

## **The complaint**

Mrs S complains that Protection and Investment Ltd (“PIL”) failed to undertake the contractual annual review of her pension investments when it was due. As a result, she complains, the value of her pension savings fell.

## **What happened**

In 2021 Mrs S received advice from PIL that resulted in her transferring her pension savings into a new pension plan. Allied to that advice she agreed that PIL should provide her with ongoing support and advice about her pension investments utilising its “Level 3” service. Mrs S agreed to pay an annual charge equal to 0.5% of the value of her pension savings and in return would receive an annual review of her pension investments.

In February 2022, around eleven months after the initial transfer, Mrs S emailed PIL with concerns about the fall in value of her pension investments. The advisor who had dealt with her pension transfer responded with some market information and told Mrs S that responsibility for her ongoing service had passed to a colleague. But the advisor didn’t pass Mrs S’s contact request onto the new point of contact, assuming that her review would be arranged under the normal processes.

But, in error, Mrs S hadn’t been added to the new advisor’s review diary. So, when she had heard nothing further from PIL, she got back in touch in early June 2022. The new advisor apologised for the lack of a review and asked for a short period of time to familiarise himself with her pension investments. He met with Mrs S to review her portfolio on 29 June and provided Mrs S with some recommendations. In brief he suggested she might consider selling the four bond funds she held. But by that time Mrs S had become disillusioned with PIL’s service and advised that she would be terminating their agreement. She made a formal complaint about what had happened.

PIL agreed that it had fallen short of the service it would expect to provide to Mrs S. So it offered to refund the full ongoing advice fee that it had been paid amounting to £3,334.14. But it didn’t agree that it was responsible for any falls in the value of Mrs S’s pension investments. Unhappy with that response Mrs S brought her complaint to us.

Mrs S’s complaint has been assessed by one of our investigators. He noted that PIL had agreed that its service had not met the required standards. But he didn’t think that what PIL had offered to Mrs S was sufficient to put things right. Although he noted the difficulties in retrospectively deciding what its advice would have been to Mrs S in March 2022 he thought the later recommendations suggested she might have been advised to sell the four bond funds she held, and retain the proceeds in cash for a period of time. So he thought PIL should pay Mrs S compensation equal to the fall in the value of those bond funds between April and August 2022.

PIL didn’t agree with that assessment. So, as the complaint hasn’t been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mrs S accepts my decision it is legally binding on both parties.

## **What I've decided – and why**

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

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mrs S and by PIL. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

At the outset I think it is useful to reflect on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

It is clear that PIL failed to provide the ongoing advice service that Mrs S was paying for in a timely manner. The review should have taken place a year after the transfer of her pension savings had been completed. So I would have expected the review to take place in early April 2022. But it required Mrs S to point out that the review hadn't been arranged – and that meant the review didn't take place until almost three months later, at the end of June 2022.

Mrs S says that the extended delay in the completion of that review means that her pension investments fell in value. She says that an earlier review would have resulted in her selling some underperforming investments much earlier. But on the other hand PIL says that isn't necessarily the case. It says the recommendation it gave to Mrs S in July 2022 might have been very different to that it would have provided in April 2022.

Our investigator pointed out the difficulties in determining what advice would have been given to Mrs S had the review meeting taken place earlier. I agree with what he said. The economic forecasts in early 2022 in respect of interest rates and inflation were not entirely in line with what actually happened. So the recommendations made in July might be very different to what would have been expected three months earlier.

But given the concerns Mrs S expressed to PIL at the time, I think it unlikely that she would have done nothing had a review taken place in April 2022. I think by that time it was clear that holdings in bonds were coming under pressure from the economic environment. And so I think the comments Mrs S's advisor made in July might have been equally pertinent had an earlier review taken place. In July 2022 he told Mrs S that when interest rates are rising, bond rates fall. He told Mrs S that he couldn't see her being in a position to make any money in that sector in the next 12 to 18 months.

Despite my earlier comments about the changes in the economic outlook during the middle of 2022, I think the likely trajectory of interest rates, and so the impact on bond values, would have been apparent in April 2022. So I think the advice Mrs S received in July might have been just as likely to have been given in April. And so that is what I will base my redress on.

PIL has confirmed that, for a short period of time, Mrs S's pension investment portfolio would have remained in line with her agreed attitude to risk had the four bond investments been sold and the proceeds retained in cash. Given the inherent uncertainty in the economic outlook, and the concerns that Mrs S had expressed to PIL at that time, I think it reasonable to conclude that is the approach she would have taken.

There is no way I can be certain about what would have happened if the review meeting had taken place as it should have in April 2022. But it was PIL's error that led to the meeting not being held, and Mrs S's pension investments not being reviewed. On balance I think the redress I have described above reaches a fair outcome for both parties.

There is no doubt that these failings will have caused some distress and inconvenience to Mrs S. She has needed to engage a new financial advisor when she concluded her relationship with PIL had broken down. And she has seen a reduction in the value of her pension investments that might have been smaller had she been advised to take some corrective action three months earlier. So I think PIL should pay Mrs S an additional sum of £250 for the distress and inconvenience she has been caused.

### **Putting things right**

Mrs S's new pension plan started on 17 March 2021. As I've explained earlier she should have received a review a year later. So I think it reasonable, allowing for a short period of time for a review to be set up, and following the review for any changes to take place, that her bond funds would have been sold in late April 2022. I think it is reasonable, as suggested by the investigator, to use 29 April 2022 as the effective date.

Mrs S chose to not accept the advice she ultimately received from PIL and instead moved to a new advisor. She ended her agreement with PIL on 14 July. I think I should allow a period of time for the new advisor to propose and implement any changes to her investments. So like our investigator I think it reasonable to consider PIL's liability for any losses to end on 14 August 2022.

PIL should calculate the proceeds that Mrs S would have received had her four bond funds been sold on 29 April 2022. It should compare that amount with the value of the four funds on 14 August 2022. If the August value is lower than the notional value calculated as at 29 April she has suffered a loss and PIL should pay her compensation equivalent to the difference.

That compensation would have continued to be invested in line with the remainder of Mrs S's pension savings. So PIL should determine what investment returns (if any) Mrs S's pension savings have achieved between 14 August 2022 and the date of this final decision. PIL should increase (or decrease) any compensation calculated above in line with the relevant investment returns.

PIL should pay into Mrs S's pension plan to increase its value by the total amount of the compensation. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If PIL is unable to pay the total amount into Mrs S's pension plan, it should pay that amount direct to her. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mrs S won't be able to reclaim any of the reduction after compensation is paid.

The notional allowance should be calculated using Mrs S's actual or expected marginal rate of tax at her selected retirement age. I think it reasonable to assume that Mrs S is likely to be a basic rate taxpayer at the selected retirement age, so the reduction should equal the current basic rate of tax. However, as Mrs S would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation.

The compensation should be paid to Mrs S within 28 days of PIL being notified of her acceptance of this final decision. Should the compensation not have been paid by that date PIL should add simple interest at a rate of 8% per annum to the compensation amount from the date of this final decision to the date of settlement. HM Revenue & Customs will require PIL to take off tax from this interest. PIL must give Mrs S a certificate showing how much tax it's taken off if she asks for one.

Given that my redress is intended to place Mrs S back into the position she would have been had nothing gone wrong, I don't make any direction in regards of the advice fees that Mrs S has paid (and would have paid had nothing gone wrong). I do note the offer PIL previously made in relation to those fees, and leave it up to PIL to decide whether that compensation should be paid in addition to the redress I am directing here.

For the reasons explained above PIL should pay Mrs S an additional sum of £250 for the distress and inconvenience she has been caused.

### **My final decision**

My final decision is that I uphold Mrs S's complaint and direct Protection and Investment Ltd to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 3 January 2024.

Paul Reilly  
**Ombudsman**