress instructions below include the requirement for the calculation to be completed with the end date being in line with the date of my final decision.

Once this element is completed, an appropriate solution needs to be found for the funds moving forward.

Pensionhelp made three suggestions within their complaint response letter.

The first two of these result in the total value of the pension (both the existing amount and the transfer value) either being invested into the Lifestyle strategy or the two separate investment funds. Neither of these were agreed by Mr R and he is entitled to reject them as an option.

The third option suggests the pension is moved away from the automatic Lifestyle strategy.

Then the transfer value could be invested into the two chosen investment funds. From there individual assets and investment funds could be used to manually replicate the Lifestyle strategy for that amount originally held within the pension.

This is not a simple solution as the pre-existing lump sum and ongoing regular premiums would need to be allocated to the appropriate funds, with manual changes then made each

year to reflect the automatic changes that would have been made as part of the Lifestyling strategy. However, it would, as close as is possible, move the pension monies in line with what was originally recommended, and as Pensionhelp are willing to offer this as a solution I see no reason to discount it based on the complexity of its implementation.

A fourth solution has been noted by both Mr R and Pensionhelp in their communications with this service - the transfer value could be transferred away from Royal London into a pension where the two chosen investment funds were available. This would allow the DB transfer value to be invested as desired, with the pre-existing Royal London value (and ongoing regular premiums) remaining within the Balanced Lifestyle Strategy. This is also considered an appropriate way of moving the pension monies to as close a position as possible to where was initially recommended.

Consolidation of pension provision was not one of Mr R's over-riding concerns at the time of advice, with an additional SIPP already held by Mr R, and as such I do not believe this solution would prove an administrative burden.

It is unclear whether Mr R's existing SIPP would provide access to the two required investment funds, however if not, a suitable other provider could be found by Pensionhelp on Mr R's behalf.

Both solutions require ongoing communication and collaboration between Pensionhelp and Mr R. In this regard as part of this decision I require Pensionhelp to maintain their openness to complete either of these solutions should Mr R agree.

I have considered carefully whether the advice fee levied by Pensionhelp should be returned in addition to the redress above. However, once the two elements of the redress have been completed, I believe Mr R will have been placed as close as possible to the position he would otherwise have been in were it not for Pensionhelp's error. As such, the return of the advice fee is not considered necessary. If this were to be returned Mr R would be in a better position than he would otherwise have been in, with Pensionhelp being unfairly disadvantaged."

The provisional decision went on to detail appropriate redress instructions and asked all parties to provide any additional commentary or evidence they wanted me to consider before 8 January 2024.

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.

No additional commentary or evidence has been provided by any party following the issuance of my provisional decision.

As such, I remain of the opinion that the outcome detailed in my provisional decision remains fair and reasonable in this case. Therefore I am not making any changes to it.

The redress instructions below are in line with those contained within the provisional decision.

Putting things right

My aim is that Mr R should be put as closely as possible into the position they would probably now be in were it not for Pensionhelp's error.

What must Pensionhelp do?

To calculate the losses incurred, and as per the methodology already suggested by both Pensionhelp and our investigator, the value of the pension as it is now should be compared with what it would have been had Mr R's funds been invested as advised.

To compensate fairly, Pensionhelp must:

- Compare the actual value of Mr R's Royal London pension with the notional value had the DB transfer value been invested in the two recommended funds. If the actual value is greater than the notional value, no compensation is payable. If the notional value is greater than the actual value, there is a loss and compensation is payable.
- If there is a loss, Pensionhelp should pay into Mr R's pension plan to increase its value by the amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.
- If Pensionhelp are unable to pay the total amount into Mr R's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore, the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. 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%.
- The calculation should commence at the date the DB transfer funds were invested into the Lifestyle strategy and end at the date of my final decision.

The above calculation addresses any investment losses Mr R may have suffered from the date of the incorrect investment until present. However, additional consideration needs to be given to the ongoing issue of how to invest the transfer funds moving forward.

Pensionhelp made several suggestions as to how the pension monies could be allocated.

With regard to the first two options put forward I accept that both of these leave either the pre-existing amount held within the Royal London policy (and ongoing regular contributions) or the transfer value invested in a way that was not agreed. As such I do not consider these reasonable options.

However, the third and fourth options, detailed above would allow for the funds to be invested as closely as possible to what was originally intended.

If Mr R does not agree or does not want any further assistance from Pensionhelp in relation to the future options detailed, then no further action is required of them once the initial calculation and payment of redress detailed above is completed.

My final decision

I am upholding this complaint and require Pensionhelp Limited to follow the redress instructions detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 7 February 2024.

John Rogowski
Ombudsman