

complaint

Mr G has complained that when he decided to take his pension benefits from two stakeholder pension plans, he was not given advice by Bank of Scotland. He says that this cost him time and as a result he suffered a financial loss.

background

I issued my provisional decision on 5 April 2013 in which I indicated that I was minded to partially uphold this complaint. A copy of my provisional decision is attached and forms part of my final decision.

Both parties were given the opportunity to make further final submissions. Bank of Scotland confirmed that it had no further comments to make. Mr G said that he did not necessarily agree with my provisional decision but that he had nothing further to add.

my findings

I have considered all the evidence and arguments from the outset, in order to decide what is fair and reasonable in the circumstances of this complaint.

As neither party has raised any comments in response to my provisional decision, I see no reason to alter my findings which remain as set out in my attached provisional decision.

my final decision

I uphold Mr G's complaint in part only. I award £400 for distress and inconvenience suffered by Mr G.

Lesley Stead
ombudsman

C O P Y

PROVISIONAL DECISION

summary of complaint

Mr G has complained that when he decided to take his pension benefits from two stakeholder pension plans, he was not given advice by Bank of Scotland. He says that this cost him time and as a result he suffered a financial loss.

background to complaint

The facts and background are set out in more detail in the adjudicator's view but, in brief, Bank of Scotland wrote to Mr G in February 2010 following the merger of Lloyds TSB and Bank of Scotland about changes to Bank of Scotland Investment Services (BoSIS). The letter said that Mr G needed to take no further action unless his financial circumstances had changed and that his existing products, including any fees and charges were unaffected.

The letter said that, from 1 April 2010, the client manager would provide advice on behalf of Lloyds TSB Bank plc rather than through BoSIS on behalf of Bank of Scotland. It added that the client manager:

'will continue to be your contact for all of your financial needs and will be able to provide factual information about all your existing BoSIS products. They will only be able to provide advice on the new range of products and solutions but will be happy to refer you to an Independent Financial Advisor should you require advice on your existing BoSIS products.'

In 2011 Mr G was considering taking his pension benefits. In February 2011, he spoke to his client manager then, an annuity was mentioned and the client manager said that he would check whether Mr G was invested in the lifestyle portfolio. The client manager emailed Mr G on 25 February 2011 to confirm, amongst other things, that the lifestyle option (switching into more conservative funds as retirement approaches to protect the value of the fund built up) had not been selected.

Mr G emailed the client manager on 27 May 2011, requesting annuity quotations. Mr G did not receive any reply. He says that he telephoned at the end of June 2011 to chase the matter up. He also says that he called again at the end of July 2011, having by then received a letter dated 26 July 2011 suggesting that he switch to a deposit based fund. The client manager told Mr G that his role had changed and that he was unable to give advice about fund switches.

Mr G then telephoned Bank of Scotland on 4 August 2011. During the first call he said that he was considering switching to a less volatile fund and the Money and Gilt and Fixed Interest Funds were mentioned. When he called back he asked for advice about fund switching. The call handler said that neither she nor the client manager was able to give advice and suggested that Mr G seek independent financial advice. During his third call Mr G requested that his funds were switched which was done.

But by then the value of his funds had fallen. Mr G complained to Bank of Scotland about the fall in value and cost of the client manager's services, which he said he was no longer receiving. He also said that he believed the pension plans had been mis-sold to him. He asked for the fall in fund value (£16,000) to be restored and for at least half of the previous three years' fees to be refunded on the basis that was a charge for managing the funds which he did not consider had been done.

In its final response letter dated 22 December 2011 Bank of Scotland rejected, in the main, Mr G's complaints but agreed that there had been a lack of investment reviews, for which £300 had earlier been offered.

Mr G was dissatisfied with Bank of Scotland's response and referred his complaint to this service.

It was considered by one of our adjudicators who did not uphold the complaint. Her view was that the offer made by Bank of Scotland was reasonable and that Bank of Scotland had made it clear enough in 2010 that it was unable to provide financial advice.

Mr G did not accept the adjudicator's view and said that he did not understand how her conclusions had been reached. About the February 2010 letter Mr G said:

- The adjudicator's statement that Bank of Scotland would not be able to provide him with any advice was incorrect – the responsibility was just shifted from Bank of Scotland to Lloyds TSB.
- The letter did not say that, if advice was wanted, it would need to be requested.
- The statement in the letter that 'Your client manager will continue to be your contact for all of your financial needs but will be happy to refer you to an Independent Financial Advisor should you require advice' had been ignored. A request for annuity quotations is a matter that any client manager should have dealt with or, if he considered that such a request was seeking advice then Mr G should have been referred to one of their financial advisors.
- Although it is correct that Mr G only requested advice in August, the advice he sought then was where to go next, now that he had been informed that he did not have a client manager. He could not have been expected to ask that question in May when he believed he still had a client manager.

He added that he had perhaps laid too much emphasis on not getting advice, rather than on not having a client manager which was what had caused the delay and his subsequent losses. When he first requested annuity quotations at the end of May 2011, from whom he believed was his client manager, it was because the pension fund had a relatively high value after years of underperformance. If, as the February 2010 letter clearly indicated, he did have a client manager, and then he or she would have acted on his behalf or referred him to one of Lloyds TSB's independent advisers.

When he received the letter his circumstances had not changed but they did subsequently. His client manager was always, and as the letter stated, his first point of contact but unbeknown to Mr G he had no client manager. This was in breach of the agreement set out in the February 2010 letter. Mr G was not informed of any change until August 2011, three months after his initial request in May and by which time the value of his fund had fallen considerably. In the circumstances Mr G did not consider that compensation of £300 was fair.

my provisional findings

As to whether Bank of Scotland failed to give Mr G advice, I agree with the adjudicator that it was clear from the February 2010 letter that Bank of Scotland's position had changed and, in particular, the role of the client manager. Although Mr G says that responsibility for giving advice simply moved to Lloyds TSB, what the letter actually said was that a new range of products would be offered through Lloyds TSB (and other companies within the Lloyds Banking Group), that advice would be provided by the client manager on behalf of Lloyds TSB, only on the new product range. The letter went on to say, about existing BoSIS products, that factual information would be provided.

I think from that it was reasonably clear that, from 1 April 2010, client managers would no longer be in a position to offer advice about existing BoSIS products, which included Mr G's stakeholder pension plans. I do not therefore consider that Bank of Scotland was under an obligation to provide advice to Mr G after 1 April 2010.

That said the main thrust of Mr G's complaint is now not that Bank of Scotland was not prepared to advise him but that he did not have a client manager in place which meant that there was a failure to provide information about his pension fund and/or refer him to an independent financial adviser.

Just pausing there I can agree with Mr G's comment that the February 2010 letter did not say that if advice was wanted then Mr G needed to request it. What the letter says is that if advice is required then the client manager would refer the client to an independent financial adviser. So I can understand Mr G's point that the client manager should have either provided the information requested (annuity quotations) or referred Mr G to an independent financial adviser if the client manager considered that Mr G was seeking advice.

It seems that Mr G did have a client manager, at least in February 2011. But things went wrong after that when Mr G emailed his client manager on 27 May 2011 and did not receive any reply. Despite chasing at the end of June (I think by telephone) it was not until the end of July 2011/early August 2011 when, following conversations with his (former) client manager and others Mr G was made aware that advice about fund switching could not be given and he made his own decision to switch funds.

Bank of Scotland did not deal with the matter properly or indeed at all. It failed to reply to or act on Mr G's email of 27 May 2011, nor did it respond to Mr G's follow up telephone call and it was not until early August that Mr G's funds were switched by which time the value had fallen considerably. His argument is that he would have switched funds at the end of May 2011 if the situation had been explained to him as was the case in August 2011.

I can see that argument. But, on the other hand, Mr G was aware, not least from his discussions with his client manager in February 2011, that the value of his funds could fluctuate – the client manager's email of 25 February 2011 said that, based on recent market performance, Mr G 'was almost certainly going to be better off', not having selected the lifestyle option.

The corollary of that was that if Mr G's funds remained invested then the value could rise as well as fall. He was therefore aware, and before his discussions on 4 August 2011, that there was a risk that, if he did not take steps to protect the value of his fund by switching funds, then the fund value could fall which, unfortunately, is what happened.

Mr G was awaiting annuity quotations from Bank of Scotland. Although I agree that Bank of Scotland should have provided that information or referred Mr G to an independent financial adviser, it seems to me that the information requested was not strictly relevant to any decision whether to switch funds or not. Mr G already knew that switching into safer funds was generally considered advisable coming up to taking benefits but he had not elected to switch funds.

Although he did switch funds in August 2011, I am not persuaded that this indicates that he would have done so earlier had Bank of Scotland dealt with the matter properly. By August 2011 his fund had already suffered a loss and so his decision, which was taken without independent financial advice having been given, to switch could have been aimed at ensuring that further losses were sustained.

The upshot is that although Bank of Scotland was at fault for failing to deal with Mr G's email of 27 May 2011, I do not see that this means that Bank of Scotland is responsible for the fact that in the interim Mr G's fund value fell. I do think however that Bank of Scotland caused Mr G inconvenience for which compensation (in addition to the £300 compensation offered for a different reason) should be awarded. I consider that a further £100 is appropriate.

To deal with other aspects of the matter, the charges applied to the pension fund were made clear from the outset and do not only cover the cost of the client manager but the general administration of the pension fund. I am not persuaded that Bank of Scotland should make any refund to Mr G, particularly taking into account that sum offered and that Mr G did have the services of a client manager up to February 2011 at least.

my provisional decision

I uphold Mr G's complaint in part only. I award £400 for distress and inconvenience suffered by Mr G as referred to above.

Lesley Stead
Ombudsman