DRN-4149621

The complaint

Mr C complains about the advice given by Aon Consulting Financial Services Limited (Aon) via its representative Godwins Ltd (Godwins) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension with a third party. He says the advice was unsuitable for him and believes it has caused a financial loss.

What happened

Our Investigator thought the complaint should not be upheld. Mr C disagreed with the Investigator's opinion. The complaint was then passed to me.

After receiving some new information, I issued my provisional decision also saying that Mr C's complaint should not 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

In 1995 Mr C was in contact with Godwins. Aon accepts that it is now responsible for the advice Mr C was given to transfer the benefits of his DB scheme to a personal pension.

There isn't a suitability report, or any other advice related documentation from the time of sale. I do have the product providers administration file that has the application forms and some illustrations from 1998. I've also received some information from the DB scheme and Mr C has provided some information about his personal situation. It's unfortunate that the advice information from the time is now no longer available, but I think I have been able to reach a fair conclusion about the merits of the complaint despite this.

I understand from the point-of-sale documentation I have, and the further information I've received, that Mr C:

- *Was 31 years old, divorced and he had a young dependent child.*
- *Was employed.*
- *Didn't have any health problems.*
- *Had no savings or investments, and no liabilities. He thought his attitude to risk was low.*
- *Couldn't recall a specific need for the transfer.*

Godwins advised Mr C to transfer his DB scheme to a personal pension in 1995. The transfer amount was £16,594.

In January 2012 this personal pension was transferred to another provider. The transfer value was £38,271.78.

Mr C complained in May 2021 to Aon about the suitability of the transfer advice. He said that he had lost his accrued, and future, guaranteed benefits. He was an inexperienced investor and did not understand, or want to take the risk of, the transfer. He said that if he was made aware of the full implications of the transfer, he would not have proceeded with it.

Aon didn't uphold Mr C's complaint. It said that he accepted the risk of the transfer, and he would have been provided with full information, such as an illustration and a letter of recommendation, at the time of sale. He would have agreed with these in order to proceed.

Aon said that Mr C could refer his complaint to the Financial Ombudsman Service but that it didn't think the Financial Ombudsman should consider it. This was because it had been brought out of time. Mr C referred his complaint here.

Our Investigator firstly looked at the jurisdiction of the complaint. He didn't think that Mr C had complained too late. This was because Mr C didn't have enough information to be able to say that he may have lost out any time before he complained. I've already considered whether the complaint was brought in time, and I've issued a decision saying the complaint is one that we can consider. I've gone on to look at the merits of it.

Our Investigator didn't uphold the complaint. He thought that there wasn't enough evidence to say that the sale of the plan was unsuitable for Mr C. And so, he didn't think it should succeed.

Mr C's representative disagreed on his behalf, although it didn't provide any reasons why. It requested that his complaint was considered by an ombudsman.

The Investigator wasn't persuaded to change their opinion, so the complaint was referred to me again to make a decision about the merits of the complaint.

What I've provisionally 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.

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 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 Aon's actions here.

The advice was provided by Godwins in 1995. At this time, it was regulated by the Personal Investment Authority ('PIA'). I understand Godwins was a previous member of the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). When the PIA took responsibility for LAUTRO businesses in 1994, they adopted the LAUTRO rules. And these adopted rules applied at the time of the advice in this case.

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.

Given the lack of information from the point of sale I've not been able to say with certainty that LAUTRO is the correct regulatory framework. Godwins could also have been a member of an alternative regulatory body FIMBRA, but the applicable rules and guidance are very similar and, in *this case, Godwins should have essentially followed the same process. So, I don't think this uncertainty is material.*

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

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. The discount rate was 10.7% per year for 33 years to retirement in this case.

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 don't have any information from the time of sale about what information Mr C was given about the likely performance of the personal pension and what the transfer could provide. But I have looked at the information I have received to see if I can determine what Mr C might have been told at the point of sale.

Mr C's scheme has provided information about the benefits he gave up. This was a pension of £3,819.57 a year in 1995. This was comprised of £549.12 that would increase at 7% per year and £3,270.45 that would increase by 5% per year in deferment. The increases would be applied until it became payable at his age 65 in around 32 years time.

So, increasing the deferred pension amounts by the percentages given by the scheme for 33 years to retirement gives an annual income of £5,124.61 and £30,521.14. Which is a total pension of approximately £35,000 per year in 2029 at his age 65. This is of course a significant amount.

I have an illustration from November 1998 that shows that the fund had grown to £27,548. This illustration shows that going forward the fund could grow to £577,898.26 in September 2029. It goes on to show that this would give Mr C a pension of £69,805.84, or a reduced pension and some tax-free cash. The illustration doesn't explicitly say the growth rate that is used but I've estimated this to be around 10.5%.

I think that Godwins would have likely provided Mr C with similar information to that shown in the illustration at the time of sale. That is, it would have shown that his fund would grow by around 10% or slightly above. And this would show that he was likely to receive a pension that was above what he was giving up from the DB scheme. And these would have been reasonable assumptions at the time.

In fact, using what was considered to be a reasonable growth rate at the time would likely have shown that Mr C would receive an income that was in excess of his DB scheme. The growth rate of around 10% in 1998 shows that Mr C would receive over twice what I've estimated the DB scheme would provide. So even a much lower growth rate would still have shown that the DB transfer was viable.

Of course, these are only estimates. And I've noted that the personal pension performed very well between 1995 and 1998 which of course makes this comparison less accurate. But even considering this, and also taking into account the composition of assets in the discount rate, Mr C's attitude to risk and also the term to retirement. I think, it's likely that Mr C proceeded on the basis that he was unlikely 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. And it was likely for Godwins to have advised him on this basis.

With this in mind, I don't think the recommendation to transfer out of the DB scheme was unsuitable for Mr C.

I've also thought about some other aspects of the transfer that may have applied to Mr C. I appreciate that they may not have been discussed at the time of sale, or at least there isn't any evidence that they were. But these issues can be important. So, I shouldn't disregard them.

It could have been that Mr C was attracted to the flexibility of the personal pension in retirement. And bearing in mind that Mr C still had a significant amount of time until his retirement and he would have the opportunity to make other provisions. So, this wouldn't be unreasonable.

And the information I've seen shows that Mr C may have been able to take a larger amount of tax free cash than he would have been able to from the DB scheme at retirement. Mr C did have a dependent child, but I understand he wasn't married. So, the spouses pension the DB scheme had may not have been useful to him. Mr C may have preferred the different provisions on death that a personal pension can offer.

Overall, I don't think it's reasonable to say that Godwins recommended an unsuitable product to Mr C.

Developments

Aon, and Mr C, received my provisional decision. But neither made any comment about what I said in my provisional decision after they'd seen it.

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.

Aon and Mr C didn't raise any new points after receiving my provisional decision. So, I've reached the same conclusions I reached before, for the same reasons. Overall, for the reasons I've outlined above, I don't think the advice Godwins gave to Mr C to transfer his DB scheme benefits away to a personal pension was unsuitable for Mr C.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 September 2023.

Andy Burlinson
Ombudsman