DRN-2792587

The complaint

Mr D has complained about the advice he received from LEBC Group Limited to invest his pension the Woodford Equity Income Fund.

What happened

The facts are well known to the parties so I won't repeat them in detail here. In summary LEBC advised Mr D in late 2017 with regard to transferring his pension to a pension account. As part of the process an attitude to risk questionnaire was completed and Mr D agreed his attitude to risk was low to medium. A report sent in January 2018 gave Mr D full details of the makeup of the fund and how it would be monitored. Funds were then transferred and invested in March 2018.

Mr D complains about the advice to invest in the Woodford fund which carried a high risk whilst his attitude to risk was low to medium. This investment was 7.5% of a wider portfolio.

Our investigator recommended that Mr D's complaint be upheld. He acknowledged that the risk attached to the portfolio was 3/10 which matched Mr D's attitude to risk score. However he felt that the asset allocation was unsuitable for Mr D – with a higher concentration of equities than would be expected for a low to medium risk investor. He explained how he felt fair compensation should be calculated.

Mr D accepted the recommendation but LEBC didn't. It said

- At the time of the advice their solution included the ability to review a portfolio and based on underlying assets, weights and their volatility produce a risk report matching it to a level of risk.
- Using the risk questionnaire Mr D was assessed as having a risk rating of 3/10 and the portfolio was assessed as suitable, which included the ability to regularly review the advice given and rebalance both the portfolio and reassess the investment risk profile of the customer and the investments.
- The governance and rebalancing of the portfolio would indicate if the risk profile later exceeded the customers risk profile and the ongoing advice reviews would allow the investment to be switched to a more appropriate portfolio. Additionally, funds are regularly added and removed from the portfolio to maintain the portfolio aim – which here was higher income generation. This is in addition to the annual rebalancing review and ongoing advice reviews.
- The portfolio was designed for customers who are aware of the need to maintain some growth as well as income on their investments. They are seeking a stream of income capable of growing and keeping pace with inflation – such customers are likely to want the income either immediately or in the very short term.
- The portfolio was suitable for Mr D's risk profile even accounting for the higher level of equities and subsequent advice reviews would be used to ensure it remained suitable.

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.

The portfolio comprised of 15 different funds and 7.5% of the total was invested in the Woodford fund about which Mr D complained. However the breakdown of Mr D's portfolio between the four main asset classes was as follows:

48.59%	Equities
33.07%	Fixed Interest
9.16%	Property
8.63%	Cash & Other

LEBC had a regulatory duty to take reasonable steps to ensure that the recommendation it made was suitable for its client. When making the recommendation LEBC was obliged to obtain necessary information regarding the client's knowledge and experience in the investment field, financial situation and investment objectives.

I've considered with care the representations that LEBC has made. I find that the Woodford fund about which Mr D complained did carry a higher risk than his attitude to risk allowed for. Nevertheless I appreciate that the this fund made up only 7.5% of the total invested. I also take into account that the governance and rebalancing may have allowed for fund adjustment, but would only have returned the allocation of funds to its original weightings.

LEBC did consider the length of time that Mr D wished to hold the investment and its purpose, as it was obliged to do. But looking holistically at the advice Mr D received, it seems that this was at the expense of his preference for risk taking. I say this because I'm satisfied that the recommendation of investing almost half his portfolio in equities exposed him to greater risk than his risk profile – low to medium - allowed for. Accordingly I don't find that Mr D's investment objectives were met by the recommendation of a portfolio with almost 50% in equities.

It follows that I find that investment advice given to Mr D was unsuitable and I therefore uphold this complaint.

Putting things right

In assessing what would be fair compensation, my aim is to put Mr D as close as possible to the position he would probably now be in if he had been given suitable investment advice. Mr D should be aware that this may not mean he has lost out financially.

I think Mr D would have invested differently. With respect to the Woodford Equity Income fund, it could have been included in a lower risk portfolio that was suitable for Mr D. But it's not possible to say *precisely* if this would have been the case or what other investments he may have invested in. I am satisfied that what I have set out below is fair and reasonable given Mr D's circumstances and objectives when he invested.

What must LEBC do?

To compensate Mr D fairly, LEBC must:

- Compare the performance of Mr D's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- LEBC should add interest as set out below:

- LEBC should pay into Mr D's pension plan to increase its value by the total amount of the compensation and any interest. 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 LEBC is unable to pay the total amount into Mr D's pension plan, it should pay that amount direct to him. 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 Mr D won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr D's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr D is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr D would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Income tax may be payable on any interest paid. If LEBC deducts income tax from the interest it should tell Mr D how much has been taken off. LEBC should give Mr D a tax deduction certificate in respect of interest if Mr D asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
LEBC Income Plus Governed Investment Portfolio	Still exists	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

At the end date part of Mr D's investment remained frozen in the Woodford fund, so it wasn't payable at that time. It would be unfair to LEBC for this investment to be considered to have no value, as Mr D has already received some of the investment value back from the liquidators and he'll likely receive further disbursements until the liquidation is concluded.

However Mr D may not eventually receive the value placed on his investment in the fund at the end date. In the meantime he won't be able to sell his investment and invest the proceeds elsewhere.

To fairly address this LEBC should:

- Use the value placed on Mr D's remaining investment in the Woodford fund at the end date when determining the total actual value of his investment.

- Pay Mr D a return that would likely be generated by the size of this investment in a two-year period. This should be calculated by using the average annual return from the benchmark above over the past 20 years. LEBC may appropriately deduct any proceeds Mr D received from the liquidation since the end date and prior to the date of their calculation.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, LEBC should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any withdrawal from the LEBC Income Plus Governed Investment Portfolio should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if LEBC totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr D wanted Income with some growth with a small risk to his capital.

- 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 D'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 D into that position. It does not mean that Mr

D 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 D could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that LEBC Group Limited should pay the amount calculated as set out above.

LEBC Group Limited should provide details of its calculation to Mr D in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr D either to accept or reject my decision before 11 April 2022.

Lindsey Woloski
Ombudsman