

complaint

Mr B's complaint is about the suitability of the advice he was given by Greystone Financial Services Limited ('Greystone') to transfer out his defined benefit Occupational Pension Scheme ('OPS') into a personal pension plan.

Mr B has several complaints relating to his pension against Greystone. These complaints involve the transfer out of Mr B's personal pension into Self-Invested Personal Pensions ('SIPPs') on the subsequent advice of Greystone in January 2004, and to make subsequent investments with the SIPPs. These are the subject of separate complaints. The only issue addressed in this decision is the complaint about the suitability of advice given by Greystone about the transfer from his OPS in 2002/ 2003 to a personal pension plan.

background

The circumstances of this complaint were set out in my provisional decision of 27 September 2019. A copy of that is attached and forms part of this final decision.

In short, I upheld Mr B's complaint on the grounds that with a critical yield calculated as being 9.89%, I considered that it was unlikely the value of the retirement benefits would be improved by transferring from Mr B's OPS. I was satisfied the transfer would've presented significant risks above what Mr B was willing to take. I considered the transfer could not reasonably be seen as meeting Mr B's risk profile of low to medium attitude to risk.

In terms of redress, I recommended Greystone should undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017. And I also awarded Mr B £500 to reflect the trouble and upset he suffered as a result of the effect this advice has had on his retirement planning.

I invited both parties to tell me of anything else they wanted me to consider before I finalised my decision. Both parties accepted my findings. However, Greystone expressed some concern about Mr B being put in a better position as a result of redress that may be awarded in respect of his other complaints.

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither Mr B nor Greystone has provided any fresh evidence in response to my provisional decision, I find no basis to depart from my earlier conclusions.

As noted above, whilst Greystone have accepted my provisional decision, it expressed concern about Mr B being put in a better position as a result of redress that may be awarded in other (related) complaints. As noted above, these complaints are being dealt with separately and no final decision has been made in respect of these cases. Greystone's concerns will, of course, be taken into account before any determination is made in these cases. In this particular case, for the reasons set out in my provisional decision, I'm satisfied the correct redress has been reached.

putting things right – what Greystone needs to do

Greystone should undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the final decision which will follow.

Greystone may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

Such a calculation using the regulator's pension review guidance will involve establishing any past and future loss. The past loss will involve comparing the actual tax-free cash and net income payments Mr B received from his SIPP with the notional tax-free cash and net income Mr B could have had from his OPS if he'd retired from that same date, from the date those payments began up to the date of this decision. Each tranche of SIPP payments will need to be adjusted so that they reflect the proportion of the total payments made into the SIPP which derived from the OPS transfer. More information about this is below.

The future loss would usually involve comparing those funds Mr B still has in his pension today (again proportioned for the transfer received from the OPS) with the notional value of the future income he would now have been receiving from his OPS. But as noted above the advice to transfer out of his personal pension into SIPP on the subsequent advice of Greystone in January 2004, and to make subsequent investments with the SIPP, are the subject of separate complaints. So in order to place a value on Mr B's personal pension for calculation purposes that is independent of the subsequent advice to transfer to SIPP and make further investments, a fair value should be determined by increasing the actual value transferred out of the personal pension in January 2004 up to the present day using the following benchmark:

- For half the investment: FTSE UK Private Investors Income Total Return Index;
- For the other half: average rate from fixed rate bonds.

This will allow the loss that has been suffered as a result of the transfer to be determined separately from the loss that resulted from the way Mr B's SIPP plans were invested (including the fact that additional contributions were later placed into the SIPP).

When using the fixed rate bonds as the benchmark, Greystone should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Why is this benchmark suitable?

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- 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 who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have 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 Mr B could have obtained from investments suited to his objective and risk attitude.

This benchmark should be used to calculate two fair values over the period from January 2004 to the date of my final decision:

1. For the total value of Mr B's pension, taking into account all the further contributions subsequently made, and all the withdrawals of tax-free cash and gross income.
2. For the value which was transferred out of the personal pension in January 2004, as this relates to the original sum transferred from the OPS.

At each point Mr B drew down further tranches of tax-free cash or income, the total fair value in 1) must be compared with the value relating to the OPS transfer in 2). This should be used to calculate the proportion of the total tax-free cash and gross income withdrawals which derive from the OPS transfer. Those proportioned payments are what should be deducted to enable the fair value in 2) to be calculated up to the date of my final decision.

The net amount of those proportioned tax-free cash and income withdrawals are, in turn, what should be used in determining the past loss above.

If the above redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid if Mr B had been able to enjoy the higher income from the OPS in future. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement. Given the significant level of income the OPS would have provided I consider it's a reasonable assumption that Mr B would have been paying 40% income tax on the extra pension benefits represented by this loss. So making a notional deduction of 30% overall from the loss adequately reflects this.

Mr B may consider he's able to demonstrate that a part of the lost pension benefits might have been taxed at the lower rate of 20%. To the extent that this affects the result (because the total compensation may exceed £150,000 and Greystone is not obliged to pay Mr B more compensation than £150,000), I would expect Greystone to consider appropriate evidence provided by Mr B as to his marginal tax rate on this lost income.

The compensation resulting from the loss assessment must where possible be paid to Mr B within 90 days of the date Greystone receives notification of his acceptance of my final decision – which will be issued following this provisional decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my

final decision to the date of settlement for any time, in excess of 90 days, that it takes to pay him this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

I appreciate that Mr B has suffered a number of serious health conditions since the advice was given. Whilst I acknowledge that dealing with these matters has come at a difficult time for Mr B, I agree with the amount awarded by the adjudicator of £500 is fair in terms of the distress and inconvenience caused to him as a result of the effect this advice has had on his retirement planning. This payment of £500 does, in any case, form part of the maximum £150,000 binding award I can make.

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

my final decision

My decision is that I order Greystone Financial Service Limited to pay Mr B the amount produced by that calculation set out above along with the payment of £500 for the distress and inconvenience caused – up to a maximum of £150,000. I also award interest at 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes to pay him this compensation – subject to the further condition above.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I will recommend that Greystone Financial Services Limited pays Mr B the balance including the interest as set out above on that balance.

This recommendation will not be part of my determination or award in the final decision. Greystone Financial Services Limited doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to get independent legal advice before deciding whether to accept this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 31 January 2020.

Yolande McLeod
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr B's complaint is about the suitability of the advice he was given by Greystone Financial Services Limited ('Greystone') to transfer out of a defined benefit pension scheme into a person pension plan.

Mr B first raised a complaint with Greystone in 2003, which was shortly after the transfer. He has raised several complaints over the years and ultimately brought this complaint to our service in 2015. Greystone responded in full via this service in 2018.

Mr B has several complaints relating to his pension against Greystone. The only issue addressed in this decision is the complaint about the suitability of advice given by Greystone about the transfer from his defined benefit pension scheme in 2002/ 2003 to a personal pension plan.

background

Mr B was made redundant from his employment with a business I'll refer to as 'C' in 2001 and became a self-employed consultant for C in that year. He was entitled to deferred pension with C under an Occupational Pension Scheme ('OPS') of £45,572 per annum (as well £4,327 per annum as a result of a transfer from a previous scheme) at the normal retirement age of 62. He was also entitled to a tax free cash lump sum of £90,610. The pension was index linked and a revaluation up to age 62 was yet to be added to these figures. Alternatively, he could take a total transfer value of £701,797 (quoted in February 2002).

Mr B first contacted Greystone in early 2002 to discuss the transfer of his OPS. He was initially seeking to set up a Self-Invested Personal Pension ('SIPP').

On 22 April 2002, Greystone's adviser ('the adviser') emailed Mr B comparing the OPS benefits with those resulting from a transfer. He said a transfer was suitable if Mr B was prepared to accept a moderate level of investment risk. Having previously noted Mr B to be "cautious" at a meeting held in March 2002, he commented that due to Mr B's wish for a "secure" pension, he (Mr B) should stay in the OPS.

Mr B emailed the adviser in May 2002 indicating he was still interested in transferring from the OPS. The adviser revised his recommendation to transfer – although a formal suitability report was yet to be provided – the discharge form for the OPS was signed that month. But the transfer value reduced, and over the course of several months Mr B was seeking explanation for this reduction. An upward adjustment was subsequently made to £687,736.

In an email dated 18 September 2002, Mr B told the adviser he still hadn't made up his mind as to whether to transfer. But at a subsequent meeting with the adviser on 8 October, it was noted that Mr B had decided to transfer for reasons of control of his pension fund, improved death benefits and flexibility of income levels.

In summary, other meeting notes and analysis documents prepared during the period 2002, made the following observations:

- Mr B held deferred benefits in his OPS relating to fifteen years' service;
- This was a final salary (defined benefit) index-linked occupational pension;
- He was in his mid-fifties and had normal retirement date of 62 which he would've reached in mid-2008. And in the transfer analysis, it was estimated the revalued pension could be £59,180 at this time (2008);
- On death before retirement the OPS provided a "widows/ widowers pension of 50% of GMP [Guaranteed Minimum Pension] together with a lump sum of the cash at the date of death less the corresponding capital value of the widows/ widowers GMP..." And on death after retirement the OPS provided a "widows/ widowers pension of 50% and a guarantee that if

death occurs within a five-year year period, the unpaid instalments would be paid as an additional spouses pension or, at the discretion of the Trustees, a lump sum.”;

- The transfer analysis carried out by Greystone stated *“The annual growth rate required [the critical yield] under the personal pension to match existing scheme pension benefits is 9.89%.”* This was to the OPS’s normal retirement age of 62;
- As at June 2002, a net worth statement showed that Mr B had various shares and investments totalling £75,744, a cash deposit of £3,000 and jointly owned property valued at £340,000.

A fact find was completed and signed by Mr B in April 2002. In response to pre-populated answers, Mr B said he wanted to retire early and that he would be *“happy to accept a lower pension”* to achieve this. The fact find went on to note that in respect of *“Lump Sum Death Benefits”* Mr B had very little life assurance cover and his dependants could do with extra sums if this could be arranged. A handwritten note by Mr B indicated that *“dependents”* referred to his wife only.

In terms of risk, the fact find noted that Mr B didn’t mind a *“reasonable degree of risk”* in the hope the benefits could be higher in retirement. Further, in the sections regarding his attitude to risk, Mr B opted for *“Low”* and *“Medium”* risk. Under the section entitled *“Priorities,”* Mr B listed his number *“1”* priority as being *“the security of my pension fund.”* This was followed by a tax-free lump sum at retirement, provision for a spouse’s pension and a lump sum benefit upon his death before retirement. He marked *“The ability to retire early”* as *“N/A.”*

In December 2002, Mr B was advised by Greystone to transfer his OPS to a personal pension. The transfer was confirmed in January 2003. On transfer, the adviser noted that Mr B’s pension funds were invested *“cautiously”* with the split agreed at 30% With Profits, 50% Reserve and 20% Fixed Interest.

Within a few days of the transfer, Mr B contacted Greystone. He wanted to reverse the transfer under a *“cooling off period.”* But he was told by Greystone that if he cancelled this wouldn’t mean he could transfer back into his OPS because this was dependent on the (OPS) Trustees discretion.

The adviser wrote to Mr B on 11 February 2003 with a letter covering both Greystone’s advice and addressing Mr B’s concerns about the transfer. He confirmed, in his (the adviser’s) view, the transfer was the right course of action for Mr B. Following this letter, Mr B indicated he was still considering whether to try to return to the OPS. But he confirmed to Greystone on 21 February, he was proceeding with the personal pension contract.

The adviser noted in January 2004, that Mr B’s funds increased by about 5.10% in value from an *“invested”* amount of £681,327 which he said had increased to £716,058 by 15 January 2004. This is when the switch from the personal pension to two SIPP’s, took place. Subsequently, as noted above, Mr B’s made several complaints to Greystone over the years. In respect of the advice he received about the OPS transfer to a personal pension, Mr B he didn’t think the transfer was suitable for his needs.

In its response to Mr B’s complaint about the suitability of transfer from the OPS, Greystone said the advice it gave was suitable based on his particular circumstances and his low to medium risk profile. In summary, Greystone made the following points:

- The file from the time (2002/ 2003) demonstrates that following lengthy discussions with Mr B, it was clear he expressed a strong preference for greater control, flexibility and the opportunity for greater growth, as well as potentially more favourable spousal benefits;
- From the outset Mr B was keen to establish a SIPP (not just transferring into a personal pension). This indicates how strongly he felt about taking control and having greater input into his financial situation in preparing for his retirement;
- Mr B was a sophisticated, engaged and experienced investor – he clearly did not simply follow the adviser’s advice given he took the time to thoroughly discuss with the adviser the transfer and to question the advantages and risks;

- Mr B was made aware there were risks associated with the search for greater potential rewards. And he understood this and was prepared to accept this.

One of our adjudicators looked at this complaint. He concluded it should be upheld for the following reasons:

- With a critical yield calculated as being 9.89%, he didn't think the likely the value of the retirement benefits would be improved by transferring. And potentially there could have been very significant negative effects to Mr B's pension fund;
- He didn't think the advice Mr B was given adequately explained the risk the transfer involved. The OPS provided a guaranteed escalating pension for life, whereas the drawdown pension figures were based on the maximum withdrawal allowed. And based on such a level of income being taken, there would be a significant risk, depending on investment return and longevity, the fund could be exhausted;
- Mr B had limited other savings to fall back on so the pension represented his main source of income during retirement;
- The transfer could not reasonably be seen as meeting Mr B's risk profile of low to medium attitude to risk.

Our adjudicator recommended to identify the loss that has been suffered as a result of the advice to transfer, Greystone should undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017. He also recommended an additional sum should be paid to Mr B of £500 to reflect the trouble and upset he's suffered as a result of the effect this advice has had on his retirement planning.

Mr B agreed with the adjudicator's view. Greystone maintained the advice was suitable. So the matter has been passed to me for a decision.

my provisional findings

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'm intending to uphold the complaint for similar overall reasons to the adjudicator, but I've made a slight change to how compensation should be calculated. I'll explain why.

Mr B had 15 years' service accrued in his OPS. This is significant. His OPS was an important benefit and one which he shouldn't have given up without good reason. From the transfer summary produced by Greystone, his OPS would've provided a significant annual income, along with a tax free lump sum benefit.

But Greystone's illustrations showed that Mr B's personal pension needed to grow by at least by 9.89% to match the same benefit as his OPS. This level of growth is a clear indicator of the valuable benefits that were being given up. From the earlier notes of the Greystone adviser it seems he (the adviser) agreed these valuable benefits shouldn't be given up in Mr B's case. This changed however, when Mr B indicated he wanted more flexibility in how he drew his benefits and for increased death benefits to provide for his wife.

Like the adjudicator, I'm not aware of any official guidance given by the regulator with regard to viable rates of growth at that time (2002). However, there are published discount rates used for pension review loss calculation purposes which I think can be used to give an indication of what rates of growth may have been considered reasonably achievable. Based on the transfer dates and term to retirement the rate was 5.9%.

I also note the growth rates used in Greystone's illustrations were 5% and 9%. But these were just illustrations and as noted in the analysis form *"It is important to note that the 5.0% and 9.0% annual growth rate illustrations do not represent the higher and lower limits of what is achievable since this will depend on the actual future performance of the chosen investment medium."* And in a letter that

followed in February 2003, the adviser noted that the cash flow model confirmed that Mr B needed investment growth of between 6% and 8% per annum for the fund to meet his income needs whilst protecting his capital.

So the critical yield of 9.89% required on transfer was above the highest of the rates used in illustrations at the time as well as being what was likely to be reasonably achievable as measured against the regulators discount rates. In this context, I'm satisfied the transfer would've presented significant risks above what Mr B was willing to take.

I say this because although the adviser said Mr B's risk profile was low to medium, which he said supported the advice to transfer, elsewhere the same adviser categorised Mr B as "*cautious*." This is further evidenced by Mr B contacting the business within a few days of the transfer seeking to reverse it. As noted by the adviser's response in February 2003, Mr B was "*...concerned about investment risk and the current bad press surrounding pensions in general*." This to me shows that Mr B had a fairly low tolerance for risk. Therefore, in my view, although Mr B may have been willing to accept some risks, I'm not persuaded he appreciated or was willing to accept the higher degree of risk involved in transferring when the critical yield was this (9.89%) high.

Further, in my view, the objectives Mr B was seeking to achieve didn't justify the risks involved. I don't think the new plan offered significantly more death benefits than the OPS. I note from the initial discussions recorded on 21 April 2002, the adviser said one of the main advantages of the OPS was it had "*good widows benefits*." And I can see in a memo from the adviser dated 8 May 2002 he says if Mr B is "*worried*" about providing for his wife "*he can take out some life cover. [Mr B] said that he had researched this and the cost were approx. £3,000 per annum*."

Whilst I accept the sum quoted for the life cover was relatively high, this needs to be balanced against the benefits Mr B was proposing to give up. The loss in his own pension that would result if the performance of the personal pension, didn't achieve the critical yield shown above could also have been substantial. In my view, this was the most relevant issue to Mr B given that he'd marked the security of his pension fund as his number one priority, and this should have been highlighted to him throughout by the adviser.

The other objective Mr B wanted was more flexibility in how he drew his pension. I know Mr B has made use of the drawdown facilities now available to him – his OPS had no such option. But whilst a personal pension did offer more flexibility in terms of the drawing down facilities, I don't think this, in itself, was sufficient reason to transfer from his final salary pension scheme. This is because he was giving up the safety of a guaranteed income, which unlike the drawdown didn't carry the risk of being exhausted due to longevity and/ or investment performance. This should be set against the growth rates noted by his adviser needed to maintain his (Mr B's) standard of living of between 6% and 8%. Which did not seem reasonably achievable based on Mr B's risk profile.

So in my view the transfer presented a significant risk. Given the critical yield of 9.89% there was an appreciable risk that the benefits payable from the personal pension was likely to be less than if Mr B stayed in his former OPS. Although it was recorded that Mr B accepted a low to medium degree of risk in return for higher returns, he also said quite clearly in the fact find that securing his pension fund was a number "1" priority for him.

I can see the risks in regards for the need for growth to be maintained at a particular rate, were highlighted to Mr B prior to the transfer. But he relied on Greystone's advice. Whilst Mr B may have had some understanding of investments, there's no suggestion he was a pensions expert. And it's clear from his correspondence with the business before and after the transfer, that he placed a lot of reliance on the advice provided to him by Greystone's adviser.

In summary, I'm satisfied the transfer presented a significant risk above what Mr B should've been recommended to take given his particular appetite for risk. Accordingly, I don't think Greystone should've advised Mr B to transfer his OPS. And I'm not satisfied that transferring away from the OPS was suitable or in Mr B's best interests. I think his number one objective – to ensure the security of his

pension fund – could have been achieved by staying in his OPS. The figures provided for the critical yield necessary to match the OPS benefits demonstrate how valuable the benefits were. And I think if Mr B had been made aware of the scale of the benefits he was giving up by transferring, it's likely he would've kept his OPS.

putting things right

My provisional decision is that I'm intending to uphold the complaint, and that a fair and reasonable outcome would be for Greystone to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. In my final decision, I will be making the following recommendation.

Greystone must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the final decision which will follow.

Greystone may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

Such a calculation using the regulator's pension review guidance will involve establishing any past and future loss. The past loss will involve comparing the actual tax-free cash and net income payments Mr B received from his SIPP's with the notional tax-free cash and net income Mr B could have had from his OPS if he'd retired from that same date, from the date those payments began up to the date of this decision. Each tranche of SIPP payments will need to be adjusted so that they reflect the proportion of the total payments made into the SIPP which derived from the OPS transfer. More information about this is below.

The future loss would usually involve comparing those funds Mr B still has in his pension today (again proportioned for the transfer received from the OPS) with the notional value of the future income he would now have been receiving from his OPS. But as noted above the advice to transfer out of his personal pension into SIPP's on the subsequent advice of Greystone in January 2004, and to make subsequent investments with the SIPP's, are the subject of separate complaints. So in order to place a value on Mr B's personal pension for calculation purposes that is independent of the subsequent advice to transfer to SIPP's and make further investments, a *fair value* should be determined by increasing the actual value transferred out of the personal pension in January 2004 up to the present day using the following benchmark:

- For half the investment: FTSE UK Private Investors Income Total Return Index;
- For the other half: average rate from fixed rate bonds.

This will allow the loss that has been suffered as a result of the transfer to be determined separately from the loss that resulted from the way Mr B's SIPP plans were invested (including the fact that additional contributions were later placed into the SIPP).

When using the fixed rate bonds as the benchmark, Greystone should use the monthly average rate for the fixed rate bonds with 12 to 17 months maturity as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Apply those rates to the investment on an annually compounded basis.

Why is this benchmark suitable?

- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.

- 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 who was prepared to take some risk to get a higher return.
- I consider that Mr B's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50 combination would reasonably put Mr B into that position. It does not mean that Mr B would have 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 Mr B could have obtained from investments suited to his objective and risk attitude.

This benchmark should be used to calculate two fair values over the period from January 2004 to the date of my final decision:

1. For the total value of Mr B's pension, taking into account all the further contributions subsequently made, and all the withdrawals of tax-free cash and gross income.
2. For the value which was transferred out of the personal pension in January 2004, as this relates to the original sum transferred from the OPS.

At each point Mr B drew down further tranches of tax-free cash or income, the total fair value in 1) must be compared with the value relating to the OPS transfer in 2). This should be used to calculate the proportion of the total tax-free cash and gross income withdrawals which derive from the OPS transfer. Those proportioned payments are what should be deducted to enable the fair value in 2) to be calculated up to the date of my final decision.

The net amount of those proportioned tax-free cash and income withdrawals are, in turn, what should be used in determining the past loss above.

If the above redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid if Mr B had been able to enjoy the higher income from the OPS in future. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement. Given the significant level of income the OPS would have provided I consider it's a reasonable assumption that Mr B would have been paying 40% income tax on the extra pension benefits represented by this loss. So making a notional deduction of 30% overall from the loss adequately reflects this.

Mr B may consider he's able to demonstrate that a part of the lost pension benefits might have been taxed at the lower rate of 20%. To the extent that this affects the result (because the total compensation may exceed £150,000 and Greystone is not obliged to pay Mr B more compensation than £150,000), I would expect Greystone to consider appropriate evidence provided by Mr B as to his marginal tax rate on this lost income.

The compensation resulting from the loss assessment must where possible be paid to Mr B within 90 days of the date Greystone receives notification of his acceptance of my final decision – which will be issued following this provisional decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes to pay him this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where

the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

I appreciate that Mr B has suffered a number of serious health conditions since the advice was given. Whilst I acknowledge that dealing with these matters has come at a difficult time for Mr B, I agree with the amount awarded by the adjudicator of £500 is fair in terms of the distress and inconvenience caused to him as a result of the effect this advice has had on his retirement planning. This payment of £500 does, in any case, form part of the maximum £150,000 binding award I can make.

my provisional decision

Where I uphold a complaint, I can award fair compensation to be paid by a financial business of up to £150,000, plus any interest and/or costs that I think are appropriate. If I think that fair compensation is more than £150,000, I may recommend that the business pays the balance.

Provisional decision and award: I intend to uphold the complaint. I think that fair compensation should be calculated as set out above. My decision is that Greystone Financial Service Limited should pay Mr B the amount produced by that calculation along with the payment of £500 for the distress and inconvenience caused – up to a maximum of £150,000. I also award interest at 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes to pay him this compensation – subject to the further condition above.

Recommendation: If the amount produced by the calculation of fair compensation is more than £150,000, I will recommend that Greystone Financial Services Limited pays Mr B the balance including the interest as set out above on that balance.

This recommendation will not be part of my determination or award in the final decision. Greystone Financial Services Limited doesn't have to do what I recommend. It's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to get independent legal advice before deciding whether to accept this decision.

Yolande McLeod
ombudsman