

## **The complaint**

Mrs J complains about Wilfred T. Fry (Personal Financial Planning) Limited (Fry). She's unhappy with advice they gave her regarding a pension she'd inherited.

## **What happened**

Mrs J and her late husband were longstanding clients of Fry. After her husband's unfortunate passing, she spoke to them about the best way forward with her investments. Fry's advisor suggested a course of action which included investing her late husband's pension into an offshore bond.

Mrs J sought advice from a separate firm (B1) as she was concerned at the charges she would incur if she proceeded with Fry's advice. She was told that the funds should have remained within the pension wrapper as this would be the most tax-efficient way forward.

B1 subsequently contacted her late husband's pension platform provider (B2) to make some initial enquiries. Mrs J was then contacted by Fry's advisor who told her that he'd been in touch with B2 to see if the pension could be reinstated, and they'd replied to say that it could be. The funds were then put back in the pension wrapper, but Mrs J changed advisors from Fry to B1.

She subsequently complained to Fry about the advice she'd received. They looked into her concerns and upheld the complaint. They apologised and said there'd been some unintentional errors. They explained that her late husband's estate had been administered by their Estate and Trustee team who'd contacted B2 and requested that his pension should be paid to Mrs J. But this had been incorrectly taken to mean that a lump sum should be paid to Mrs J, instead of transferring the pension payments that had previously been made to her late husband.

B2 had then instructed the sale of the pension and proceeds were sent to Mrs J in April 2023. She then had a meeting with Fry's advisor in May 2023 where her need for income was discussed. The advisor hadn't recognised the error and recommended moving the funds into an offshore bond. He'd subsequently discovered that the pension shouldn't have been surrendered and contacted B2 to see if the payment could be reversed and the pension reinstated.

They accepted that with the benefit of hindsight, they should have contacted Mrs J to explain what had happened. However, their intentions at the time were to find out what could be done, and then get in touch with her. B2 had investigated what had happened and then responded to the advisor who'd then contacted Mrs J immediately to explain what had happened and the way forward. They apologised for what had happened, but said that everything was now back in the position it should have been in.

Mrs J didn't accept their findings and asked for our help. She wanted a further investigation to ensure that she was back in the correct position. She also wanted to ensure that the advice hadn't been wilfully negligent.

The complaint was considered by one of our investigators who thought it should be upheld. The investigator said that in order to put things right, Fry should calculate if there was any financial loss created during the time when the pension was transferred to Mrs J and when it was reinstated. She also said that Fry should pay Mrs J £150 in compensation for the distress and inconvenience caused by their error.

The investigator also considered the advice to invest in the offshore bond. She thought it would have been a reasonable solution if the pension had been correctly paid out to Mrs J. However, as the recommendation was based upon a situation that shouldn't have happened and wasn't taken up, she didn't think this aspect of the complaint should be upheld.

Mrs J didn't agree with the investigator as she didn't think £150 compensation was sufficient. She said that she'd met with the advisor in January 2023 and at the time he'd recommended investing the funds from the pension. She believed the advisor didn't have her best intentions in mind when he made the recommendation. The error only came to light when she had concerns about the level of fees involved and sought advice elsewhere.

The investigator wasn't persuaded to change her opinion so the complaint has been passed to me to make a 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 think this complaint should be upheld and I will go on to explain why. I'd firstly like to assure Mrs J that I've carefully considered the submissions she's made. It's clear she's been through challenging personal circumstances, and I'd like to extend my sympathies to her.

But I'd like to reiterate that this service isn't the industry regulator, that is the Financial Conduct Authority's role, so we do not look to enforce regulations or punish businesses. Instead, we provide an informal dispute resolution service and as such, our role is to weigh up what happened in the specific circumstances of a complaint and determine a fair and reasonable outcome.

With this in mind, I've considered the complaint Mrs J has raised. I appreciate the strength of feeling she has about her complaint, and I note what she's said about the advisor potentially making the recommendation in order to earn commission. However, the recommendation was never implemented, so it's not something that needs to be put right. I think the issue at the heart of the complaint, and what I've focused my investigation on, is the pension being surrendered when it shouldn't have been.

Fry have accepted that they've made an error in surrendering the pension, and I find their testimony about the circumstances leading to the error plausible, so my role here is to determine if Mrs J has lost out because of their actions and if she has, determine fair and reasonable redress.

The pension would potentially have continued to grow if it had still been invested and it wouldn't be fair for Mrs J to have lost out on any potential growth. This is where Fry needs to put things right. I will go on to set out how this should be done, but essentially they need to work out if there had been any potential growth and if there was, then pay that sum back into the pension. I consider this to be fair and reasonable redress and puts Mrs J back in the position she should have been in, had the error not occurred.

Mrs J has also been inconvenienced by having to speak to another firm to get advice. I take her point about having to resolve this issue on her own, fairly soon after her late husband's passing. I agree that £150 isn't sufficient and think that Fry should pay her £300 which in my opinion is fair and reasonable in the circumstances.

### **Putting things right**

In assessing what would be fair compensation, my aim is to put Mrs J as close as possible to the position she would probably now be in if the error hadn't occurred and the pension hadn't been surrendered.

To compensate Mrs J fairly Fry must:

- Compare the actual value of the pension that was reinstated with the notional value if it hadn't been surrendered. 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, pay a sufficient sum into the pension plan to increase its value by the amount of the compensation and any interest shown below. The payment should allow for the effect of charges and any available tax relief. Fry shouldn't pay the compensation into the pension plan if it would conflict with any existing protection or allowance.
- If Fry are unable to pay the compensation into the pension plan, they should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the compensation 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 Mrs J won't be able to reclaim any of the reduction after compensation is paid.
- The notional allowance should be calculated using Mrs J's expected marginal rate of tax at her selected retirement age. For example, if she is likely to be a basic rate taxpayer at the selected retirement age, the reduction would equal 20%. However, if Mrs J would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.
- Pay Mrs J £300 for the distress and inconvenience caused by their error.
- Provide the details of the calculation to Mrs J in a clear, simple format
- If B2 are unable to calculate a notional value, Fry will need to determine growth for the pension instead, using this benchmark: FTSE UK Private Investors Income Total Return Index.
- The FTSE UK Private Investors Income Total Return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone, like Mrs J, who was prepared to take some risk to get a higher return. Although it's called income index, the mix and diversification provided within the index is close enough to allow me to use it as a reasonable measure of comparison given Mrs J's circumstances and risk attitude.
- The adjustments above also apply to the calculation of a fair value using the

benchmark, which is then used instead of the notional value in the calculation of compensation.

### **My final decision**

For the reasons I've given above, I think this complaint should be upheld. Wilfred T. Fry (Personal Financial Planning) Limited should put things right as I've set out above

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 30 December 2024.

Marc Purnell  
**Ombudsman**