DRN-4562390

Financial Ombudsman Service

The complaint

Mr H complains that Pension Works Limited (Pension Works) gave him unsuitable advice when it recommended he remained in his defined benefit (DB) pensions rather than transfer them to a self-invested personal pension (SIPP). He says Pension Works' advice has seriously impacted his well-being and retirement plans.

What happened

Mr H contacted Pension Works for advice about transferring two deferred DB pensions to a SIPP. At the time, those pensions had a combined cash equivalent transfer value (CETV) in the region of £625,000. Mr H was also an active member of a defined contribution (DC) pension with his existing employer. According to Mr H's figures the value of that pension pot was in the region of £185,000 (albeit it fluctuated).

Pension Works had some initial discussions with Mr H to explain the different stages of the advice process, which included an initial 'abridged advice' stage with the possibility of moving on to full advice. Pension Works explained the fees that would be payable if Mr H's transfer proceeded to the full advice stage. It said there were two possible outcomes from the abridged stage of the advice process:

- Unsuitable – meaning there would be no merit in taking things further and the process would end there.
- Unclear – meaning there would be merit in potentially looking into things more closely. If Mr H agreed, he'd then pay a fee for Pension Works to complete further work.

Pension Works also explained, amongst other things, that if the matter proceeded to the full advice stage and its recommendation was then not to transfer, it wouldn't be able to proceed with a transfer against its own recommendation due to its company policy. It referred Mr H to some of its literature and sent him its terms of business. Mr H indicated he understood the process. He said he'd worked in the financial services industry throughout his career and he was aware of the 'rigour' associated with DB transfers.

Pension Works carried out a fact find with Mr H. Amongst other detail, it noted the following about him and his personal circumstances:

- He was aged 57, married with three children, one of whom was financially dependent on him.
- He and his wife had each suffered from health issues.
- He owned his own home worth around £725,000 and had an outstanding mortgage of around £39,000.
- He earned a salary of £64,000 a year – which equated to around £3,600 net a month. His wife earned £894 a month.
- He had essential outgoings of around £2,255 a month and paid roughly £190 a month to help fund his lifestyle.

- Amongst his other assets he had a Cash ISA worth £1,850, a stocks and shares ISA worth £600 and Premium bonds of £724.
- He expected to benefit from a sizeable inheritance in future*.*

Mr H's main aims and objectives were to:

- Hopefully reduce his working week to three days (he hadn't formally approached his employer at that point) before fully retiring around the age of 62. He wanted to enjoy more quality time with his wife whilst they were well enough to enjoy life.
- Leave a legacy to his wife and children on his death.

Mr H described his attitude to risk as 'very optimistic' and based on the answers he gave, his risk profile was 8 out of 10, with ten being highest risk.

Mr H was in the process of transferring the majority of his DC pension mentioned earlier, leaving a nominal amount invested.

Pension Works produced an initial advice report dated 1 July 2022. It recommended that Mr H remained in both of his DB schemes as it felt it would be unsuitable for him to transfer out. When explaining the recommendation to Mr H during a phone call, the adviser explained that the findings largely hinged on the '*Why now?*' test. The adviser felt that Mr H would be able to reduce his working hours and maintain his standard of living without having to transfer his DB pensions. He could do this by supplementing his income using his DC scheme. Therefore, he felt it would be better for Mr H to leave his DB pensions where they were and revisit the position closer to retirement age when his plans were more defined. Mr H said he didn't understand why the recommendation was to remain in the scheme, given the long discussion about his personal circumstances and his understanding and experience of the financial regulations. He described the recommendation as a "*devastating blow".*

Mr H complained to Pension Works about the poor advice he received. Amongst other things he said it should have recommended he transfer his DB pensions at the time, rather than wait another three years. He said Pension Works' recommendation had ruined his and his wife's retirement and he'd struggle to live/retire at 67 on the income from his DB schemes. Mr H said he'd since become aware of an 'insistent client' process but wasn't told about that before. To put things right, he wanted Pension Works to compensate him for any reduction in the transfer value; the loss of tax-free cash and investment opportunities. He also wanted Pension Works to recognise the distress it caused him. Mr H said he was still trying to understand and come to terms with how he'd been so poorly advised.

Pension Works responded in September 2023. It was satisfied its advice for Mr H not to transfer was correct. Its key reasons were he was in good health; he was five years away from his preferred retirement age of 62 and had a DC pension he could draw on if required. So, there was no need for him to make the "*irreversible"* decision to transfer out of his DB schemes, especially given the other options available. And it said it made it clear at the outset that it couldn't proceed on an insistent client basis. Also, it wasn't responsible for the fact that Mr H chose not to pursue a transfer through another provider at the time, or from any losses arising from his decision.

Mr H wasn't happy with Pension Works response, so he complained to the Financial Ombudsman Service. One of our Investigators looked into the complaint, but she didn't think Pension Works had done anything wrong. She was satisfied Pension Works explained at the outset that if the recommendation at the abridged advice stage was not to transfer, its company didn't allow it to arrange a transfer against its own recommendation. She was satisfied its terms of business made this clear too. The Investigator didn't feel it was unfair for Pension Works to have made the recommendation that it did not least because she'd seen no compelling reason for Mr H to transfer his DB pensions at age 57. She was also satisfied that Pension Works had clearly explained the process and hadn't led Mr H to believe the transfer would go ahead.

Mr H didn't accept the Investigator's assessment. He said he'd lost faith in regulation and had been *"robbed"* of five years of retirement. He felt Pension Works wasted his time and said it seemed clear it was never going to recommend a transfer. He maintained he was not made aware Pension Works didn't offer an insistent client process at the time. Mr H feels that Pension Works failed in its basic financial advice and "*the economics of their decision make absolutely no sense at all".* He asked an Ombudsman to consider the matter afresh. It's been passed to me to decide.

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 doing so I've also taken into account relevant law and regulations, the regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. In particular, I've considered the Principles for Businesses (PRIN) and the Conduct of Business Sourcebook ('COBS') which are included in the Financial Conduct Authority's (FCA) Handbook.

Relevant here is what's set out in PRIN 6: A firm must pay due regard to the interests of its customers and treat them fairly.

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

I've also considered what's set out in COBS 19.1 regarding DB transfers.

I fully appreciate Mr H's strength of feeling concerning the issues leading to this complaint. And it's evident that Pension Works recommendation not to transfer his DB pensions has had a significant effect on Mr H's well-being and retirement plans. While I understand Mr H's concern, my role here is to say, based on the evidence I've seen, whether Pension Works acted fairly and reasonably. In arriving at that determination, I have taken account of Mr H's personal circumstances and objectives and Pension Works' regulatory responsibilities in this kind of situation.

And, for broadly the same reasons our Investigator gave, I'm also satisfied that Pension Works acted fairly and reasonably when advising Mr H. So, I won't be directing it to take any further action. I fully appreciate that this is likely to come as further disappointing news to Mr H, so I hope my explanations below are helpful in demonstrating how I've arrived at this decision.

The advice

During the fact-find process, Mr H referred to the "*rigour"* surrounding transfers from DB schemes. He described the fact find as an *"explore"* interview and acknowledged that the adviser had to give balanced advice. However, he said he was well aware of the risks associated with what he wanted to do and was satisfied, having given careful thought to it, that transferring was the best thing for him. Some of this understanding appears to come from Mr H's own career in the financial services industry.

But, regardless of any prior understanding that Mr H had, Pension Works still had to act in line with COBS and PRIN. It also had to pay close attention to what the FCA says about DB transfers. That is, for the majority of consumers, transferring out of a scheme that offers valuable guaranteed benefits on retirement, won't be suitable.

This is set out in paragraph 19.1.6 (2) of COBS which says:

"When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable".

So that's the backdrop against which I considered this complaint.

If Pension Works was to recommend a transfer in Mr H's case, it needed to demonstrate, based on the contemporary evidence it gathered, why a transfer was considered to be in Mr H's best interests *overall*. This wasn't simply about helping Mr H to fulfil his wishes. Pension Works had to gather enough information to ensure it fully understood Mr H's needs and objectives and was able to carefully explain any recommendations it made in light of those circumstances.

Mr H now thinks Pension Works wasted his time in going through the process when it was unlikely to recommend a transfer. But I don't think his position is supported by the evidence.

First, until it gathered information from Mr H, I don't think Pension Works could have known with any certainty what the likely outcome would be.

Second, I've listened to various calls between Mr H and different advisers, particularly during the early part of the process. And I've heard each of them clearly explain that there would be two possible outcomes to the abridged advice process. I've set those out above but for ease of reading I'll repeat them here. Those were:

- Unsuitable – meaning there would be no merit in taking things further and the process would end there.
- Unclear – meaning there would be merit in potentially looking into things more closely. If Mr H agreed, he'd then pay a fee for Pension Works to complete further work.

Nothing I've heard causes me to think that Mr H was given the impression the recommendation would be to transfer. If anything, given the possible outcomes I've described above, if Pension Works was minded to make such a recommendation, it could only have done so once it had taken Mr H through a more rigorous process and he'd paid a fee for that service. So, I don't think it's something Mr H ought to have expected at the end of the abridged advice process.

Also, I appreciate Mr H may not agree, but by explaining the process in the way it did, I think Pension Works actually tried to prevent time from being wasted by explaining that it was entirely possible Mr H could come away without the recommendation he was hoping for. If he'd chosen not to proceed on those terms, Mr H could then have opted to approach another adviser. As it was, Mr H indicated he understood the explanations Pension Works gave him and things proceeded on that basis.

Mr H told Pension Works that a key objective for him was to reduce his working hours, so that he could spend more quality time with his wife. I can certainly see why that might be a priority for him, especially as he and his wife had both previously experienced periods of ill health. Therefore, whilst their health was relatively stable by the time he sought Pension Works advice, Mr H said they wanted to enjoy life. And he felt that by transferring his DB pensions, he'd be able to maintain a similar standard of living by supplementing his reduced income as he needed.

Part of the advice process also required Pension Works to consider other ways that Mr H might be able to achieve his aims without the need to transfer his DB pensions at all. That's important because of the valuable and guaranteed benefits that a DB pension is intended to provide in retirement. Therefore, if there was a viable alternative to transferring the DB schemes, that's something that Pension Works needed to explore. And I'm satisfied that's what happened in Mr H's case.

I can see that during the advice process, Mr H said he was also in the process of transferring a separate DC pension with a value in the region of £185,000 to a more flexible arrangement. Pension Works thought about how the DC scheme could help fund Mr H's retirement, including bridging the income gap that would exist if Mr H went ahead with his plans to reduce his working hours. It also established that he'd be able to make withdrawals from the DC pension whilst also continuing to contribute to it. It prepared a range of other cashflow models too with and without Mr H taking benefits from his DB schemes. But, ultimately, Pension Works analysis showed that even if Mr H's earnings reduced following a change in working hours, together with his wife's income and the available funds from the DC scheme, he'd still be able to meet his outgoings and maintain his standard of living without the need to access his DB pensions at that point. Given the position that Pension Works arrived at, I can certainly see why that would be a factor in favour of remaining within the DB schemes at that point at least.

In those circumstances, I think it was reasonable for Pension Works to give the recommendation it did. Importantly, using his DC pension to supplement his reduced income meant that Mr H would be able to achieve part of his objectives without putting his safeguarded and guaranteed DB pensions at unnecessary investment risk. And those pensions would also be subject to escalation once in payment. Again, bearing in mind the regulator's starting position, I don't find Pension Works' recommendation unreasonable. I'm also satisfied that it took account of the relevant factors in its analysis, including Mr H and his wife's previous ill health.

Mr H also said he wanted to provide a legacy for his wife and family in the event of his death. This isn't an unusual objective and I think most people, when asked, would say this is important to them. And whilst this is something that Pension Works needed to have regard to, I think its priority here was to make a recommendation concerning Mr H's retirement provision. That's because a pension is primarily designed to provide income in retirement not to leave as a legacy on death. So, when saying that Mr H should leave his DB pensions where they were (at that point at least) I think Pension Works thought about how Mr H could preserve his valuable benefits for his retirement. Those benefits would also include spousal benefits for Mr H's wife in the event of his death. Again, I don't think it was unreasonable for Pension Works to prioritise Mr H's guaranteed benefits in retirement over potentially higher death benefits for his loved ones. I say that in particular because, it seems likely there would have been other ways for Mr H to have provided a legacy. For example, through an insurance policy designed specifically for that purpose, or through the remaining provision within his DC scheme. So, again, given the regulator's starting position, I can't say that Pension Works acted unfairly or unreasonably in relation to this particular objective.

Did Pension Works clearly explain that it wouldn't process a transfer under an 'Insistent Client' process?

An insistent client is a term generally used to describe a customer who wishes to proceed with a transaction against a financial adviser's regulated advice.

Mr H is adamant that Pension Works didn't tell him it wouldn't take things forward via an insistent client process in the event that it didn't recommend a transfer. But I don't think that position is supported by the evidence either.

As I mentioned above, I've listened to various calls between Mr H and Pension Works. And I'm satisfied that from the outset, it explained the two possible outcomes that would follow from the abridged advice process. Those included a recommendation to leave the DB pensions where they were if that was felt to be in Mr H's best interests. I've heard different advisers clearly say that in the event a transfer wasn't considered to be in Mr H's best interests, Pension Works wouldn't go against its own advice as that was against company policy (it seems this policy may have changed since). Whilst I accept that the advisers didn't use the term 'insistent client', I'm satisfied that the explanations were clear enough for Mr H to understand what they meant.

However, the terms of business sent to Mr H do clearly mention 'insistent client'. Under a heading of "*The service we offer*" it says: "*We will only recommend you transfer your existing DB pension scheme where we can demonstrate it is in your best interests to do so. Should we recommend you remain in your existing scheme we will set out the reasons why we have determined this is the best outcome for you. If you do not accept our outcome and request to transfer your benefits regardless, we would not be prepared to proceed on that basis. This means that if you cannot arrange the transfer directly, you would have to find an alternative firm that considers the transfer to be suitable or a firm that deals with client instructions that go against the advice that has been given (this is known as an "insistent client").*

Elsewhere in the document, it explained "*an insistent client is a client who is given a personal recommendation by a firm but decides to enter a transaction that is different from this recommendation and wants the firm to arrange it. With DB transfer advice, this is most likely to happen when a firm recommends a client keeps their DB scheme but the client wants to transfer anyway. Pension Works will not undertake business with insistent clients."*

Therefore, even if Mr H didn't recall some of the explanations he was given during phone calls, I think the position ought to have been clear to him from the written information Pension Works sent.

In summing up, I do appreciate Mr H's grave disappointment that Pension Works didn't recommend a transfer. But for the reasons I've set out above, I'm not persuaded that it acted unfairly or unreasonably in doing so. I'm satisfied that Pension Works followed a fairly comprehensive process and that it gave Mr H clear explanations upfront about the possible outcomes. It also took the time to explain, at the end of the abridged advice process, why it didn't recommend a pension transfer.

For all of those reasons, I won't be directing Pension Works Limited to do anything else.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 24 April 2024.

Amanda Scott

Ombudsman