

The complaint

Mr W complains about advice he received from WPS ADVISORY Ltd ('WPS') in relation to the transfer of benefits from a defined-benefit ('DB') occupational pension scheme.

What happened

Mr W held deferred benefits in a DB scheme from a period of previous employment. The scheme was subject to a buy-out by an insurer, which was announced in 2020. As part of this, Mr W's former employer arranged for members of the scheme to have access to advice from WPS about their pensions, and the employer would cover the cost of this.

In September 2020, the DB scheme provided a transfer valuation of Mr W's benefits. The cash equivalent transfer value ('CETV') at that time was £215,067.50.

Mr W took up the option of receiving advice from WPS. WPS completed a fact find to gather information about Mr W's circumstances and objectives. Mr W was 52, in good health, married with three children, two of which were financially dependent, and he worked full time as a contractor. Mr and Mrs W owned their own home and three further investment properties (one of which was held jointly with Mrs W's parents) providing additional rental income. They had mortgages totalling £60,000 but also had savings of an equivalent amount, earmarked to repay the mortgages in full. WPS recorded that Mr W was interested in retiring at age 55 but accepted this might not be affordable and instead he may switch to working part time for a few years. He and Mrs W expected to need an income of at least £2,035 per month in retirement.

WPS also noted that while, prior to the pandemic, Mr W may've been more willing to take risk, he was now more risk averse and wasn't looking to take risk for several years.

On 10 November 2020, WPS gave Mr W its written recommendation. WPS said its analysis showed that the cost of replacing the benefits he'd be giving up was £357,134, over £142,000 more than the CETV. Mr W could not access benefits from his pension at that time, based on his age, and he had no clear need for additional income or capital from the pension. It also noted that Mr W was uncomfortable with risk. As a result, it didn't think a transfer at that time was in his interests as he could revisit this when he did come to retire. The report noted there were risks associated with this recommendation – including that any future transfer value could be lower (or higher). But WPS advised him not to transfer his DB scheme benefits.

Mr W retained his benefits in the DB scheme. The insurer later became responsible for providing the benefits due under the DB scheme as part of the buy-out.

In 2022, Mr W obtained a CETV from the insurer, which was now his pension provider. The CETV at that time was just under £124,000.

Mr W complained to the insurer as he felt this value had been calculated incorrectly. That complaint was considered separately by our service under a different reference.

Mr W also complained to WPS about the advice he'd been given as he now felt this was unsuitable and that a transfer should've been recommended. He said WPS hadn't made him aware that the transfer value could fall so substantially and says it had said this would not occur.

WPS rejected Mr W's complaint. It said the advice it had provided was suitable as there was no reason at the time for Mr W to give up the guaranteed benefits the existing pension provided. It said it had explained that transfer values could change. And in any event, while the CETV had changed, because of market conditions making the cost of replicating benefits more favourable, Mr W retained his guaranteed benefits.

Mr W asked our service to look into the matter. One of our Investigator's considered the complaint but didn't think it should be upheld. He thought the advice to retain Mr W's benefits was suitable, particularly bearing in mind the regulator's position that the starting assumption when considering a DB transfer is that it will be unsuitable. And he was satisfied that WPS had explained that transfer values could fluctuate in the future and that it wasn't possible to predict by how much. He accepted WPS had said it thought the transfer value falling by half was 'unlikely', but he didn't think this was unreasonable.

Mr W did not accept the Investigator's opinion. He said the adviser should not have expressed the opinion that a significant fall in value was 'unlikely', noting this has proven not to be the case. He also says the relationship between transfer values and interest rates and how CETV's were calculated should've been explained more clearly to him. Without this, Mr W says he wasn't given clear enough information to allow him to make an informed decision. And his CETV was at a level unlikely to be achieved again and he would've acted differently, if this had been explained.

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 think it's important to firstly explain I've read and taken into account all of the information provided by both parties, in reaching my decision. I say this as I'm aware I've summarised Mr W's complaint in less detail than he has. If I've not reflected something that's been said it's not because I didn't see it, it's because I didn't deem it relevant to the crux of the complaint. This isn't intended as a discourtesy to either party, but merely to reflect my informal role in deciding what a fair and reasonable outcome is. This also means I don't think it's necessary to get an answer, or provide my own answer, to every question raised unless I think it's relevant to the crux of the 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 Business ('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 crux of the complaint is that the advice WPS provided to Mr W was unsuitable and incomplete and has led him to lose out on a higher transfer value.

As I've explained, as part of the proposed buy-out of the DB scheme, Mr W's former employer arranged for advice to be available to scheme members from WPS. Because of the transfer value of Mr W's pension benefits he was required to take regulated financial advice before he could transfer. That transfer value was not enhanced because of the buy-out. While his former employer was covering the cost of the advice, I'm satisfied that WPS was acting independently and for Mr W when it provided him advice. And Mr W wasn't restricted to taking advice from WPS and he could've approached a different adviser at his own cost, if he so chose.

WPS' role, as a regulated financial adviser, was to consider Mr W's circumstances and objectives, have regard for the relevant rules and regulations – not least COBS 9 which deals 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 – and recommend what it believed to be in Mr W's best interests. It also had to bear in mind 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. And so, WPS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W's best interests.

Mr W has said it was always his intention to transfer his pension and access his pension benefits flexibly, including taking tax-free cash. And he only delayed doing so because WPS indicated his CETV would not fall substantially. Notwithstanding that WPS' role wasn't just to put in place what Mr W might've wanted, this objective being set in stone isn't reflected in the information from the time. I've seen a copy of the information WPS recorded as part of its fact finding and have been provided a copy of the call in which all of this was discussed. And while Mr W was interested in potentially retiring from age 55, he was clear that he also felt this may not be affordable and that he may alter his working arrangements instead from that age. He was also clear, in my view, that he didn't have a specific need to access a lump sum and didn't know if he would or should access this. And he explained the purpose of speaking to WPS was that, with so much about future circumstances unknown, he wanted advice about what he should do.

Looking at the information recorded at the time, I'm satisfied that WPS understood Mr W's circumstances before giving advice - which was in line with what it was required to do.

Having taken these circumstances into account WPS recommended that Mr W should not transfer his benefits – setting out the reasons in a written report.

Again, although Mr W has indicated he disagrees, I don't think at the time of the advice he said that it was his firm plan to transfer his pension and access this flexibly. He was clear in his discussions and correspondence with WPS that he didn't know how he'd access benefits and wanted advice. So, I think it was reasonable for WPS to conclude that he didn't *need* flexibility in his pension benefits at the time.

Mr W did indicate that he and Mrs W expected to require a certain level of income, which the DB scheme wouldn't alone have provided. But the DB scheme was only part of their income provisions – they were receiving rent from investment properties and Mr W had other pension provisions. So, I don't think he needed to transfer to be able to draw a greater income from this policy. And I don't think he was likely to improve his benefits by transferring.

Mr W explained to WPS he was risk averse. The DB scheme would provide Mr W with a guaranteed escalating pension in retirement and provided the option to take a tax-free lump sum. There was no risk involved to Mr W in respect of these benefits – the DB scheme or the insurer, if the buy-out went ahead, had to provide them. So, these benefits were

appropriate to his attitude to risk.

WPS was required to carry out a transfer analysis by the regulator. And as part of this, it was required to produce a transfer value comparator ('TVC') – an estimate of what sum of money the consumer would need to invest at that point on a risk-free return basis to provide equivalent benefits to the DB scheme at retirement. Mr W was being offered a CETV of £215,067.50. The TVC estimated Mr W would need to invest £357,134 on a risk-free basis in order to replicate the benefits the DB scheme would provide at age retirement. So, the CETV wasn't enough at that time to replicate the guaranteed benefits of the DB scheme. And if the CETV was invested on a risk-free basis would've resulted in him receiving lower benefits at retirement. In order to make up that deficit, Mr W would've had to achieve growth in his pension, through investments. These would've involved a greater level of risk than Mr W indicated he was comfortable with. And given the size of the shortfall and the relatively short time until retirement, it appears unlikely that this level of growth could've been achieved. And so, Mr W was likely to receive benefits of a lower overall value as a result of transferring and investing in line with his attitude to risk.

The DB scheme pension also provided a spouse's pension in the event Mr W were to pass away before Mrs W. This was also guaranteed and would escalate while in payment. And, given Mr W explained to WPS that Mrs W had limited pension provisions of her own, I think this would've been a useful and valuable benefit.

Taking all of this into account, and particularly the regulator's position on DB transfers, I think it was reasonable of WPS to conclude that a transfer was not in Mr W's best interests. He doesn't appear to have had a need to transfer, he was likely to be worse off as a result and the DB scheme could've been useful to him in retirement. And this was the position even taking into account the CETV being offered. So, I think the recommendation WPS made – that he not transfer – was suitable.

Mr W has said that he has lost out on the higher transfer value by not transferring at the time and that he only did so because of incomplete or misleading information WPS provided. Specifically, he says he was reassured that the CETV would not decrease substantially.

The written recommendation states that *"any future transfer value may be lower (or higher) should you consider transferring in the future"*. And this statement is in the section of the report titled *"risks associated with my recommendation"*. So, I think WPS was clear that the transfer value was not guaranteed. The details from the DB scheme were also clear that the CETV was only valid for three months and would be subject to recalculation – something which Mr W indicated an awareness of to WPS. So, I think he was aware that this could fluctuate.

Mr W says the adviser reassured him over the phone that this wouldn't fall substantially. WPS has provided our service with copies of the call recordings that it holds. During these discussions, the CETV that was available to Mr W was discussed a number of times. Mr W made mention that this was higher than it had been the year before. And this figure was clearly something he was thinking about. But again, WPS was clear in those conversations that what the CETV would be in the future was unknown and it could go up or down. Which Mr W acknowledged.

Mr W did ask, in one call I've heard, whether it was likely for example that the CETV could fall by half, although he acknowledged WPS potentially couldn't answer – indicating he again knew the value could fluctuate. The adviser did say in response that they thought this level of reduction was unlikely. Mr W says that opinion should not have been expressed, it was not reasonable, he relied on that reassurance, and it was because of this he didn't pursue a transfer. Mr W has also said that he believes a further call took place in which WPS stated

even more firmly that the CETV would not decrease. But I haven't seen evidence of this or anything to suggest the information WPS has provided is incomplete.

I don't think that statement by the adviser was unreasonable. The CETV is an estimation, based on a number of assumptions, of the amount of money required to provide equivalent benefits outside of the scheme. While, with the benefit of hindsight, significant changes to market conditions over the last couple of years have resulted in a reduction in those costs and in CETV's, I don't agree with Mr W that could've been reasonably predicted at that time. So, I don't think the adviser saying they thought this level of decrease was unlikely was unreasonable. And as I've explained, WPS had also explained several times, including in writing, that the CETV was not guaranteed, could fluctuate and was an unknown. Something which I'm satisfied Mr W did understand.

And, while Mr W now says this was crucial in his decision to accept the advice, I'm satisfied transferring was not something that Mr W had already decided on when he contacted WPS. So, I'm not convinced this one discussion point, when considering that Mr W was clear he wanted advice from WPS about what was best for him, the conversations between Mr W and WPS totalled several hours and it provided written reasons for its recommendations, did result in him acting differently than he otherwise would've done.

And again, the advice that WPS provided to him – that he shouldn't transfer – was in my view suitable and in his best interests based on his circumstances. And this took into account the CETV as it was. And Mr W still holds the same guaranteed benefits under the DB scheme, now provided by the insurer, he was always entitled to. So, has not lost any of those benefits.

Mr W also says that WPS should've explained to him how CETV's are calculated and the factors that go into this. And says that without this, he wasn't in an informed position. But I don't agree. CETV's are complex, take into account a number of different factors and assumptions and for that reason are usually calculated by actuaries. WPS was not in a position to explain all of the assumptions the DB scheme or the insurer would use. WPS did explain that they could go up or down. And it did talk about the association with gilt and annuity rates, to illustrate that they are different to the fund value of a unit linked pension. But beyond that, I don't think it reasonably needed to provide further explanation beyond that they could fluctuate and were unknown – which it did, particularly given its advice was not to transfer even accounting for the CETV.

Overall WPS recommended that Mr W should not transfer his benefits and explained why. And, in my view, that recommendation was suitable for Mr W. So, in the circumstances, I don't require it to take any further action.

My final decision

For the reasons I've explained I don't uphold this complaint.

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

Ben Stoker
Ombudsman