

## **The complaint**

Mr P complains that AFH Independent Financial Services Limited ('AFH') gave him unsuitable advice not to transfer the benefits from his deferred Defined Benefit ('DB') occupational scheme to a personal pension arrangement. He says there were delays in the advice process and AFH wouldn't carry things out on an insistent client basis despite telling him that it would.

## **What happened**

The following is a summary of the key event leading up to this complaint.

Towards the end of June 2021, Mr P approached AFH for advice about his existing DB pension scheme because he was interested in transferring his benefits to a Self-Invested Personal Pension ('SIPP') with a view to purchasing commercial property.

Mr P completed some documentation and provided some personal information to enable AFH to produce a fact-find, which recorded information about Mr P's circumstances and objectives. Amongst other things this recorded that Mr P was 40 years old; he was single; he was self-employed; he owned two properties, both of which had outstanding mortgages on; and based on his previous banking and investment experience, he wanted to transfer his DB pension benefits to invest in commercial property. AFH also carried out an assessment of Mr P's attitude to risk which it deemed to be 'adventurous' – a score of '4' on a scale of 1-5.

In an abridged advice report dated 24 August 2021 (emailed to Mr P on 24 September 2021) AFH advised Mr P to remain in his DB scheme. It said the reasons for the recommendation were because Mr P was not yet in a position where giving up guarantees could be considered prudent and because it deemed his plans were very ambitious, and there were other routes for pursuing his goals without giving up the guarantees associated with his DB scheme.

In September 2022 Mr P complained to AFH about the advice and service he received. In summary Mr P said that he was disappointed with the advice not to transfer – he considered the advice was not competent; he was disappointed he couldn't proceed as an insistent client; the level of service he received was unsatisfactory – Mr P had to do lots of chasing of the adviser; he was told by the adviser on a video call he had a strong case to transfer and they agreed with his view; he was also told on video call he could be an insistent client; and because he wasn't able to transfer, Mr P said he's suffered a loss because his transfer value is now lower. Mr P requested that AFH carry out the transfer, which he still wanted to do, based on the transfer value at the time of the original advice.

AFH didn't uphold Mr P's complaint. In a final response letter of October 2022 it said that the starting assumption for DB transfers is that a transfer will not be suitable. It said Mr P was made aware of this, along with the only two possible outcomes of abridged advice: either remain in the scheme or the outcome is unclear in which case full advice could be offered. It said it had found no evidence that Mr P was told a transfer was a foregone conclusion or that it would offer him an insistent client option. It said that it had understood and assessed Mr P's circumstances and objectives and having done so, while it believed Mr P's assets

gave him a strong foundation to build on, and it acknowledged his plans for a commercial property purchase, it didn't believe he was able to give up the valuable guarantees provided by his DB pension scheme. It said that as Mr P's DB scheme represented a significant portion of his retirement income against the backdrop of a significant interest only mortgage that had no apparent means of repayment, it maintained that its advice not to transfer was the right one. It said that its decision not to offer an insistent client option was also the right one because it didn't think it was in Mr P's best interests to transfer.

Dissatisfied with its response Mr P brought his complaint to our Service. An investigator didn't uphold the complaint. In summary they said there was no evidence that AFH's advice to Mr P not to transfer his DB scheme benefits was unsuitable or that it didn't act in his best interests. They said Mr P's DB scheme was his only pension and his plans were uncertain and high risk. They also didn't think Mr P's desire to increase the death benefits available to his beneficiaries was a good reason to transfer. They said there was no evidence of significant delays in the advice process and it was AFH's decision whether or not to provide Mr P with an insistent client option. They said there was no evidence it told him it would offer this to him. They said they didn't think AFH had done anything substantially wrong and so they couldn't hold it responsible for the decrease in Mr P's transfer value - notwithstanding that because Mr P hasn't transferred he's not suffered a loss in any event.

Mr P disagreed. In summary he said there were several inaccuracies in the investigator's report which were based on the many inaccuracies within the abridged advice. Mr P said all the conversations he had with AFH were supportive of his decision to transfer out. He said these conversations took place on video calls and he can't believe AFH doesn't have any records of these. Mr P considers AFH is withholding evidence. He said he believes it is for the regulated firm to provide beyond reasonable doubt they are right – he considers omission of evidence is a sign of guilt and that the ruling should be in his favour. Mr P believes from a regulatory perspective he should've been able to transfer out. Mr P said that he found another advice firm who would help him, but because of the losses incurred as a result of the poor advice from AFH, he didn't go ahead. Mr P repeated his wish to transfer out at the same value as he should've been allowed to in 2021.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

### **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.

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'). 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 AFH's actions here.

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

*PRIN 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 not uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

### *The regulator's position*

I think it's important to set out here that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AFH should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. I understand Mr P disagrees with this starting position, but these are the regulatory rules businesses like AFH must follow when giving this kind of advice.

### *Abridged advice*

In providing advice on his DB pension, AFH took Mr P through an abridged advice process as permitted under FCA rules.

Abridged advice was introduced by the FCA in 2020. Its aim is to provide advice at a much lower cost to full advice. And while it begins the same way as full advice (the presumption of unsuitability also applies to abridged advice) including a full fact-finding exercise, attitude to risk assessment and confirmation of the existing scheme benefits, it must not include any assessment of the receiving scheme or analysis such as Transfer Value Comparator ('TVC'). Crucially, it can only result in one of two outcomes. COBS 19.1A sets out what these two outcomes are and how a business, like AFH, should act in giving abridged advice:

*"A firm giving a retail client abridged advice must either:*

*(1) Make a personal recommendation that the client remains in their ceding arrangement; or*

*(2) do all the following:*

*(a) inform the client that they are unable to take a view on whether it is in the client's best interests to transfer or convert without undertaking full pension transfer or conversion advice, even when the firm considers that it may be in the client's best interests;*

*(b) check if the client wants the firm to provide full transfer or conversion advice and check that the client understands the associated cost"*

I'm satisfied based on what I've seen that it was reasonable for Mr P to have understood the only two possible outcomes that could result in AFH giving him abridged advice and what its fee would be for the advice. Mr P signed AFH's abridged advice fee agreement where this information was, in my view, clearly set out.

AFH's abridged advice outcome report (dated 24 August 2021) was communicated to Mr P by email on 24 September 2021. The report's conclusion was that Mr P should retain his DB scheme benefits. I'm satisfied AFH's abridged advice did not therefore go beyond what it was permitted to conclude.

### *Suitability of the advice*

I can see Mr P believes the advice given to him to retain his DB scheme benefits was wrong and negligent. So I've considered the advice AFH gave him.

Having done so, I think the conclusion reached by AFH that Mr P should retain the benefits in his DB scheme, was fair and reasonable in the circumstances.

It's clear from the advice paperwork that Mr P had experience of investing and that he was confident he could achieve returns greater than he'd receive by remaining in the scheme. It appears Mr P had a plan of how he was going to achieve things. But AFH's role here wasn't simply to transact what Mr P wanted it to do. Its role was to advise Mr P, and in doing so it had to look beyond what Mr P wanted and what he felt was the best approach and make a determination of what it believed was in his best interests overall.

From the recommendation report AFH produced, it's clear that it believed Mr P's chosen path, which was to give up a guaranteed income in retirement for the opportunity of utilising his pension monies to purchase and so invest in commercial property wasn't in his best interests. AFH's conclusion was that, at this stage in Mr P's life and based on his current assets and liabilities, while his financial position was promising, he wasn't yet in the position where giving up the guarantees his DB scheme would provide was a prudent move to make. I can see AFH recorded for example that Mr P had outstanding interest-only debts totalling £185,000, which he needed to repay at some point in the future. It doesn't appear Mr P had a repayment vehicle in place. And his plan to rely on the state pension wasn't sensible given he was yet to accrue much by way of National Insurance contributions. I also note that AFH expressed concern that Mr P's plans were ambitious and uncertain, but that his entrepreneurial goals could be achieved by remaining in the DB scheme – transferring wasn't the only way he could achieve things. It said the transfer was not a pre-requisite for any business plans he had. I think these were fair and reasonable conclusions for AFH to make at the time.

I can see that in completing AFH's questionnaire about his retirement objectives, Mr P indicated that he wanted his family to benefit from his pension. But in giving advice, the priority for AFH was to make a recommendation concerning Mr P's retirement provision. That's because a pension's primary purpose is to provide an income in retirement – that's what it is designed for. It is not designed to be primarily used as an inheritance planning tool. So I don't think it was unreasonable for AFH not to place greater weight on death benefits for his loved ones over Mr P's retirement income needs.

I understand that Mr P disagrees with AFH's advice and recommendation. He's also said the advice was based on inaccuracies – although I can't see that he's been specific here.

But I'm satisfied based on the evidence presented that the advice was based on Mr P's circumstances and needs at the time and that having considered these AFH deemed he should retain his DB scheme because it wasn't in his best interests to transfer to a personal pension arrangement. I don't think AFH acted unfairly or unreasonably here.

I can see that Mr P says he was told by the adviser he had a strong case to transfer and that they agreed with his view. In addition he says he was told he could be an insistent client. Mr P says this happened on video calls and he's expressed concern and disappointment

that AFH haven't produced recordings of them. Mr P has also said he believes AFH is withholding this evidence.

Firstly, I've seen nothing to support Mr P's view that AFH is withholding evidence. AFH says these calls weren't recorded and that any notes from the calls would've been recorded in the fact-find. In my experience it is not unusual for these types of call to not be recorded. Looking at what evidence is available, including the WhatsApp messages and emails between Mr P and the adviser, some of which Mr P himself has provided, I've seen no evidence to support Mr P being told by AFH that he had a strong case for transfer or that he could conduct matters on an insistent client basis. Given Mr P was being taken through the abridged advice process, it seems unlikely to me the adviser would've talked positively about transferring when there were only two outcomes that could result from the advice at this stage as I set out earlier – neither of which was a positive recommendation to transfer.

I can see that Mr P would like to go ahead with the transfer of his DB pension and he wants AFH to allow him to do so and based on the transfer value at the time. But in this case AFH's advice is that Mr P should not transfer and it stands by its advice. It has also made it clear that it will not facilitate the transfer on an insistent client basis. AFH is under no obligation to do so and I can't compel AFH to do so. As Mr P knows, he is free to approach another firm if he still wishes to transfer his pension.

I can see that Mr P has expressed concern about the length of time the advice process took and that he had to chase the adviser several times for the report. He's also said that because his transfer value is now lower he's suffered a loss because he can't now execute his plan. But AFH's advice was that Mr P should retain his DB pension – so Mr P hasn't lost out as a result of any delay there might have been in the advice process (notwithstanding that I'm not persuaded there were any significant delays.) And just because Mr P's transfer value might now be lower doesn't mean AFH's advice to retain his DB pension was unsuitable. As I've set out above, I think the conclusions reached by AFH in its recommendation to Mr P were reasonable in the circumstances.

For these reasons, AFH is not responsible for any loss Mr P feels he has suffered as a result of the advice he received - there is nothing AFH needs to do to put things right.

### **My final decision**

For the reasons above, I've decided to not uphold this complaint – so I make no award in Mr P's favour.

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

Paul Featherstone

**Ombudsman**