

complaint

Mr S's complaint is about various advice he received from Equilibrium Wealth Management Ltd about his pension benefits over a number of years. Broadly, he thinks the advice was unsuitable and caused him loss.

background

In 2008 Equilibrium advised Mr S to transfer an existing pension to a SIPP, take the tax-free cash from it and invest it into a bond. The remainder of the pension was put into a distribution fund. Mr S was recorded as having a cautious attitude to risk at the time.

In January 2011, Equilibrium advised Mr S to transfer that SIPP to Standard Life. As part of the transaction, Mr S incurred a penalty on leaving his previous provider. Equilibrium also received initial commission for its advice. The penalty, commission and set up costs came to more than 5% of the value of Mr S's pension.

It was also agreed that Equilibrium would receive 0.5% of the value of Mr S's pension each year to *'provide ongoing advice, support and to help fund annual reviews'*.

Mr S's recorded attitude risk was 'balanced'. Equilibrium also noted that his objective was that he wanted an element of capital protection. It recommended that he invest his pension into two structured products:

- Under product 1, if the FTSE 100 was higher on any anniversary of the investment, it would automatically mature and provide a 10% return for each year of the investment.
- Product 2 also allowed Mr S to 'lock in' up to 10% growth achieved each year on growth in the underlying fund – a cautious managed portfolio. The total charges for providing the guarantees were 3.58% a year.

In March 2013, the investment in product 1 matured and provided a return of about 20%. The proceeds were paid into Mr S's SIPP bank account and remained there for the remaining duration. Product 2 remained invested.

After a further fact-find in May 2014 Equilibrium proposed reinvesting the entirety of the SIPP (which by that time included a large cash holding) into two multi-manager funds. At the same time it made proposals for Mr and Mrs S's other investments. Mr and Mrs S didn't take these up. Later that year they complained about the advice they'd received.

Equilibrium didn't uphold most of their complaints. It did offer compensation to Mr S in respect of the advice it'd given him to take the tax free cash from his original pension and invest it in a bond in 2008. Mr S accepted the offer in respect of that specific issue, but he and his wife referred his other complaints to this service.

The adjudicator who dealt with the complaint thought it should succeed. He concluded:

- Mr S had already accepted compensation for advice on investing his tax free cash in 2008. So he was considering the complaint on the basis that Mr S would always have needed to move his pension to a different provider. His existing pension wouldn't enable him to release that sum whilst leaving the remaining funds invested.

- Even if Mr S was right to question whether the rest of his pension was put into the right funds in 2008, calculations showed that he hadn't suffered a financial loss as a result of this.
- The 2011 advice was unsuitable for a number of reasons. These included:
 - The initial reduction to Mr S's fund caused by the transfer was inconsistent with his requirement to protect his capital.
 - Apart from the fact that it required a change of SIPP provider, the advice to invest in product 1 might not have been unsuitable. But the fund had matured in 2013. As Equilibrium had been receiving a fee each year for 'ongoing advice' it was surprising that it didn't contact Mr S for over a year to discuss reinvesting the proceeds. This had led to them remaining in the SIPP bank account and potentially causing Mr S loss.
 - Mr S had been aiming for growth (but with capital protection) when investing in product 2. But the yearly charges of 3.6% on this fund, to pay for the guarantees, gave it little prospect for growth.
 - The adjudicator weighed up everything that had happened, including Equilibrium's inaction when it had been charging for reviews. He thought Mr S could've been advised to achieve his objective of growth with some capital protection by switching the funds in his existing SIPP; rather than transferring to Standard Life.

He thought the appropriate way to calculate Mr S's loss was to compare the amount he transferred out of Standard Life in August 2015, with the amount that would've been transferred if he'd still been in different funds with his original provider. The adjudicator applied a benchmark to determine how those funds would've performed. The loss Mr S had suffered was about £7,000. This was after adjusting for the tax he'd likely pay in retirement.

The adjudicator explained that if there was a delay in paying compensation, it was likely the loss would need to be updated to take account of performance since August 2015.

Mr S told us he was satisfied with the adjudicator's view. Equilibrium said:

- It acknowledged that product 2 did attract high charges. However this was the cost of meeting Mr S's objective of capital protection (which the fund did).
- It also disputed the view reached about product 1. But in the interests of bringing the matter to a prompt conclusion it was willing to make Mr S an offer. It was willing to reimburse Mr S for any loss of growth on the proceeds from when product 1 matured to the date Equilibrium had been removed as the servicing agent for Mr S's SIPP. (This happened in November 2014, rather than August 2015.)

Using the same benchmark as in the adjudicator's assessment, Equilibrium's offer came to around £1,900. This was after adjusting for the tax Mr S would've likely paid in retirement.

Mr S didn't accept the offer. He explained that he didn't take advice on how to invest his SIPP until after family members helped him transfer it to a new provider. The transfer wasn't completed until August 2015, during which time his investments weren't changed.

Based on this, the adjudicator thought it was reasonable to hold Equilibrium responsible for what funds Mr S was (or wasn't) in until that point. He had been in those funds as a result of Equilibrium's original advice.

As neither party raised any further points, the case was passed to me for a final decision.

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 the same overall conclusion as the adjudicator – and for very similar reasons.

I note that Mr S was satisfied with the adjudicator's original view. This explained that the part of the 2008 advice we could still look at (the investment of funds within his pension) hadn't caused him loss. So the remaining issue for me to address is the one Equilibrium doesn't agree with: whether its advice in 2011 caused him loss.

The adjudicator took the view that, taking away the wider circumstances of this case, product 1 may have been appropriate for someone seeking capital protection. I don't dispute this, however I think it was potentially problematic in Mr S's case. The product had a term of up to five years. The worst case scenario was that if the level of the FTSE was not higher at the end of each year than at the start of the investment, Mr S might have to wait until the end of the term to access his funds.

I think this could've been a problem given Mr S was aged 72. Whilst it doesn't seem he needed an income from his pension and was still working, Equilibrium noted that he was in poor health. I accept that the government had put back the age at which Mr S might need to buy an annuity to 77. Nevertheless, I don't think Equilibrium could rule out the possibility that Mr S would need to access the investment before he was able to. At the very least, I don't think such a product should have formed a substantial part of Mr S's pension, even if it did have some attractions.

I also share the same concerns about product 2. Mr S was recorded as having a balanced attitude to risk. He had previously been cautious. So this suggests to me someone who was seeking some growth; to the extent that this could be achieved with some capital protection. In fact he'd have needed to achieve some growth just to overcome the initial costs of transferring from his previous adviser and setting up the SIPP.

At the point Mr S made the investment in 2011 the markets had recovered much of their falls from the 'credit crisis'. And in any case his proximity to likely retirement ruled out a substantial investment in higher-performing assets like shares. So I don't think it was likely Mr S would experience sufficient growth in future to make it worthwhile paying the 3.6% yearly charge for capital protection.

On balance I don't think the overall proposition of funds made by Equilibrium put Mr S in a better position than if he simply remained with his previous SIPP provider and switched to more suitable funds. That's what I consider he should've been advised to do. I agree with the adjudicator that Equilibrium's recommendation actually exposed Mr S to the risk of capital loss simply from the charges involved in switching.

fair compensation

It's difficult to say how Mr S would've invested if he'd been given suitable advice to switch funds within his existing SIPP. I agree with the adjudicator's use of a benchmark that is split equally between:

- 50% of the pension performing in line with the monthly average rate for fixed rate bonds with 12 to 17 months' maturity (as published by the Bank of England).

- the other 50% performing in line with the FTSE WMA Stock Market Income Total Return Index ('the WMA index').

The average rate for fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital. The WMA index is a mix 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.

I think Mr S's risk profile was in between; in the sense that he was prepared to take a small level of risk to reach his investment objectives. So, the above 50/50 combination would reasonably put him into that position. It doesn't mean that he would've invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return he could've obtained from investments suited to his objectives and risk attitude.

The adjudicator ran a calculation to demonstrate that the net value of Mr S's pension would have been worth £7,075.60 more on this basis, as at the point Mr S transferred away from Standard Life on 26 August 2015. I agree with the adjudicator that Equilibrium remained responsible for the performance of Mr S's pension up to that point. He was still invested in funds that were a result of its recommendations. And I don't think he was yet reasonably in a position to know where else to invest.

I accept that Equilibrium isn't responsible for the exact performance of Mr S's plan since he transferred it elsewhere. But any loss that existed in his funds as at August 2015 will have increased (or decreased) in line with general market movements since that date. So it will be fair and reasonable for the amount of £7,075.60 to be adjusted for the change in the 50/50 benchmark used above from 26 August 2015 to the date of this decision. The adjudicator can provide the parties with details of this adjustment.

my final decision

I uphold Mr S's complaint. I require Equilibrium Wealth Management Ltd to pay Mr S the amount of compensation identified at the date of this decision from the calculation above.

If the calculated amount is not paid within 28 days of Equilibrium receiving Mr S's acceptance of this decision, further interest must be added at the rate of 8% per year simple until payment is made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 15 February 2016.

Gideon Moore
ombudsman