

complaint

Mr L's complaint against Bankfoot Financial Services Ltd is about pension transfer advice he received in 2008. He thinks the advice was unsuitable, as he incurred costs which he wouldn't have done if he'd been advised to transfer into the occupational pension scheme (OPS) he'd joined.

background

Mr L had three existing pensions whose selected retirement dates were over 15 years away. About one third of the total value was invested in each of managed, equity and property funds. The annual management charge (AMC) on each of the three plans was 1.25%.

At the time, Bankfoot recorded Mr L with a balanced attitude to investment risk. It described this as someone '*prepared to invest in equity based assets*'. It knew he was a member of his employer's occupational pension scheme (OPS) and was contributing to it. No other details about the OPS were recorded.

Bankfoot advised Mr L to transfer his pensions to a plan with a new provider and invest in the following funds:

- 75% Index Linked
- 10% Far East
- 10% UK Ethical
- 5% BGI Consensus

The AMC on the new plan was 0.52%. For its advice, Bankfoot was paid 7.5% of the amount transferred. This was met by deducting extra units from the new plan; not taken into account in the AMC.

In 2009 Mr L's OPS switched its chosen provider and transferred funds across. The AMC with the new provider remained the same as before (0.59%). Mr L decided in 2010 to transfer the benefits from the policy Bankfoot had sold him into his OPS.

One of our adjudicators thought Mr L's complaint should succeed. In summary, he said:

- Bankfoot's 2008 advice wasn't suitable. The funds it had recommended were concentrated in index-linked gilts. These seemed too low risk considering Mr L's 'balanced' attitude; and the fact he had over 15 years until retirement.
- Mr L would've better met his objective of saving for retirement if he'd been directed to look into transferring into his OPS. There was no record of Bankfoot enquiring about this option.
- Bankfoot had agreed to be paid by commission, and a transfer to the OPS would've meant it couldn't receive commission. But Bankfoot had a regulatory obligation to give Mr L suitable advice, regardless of this fact.
- If Mr L had been directed to look into transferring to his OPS, he would most likely have transferred. The OPS's AMC was comparable to the plan Bankfoot recommended. But he wouldn't have incurred the additional charge for commission.

- As it happened, the funds available to Mr L through the original OPS (and which he invested in with the new provider) were more suited to his attitude to risk. But the original OPS provider had told us they weren't able to calculate a notional policy value, assuming he'd invested in those funds.
- A reasonable and pragmatic approach would be to compare the performance of the plan Bankfoot had recommended with how the same money would've performed in line with the FTSE WMA Stock Market Income Index total return ('WMA index'). Any loss as at the date of Mr L's transfer into his OPS in 2010 should then be 'rolled up' to the present day using the same index.
- This amounted to a gross loss of nearly £14,000 within Mr L's pension fund. If the tax Mr L would've likely paid in retirement was taken into account, the amount that could be paid directly to Mr L as compensation was about £12,000.

Bankfoot didn't agree. In summary, it said:

- Mr L had been concerned with volatility and falls in the stock market. The FTSE 100 index had fallen by 400 points to September 2008 when the advice was given. This was why it had recommended the particular funds. And it was done with the intention that they'd be reviewed on an ongoing basis; rather than being transferred again within two years.
- Bankfoot conceded this reason hadn't been documented. So it wasn't going to disagree with the adjudicator's main finding that the advice was unsuitable.
- Its main disagreement was with the proposed way to calculate Mr L's loss. It was unhappy with the use of the WMA Index. It said this would normally be used by stockbrokers to measure performance of their own portfolios.
- It proposed the loss should be based on how the funds Mr L transferred into in 2010, would've performed between 2008 and 2010. It claimed this amounted to a loss of about £3,000. It then proposed that £1,000 should be deducted as a nominal fee for its consultation time and advice. After allowing for future taxation, the resulting figure it offered to pay to Mr L was about £1,600.

The adjudicator highlighted that the split of funds Bankfoot used in its comparison wasn't directly representative of the funds in Mr L's OPS in 2008. It also didn't take account of Mr L's loss since 2010. He referred to our website where we explain that the use of the WMA index here isn't as a benchmark in the normally understood sense. It's being used as a proxy for the potential return Mr L might have been able to obtain in a range of funds with a similar risk profile; considering that he was recorded as having a 'balanced' attitude.

The original OPS provider had said it couldn't carry out a calculation, which would've been our preferred approach. So he thought it reasonable and pragmatic to use the WMA index for the whole period up to 2010, and to update the loss thereafter. Lastly, he asked for details of how the 'nominal fee' had been calculated.

Bankfoot didn't consider it was responsible for the loss from 2010 to date. It said Mr L had transferred his pension without its advice. And it would've continued to review Mr L's pension. So it was wrong to suggest he would've remained in the funds it had initially

recommended. It also said that based on the time spent and amount invested, using its current rates the fee would've been over £4,000. So it thought its offer of £1,000 was fair.

The adjudicator put Bankfoot's offer to Mr L, and explained why he didn't agree it fairly compensated him. Mr L said he didn't want to accept it. He asked for the matter to be reviewed by an ombudsman. Neither Mr L nor Bankfoot made any further submissions.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I find I've reached very similar conclusions to the adjudicator.

Bankfoot concedes that it can't demonstrate there was a discussion about Mr L being nervous of stock market movements. But in any event Mr L was already invested in the markets as part of a long-term approach within his pension, which had about 15 years left to run. It is notoriously difficult to 'time' an exit and re-entry into the markets without missing a key period of good performance. So trying to switch to and from safer investments on a short-term basis carries its own risks.

On the other hand, if Mr L wished to 'de-risk' his funds on a longer-term basis, I would expect to see a credible note of this; rather than Bankfoot recording that he did still have a balanced risk outlook.

Mr L's existing funds, and the funds he invested in under his OPS, indicate to me that he continued to have a balanced risk approach. Given the period Mr L had left to invest, I wouldn't expect it to be appropriate to move a significant amount into index-linked gilts. These would be typically suited to someone who is perhaps closer to retirement, and who feels preserving the purchasing power of their pension against inflation is paramount; to the exclusion of potentially greater growth in other assets.

Bankfoot had agreed with Mr L in writing to be paid by commission available from a product it sold him. It didn't have to agree to do this: it could've proposed Mr L would instead pay a fee, whatever its advice was. So I don't think it's fair or reasonable for Bankfoot to now suggest that it wouldn't have been able to recommend he transfers into his OPS and stick to that agreement.

In order to ensure it gave Mr L suitable advice, Bankfoot had to consider all the information it collected about his circumstances – and recommend the best option. Bankfoot recorded that Mr L was a member of an OPS. But in its final response to the complaint it suggested that the OPS was a final salary scheme that wouldn't accept transfers. There's no evidence that Bankfoot recorded this at the time, and in any case it wouldn't have been correct. I think Bankfoot failed in its duty to Mr L by not making reasonable further enquiries itself about the OPS; or recommending that Mr L did so.

As it happens, the new policy Bankfoot sold Mr L had similar fund charges to his OPS. But the commission Bankfoot collected (which wouldn't have been paid on a transfer into the OPS) effectively increased the product charges under the new policy. Future performance can't be reliably predicted. So in today's environment of lower investment returns I think the difference in charges should have been a key consideration when Bankfoot assessed what option was more suitable.

I also think 7.5% commission was a substantial amount which resulted in about £6,500 being deducted from Mr L's pension at the outset. Had Mr L known that there was an alternative option that would avoid this additional deduction, I find it highly likely he'd have chosen to transfer into his OPS.

fair compensation

My aim in awarding fair compensation is to place Mr L as close as possible to the position he would've been in, had he been given suitable advice and information. For the same reasons the adjudicator has already highlighted, I don't agree Bankfoot's counter-proposal provides fair redress in this case.

As the additional £6,500 charge can be quantified as a loss Mr L would always have suffered, I've considered whether it would be fair to make this the basis of the award. But I agree with the adjudicator that it's not just the extra charges that are the problem in this case. Mr L was also put into funds that meant he didn't fully benefit from the market recovery during 2009. In my view Bankfoot is responsible for this additional cause of Mr L's loss as it hasn't been able to demonstrate why those funds were suitable for him.

This makes it necessary to compare the performance of Mr L's actual policy with the funds he could've invested in under his OPS. The original OPS provider can't do such a calculation. I don't agree with Bankfoot that it's a fair substitute to replace those OPS funds with the past performance of funds Mr L later invested in with his new OPS provider. Mr L didn't actually invest in those funds at the time.

Where we know where a consumer would've invested, the ombudsman service does seek to obtain notional values for such an investment. But this isn't always possible. I think the fair alternative in this case is to use the WMA income index as a proxy for the sort of balanced risk funds Mr L would've invested in under both his original and new OPS provider. It is independent of any particular investment. This aims to settle the matter informally and without further increasing the complexity of the calculation.

why is this remedy suitable?

I've chosen this method of compensation because:

- Mr L wanted to obtain growth in his pension funds, and was willing to accept some investment risk.
- The WMA index is made up of diversified indices representing different asset classes, mainly UK equities and government bonds. It would be a fair measure for someone who was prepared to take some risk to get a higher return.
- Although it's called an 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 Mr L's circumstances and risk attitude.

Mr L's loss will have increased further since he transferred back into his OPS. The loss was sustained by his fund; and he hasn't benefited from further growth on that 'missing' amount in his fund since 2010.

I agree with Bankfoot that it isn't responsible for the specific funds Mr L has invested in since 2010. But in my view the reason he made this transfer was a direct result of its unsuitable advice in 2008. So it's illogical to say that Bankfoot isn't still responsible for the lack of further growth on this 'missing' amount in his pension fund from 2010 to now. And it's consistent

with the fact that Bankfoot isn't responsible for the specific funds if we continue to apply the same WMA index as a proxy for the investment growth Mr L could've obtained since 2010.

The adjudicator has already produced this calculation, which updated Mr L's loss to 4 September 2015. A copy of this was sent to both parties so that they had the opportunity to comment. I don't think Bankfoot made a fair counter-offer. So I think it's reasonable for that 4 September 2015 calculation to form the basis of the award I make to Mr L now.

My award may include a payment of interest from a date I specify in the award. I think it's appropriate here for interest at 8% per year simple to be added to the amount quantified in the adjudicator's calculation. This is comparable to the approach a court might take where there is a late payment of a sum that was due.

I would normally require Bankfoot Financial Services Ltd to increase the gross value of benefits Mr L holds in his employer's OPS by the amount calculated of £13,981.75; plus interest at 8% per year simple from 4 September 2015 to the date of settlement. However I anticipate that there could be difficulties in the provider accepting a compensation payment into an OPS.

Instead Bankfoot Financial Services Ltd should pay the amount direct to Mr L, less a notional reduction for the tax that he will otherwise pay when he draws benefits from the OPS. I think it's likely Mr L will be a basic rate tax payer at retirement, so the notional deduction for tax is 15%. (This is because he would've been able to take 25% as a tax-free lump sum. And the remaining 75% would have been subject to income tax at 20% using today's rate.)

So the compensation payable directly to Mr L is £11,884.49; plus interest at 8% per year simple from 4 September 2015 to the date of settlement.

my final decision

I uphold Mr L's complaint and require Bankfoot Financial Services Ltd to pay him £11,884.49; plus interest at 8% per year simple from 4 September 2015 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 February 2016.

Gideon Moore
ombudsman