DRN-4465887

The complaint

Mr H complains about the advice given by Pension Works Limited to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr H approached Pension Works after his existing adviser asked it to discuss his pension and retirement needs. His existing adviser had already obtained details and a guaranteed transfer value (CETV) from Mr H's employer prior to this meeting.

Pension Works completed a fact-find to gather information about Mr H's circumstances and objectives. Pension Works also carried out an assessment of Mr H's attitude to risk, which it deemed to be low medium.

In January 2020 Pension Works advised Mr H to transfer his pension benefits into a SIPP. The suitability report said the reasons for this recommendation were:

- To take the maximum tax-free cash to pay off the majority of his mortgage at the earliest opportunity.
- To ensure if he dies the remainder of his pension could be left to his son, or if they get back together, his former partner.
- To have control over how the pension income is paid.

Mr H accepted Pension Works' recommendation and the transfer took place following this. The amount transferred was around £274,312.01.

Mr H complained in June 2023 through a professional representative to Pension Works about the suitability of the transfer advice. His representative said the FCA's position was that transferring a Defined Benefit (DB) pension was unsuitable and Mr H had no capacity for loss nor investment experience and so shouldn't have been advised to transfer. It said this had caused him a financial loss.

Pension Works didn't uphold Mr H's complaint. It said the advice was suitable and it disputed it didn't meet its obligations in terms of conduct and legislative requirements. It said his requirements couldn't be met by the scheme and didn't agree Mr H had made a loss.

Mr H referred his complaint to our service. Our investigator didn't uphold the complaint. The investigator asked Mr H about his circumstances at the time and what he'd used the tax-free cash for. Mr H explained he didn't use the money to pay off his mortgage, which was what his objective at the time of advice was recorded as being. He told us he'd split with his partner and at the time had been living with his sister. He needed his own house and a family member had loaned him £35,000 for the deposit on a property. Mr H had purchased the property around the time of advice and had been told the transfer could take 12 months, which it did. He had explained to the family member he'd be able to pay them back once the transfer completed. The investigator asked if the transfer hadn't taken place and he'd not had access to the tax-free lump sum, how would he have paid back the money to his family member. Mr H said he wouldn't have been able to.

The investigator concluded that although he didn't think the recommendation was suitable based on the stated objectives at the time (different to Mr H's testimony now), Mr H would've wished to transfer anyway. As he had no way of repaying the loan and having a property of his own was very important to him.

Mr H's representatives disagreed. They said that Mr H had a gold-plated final salary pension and the benefits lost, outweigh other factors. It also said it didn't agree with the investigators' view that other assets could help absorb the loss of the DB plan. It was the FCA's guidance that transferring away from a DB scheme was bad.

The investigator wasn't persuaded to change their opinion, he explained he had not said Mr H had capacity for loss or sufficient other assets to fall back on.

He reiterated that Mr H had no other way of repaying the family member and purchasing a property was the key objective for Mr H given his circumstances. Mr H's only other way of accessing some tax-free cash would've been by taking benefits from the scheme early. However, the expected tax-free cash here would've only provided £23,000 and he didn't have sufficient other savings to meet the repayment of the loan. And it would've meant Mr H having to take income at 55 which he didn't need at the time. So this wasn't a viable alternative.

Pension Works responded to say it had nothing further to add, although it didn't agree with some of the investigators points about failings with its advice. It agreed with the outcome.

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 Pension Works' 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 not to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pension Works should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests. And having looked at all the evidence available, I'm satisfied it was in his best interests.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The critical yield required to match Mr H's benefits at age 65 was 5.87%, on a joint life basis where all benefits were taken as a pension. Further calculations were produced for age 65 on a single and joint life basis, as well as benefits being taken as pension only or with a lump sum. The same was also produced for age 62.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.7% per year for nine years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

As the investigator noted, the suitability report referred to a critical yield of 3.72% for age 65 where tax-free cash was taken and a reduced pension. However, the transfer analysis contradicted this as it said the investment growth needed to meet the scheme would be 4.13%.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's *'low-medium'* attitude to risk and also the term to retirement. There would be little point in Mr H giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. Mr H also had a very low capacity to absorb any potential investment growth downturns to his fund.

So for this reason alone a transfer out of the DB scheme wasn't in Mr H's best interests. Of course financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Other reasons to transfer

The objectives recorded at the time say that Mr H wished to access £70,000 to pay down his mortgage. However, this doesn't tally with what Mr H has told us he required the money for. It's unclear how it has come to pass that the information relied on for the recommendation doesn’t match reality. But ultimately, I don’t think this is important here, given the clear need that Mr H had for the tax-free cash.

Mr H had approached Pension Works via his financial adviser to look into transferring his DB pension. And he’s told us his circumstances were such that he needed to purchase his own property as he was living with his sister. And that he’d borrowed £35,000 to fund this from a family member with the promise of repaying this amount in approximately a year when he received the tax-free cash from the pension transfer. And I agree with the investigator that there was no other available route to achieve this objective.

I think this objective would’ve been so strong it was actually a need. Mr H had promised a family member he’d repay the money that he’d borrowed to purchase a house so that he had somewhere to live of his own. I think this will have far outweighed the downside that he could receive less benefits in retirement. And so, I think Mr H would’ve wished to go ahead with a transfer even if Pension Works had recommended that he didn’t transfer. It’s also worth noting that had the recorded objective matched reality (the need to repay a loan to purchase the property) and Pension Works had recommended transferring on this basis. I think it would’ve been in Mr H’s best interests to do so in the circumstances. As I’ve said it’s not necessary for me to speculate on why the objectives recorded don’t match reality. It doesn’t make a difference to the outcome of this complaint for the reasons explained.

conclusion

Mr H had a very compelling reason to access a lump sum to buy a property and repay a loan used for the deposit, to a family member. Regardless of the fact the objective recorded at the time didn’t match this, so the advice was given based on other factors, Mr H couldn’t have met his objective without transferring his pension and accessing tax-free cash. I think Mr H would’ve wished to transfer even in the event Pension Works had advised him not to.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr H to accept or reject my decision before 5 January 2024.

Simon Hollingshead
Ombudsman