

The complaint

Mr H complains Anderson Maine Limited (AML) an Appointed Representative of Access Wealth Management (AWM) wrongly advised him to transfer his personal pension plans to a Self-Invested Personal Pension (SIPP) with another provider.

What happened

Mr H is represented in his complaint by a third-party representative but for clarity I will refer to Mr H throughout this decision.

Our investigator set out the background to this complaint in her view.

Mr H was advised by AML in August 2018. At the time of the advice his circumstances were:

- He was employed with an annual income of around £30,000 per annum.
- He was married at the time of receiving the advice and this also remains the same.
- Mr H has no financial dependents.
- Mr H was 53 years of age at the time of receiving the advice
- He was looking to retire at age 67 and was in good health.
- Mr H did not have any savings to act as an emergency fund.
- Mr H and his wife had an outstanding mortgage of £47,000 at the time of the advice.
- Mr H's attitude to risk was categorised as medium risk.
- Mr H held two personal pension plans and was a member of his occupational scheme at the time of the advice.

After the adviser assessed Mr H's circumstances and objectives, the adviser recommended he transfer two personal pensions with existing providers to a SIPP with provider "A". At the time of the transfer Mr H's pension plans were valued at £35,813.00 and £23,423.09 respectively.

The adviser recorded his recommendation to transfer his plans for the following reasons:

- Transferring Mr H's pensions was likely to provide him with better benefits at retirement than if he leaves his fund where it is.
- Provider A have good financial strength; have a wide range of investment funds suitable for Mr H's risk profile, and offer an annual service charge of 0.25%, which the adviser noted as making A's contract one of the most competitive on the market for Mr H's fund size.
- Reduce the charges paid by Mr H. The charges made within Mr H's existing plans were higher than charges made on other plans available within the market. So, by switching Mr H's plans to another provider, AML said that it could help to reduce Mr

H's charges going forward.

Mr H brought a complaint via his third-party representatives against AWM (albeit it was AML who gave the advice as its AR) on 14 December 2022. In summary the complaint said:

- AWM recommended a SIPP to Mr H when the wrapper was not a suitable product for a client in his Defined Benefit situation. It said AWM failed to assess properly Mr H's needs and objectives at all.
- AWM failed to consider and explain to Mr H the high costs involved and the charges in a SIPP platform compared to the fees in his original plan.
- AWM failed to consider Mr H's other assets/overall portfolio, resulting in the overall portfolios being unsuitable for the customer.
- AWM failed to advise on the overall costs of the solution they were recommending, including product, platform, investment, transfer, annual fee, and advisor charges (initial and ongoing) to ensure their recommendations were suitable in light of alternative product options.
- AWM failed to bring to Mr H's attention that the recommended scheme is non-standard and to highlight all relevant risks of a non-standard scheme.
- AWM failed to highlight to Mr H that the initial investment and returns would not be guaranteed.
- AWM failed to provide independent advice on the benefits and risks involved.

On 5 January 2023, AWM issued its final response. It didn't uphold Mr H's complaint. In summary it said:

- Mr H had four different Personal Pension Plans and was a member of his occupational work-based pension. It was not recommended that Mr H transfer his defined benefit scheme or cease contributing to it. It did not advise him to transfer any DB pension plan
- Mr H was not assessed as having a low attitude to risk and pointed to the attached attitude to risk assessment.
- Mr H's needs and objectives were fully assessed and documented in the fact find provided.
- The costs associated with the SIPP were lower than his existing plans as documented in the suitability letter and the O&M analysis.
- Mr H's assets and current circumstances were assessed and recorded in the fact find document.
- There are no ongoing advice charges as AWM does not provide ongoing advice, unless specifically requested by the client.
- AWM did not advise Mr H that the SIPP is a non-standard scheme. The SIPP and the investment fund inside the SIPP wrapper were mainstream and not unregulated in any way. A uses the term SIPP to describe all its pension wrappers
- AWM highlighted that the investment returns were not guaranteed in both the Suitability Report and Personal Illustration. It is factually incorrect to say otherwise.
- AWM provided independent advice as detailed in the O&M Analysis, Client Agreement and Fact Find.

Mr H didn't agree with AWM's findings and brought his complaint to this service via his third-party representatives.

An investigator looked into things for Mr H. She didn't uphold his complaint. She clarified that no Defined Benefit pensions were transferred. Instead, AML recommended Mr H complete a switch of two of his personal pensions to an alternative personal pension with A. She then went onto look at the suitability of the advice.

In summary she found the advice provided by AML to be suitable because:

- The plan recommended was actually cheaper than Mr H's existing pension arrangements.
- Mr H didn't lose out on any benefits because there were no guaranteed annuity rate (GAR) on Mr H's existing plans, nor did Mr H lose any right to take benefits at an earlier than normal retirement age.
- Having considered the attitude to risk assessment and personal circumstances she was satisfied the recommended pension arrangement was in line with Mr H's attitude to risk.

AWM accepted the investigators view and had nothing further to add.

Mr H, via his third-party representatives did not. He didn't provide an explanation as to why he didn't agree with the view issued but instead provided information obtained via a DSAR from A. This was information pertaining to the transfer and the receiving pension plan.

Mr H asked for an ombudsman review.

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.

Having done so, I have independently reached the same outcome as our investigator and for broadly the same reasons.

In deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr H, via his representatives and by AWM. Having considered all the evidence available, I'm persuaded that the advice to transfer the pensions was suitable in the circumstances.

AWM, through its Appointed Representative AML, was providing regulated investment advice to Mr H. It was required to provide suitable advice, which is reflected in the Regulator's rules on providing such advice. These rules were set out in COBS (Conduct of Business Sourcebook), and in particular in COBS 9.2 - assessing suitability.

Broadly speaking, that section sets out the requirement for a regulated advisory business to undertake a "fact find" process. Once the fact finding was complete, COBS 9.4.7R required a business to "explain why the firm has concluded that the recommended transaction is suitable for the client" - in other words, it needed to provide its client with a suitability report outlining its advice and the reasons for it.

In 2009 the regulator published a checklist for pension switching. It highlighted four key issues it thought should be focussed on – Charges (has the consumer been switched to a pension that is more expensive than their existing one(s) or a stakeholder pension, without good reason?); Existing benefits (has the consumer lost benefits in the switch without good reason?); Risk – (has the consumer switched into a pension that doesn't match their recorded ATR and personal circumstances?); Ongoing fund management (has the consumer switched into a pension with a need for ongoing investment reviews, but this was not explained, offered or put in place?)

So, in reaching my decision I have considered the evidence provided alongside the guidance provided by the regulator.

Charges play a very important part when considering whether it's in the consumer's best interest to switch their pension or not. Whilst they can't be viewed in isolation, higher costs would generally point towards being a good reason not to move. So, that means there'd need to be other, more compelling reasons to justify a switch. In this case the pension that was recommended was actually cheaper than Mr H's existing pension arrangements. Of his existing plans, one had a single fund and the other was split offering annual management charges of 0.15%, 0.65% and 1.0% respectively, as opposed to 0.35% with the recommended plan with provider A. So, with regard to the charges, I'm satisfied AML did not recommend a more expensive plan to Mr H than his existing personal pensions.

As our investigator has already said Mr H didn't lose out on any benefits by transferring his plans. There was no guaranteed annuity rate (GAR) on Mr H's old plans, nor did he lose any right to take benefits at an earlier than normal retirement age. So, I'm satisfied Mr H hasn't lost any benefits in transferring his plans into one plan with provider A.

I'm also satisfied the recommended pension plan was in line with Mr H's attitude to risk and personal circumstances. Provider A's plan has a wide range of investment funds that were suitable for Mr H's risk profile. The adviser recommended Mr H invest 99.75% in the 50/50 Bond & Equity Index and 0.25% in Cash which I'm satisfied is consistent with Mr H's attitude to risk. AML explained that the recommended fund invests in a wide range of asset classes and has a low annual management charge of 0.1%. This meets his risk profile as assessed within the risk questionnaire provided.

The last area to consider is whether Mr H switched into a pension with a need for ongoing investment reviews, but this was not explained, offered or put in place. Mr H was advised to switch his existing plans to another personal pension arrangement that was less expensive than his existing arrangements and not more complex. I'm satisfied Mr H was not switched into a pension where there was a need for ongoing investment reviews that were not explained, offered, or put in place.

I have also looked carefully at the DSAR obtained by Mr H's third-party representatives and submitted as a basis as to why it feels the recommendation was not suitable advice for Mr H. It is essentially the administrative elements of the transfer including the Origo notes, illustrations, contract notes and pension plan details. There is everything I would expect to see regarding the information of a new pension plan and the transfer of the existing plans into it. But this has little to do with the recommendation and whether or not it was suitable advice for Mr H.

That information is discerned from documents including but not limited to the fact find, suitability letter, attitude to risk questionnaire, O&M analysis and the advisers notes. I haven't seen any evidence to persuade me that the recommendation to transfer his existing pension plans was not sound advice and suitable for Mr H.

It follows that I don't uphold this complaint.

My final decision

For the reasons I have given I don't uphold this complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 26 September 2023.

Wendy Steele
Ombudsman