DRN-4501797

The complaint

Mr O has complained about the advice given to him by The On-Line Partnership Limited ('OLP') to transfer his occupational defined benefit ('DB') pension scheme, an occupational defined contribution ('DC') scheme, and a Zurich personal pension into an Aviva self-invested personal pension plan ('SIPP'). Mr O has stated that this advice was unsuitable and has caused financial loss.

Mr O is being represented in this complaint however for ease of reference I have referred to Mr O throughout the decision below.

The 2017 advice was given by Marlborough Place Independent Financial Advice who are an appointed representative of The On-Line Partnership Limited ('OLP'), again for ease of reference I have simply referred to OLP throughout the decision below.

What happened

Having become concerned that his previous employer was closing their UK operations Mr O sought the services of OLP to discuss his deferred pension benefits.

OLP completed a fact-finding exercise with Mr O. This confirmed that Mr O was:

- Aged 51, married with non-dependent children.
- Was intending to retire at age 65 although may carry on working until his state pension at age 67.
- Was employed as a Hospital Porter with net take-home pay of £850 per month. Expenditure was documented as £500 per month leaving disposable income of £350 each month.
- The family home was valued at £135,000 with an outstanding mortgage of £70,000.
- Cash savings held were £3,000.

Mr O's three existing pensions were also detailed. These were confirmed as:

- DB scheme with a transfer value of around £132,000.
- DC scheme with a transfer value of around £54,000.
- Zurich personal pension with a transfer value of around £32,000.

OLP also completed a risk profiling exercise, the results being Mr O's attitude to risk ('ATR') being assessed as "moderately cautious".

To assess the value of the benefits being transferred from the DB scheme, and the likelihood that the funds could provide the same level of benefits in retirement once transferred, OLP completed a transfer analysis report. This documented the critical yield for the transferred funds (at age 65) as being 8.45% if all the funds were used to provide retirement income, and 6.79% if Mr O took his maximum tax-free cash. These rates dropped to 6.4% and 5.92% respectively should the ceding DB scheme end up in the Pension Protection Fund ('PPF').

The advice was documented in OLP's suitability letter dated 26 April 2017. The confirmed Mr O's objectives were to review his existing pensions and to transfer his DB scheme to a money purchase pension plan "to provide greater flexibility when drawing benefits".

Regarding the DC scheme and the Zurich scheme, the suitability letter confirmed that OLP's advice was to transfer these pensions as they did not meet Mr O's ATR, they would not allow him to take advantage of the flexibility provided by the new pension freedoms legislation and transferring would meet the new strategy of consolidating Mr O's pension provision.

The product illustration for the recommended Aviva SIPP confirmed that the transferred funds were to be split equally between the Legal & General Multi-Index 4 fund and the Vanguard Lifestrategy 40% Equity Fund, with 2% held in cash.

The illustration also documented the charges applicable to the new pension, these were:

- An initial charge of 1%
- An initial charge of £6,200.
- Weighted fund charges equivalent to 0.2597% per year.
- Ongoing adviser charge of 0.75% per year.
- An Aviva charge each year of 0.35% of the first £50,000 within the pension, 0.3% on the next £100,000, and 0.25% on the next £200,000.

As well as the charges the illustration also provided projected retirement benefits using assumed growth rates. These assumed growth rates were -1.7%, 1.2% and 4.2% per year until Mr O reached age 65.

OLP's advice was accepted by Mr O with all three pensions being transferred into a new Aviva SIPP.

Mr O raised his complaint with OLP on 25 October 2022, with OLP's response issued on 21 December 2022.

OLP's response rejected the complaint stating that they believed the advice was suitable.

They stated that the suitability letter completed in 2017 detailed all the guarantees that would be lost upon transfer and explained that the transfer was being recommended as the existing DB scheme did not meet Mr O's requirements for flexible access to his pension in retirement, more tax-free cash than the DB scheme would provide, and lump-sum death benefits for his wife and adult children should he pre-decease them.

In addition, OLP also confirmed that they had concluded the subsequent investment advice for the Aviva SIPP was also suitable.

Unhappy with this response Mr O referred his complaint to this service.

Our investigator looked into things and concluded that the advice was unsuitable.

With regard to the DB pension the investigator noted that the advice was likely to lead to Mr O being finically worse off in retirement with the non-financial reasons given in support of the transfer insufficient to justify the advice.

Regarding the Zurich pension and the DC pension the investigator concluded that these transfers were also unsuitable. The documentation on file confirmed that the new SIPP was more expensive than the ceding schemes with the reasons for transfer again considered insufficient.

In response to the findings issued, OLP stated that they did not accept the findings but to resolve the complaint did offer to provide redress in line with the recommendations made by the investigator, with the caveat that the redress calculation be capped in 2018 when they were removed as Mr O's advisers.

This redress offer was not accepted and as such the case was passed to me. I issued a provisional decision which stated:

"I have broken my assessment of OLP's advice to Mr O down and covered the advice in relation to the three different pensions separately below.

DB pension

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. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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 below is not a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of OLP's actions here.

Principle 6: A firm must pay due regard to the interests of its customers and treat them fairly.

Principle 7: A firm must pay due regard to the information needs of its clients and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests' rule).

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, OLP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr O's best interests. And having looked at all the evidence available, I'm not satisfied it was.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. 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 quoted as 8.45% if all the funds were used to provide retirement income, and 6.79% if Mr O took his maximum tax-free cash. These rates dropped to 6.4% and 5.92% respectively should the ceding DB scheme end up in the PPF. These rates compare with the discount rate of 4.1% per year for the 13 years to Mr O's retirement in this case.

For further comparison, the product specific illustration produced by OLP in 2017 used growth rates of -1.7%, 1.2% and 4.2% per year to provide projected retirement benefits for the SIPP at Mr O's retirement date.

I've taken this into account, along with the composition of assets in the discount rate, Mr O's attitude to risk and the term to retirement. I think, based on the information that was available at that time, Mr O was likely to receive benefits of a materially lower overall value than the occupational scheme at retirement, as a result of investing in line with his attitude to risk.

Overall, the transfer of the DB pension was likely to lead to Mr O being worse off in retirement and given this I have gone on to consider the non-financial reasons given in support of the transfer to establish if these are sufficient to justify the advice.

Flexibility of access

This was noted as an objective of Mr O and a reason in support of the transfer.

Regarding this as an objective the first point I would note is that at the time of advice Mr O was 51 years of age with a retirement date of 65, and whilst the pension freedoms legislation would allow Mr O access to the SIPP at age 55, there is no indication on file that any access at that time would be required. Based on the information in the advice file, the earliest date Mr O would require access to the pension was at age 65 – some 14 years after advice.

Given this, any access requirements are considered a future need and a weak justification for transferring.

I would also note that Mr O's requirements at age 65 could have been met without transferring. The file details that there was a requirement for £12,000 per year between age 65 and 67, at which time state pension would commence and the need for pension income would reduce.

The DB pension was forecast to provide a lump sum of around £38,000 and income of around £5,700 per year at age 65 with this meeting both the lump sum requirements at age 65 and the ongoing income needs from 67 onwards, without exposing Mr O to any advice or investment charges or any investment risk. In addition, should there be any unexpected income needs Mr O would still retain around £80,000 in other pension provision which could be used whilst retaining the valuable lifelong guarantees applicable to the DB scheme.

Death benefits

OLP noted Mr O wanted the "Possibility of retaining lump sum pension benefits on death to potentially assist your wife and adult children in the future".

I consider it entirely reasonable that anyone would want to ensure maximum possible death benefits were available to their beneficiaries in the event of their death. However, in line with the investigators commentary in the findings already issued, the primary purpose of a pension is to provide income in retirement. This is especially the case where (as per the scenario in this instance) the pension forms the bulk of a person's retirement provision.

The DB pension which was transferred provided a valuable spouses pension that would have given Mrs O an income for the remainder of her life. There is little detail or analysis on file as to what levels of income Mrs O would need in the event of Mr O's death, nor an explanation as to why a lump sum would be required, especially given the DC and Zurich pensions would provide lump sums in the event of Mr O's death.

Additionally, if providing a lump sum in the event of his death was of paramount importance to Mr O I would have expected OLP to explore the possibility of putting some form of life insurance policy in place. Mr O did have disposable income each month and as such did have the means to enact such a policy. This then would have allowed a lump sum to be paid to Mr O's chosen beneficiaries whilst retaining the valuable guarantees provided by the DB scheme.

Overall, I do not consider the changed death benefits brought about by the transfer to have been sufficiently discussed and documented or the potential alternatives appropriately discounted, and a such do not consider this to be a strong argument in support of the transfer advice.

Financial Stability of the DB scheme

Commentary within the suitability letter confirmed that a "key risk" that concerned Mr O was the current funding of the DB scheme. It was noted that the scheme was "significantly underfunded" at 77% at that time, with OLP stating that the pension trustees could reduce transfer values at their discretion in future.

Whilst all the above is true, I do not believe there was sufficient additional discussion around how this could actually impact Mr O.

Mr O has confirmed his reasons for discussing his pension planning with OLP centred around the fact his previous employer was closing down their UK operations and he was concerned about the impact on his pensions.

Additional discussions should have been had around the separation between the employer and the pension, the role of the pension trustees and their duty to scheme members, and the fact that it is not unusual for DB schemes to be underfunded.

In addition, whilst the file does note that the scheme was protected by the PPF, and that should the scheme enter the PPF benefits could be reduced by up to 10%, I believe there should have been further discussion around the fact that even in this worst case scenario the PPF would provide both tax-free cash and income that would be guaranteed for life which would still meet all of Mr O's retirement income needs.

Had this full discussion took place, I do not believe the security of the DB pension would have been a material issue for Mr O.

Overall, I have reached the same conclusion as our investigator. The transfer of the DB scheme was likely to lead to Mr O being worse off in retirement. In addition, the non-financial reasons documented on file in support of the transfer are considered weak and insufficient.

The advice to transfer the DB scheme is considered unsuitable.

DC scheme and Zurich Scheme

Given both the DC scheme and the Zurich scheme are money purchase arrangements with no inherent guarantees attached I have dealt with the advice given on both schemes together.

The reasons given for transferring both pensions were the same. Firstly, the schemes did not match Mr O's ATR, secondly, they would not allow the flexible access desired, and lastly there was a desire for Mr O to consolidate all his pensions into one plan.

In 2008 a report was issued in which the regulator provided guidance on pension switching.

Examples of both good and bad advice practices were included in this report. An example of unsuitable advice stated:

> *"A pension incurring extra product costs without good reason (this outcome involved assessing cases where, for example, the reason for the switch was for investment flexibility, but this was not likely to be used; the reason was fund performance, but there was no evidence the new scheme was likely to be better; or the reason was the flexibility of a drawdown option, but there is no evidence this option was needed)."*

The report makes it clear that cost is a key consideration when recommending a transfer.

Dealing firstly with the occupational DC scheme, the documentation on file indicates there were no annual charges being applied to this plan. This is not uncommon as the sponsoring employer will often cover any charges. The new pension was therefore undoubtedly more expensive.

Having looked at the reasons given in support of the transfer I do not believe any of these are sufficient to justify the additional costs. Whilst the existing investment within the DC scheme may not have met Mr O's ATR, there were numerous other investment options available to him within the occupational DC scheme. A fund switch could have been made at no cost which would have removed this issue.

Regarding flexibility of access, as per the rationale above, the file does not indicate Mr O had any plans to access any of his pension provision before age 65, as such any access requirements were around 14 years away and cannot be considered an immediate need that would necessitate a transfer in 2017.

Finally, I have considered the requirement for Mr O's pension provision to be consolidated into one plan.

Had suitable advice been given on the DB scheme, this would have been retained. As such, consolidation into one plan would not have been possible.

Moving on to the advice regarding the Zurich scheme here I would note that whilst the overall costs associated with the SIPP were higher (1.3% compared to the 0.81% charge for the Zurich policy) the SIPP costs include 0.75% per year for the adviser charge. This was a service not included within the Zurich scheme and as such to fairly compare the plans this charge would need to be removed from the overall cost of the SIPP.

It could therefore be argued that the SIPP was in fact cheaper than the Zurich scheme.

However, it also must be noted that there was an initial charge of 1% with an additional flat fee of £6,500 incurred, some of which must be allocated to the Zurich policy.

Overall, an exact cost comparison is complicated.

I have however reached the same conclusion as the investigator regarding the transfer of the Zurich policy.

Whilst the overall costs are difficult to compare, the reasons in support of the transfer (Mr O's ATR and flexible access) are considered insufficient for the same reasons as noted above.

Regarding the requirement for consolidation here I would again note that if suitable advice been given to retain the DB scheme, I do not believe the remaining policies would have been transferred.

In summary, I have concluded that had correct advice been given to Mr O, the DB scheme would have been retained, with the occupational DC scheme and the Zurich pension also being retained, albeit with the possibility of internal fund switches to bring them in line with Mr O's ATR."

In addition to the above I asked all parties to submit any further evidence or commentary they wanted taken into consideration by 6 December 2023.

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 response to the findings above Mr O confirmed he accepted the outcome.

OLP stated that whilst they did not accept the outcome, they were willing to provide redress in line with the calculation laid out in the provisional decision in order to resolve the complaint.

As such, with no further evidence or commentary to consider I see no reason to make any changes to the provisional decision, which I believe represents a fair and reasonable outcome in this case.

The redress instructions included below remain unchanged from those included in the provisional decision.

Putting things right

My aim in awarding redress is to put Mr O as far as possible in the position he would be in now if OLP had given him suitable advice.

I think Mr O would have remained in the DB scheme.

I also think he would have retained his existing occupational DC scheme and the Zurich pension, possibly undertaking an internal fund switch in line with his ATR.

What should OLP do

To compensate Mr O fairly, OLP must determine the combined fair value of his transferred pension benefits as outlined in Step One and Step Two below. If the actual value is greater than the combined fair value, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

fair value – step one

OLP should therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr O has not yet retired, so, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

I have considered OLP's point made in response to the investigator's original findings that the redress calculation below should be stopped in 2018 when they were removed as Mr O's advisers, however I do not believe this would be fair. OLP's advice removed valuable lifelong guarantees from the DB pension funds that cannot be re-instated, any investment decisions made post 2018 could only been made as a result of OLP's unsuitable advice to transfer.

Has suitable advice been given the DB scheme would have been retained with any and all subsequent investment decisions avoided.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr O's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, OLP should:

- calculate and offer Mr O redress as a cash lump sum payment,
- explain to Mr O before starting the redress calculation that:
    - redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr O receives could be used to augment the pension rather than receiving it all as a cash lump sum,
- if Mr O accepts OLP's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr O for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr O's end of year tax position.

Redress paid directly to Mr O as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, OLP may make a notional deduction to allow for income tax that would otherwise have been paid. Mr O's likely income tax rate in retirement is presumed to be 20%. However, if Mr O would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

fair value – step two

OLP must compare the total value of the DC scheme and Zurich personal pension transferred to Mr O's SIPP with that of the benchmark shown below to determine the fair value of Mr O's pension if suitable advice had been given.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SIPP (recently transferred to Hargreaves Lansdown)	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	n/a

To arrive at the fair value when using the fixed rate bonds as the benchmark, OLP 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 additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the fair value at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if OLP totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the combined fair value.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Mr O's SIPP. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr O as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

Why is this remedy suitable?

I've chosen this method of compensation because:

- Mr O wanted Capital 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 O'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 O into that position. It does not mean that Mr O 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 O could have obtained from investments within the schemes suited to his objective and risk attitude.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

Determination and money award: I require OLP to pay Mr O the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that OLP pays Mr O the balance.

If Mr O accepts my decision, the money award is binding on OLP. My recommendation is not binding on OLP. Further, it's unlikely that Mr O can accept my decision and go to court to ask for the balance. Mr O may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

As per the rationale above I am upholding this complaint and require The On-Line Partnership Limited to calculate and pay redress to Mr O in line with the instructions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 4 January 2024.

John Rogowski
Ombudsman