

Ombudsman's Determination

Applicant	Mr N
Scheme	Wesleyan Personal Pension Plan (the Plans)
Respondent	Wesleyan Assurance Society (Wesleyan)

Outcome

1. Mr N's complaint is upheld and to put matters right Wesleyan Assurance Society should provide confirmation of the final fund values of the Plans and pay Mr N £1,000 for the significant distress and inconvenience he has suffered.
2. My reasons for reaching this decision are explained in more detail below.

Complaint summary

3. Mr N has complained about Wesleyan's handling of the Plans. In particular he is unhappy at the delay in taking his benefits, the difference between his fund value and the values communicated to him in annual statements, and the charge applied when transferring to an alternative arrangement. He has also queried an historical redress payment he has said was paid into his plan.

Background information, including submissions from the parties

4. Mr N held four separate personal pension plans with Wesleyan, collectively the Plans. The retirement age recorded against the Plans was 14 September 2014. He has said that approximately 15 years ago a redress payment of £6,000 was intended to be paid into his pension but he cannot see any evidence that this was actually done.
5. In late 2014 Mr N began enquiries about taking benefits. He discussed this with a Wesleyan financial adviser in October 2014. At the meeting, in light of the impending pension reforms, Mr N decided to defer taking benefits.
6. In April 2015 Wesleyan sent a Pensions Options Enquiry Pack to Mr N to make him aware of the options available to him.
7. On 11 June 2015 Mr N submitted a request to access his pension. Wesleyan responded by telephone on 17 June to query Mr N's request. He confirmed he wished to take maximum tax free cash from the plans and a further £37,000 as income,

leaving the remaining funds invested. During the call, Wesleyan confirmed that Mr N would be accessing his pension flexibly and this option was only available on an advised basis.

8. The following day Mr N confirmed to his Wesleyan adviser that he wanted to access his pension through flexi access drawdown (**FAD**) on a non-advised basis. However, due to the type of plan proposed, Wesleyan restated this would not be possible. I understand that the adviser was involved in the process over the following months and there was significant correspondence. Mr N's stated intention was to access the maximum tax free cash and income without incurring a higher rate tax charge. He wished to raise capital of £65,000 as soon as possible to assist a family member to purchase a property.
9. Illustrations for a FAD were requested in late June 2015 and provided by the financial adviser to Mr N. The illustrations confirmed the total value for the Plans, which as at 11 June 2015, was £112,253.
10. The illustrations were amended in July 2015 when Mr N's needs changed.
11. A recommendation and application for the FAD was completed and submitted in late July 2015. Although the advice was provided by a Wesleyan adviser, the application as it stood was not accepted on the basis that the advice was not, in the view of its compliance department, sufficiently suitable.
12. Mr N met with the financial adviser again on 22 October 2015, at which time a revised recommendation was provided. The revised advice was not to access the pension via FAD. Mr N did not accept this advice and proceeded as an insistent client.
13. In November 2015 Mr N submitted a further application for a new plan which allowed FAD. The pension switch was completed by 18 December 2015 with a total value of £115,014.03 transferred.
14. On 15 December 2015 Wesleyan responded to a complaint Mr N had raised with regard to delays incurred. This letter explained the options available to Mr N and examined the timeline up to that point. It accepted that the process had taken too long and upheld the complaint. As an apology Wesleyan offered Mr N £150 for the distress and inconvenience suffered. I understand this was not accepted.
15. Mr N received his tax free cash of £28,753.50 in mid-January 2016.
16. Throughout January 2016 Wesleyan asked Mr N for details of his tax code. In the absence of this it would need to apply an emergency tax code which would impact the income he would receive. This issue was debated between Mr N and Wesleyan. Mr N confirmed that regardless of the tax code to be used, an income payment of £37,000 should be paid and he would reclaim any tax owed to him directly from HMRC. This was agreed on 29 January 2016 and I understand the payment was made on or around 11 February 2016.

17. Mr N maintained that he was uncertain that the final fund values were correct, and disputed these.
18. In May 2016 Mr N contacted Wesleyan again about arranging a new income payment. Wesleyan explained the options available to Mr N and he instructed Wesleyan to make a payment of £32,000 gross which it did shortly thereafter.

Adjudicator's Opinion

19. Mr N's complaint was considered by one of our Adjudicators who concluded that further action was required by Wesleyan. The Adjudicator's findings are summarised briefly below: -
 - The delay in Mr N taking benefits was in part due to Wesleyan not providing a clear way forward on whether FAD was suitable. However, not all of the delays were the fault of Wesleyan.
 - Mr N has said that the delay has caused him to miss potentially 14 months of payment from his pension. However the decision not to take benefits for the majority of that period was Mr N's. He had opted to defer his decision on taking benefits until after the 2015 pension reforms. To an extent Wesleyan did contribute to the delay, but Mr N was ultimately able to access the lump sum that he had requested.
 - The Adjudicator said he had no reason to doubt the fund values stated by Wesleyan. Although he appreciated with-profits investment could be opaque and appear arbitrary, its performance was externally monitored and subject to regulatory scrutiny to ensure fair treatment of all investors. It was also understood that over the period in question the value of Mr N's pension had increased.
 - The Adjudicator was satisfied that the charges applied to Mr N's pension on conversion to a FAD account were properly disclosed by Wesleyan.
 - In respect of the redress from the pension review, although Wesleyan could not provide evidence of the payment being made, the redress had been awarded and it was difficult to conclude that the redress had not been paid into the Plans.
 - Given the unnecessary delay caused by Wesleyan, the Adjudicator recommended it pay Mr N £500 for the significant distress and inconvenience caused.
20. Wesleyan accepted the recommendation.
21. Mr N did not accept the Adjudicator's Opinion. He highlighted that the Plan's statements in the year leading to his retirement had varied significantly. His understanding was that with-profits investments should not be subject to that type of volatility. Additionally, he was unhappy that Wesleyan could not demonstrate that the redress payment had been added to his pension.

22. The Adjudicator raised Mr N's additional concerns with Wesleyan. On review of the statements received, Wesleyan identified that an error had been made with one of the Plans and that Mr N's final fund value had been understated. It said it would correct this error and pay 8% interest on the additional pension commencement lump sum owed to Mr N.
23. It explained the discrepancies on the other Plans as being the result of Mr N not benefiting from a retirement bonus. However, in the absence of being able to show that Mr N had been made aware of the potential loss of this bonus on transfer, it agreed to honour the higher figures. Given the additional issues identified it would pay a further £500 for the distress and inconvenience suffered.
24. Wesleyan was also able to identify archived documents that showed Mr N's Plans had been endorsed following the Pensions Review process and increased as per the redress offered. The Adjudicator was satisfied that this documentation showed Wesleyan had paid the required redress.
25. Mr N remained unconvinced that the figures quoted to him were correct and the complaint was passed to me to consider. Mr N provided his further comments which do not change the outcome. I agree with the Adjudicator's Opinion, summarised above, and I will therefore only respond to the key points made by Mr N for completeness.

Ombudsman's decision

26. Mr N remains uncertain that the final figures being paid to him are correct. He has noted the performance posted by Wesleyan's with-profits fund over recent years as being, on average, over 14%. As this is greater than the higher growth rate illustrated to him at the outset of the Plans, he maintains that the final fund values should be higher.
27. I have not seen the evidence which Mr N bases this on, but I have no reason to doubt what he has said in relation to the recent investment performance of Wesleyan's with-profits fund. It may well have been a positive period of growth for the fund. However, with-profits investment is not straightforward. The performance of individuals' investments in with-profit funds is not intended to directly mirror the performance of the fund as a whole. There is a significant amount of discretion afforded to the managers of with-profits funds to allocate bonuses as they consider appropriate.
28. The managers of a with-profits fund may 'smooth' the performance of the fund to reduce volatility and ensure fairness for all of the investors. To achieve this they can hold back some investment gains in good years and provide lower levels of bonuses so that in future, should the fund perform less well, they can continue to provide bonuses at that time. This is intended to provide a broadly consistent level of performance and is an approach unique to with-profit funds. As the Adjudicator explained, there are processes in place, including external monitoring, to ensure that

despite the opaque nature of with-profit investment, all of the investors are treated fairly.

29. Mr N has indicated that he is concerned for other investors and that they might be losing out due to Wesleyan's errors. I understand Mr N's concerns, but I can only determine the facts of his complaint. If others have concerns about the returns on their with-profits investments they will have to bring them separately.
30. I appreciate that in Mr N's case administrative errors have led to his fund being undervalued when he came to take benefits. However, this has been corrected by Wesleyan and he should receive confirmation of this in writing if he has not already.
31. Wesleyan contributed to the delay in Mr N taking benefits, provided an incorrect final fund value and failed to give him fair warning of the loss of potential bonuses. This amounts to maladministration. Therefore, I uphold Mr N's complaint.

Directions

32. Within 28 days of this determination, if it has not already done so, Wesleyan shall write to Mr N confirming:-
 - The outstanding pension commencement lump sum owed to him, plus the interest it agreed to pay. This shall be paid to Mr N within the 28 day period.
 - The residual funds held in his FAD account following the uplift in final values.
33. Additionally, as offered by Wesleyan, within 14 days of the date of this determination it shall pay Mr N £1,000 for the significant distress and inconvenience caused to him.

Anthony Arter

Pensions Ombudsman
28 July 2017