DRN-4273787

The complaint

Mr D complained about advice he received from Peregrine & Black Investment Management Limited trading as P&B Wealth ("P&B") to not transfer his defined benefit ("DB") pension.

What happened

Mr D met with P&B in April 2022 to discuss his circumstances and objectives as he was looking to transfer his DB pension. P&B later sent Mr D its abridged advice report which recommended that he not transfer.

Mr D complained to P&B about the advice but P&B felt the advice was suitable. Our investigator didn't think the complaint should be upheld as also he felt P&B's advice was suitable. Mr D disagreed and asked for an ombudsman to review things.

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.

General points

Before addressing the specifics of Mr D's complaint I want to outline some general points.

First, the advice P&B gave in this case is what's known as abridged advice. Essentially, that is short form advice on the transfer of a DB pension. It consists of the initial stages of a full advice process including a fact find, an attitude to risk assessment and confirmation of the benefits provided by the DB pension. But advisors are prohibited from considering a proposed receiving pension scheme and/or possible underlying investments. And they're unable to carry out appropriate pension transfer analysis (eg getting projections and cashflow modelling, getting annuity illustrations and conducting comparisons). They also can't assess how well an alternative arrangement would meet the consumer's objectives if a transfer went ahead.

One significant difference between abridged advice and full advice is that abridged advice can only result in two outcomes – either a recommendation to not transfer the DB pension or telling the consumer it's unclear whether or not they would benefit from a transfer based on the information collected. In other words, there's no option under the abridged advice process for an advisor to recommend that a consumer transfer their DB pension. If it's unclear whether a transfer will be beneficial the advisor will ask the consumer if they want full advice and will get confirmation from them that they understand the costs of doing so.

Secondly, Section 48 of the Pension Schemes Act 2015 requires an existing pension scheme to check that a consumer has received full advice before transferring or converting safeguarded benefits into flexible benefits (unless their value is less than £30,000 – which they weren't here). So it wasn't possible for Mr D to have transferred his pension unless he received full advice – either from P&B or elsewhere.

Thirdly, the regulator has determined that when advising a consumer whether they should transfer a DB pension the advisor should start by assuming that the transfer won't be suitable, and to only then consider a transfer suitable if they can clearly demonstrate that it's in the consumer's best interests. This is referred to as the 'presumption of unsuitability'. It applies to both abridged advice and full advice.

Finally, an advisor's role isn't to simply give advice which aligns with a consumer's objectives and/or allows the consumer to meet those objectives. It's to look at things objectively and dispassionately and to provide suitable advice based on what's in the consumer's best interests. It's therefore important to note that what a consumer might want to do might or might think is the best for them might not be the same as what an advisor feels is suitable or in their best interests. This is because the consumer's objectives or wishes might be unrealistic and/or impossible to achieve in the circumstances.

Mr D's advice

Mr D was clear in how he wanted to use his pension funds. It's also clear he felt his financial plan was sound, that he had his reasons for wanting to transfer his pension, and that he feels the advice process wasn't conducted in a way that took his personal circumstances into consideration. However, it remains that he only received abridged advice. So, as outlined above, it simply wasn't possible for P&B to recommended that he transfer his pension – he would have needed to get full advice in order to potentially receive that recommendation and/or to then transfer his pension.

In its advice report P&B listed the reasons for recommending that Mr D not transfer. These included:

- Mr D wasn't old enough to access his pension so it wasn't essential to transfer right away
- existing savings and investments could provide the flexibility Mr D needed in the short term
- Mr D was looking for new employment and if he was successful he might not need to access his pension funds until he decided to fully retire
- transferring the pension meant sacrificing a safeguarded and secured pension
- Mr D would become responsible for all charges on the new pension.

I don't think it was unreasonable for the advisor to rely on these reasons to conclude that a transfer wasn't suitable for Mr D. Given the two options available, I don't think it was unreasonable for the advisor to recommend that Mr D not transfer.

Mr D is understandably looking at this from the perspective of the transfer value of his DB pension – particularly as it reduced from £835,000 in March 2022 to £515,000 in November 2022. He said, for example, that DB pension values were on the downturn prior to the meeting in April 2022 and that alarm bells should have been ringing for the advisor given interest rates were starting to rise and guilt values were changing.

P&B told Mr D – in its *Our Services and Costs* document and in the advice report – that the transfer value could increase or decrease before any transfer took place. In any event, the primary purpose of the pension is to provide retirement income for Mr D. And the advisor's primary responsibility was to recommend what he thought was in Mr D's best interests having weighed up the pros and cons of staying in the DB pension compared to transferring it. I don't think a potential change in transfer value comes into that consideration – particularly when it's only abridged advice. This is because the advisor is looking at the situation at the specific point in time, it can't be predicted what's going to happen. The advisor is also not doing any analysis on what pension benefits the transfer value might buy when Mr D retires or how much the transfer value might need to grow in order to match the guaranteed benefits being given up. And changes to the transfer value (whether up or down) had no effect on Mr D's guaranteed benefits available under the DB pension or on the risks involved in transferring.

In respect of getting full advice Mr D said that when he asked about this P&B said it would most likely result in the same recommendation to not transfer. As I've mentioned above, to enable a transfer Mr D had to get full advice. And if he decided to proceed down that route P&B was obliged to outline the costs (which were around £13,000) to him. So when Mr D asked it about full advice P&B only really had two options – to do as it did and give him the likely costs and warn him of the likely outcome of full advice; or give him the costs and stay silent on the likely outcome.

The presumption of unsuitability would have applied to the full advice. So P&B would have only been able to recommend the transfer if it could *clearly demonstrate* that doing so was in Mr D's best interests – and Mr D wanting to transfer isn't necessarily the same as a transfer being in his best interests. In my experience, there must be compelling reasons to recommend a transfer and it's a high bar for advisors to overcome. Had Mr D proceeded to get full advice and a full analysis been conducted there's a possibility that in this particular case and set of circumstances P&B *might* have clearly demonstrated that a transfer was suitable for Mr D (although, to avoid any doubt, I haven't consider or reached on conclusion on this). However, the presumption of unsuitability in my opinion suggests that a recommendation to transfer is unsuitable in the vast majority of cases – and that's certainly true with most of the complaints that I see. So I don't think P&B acted unfairly in warning Mr D that there was a strong possibility he might spend £13,000 to simply receive the same advice.

To summarise the above, in my view P&B didn't treat Mr D unfairly because:

- it couldn't have recommended that he transfer his DB pension as it wasn't an option available under the abridged advice process
- the recommendation given, and the reasoning for it, was reasonable
- the information it gave Mr D about the full advice process was fair.

In closing, I recognise that Mr D has raised various issues in support of his complaint eg he was vulnerable at the time, he wasn't told he could use another provider to transfer his pension, P&B was looking to transfer his pension when he turned 54 (which was only a few months away). I don't think these affect the outcome of the complaint or the reasons behind my decision as because the fundamental issues I've outlined above remain.

My final decision

For the reasons outlined above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 12 September 2023.

Paul Daniel
Ombudsman