DRN-4158441

The complaint

Mr M complains about the advice given by Lifetime Wealth Planning Limited ('LWP') to transfer the benefits from two defined-benefit ('DB') occupational pension schemes to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes it has caused a financial loss. He thinks his retirement is now not what it should be.

What happened

When Mr M received this advice he had an existing relationship with LWP. He had been a customer of the individual adviser for some time. This adviser had moved to LWP and Mr M had remained with him. Previously, in 2015 and 2016, Mr M and the adviser had looked at whether he should transfer the value of his DB schemes. LWP says that it told Mr M that he shouldn't transfer at these times.

LWP approached Mr M in 2017 to continue the discussions they'd had previously about his pension and retirement needs. I think it's reasonable to say that in this opening correspondence LWP and Mr M were aware that the transfer values had significantly increased, LWP says this was by up to 50%. And so, the transfer was more likely to be favourable. Its initial thoughts were that Mr M should look at transferring his DB scheme to a personal arrangement because of this.

LWP then completed a fact-find to gather information about Mr M's circumstances and objectives. This showed that:

- Mr M was 52 and married. He was employed full time, and he also received some rental income.
- He had an investment portfolio with a value of £600,000 managed by a Discretionary Fund Manager (DFM). Mr M has clarified that this was partly owned by his wife.
- They had £20,000 held in cash.
- He had personal pensions of around £29,000 and a workplace DC scheme valued at £32,000.
- Their main residence was valued at £400,000, they had a holiday home valued at £320,000 and rental properties with a value of £140,000.

LWP said in the suitability letter that Mr M didn't have any borrowing against these properties. But the fact find did show, and Mr M has since clarified, that he had significant mortgages against these properties. And that this is still the case.

Mr M had deferred benefits in two DB schemes which I'll call DB1 and DB2.

DB1 had a transfer value of £19,796.41. It was estimated that at the normal retirement date of 65 this pension would have provided an annual income of £1,243.96 plus tax free cash of £1,098.68.

DB2 had a transfer value of £112,241. And it was estimated that this pension would have provided an annual income of £3,015 at his 65. In 2018 this was changed to £4,208 at this age.

LWP also carried out an assessment of Mr M's attitude to risk, which it said was 'moderate or average'. This was described as Mr M being able to take some risk but also being concerned about avoiding large losses.

On 27 November 2017, LWP advised Mr M to transfer his pension benefits into a SIPP and invest the proceeds. The suitability report said the reasons for this recommendation were:

- He wanted to have flexibility when taking an income in retirement and to take tax-free cash when, or if, he needed to.
- He wanted more flexible death benefits so in the event of his death the full proceeds of his pensions could pass to his family.
- He wanted his existing fund manager to advise on the investments within the pension

Mr M decided to proceed with the transfers. DB1 was transferred to an existing personal arrangement that LWP administered for Mr M. The amount transferred was £19,796.41 and this was completed in February 2018.

The DB2 transfer didn't proceed straight away. This is because, on 14 December 2017, the DB2 scheme trustees wrote to Mr M to say that they were reviewing the way that transfer values were calculated, and this may increase the transfer values. It expected the revised values to be available in early 2018.

On 17 December 2018, LWP advised Mr M to transfer his DB2 pension benefits into a different SIPP. There weren't any material changes to his circumstances, or the reasons why he wanted to transfer, at this point. In addition, he also transferred the DB1 proceeds into this new arrangement. This was because Mr M had now decided that he wanted all of his investments to be managed by an investment manager of his choosing. This is the one that already managed his existing portfolio.

The transfer was completed on 15 February 2019. The amount transferred was £129,793.

Mr M complained in 2022 to LWP about the suitability of the transfer advice. He said the advice was unsuitable as LWP had made errors and omissions within the fact find and made inaccurate assumptions about his financial circumstances.

LWP didn't uphold Mr M's complaint. It said:

- The fact find information was largely correct, it did note what it said were some non-material errors (in respect of their borrowing) but these wouldn't have changed the overall recommendation.
- The tax-free cash, and other benefits from a SIPP, were fully explained
- The critical yield was provided, and the transfers were financially viable. The transfers would only have to grow at a lower rate to provide the same benefits as those Mr M gave up from the DB schemes.
- Added to this the funds have performed well, and so Mr M may not have been out of pocket.

LWP said it felt they *"more than met the requirements to provide suitable advice … "* and the advice provided *"was clear, precise and met your objectives."*

Mr M referred his complaint to our service. An Investigator didn't uphold the complaint. She said that the transfers were financially viable overall, that is Mr M was likely to improve on the pension benefits he could receive. And Mr M wanted all of his investments to be managed by the same business which he was able to do with the new SIPP. He had the capacity and understanding to take some risk with these funds. This was because he was an experienced investor and he had significant assets.

Mr M disagreed, saying that half of the assets mentioned on the fact find were in his wife's name. So, his capacity for loss was less than indicated by LWP. And he didn't think that LWP had determined that the transfer was in his best interests as it was required to do.

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. 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 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 LWP's 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, LWP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

Financial viability

LWP carried out a transfer value analysis report (as required by the regulator) showing how much Mr M's pension fund would need to grow by each year in order to provide the same benefits as his DB schemes (the critical yield).

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.

For DB1 Mr M was 52 at the time of the advice and wanted to retire at 65, or earlier if possible. The critical yield required to match Mr M’s benefits at age 65 was 8.92% if he took a full pension. LWP also calculated that if Mr M wanted to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme he would need a fund with a value of £50,068.85.

For DB2 Mr M was 53 (as the advice that he acted on came a year later) at the time of this advice. The critical yield required to match Mr M’s benefits at age 65 was 2.31% if he took a full pension. LWP also calculated that if Mr M wanted to purchase an annuity to provide benefits of equal value to the estimated benefits provided by the existing scheme he would need a fund with a value of £147,426.92.

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 4% per year for 12 years to retirement (for DB1) or 3.9% for 11 years to retirement for DB2. I’ve kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr M’s ‘medium’ attitude to risk, his capacity for loss and also the term to retirement.

Mr M’s attitude to risk was assessed as being ‘medium’. The answers to the questions he was asked about this do show that he was prepared to take a risk, and these answers consistently showed that he had a ‘medium’ attitude to risk. I think it’s reasonable to say the assessment was detailed and accurate and Mr M did understand investment risk in general. Mr M was an experienced investor and so he would be familiar with risk based investments in general.

And whilst I’ve noted what Mr M has said about the joint ownership of their assets I still think it’s reasonable to say that he (and Mrs M) did have significant assets and so he had some capacity to take some risk.

There would be little point in Mr M giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

But here, given the lowest critical yield for DB2 was 2.31% I think it’s reasonable to say that Mr M was likely to receive benefits of a higher value than the DB2 scheme at retirement, as a result of investing in line with that attitude to risk.

The situation isn’t the same for DB1 and it looks like Mr M would be likely to receive lower benefits from this transfer. So looked at in isolation I don’t think this transfer was suitable for him as a starting point. But Mr M was given advice on both of the DB schemes together, so I think it’s reasonable to look at the advice in this way.

Both of the transfer values in total had a value of around £150,000. If I assume investment returns of 2.5% per year, compounded yearly over 11 years, this comes to around £197,000.

This is very close to the total fund value that LWP said would be needed to purchase the total DB scheme benefits that Mr M was giving up.

I accept that this isn't a wholly accurate comparison and doesn't take into consideration things like the charges within the SIPP. But I think it does demonstrate that the inclusion of the transfer of the DB scheme with the higher critical yield does not invalidate the whole advice.

Given this, I think Mr M was likely to receive benefits of a higher overall value than the DB schemes at retirement as a result of investing in line with that attitude to risk. With this in mind, I don't think the recommendation to transfer out of the DB scheme was unsuitable for Mr M, particularly when taking into account his other objectives.

Flexibility and control

One of Mr M's aims was increasing the flexibility he had in respect of when, and how much, he could take from his pension provision. This wasn't well defined but formed part of the recommendation on the basis that Mr M may have wanted to retire early and or use some of his existing investments, or rental income, in addition to his pension planning, to enable him to do this.

And this seems to have been a realistic proposition for him. Mr M did have a significant investment portfolio and some other income producing assets such as their properties. I have taken on board that he had borrowing against these, and that his wife did own part of the portfolio. But still, he may not have wanted, or need to, take a fixed income from this part of his pension planning. And it's also reasonable to say that he may want to vary the amounts and timings of the income he may take from this.

And it does seem clear that Mr M wanted to move his investments into a SIPP where his existing DFM could look after the investments. This seems to have been a decision he made himself rather than acting on advice from LWP. Which does suggest to me that this was definite aim that he had, which influenced his overall decision to transfer.

And this is tied into Mr M's other aims about his (and his wife's) investment portfolio. It's clear that Mr M and his adviser had thought about transferring these pensions before. They had looked into this a few years earlier, but LWP has said that the transfer values weren't at the level to make it viable. But it's reasonable to say this was long term aim, or consideration, of Mr M's.

This transfer was essentially advised to Mr M on the basis that the value was 'high' and so he would benefit from it financially in the form of increased pension benefits. And he would also benefit from the other features of a personal pension such as improved death benefits and flexibility. The advice was that it was reasonable for him to take this risk.

Taking everything into account I think Mr M did want some flexibility and I think the advice was reasonable for him.

Death benefits

Mr M was married but did not have any dependent children. He did say at the time of sale that he valued the lump sum death benefits that he could obtain from the SIPP. And I understand that Mrs M had her own provision and investments. And so, she may not have needed the spouse's pension that the DB scheme offered.

So, I don’t think losing these benefits disadvantaged Mr M. And I think he preferred the ability to pass on whatever remained of their pension to a beneficiary of his choice on his death.

Summary

Taking into consideration everything I think it’s reasonable to say that Mr M did have an aim to increase his pension benefits. Given that the transfer was likely to provide him with a higher income (if he wanted this) and better flexibility and death benefits then the advice wasn’t unsuitable for him and met his objectives at the time.

My final decision

For the reasons set out above, I don’t uphold Mr M’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr M to accept or reject my decision before 2 August 2023.

Andy Burlinson
Ombudsman