

The complaint

Mr W complains about the advice given by Bruford & Vallance (B&V) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr W was in contact with B&V in October 1988 to discuss his pension and retirement needs. There is very little information available from the time of sale. Whilst this is unfortunate, it is partly due to the passage of time. And this is exacerbated by the fact that business that sold this pension is now dissolved and has been for some time. It's unclear what, if any information, it still holds about this sale. It also doesn't seem like the sale of this plan was reviewed under the personal pension review.

I can't see that a fact find, or similar, document was completed. And I don't have any illustrations, or similar, that show what information about the benefits of the pension Mr W may have been given. But what I do know is that:

- Mr W was 27 and self-employed. He didn't have another occupational scheme he could join.
- He was single with no dependents.
- He says he didn't have any other savings, or investments, and he wanted to take a lower risk with his pension planning.
- Mr W had deferred benefits in a DB scheme. He had just over six and a half years service in this and the annual pension at his date of leaving was £704 with a terminal grant of £2,112.22.
- The normal retirement date of the scheme was age 60, and it had transfer value at the time of the advice of £4,057.42.
- Mr W had a pensionable salary of £7,538 at the date of leaving employment.

B&V advised Mr W to transfer his pension benefits into a personal pension and invest the proceeds with a third party in its Equity and Managed funds.

Mr W complained in 2022 to B&V about the suitability of the transfer advice. He said that whilst there was very little information about the transfer, he thought that it was likely that the returns the personal pension would need to produce to match the DB scheme benefits were not achievable, and so the transfer was not likely to have been suitable for him.

B&V didn't properly respond to Mr W's complaint. But it did say that it had no recollection of the sale and any records it may have had would have been disposed of when the original business was wound up 34 years ago. The files may have been acquired by a new business owner, but they aren't available. It would have complied with the pension review but doesn't have a record of this. It thought that, overall, this meant the complaint had been brought to late.

Mr W referred his complaint to our service.

One of our Investigators considered the jurisdiction of the complaint. He thought that the complaint was brought in time. Whilst it was made six years after the event complained about, he thought that Mr W had complained within three years of when he became aware he had cause to complain. And so, the Financial Ombudsman Service could consider the complaint.

Our Investigator went on to consider the merits of the complaint. He said that the growth rates at the time, although high, would've seemed achievable. Mr W was relatively young, the transfer values were modest, and he had a long time to build up other provisions. He was likely to have been able to take a risk with the DB scheme benefits. So, it wasn't unreasonable to recommend that the transfer was made.

Mr W and his representative disagreed, saying that the burden of proof should be with the business to show the advice was suitable for Mr W. It hasn't done this. And it was unlikely to be suitable for him to have transferred these benefits and a pension review would have shown this.

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.

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 B&V's actions here.

The advice was provided by B&V in 1988. At this time, according to a regulatory history screen shot it has provided, it was a member of the Financial Intermediaries, Managers and Brokers Regulatory Association ('FIMBRA').

The FIMBRA rulebook set out the expectations on members when giving advice. The key rules applying from April 1998 were as follows:

- Rule 4.2.1 required an adviser to take reasonable steps to obtain relevant information concerning a client's personal and financial circumstances in order to provide investment services.
- Rule 4.3.1 required FIMBRA members to take all reasonable steps to satisfy themselves that the client understood the risks involved in a transaction.
- Rule 4.4.1 required members to establish, based on their knowledge of the client and 'any other relevant information which ought reasonably to be known' to them, which types of investment that were the most suitable for them.

In July 1988 an amendment to the guidelines on best advice required members to ensure their recommendations were made on the basis of the client's best interests rather than the income generated for the member.

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

Our jurisdiction

Our Investigator thought the complaint was within the jurisdiction of the Financial Ombudsman Service. Neither party has commented on this. I have thought about this issue as well and I agree that the complaint is within our jurisdiction for the same reasons the Investigator said. I won't comment any further about this as there seems to be no dispute about it now.

Financial viability

The advice was given during the period of the industry-wide Pensions Review, so the rates the regulator published for Financial Viability Tests are directly relevant here. That said, I don't have any information that shows what the personal pension funds would need to grow at to replace the benefits given up.

But any illustrated growth rates were likely to be reasonably high. This is because it was credible, at the time of sale, to say that investment returns would be high for the foreseeable future. And this is illustrated by this the upper limit the regulator gave for a Financial Viability Test which was 12.7% each year for 32 years to retirement in this case.

For further information, the regulator's upper investment growth projection rate at the time was 13%, the middle projection rate 10.75%, and the lower projection rate 8.5%.

I've taken this into account, along with the composition of assets in the discount rate, and what I know about Mr W's circumstances. Mr W was relatively young at the time of sale. And it was unlikely that this transfer would represent a large proportion of his overall retirement provisions. This is because the transfer value, and the benefits it provided, were relatively modest and Mr W did have a long time before retirement to build up other provision. Mr W didn't have an occupational scheme he could join.

Overall, I think it would be reasonable for Mr W to have been able to take a risk with this pension. And given the time the advice was given, and the likely investment returns at the time, it may have been that it was likely the personal pension would produce a higher income than the DB scheme.

Taking all of this into consideration I don't think it would be right to say the transfer was unsuitable because the personal pension was placed in risk bearing investments rather than left in the DB scheme. I've not seen any persuasive evidence that the advice led to Mr W taking too high a risk.

Death benefits

Mr W was single, and as far as I have been made aware, did not have any dependents. So, I think he may have indicated that he did not have a need for the spouse's or dependent's pension that the DB scheme provided. So, I don't think losing these benefits disadvantaged Mr W. And I think it's possible he would have preferred the ability to pass on whatever remained of his pension to a beneficiary of their choice on his death. Although I can accept that given that he was very young this may not have been discussed in any detail.

Summary

Overall, I agree with our Investigator that it's likely given what I know about this pension and Mr W's circumstances that it isn't certain that he wouldn't have wanted to take some kind of risk with this pension. And the transfer to the personal pension wasn't unsuitable where this is the case.

And I'm conscious in making this decision that the complaint submitted does not really say why Mr W thinks the sale was unsuitable for him in respect of his individual circumstances. I appreciate that evidence is limited here, due to the passage of time and the situation with B&V.

But the complaint is largely that this sale was likely to be unsuitable for Mr W as sales of DB transfers around this time could be unsuitable. The personal pension review does support this to some degree, but it isn't enough to uphold Mr W's complaint on this basis here.

Having considered everything I don't think it's been demonstrated that the sale was unsuitable for Mr W.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 8 August 2023.

Andy Burlinson
Ombudsman