DRN-4248873

The complaint

Mr W complains about the advice given by Standard Life Assurance Limited (Standard Life) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Our Investigator thought the complaint should be upheld. Standard Life disagreed with the Investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that Mr W's complaint shouldn't be upheld. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

Mr W says he was approached by a representative of Standard Life in 1994. He says an employee of the business was a neighbour of his and they had discussed financial matters at times. This led to him receiving financial advice from Standard Life.

Standard Life completed a fact-find to gather information about Mr W's circumstances and objectives. This showed that he was:

- *Aged 50.*
- *Married and in good health.*
- *Employed and he was expecting to retire at age 65, although he would consider an earlier retirement if possible.*

Mr W had deferred benefits in a DB scheme that he had built up from a scheme membership between 1962 and 1982. I understand he was a member of the scheme for most of this time. Standard Life also carried out an assessment of Mr W's attitude to risk, which it said was 'neutral'.

In late 1994, Standard Life advised Mr W to transfer his DB pension benefits into a personal pension. The suitability report said the reasons for this recommendation were:

- *Mr W could improve on his retirement benefits because of the transfer.*
- *The death benefits that the personal pension offered were greater than those the DB scheme offered.*
- *His new employer did not provide a pension scheme.*

Mr W accepted the recommendation, and the transfer took place in January 1995. The amount transferred was £33,317.84. Half was invested in the with-profits fund, and half in the 'mixed fund' which was a managed fund.

Mr W took the benefits from his personal pension in April 2002 at age 58. The fund value from this transfer was £68,529.97. Mr W combined this with another personal pension to give a total fund value of £90,124.97. Both of these provided tax free cash of £13,307.37 and an annual income of £4,558.67. I understand Mr W took the benefits in the form of a with-profits annuity.

Mr W complained in 2022 to Standard Life saying that the transfer was not suitable for him. This was because Standard Life didn't:

- *Properly look into Mr W's circumstances and so it did not have full knowledge when it gave advice. And Mr W's attitude to risk wasn't properly established.*
- *Make Mr W aware of the risks of the personal pension and the funds it invested in. And it didn't properly inform him of the fees and charges of this.*
- *Make Mr W properly aware of the DB scheme benefits that he was giving up.*

Standard Life didn't uphold Mr W's complaint. It said that Mr W hadn't complained in time. And I can see that in its complaint investigation Standard Life also thinks that Mr W has benefitted from good growth from the personal pension. And so, his pension benefits may be greater overall. He was also able to retire early and use the flexibility that the personal pension offered. And he chose a different type of annuity than he would have been able to from the DB scheme.

Mr W referred his complaint to our service. An Investigator upheld the complaint and recommended that Standard Life pay compensation. She said there wasn't a great deal of information from the time of sale and Standard Life hasn't been able to provide full documentation. But she thought it was likely that Mr W had a lower attitude to risk and so it wasn't demonstrated that he wanted to take on the risk of transferring the DB scheme to a personal pension. She didn't think that the improved death benefits or greater flexibility outweighed this.

Standard Life disagreed, but it hasn't said why.

As no agreement has been reached the complaint was referred to me to make a decision.

What I've provisionally decided – and why

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The advice was provided by Standard Life in 1994. At this time it was a member of the Life Assurance and Unit Trust Regulatory Organisation ('LAUTRO').

The LAUTRO rules included a Code of Conduct at Schedule 2 to the rules. This required advisers to exercise 'due skill, care and diligence' and 'deal fairly with investors'. Paragraph 6 of the Code of Conduct required advisers to give 'best advice', which included that they should not:

- *Make inaccurate or unfair criticisms of other investments, or of any occupational or state pension; or*
- *Advise the investor to convert, cancel or allow to lapse any investment contract, occupational or state pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages.*

Paragraph 8 required an adviser to consider 'the investor's financial position generally and to all other relevant circumstances' - which included their rights under occupational and state pensions. It required them to recommend the contract from within the provider or marketing group's range which was most suited to the investor. However, none of this went as far as meaning that the adviser could just sell the least unsuitable contract from within the provider's range.

I've considered the advice given to Mr W with this in mind.

Jurisdiction

Our Investigator said that she thought the complaint had been brought in time. Standard Life didn't raise any issues following the Investigator's opinion about this, so I won't revisit their findings. But I will say that I think the complaint was brought in time for the same reasons the Investigator gave.

Financial viability

Standard Life carried out a transfer value analysis report (TVAS) (as required by the regulator) showing how much Mr W's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). There is a summary of the information that was shown in the report on file and some of the information from it is contained in the suitability report. So, I'm satisfied this information was provided to Mr W at the time.

The advice was given during the period when the regulator was publishing 'discount rates' for use in loss assessments resulting from the industry-wide Pensions Review. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the occupational pension at retirement was 7.7% per year. This compares with the discount rate of 9.9% per year for 11 years to retirement in this case. I understand the DB schemes normal retirement date was age 62.

For further comparison, the regulator's upper projection rate at the time was 12%, the middle projection rate 9%, and the lower projection rate 6%.

I've taken this into account, along with the composition of assets in the discount rate, Mr W's attitude to risk and also the term to retirement. Standard Life said that Mr W's attitude to risk was neutral. It's not entirely clear to me what this means but would suggest his attitude to risk was 'balanced' or 'medium'. And I note that Standard Life recommended he invested in low to medium risk funds.

At the time of sale it was reasonable to assume that an investment would grow at a relatively high rate. And so, the 7.7% that the pension needed to return at to replace the DB scheme benefits wasn't unreasonable. And this return is some distance lower than both the regulators medium growth rate and the discount rate. So, whilst I accept there was some risks involved with the transfer, I think it was reasonable for Standard Life to conclude that Mr W could likely receive benefits of a higher overall value than the occupational scheme at retirement, as a result of investing in line with his attitude to risk.

I can see that the fund performed well over the time it was invested, I understand it returned over 11.2% per year up to the point that Mr W took an annuity. And I think this further demonstrates that the critical yield was ultimately achievable.

With this in mind, I don't think the recommendation to transfer out of the DB scheme was unsuitable for Mr W, particularly when taking into account his other objectives. I've thought about some of these below.

Death benefits

I think it's reasonable to say the main reason Mr W was advised to transfer was on the basis that he was likely to increase the income he would receive at retirement. And this was the main driver behind the advice. But the information from the point of sale shows that Mr W did want to increase the death benefits his pension arrangements would provide.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension could possibly have been an attractive feature to Mr W And the calculations showed that, given the returns needed to match the DB scheme pension were achievable, that his wife could effectively gain the option to take lump sum benefits or have a similar, or greater income than the DB *scheme would have provided, on his death. So, I also think it was reasonable for Standard Life to recommend that Mr W transfer for this reason.*

Flexibility

The evidence from the time of sale doesn't really show that one of the reasons for transfer was the increased flexibility that a personal pension would offer Mr W. The point of sale documentation said that Mr W hadn't indicated that he wanted to retire before age 62.

But, given what Mr W has said as part of the complaint, I think it's reasonable to say that he was interested in retiring early if he could, as generally most people would. He has also said he was in receipt of some rental income and so he took the benefits from their pensions early and this was a longer term want of his and his wife's. Mr W took the benefits from the personal pension the DB scheme was transferred to in the form of an annuity at age 58.

The annuity he took provided a higher income at outset than the DB scheme would have provided at age 62. But this did include some other pension provision and it wasn't entirely guaranteed. Mr W took benefits in a slightly different form from that the DB scheme would have provided. And I'm not sure about the spouses provision this annuity has. So, I can't make a direct comparison.

But I don't think that makes the advice unsuitable. I think the advice allowed him to take his pension benefits early, with what I think is a reasonable income, and some tax free cash. So, whilst it isn't entirely clear that Mr W was advised to start the personal pension due to the increased flexibility it offered, I think it's likely he wanted this option at the time.

Overall, I don't think the advice to transfer out of the DB scheme was unsuitable for Mr W as it met his objectives, and he had a good chance of improving on his DB scheme income in retirement.

After my provisional decision

Standard Life, and Mr W, received my provisional decision. Standard Life didn't have anything to add to it.

Mr W, didn't agree with my provisional decision. His representative said that Mr W should have been advised to stay in the DB scheme. This was because:

- Standard Life approached Mr W, rather than the other way around.
- This was Mr W's main form of pension and retirement planning.
- His attitude to risk would have been very low, given his age and how important this DB scheme was to him.
- The regulator has made it clear that a DB transfer should only go ahead in exceptional circumstances and if a consumer understands it. There's very little evidence that this is the case here.

As no agreement has been reached, I've considered the above points in my final decision below.

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.

Whilst I have thought about what Mr W's representative has said. I think it's reasonable to say that they didn't really raise any new material points, or provide any new evidence, after receiving my provisional decision. So, I've reached the same conclusions I came to before, and for the same reasons.

I still think the advice was suitable for Mr W. This is because it would have been reasonable to show him that the DB transfer to the personal pension, would potentially improve his pension benefits. This is because the growth rate needed to do this was relatively achievable at the time. There was improved death benefits, and some flexibility with the personal pension. And Mr W was attracted to these.

Mr W says this was a large part of his retirement planning provision and he did not want to take a risk with this. I had considered the risk of the arrangement in respect of what I knew about Mr W's circumstances at the time in my earlier decision.

As I said, there is a risk to the personal arrangement. But it was reasonable to expect it to provide higher benefits than the DB scheme. The funds in the personal pension were generally regarded as having a lower to medium risk. And the critical yield is near the lower end of the regulator's projections at the time. Also, the evidence is that Standard Life assessed Mr W's attitude to risk, and then invested in line with that attitude to risk. And there's no evidence Mr W sought to challenge that at the time. So, I don't think it's reasonable to say this transfer carried too much risk for Mr W, especially as he appears to have benefitted from it as a result.

I don't think the regulators rules that were in place at the time, or those that exist now essentially say that a transfer should only proceed under exceptional circumstances. That said, the rules and guidance are robust in terms of DB pension transfers. The transfer must be suitable, and the starting assumption is that it is unsuitable. But having considered everything, as I said above, given his circumstances and the likely opportunity to improve his position in retirement, I still think that it was suitable to recommend the DB transfer to Mr W.

My final decision

For the reasons set out above, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 August 2023.

Andy Burlinson
Ombudsman