DRN-4235889

The complaint

Mr P complains about the advice he was given by TWM Ltd to transfer two of his pensions to another personal pension and subsequently invest further money into it. He says TWM Ltd didn't make it clear it would be better to leave his pension plans where they were, and the advice resulted in him suffering a financial loss.

What happened

Mr P's complaint was considered by one of our investigators. He sent his assessment of the complaint to both parties in June 2023. The background and circumstances to the complaint were set out in that assessment. However in summary, TWM competed a fact find in October 2021 which recorded that Mr P was the director of a company and received income of £12,750 a year and dividends of £10,000. He had two personal pensions - one valued around £119,000 and the other around £77,000. He had about £100,000 in cash deposits and £50,000 in business deposits.

The investigator said Mr P had no other investments or savings and no debts. His attitude to risk (ATR) was noted as nil to one, but following a full risk assessment his ATR was scored as 2 out of 10. After further conversations it was noted that a score of 3 out of 10 was preferred. It was also recorded that Mr P had a high capacity for loss taking Mr P and his wife's circumstances into account.

The fact-find also recorded that:

- Mr P was considering closing his business in December of that year, and wanted his pensions to be ready to support his retirement if required.
- If early retirement was possible Mr P wanted to take 'ad-hoc' withdrawals to take advantage of any unused personal allowance before his State pension started.
- Mr P was aware of the guarantees offered by his existing scheme, but he wanted access to his funds and preferred drawdown to provide the flexibility to take withdrawals within the personal allowance. He also preferred the death benefits available from this type of arrangement.

TWM sent Mr P a suitability report dated 15 October 2021. TWM advised Mr P to consolidate both his pensions to a new personal pension with another pension provider, and invest in a Governed Retirement Income Fund. It was noted that although there were guarantees on one of Mr P's existing pensions, neither that plan or the other offered drawdown. This was identified as the most important aspect of why TWM considered its advice was suitable; Mr P wanted flexibility and not an annuity.

TWM charged Mr P an initial fee of £3,000 for its advice, with an ongoing yearly fee of 0.5%. The pension provider also charged product fees which were outlined in the suitability report.

Both of Mr P's pensions were transferred to the new pension arrangement. Mr P subsequently wanted to make a further contribution of £10,000 into a pension, and this was made and invested into the same fund in February 2022 following advice from TWM.

Mr P subsequently became concerned about the performance of his plan, and complained to TWM in October 2022. TWM didn't uphold the complaint, and Mr P referred it to us.

Our investigator didn't recommend that the complaint should be upheld. He said he'd considered the suitability of the advice given against the relevant regulations in the Financial Conduct Authority's Handbook - COBS 9 (Conduct of Business Sourcebook). He said the key point was that Mr P wanted a drawdown plan which wasn't available through his existing plans. So if Mr P wanted to benefit from drawdown he needed to do something.

The investigator said Mr P didn't want an annuity. And he could see why he wanted to go into drawdown given his circumstances; given his plans for his business; the option to draw income when he wanted; not having restrictions when trying to take his benefits, and his capacity for loss taking into account the overall household income. The investigator thought the advice to transfer was suitable given drawdown achieved Mr P's objectives for flexibility in taking income, and it wasn't available from his existing pensions.

The investigator noted that Mr P had said he'd lost out on certain guarantees provided by one of his former plans. He said he appreciated this point, however that the illustrations provided at the time suggested that if Mr P was going to lose money then the losses would be minimal. He said the illustrations were based on achievable growth figures. And that in order to be able to flexibly withdraw money he needed to move away from the existing plans – if he had remained where he was he wouldn't have had the flexibility he required.

Mr P had also said the new plan was more expensive than the old plans. But the investigator said it didn't appear that the new plan's charges were more expensive on an annual basis, and it provided the features that Mr P required.

The investigator said he thought the investments that TWM had recommended for Mr P were suitable. He thought they were reasonably aligned to Mr P's agreed attitude to risk. The investigator acknowledged that Mr P may have made more money if he'd remained where he was. But he thought this was only seen with the benefit of hindsight. He said the illustrations provided at the time showed a reasonable and achievable growth rate. And that there were other factors outside of TWM's control that meant Mr P had lost money.

The investigator said that investments that had historically been considered as lower risk had suddenly decreased in value significantly in 2022 - such as gilts and bonds. He said he thought this was the main reason why Mr P had suffered such financial losses and why his investments hadn't done well. The investigator thought that overall, the advice to transfer and invest in the Governed Retirement Income Fund was suitable for Mr P's circumstances.

The investigator went onto consider the advice that Mr P had been given to make a further contribution of £10,000 into the new pension. Mr P had said TWM hadn't completed any due diligence work, or checked whether it would be appropriate to make the contribution given the losses he was experiencing at the time. The investigator said it appeared that if Mr P's investments were losing money at that time the amount was minimal. He said the value of investments went up and down, and a slight decrease in value wouldn't automatically mean TWM would have needed to review Mr P's plan or consider a different investment strategy. The investigator didn't think there was any particular need for TWM to have made changes or carried out any more significant research when the £10,000 contribution was made.

Mr P had also raised concerns about his details being passed onto another advising firm (which I will refer to as Firm A). The investigator said he understood that TWM had merged with Firm A, and as part of the merger process details of TWM's clients had been passed on to it. Firm A offered former TWM clients an ongoing service. Mr P was unhappy as he didn't give TWM permission to share his details with any other party.

The investigator explained that it was a matter for the Information Commissioner's Office (ICO) to determine whether there had been a data breach in law. But in considering what was fair and reasonable, he said it wasn't unusual for a firm taking over another firm to approach its former clients to see if they wanted to use its services or go elsewhere. He said TWM's terms and conditions which Mr P had signed, provided for TWM to share his details in this way. So he didn't think TWM had done anything wrong by sharing his details. He said as far as he was aware Mr P hadn't taken up Firm A's offer. As Mr P's relationship with TWM had ended, no further charges had been taken from the date the relationship had terminated.

Mr P didn't agree with the investigator's findings. He exchanged further correspondence with the investigator, but ultimately, as an agreement couldn't be reached, the case was passed to me to consider.

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.

Given Mr P's objectives and circumstances at the time, I'm satisfied that a transfer (technically known as a switch) was suitable in itself. I think there were good reasons for recommending the transfer, in particular that it provided the flexibility to allow Mr P to withdraw income flexibly as and when required. In my opinion drawdown suited Mr P's particular objectives and circumstances, and he was in a position to accept its associated risks.

I think the main downside of transferring, was, as Mr P has mentioned, the loss of certain guarantees on one of the existing pensions. In particular, part of one of Mr P's plans had a 4% guaranteed growth rate attached to it.

The 4% guaranteed growth rate only applied to a part of the pension – about 19% at that time. Taking into account the 1.5% guaranteed growth on the majority of the plan, the new plan would only needed to have achieved about 2% net growth on the total value transferred from that particular plan to match the guaranteed growth rate overall.

So although there was a 4% guaranteed growth rate, it was only on a relatively small proportion of the plan. The investigator said he thought the charges on the new plan were about the same as the existing plans. However, I think when looking at all the charges, including the initial and ongoing charges, the charges on the new plan were slightly higher. But even in that context, I think there would have been a reasonable expectation that the overall growth rate could be matched (given the main reason to transfer was for the flexibility to make withdrawals) or improved upon. Mr P was thinking about accessing his pension within a few months. And in order to access his benefits flexibly he needed to give up those guarantees.

I think it's also worth noting that a significant proportion of the transfer value was made up of a terminal bonus – approximately 25%. That terminal bonus wasn't guaranteed. So whilst the plan had some protection through the exiting guaranteed benefits and smoothing, if Mr P had stayed in the plan the total value payable from it wasn't guaranteed to be immune from any subsequent negative market performance.

Having said that, I accept that Mr P's existing plan with the guarantees (or the other plan without the guaranteed growth rate) were unlikely to have fallen in value to the same extent as the pension Mr P transferred to did. As I've said above, I think a transfer was, in principle, suitable for Mr P's circumstances and objectives. So like the investigator, I've considered whether the fund that Mr P was invested in was suitable for his attitude to risk.

Mr P has said that his attitude to risk was and still is '0-1' as referred to in the investigator's assessment. I think the 'nil to one' rating mentioned by the investigator was recorded in relation to describing Mr P's knowledge and experience of retirement and investment products on the fact find. And it was restated on the suitability letter. The risk profiling assessment recorded that Mr P had an attitude to risk of 2 out of 10 (Cautious). And the suitability letter said following a discussion about the risk questionnaire Mr P agreed to a level 3 out of 10 (Moderately Cautious).

In my opinion the level of risk TWM understood Mr P had agreed to take and which its recommendations were based on was clearly set out in the letter. I don't think that level of risk was inappropriate for Mr P to take given his circumstances; the household had some guaranteed pension provision. I think if Mr P wasn't prepared to take any risk he could have alerted the firm at the time. The suitability letter explained the benefits of buying an annuity (which might be appropriate for an individual not wanting any risk but lacks flexibility). It went onto say that Mr P's priority was flexibility of income, which I'm satisfied was consistent with his circumstances and the evidence presented.

I think that the fund recommended and its asset make-up was reasonably aligned to Mr P's agreed attitude to risk. As explained by the investigator, funds like Mr P's with significant investments in gilts and bonds suffered significant falls in value, and in particular during the period that Mr P was invested. The fund that Mr P was invested in would ordinarily be considered as presenting lower risks, and be suitable for cautious investors. Other funds presenting similar levels of risk also suffered significant falls in value; it wasn't just Mr P's particular fund that was affected. Large numbers of investors in these types of assets/funds, many in or approaching retirement, were also hit by the significant fall in values. I recognise that this will be of little comfort to Mr P. But I think it illustrates that the economic conditions at the time had a wider impact on what were considered to be more cautious investments, rather than there was something deficient with the fund TWM recommended for Mr P.

Mr P has raised concerns about his details being passed onto Firm A. As the investigator explained, it's a matter for the ICO to decide whether there has been a data breach in law. However if TWM provided details to Firm A when it shouldn't have done, we can consider the impact on Mr P and award compensation for any detriment resulting from it.

As the investigator said, it's not unusual where one financial firm has taken over another that the new firm reaches out to the old firm's clients to see if they want a continued relationship. And TWM's client agreement provided for TWM to transfer its rights and obligations where Mr P's rights under the agreement weren't affected. I don't think the transfer to Firm A had a detrimental effect on Mr P's rights.

In any event, TWM sent Mr P an e-mail dated 2 November 2022 explaining that it would be partnering with Firm A in order to continue to provide an ongoing service. It said the ongoing service charge Mr P was paying would continue, and that in order to carry on providing services under Firm A's 'banner' the personal data that was held for Mr P would be transferred to Firm A. It said no action was necessary if Mr P was happy for the transfer of the servicing to Firm A. But that if Mr P wished to object to the transfer of data he should let the firm know within two weeks.

Mr P sent an e-mail to TWM on 17 January 2023 effectively terminating his relationship with it. An e-mail from the adviser Mr P had been dealing with at TWM (albeit sent from Firm A's e-mail address) said it was its understanding that Mr P didn't want to engage with Firm A and that it would therefore terminate its services. TWM has provided evidence showing no further charges were paid after 16 January 2023. So I don't think Mr P was inappropriately charged.

I appreciate that Mr P will be very disappointed with my findings. However overall, for the reasons outlined above and by the investigator, I've not been persuaded that TWM's advice was unsuitable in the particular circumstances, or that his complaint should succeed.

My final decision

Accordingly, my final decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 October 2023.

David Ashley
Ombudsman