DRN-4414901

The complaint

Mr B has complained about Pension Works Limited’s advice to not transfer his defined benefit occupational pension to a personal pension.

What happened

Mr B was a member of his employer’s defined benefit pension scheme. It had a cash equivalent transfer value (“CETV”) of approximately £240,000 and he wanted to transfer it to a personal pension. Pension Works provided Mr B with various information and asked him to complete attitude to risk and defined benefit transfer questionnaires. It later spoke to Mr B and on 14 September 2021 it sent him its abridged advice report. Amongst other things this recorded that Mr B’s priorities were:

- maximising his income potential
- flexibility in taking retirement benefits
- death benefits.

Pension Works’ advice/recommendation was to not transfer the pension ie that Mr B should remain in the defined benefit pension. It felt a transfer was unsuitable because Mr B will be partially reliant in retirement on the benefits provided by the defined benefit scheme to his meet needs, and it couldn't justify the transfer of a defined benefit pension based on a consumer’s objective of achieving capital growth over the long term.

In 2023 Mr B complained to Pension Works about the advice. He said the CETV in 2021 was about 50 to 60 times his pensionable income and it had dropped by 45%. He also said he made it clear that he wanted to transfer the pension and that he accepted the risk in doing so. In response to the complaint Pension Works said it was satisfied that transferring wasn’t unsuitable or in Mr B’s best interests.

Our investigator didn’t think the complaint should be upheld as she felt Pension Works’ recommendation was suitable. Mr B disagreed. He said the CETV outweighed any long-term annuity ie £240,000 was equivalent to 40 to 50 years income provided by the defined benefit pension. He also felt the transfer would have been in his best interests given the later drop in the CETV. And he repeated that he made it clear he wanted to transfer and that he understood and accepted the financial risks of doing so.

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.

It’s important to note here that Pension Works only gave Mr B abridged advice – that’s essentially short form advice at a much lower cost (in this case free) compared to full advice. Abridged advice can only result in two outcomes – a recommendation to not transfer the pension; or telling the consumer it’s unclear whether or not they would benefit from a transfer based on the information collected during the abridged advice process. So Mr B couldn’t have received a recommendation to transfer the pension via the abridged advice process.

Irrespective of whether Pension Works gave Mr B abridged advice or full advice it had to adhere to various regulatory requirements. These included the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Below isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but it 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.

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 regulator, the Financial Conduct Authority, states in COBS 19.1.6G that when advising a consumer whether they should transfer a defined benefit pension a business should start by assuming it will not be suitable, and only then consider it to be suitable if it can clearly demonstrate that it's in the consumer's best interests.

Accordingly, the starting point for Pension Works' advice was that transferring wouldn't be in Mr B's best interests. And unless it could clearly show that transferring was in Mr B's best interests it couldn't advise him to transfer. And although Mr B wanted to transfer and accepted the risks of transferring, that's not enough on its own for Pension Works to clearly show that transferring was in his best interests and/or that a recommendation to transfer was suitable.

The retirement benefits provided by a defined benefit pension are valuable as they're guaranteed for life – as opposed to a personal pension which isn't guaranteed (because investments go up and down) nor for life (because a consumer might spend it all before they die). This is why the regulator requires businesses to start from the position that transferring is unsuitable. Of course, there might be occasions where a business can show that transferring is in a consumer's best interest – eg because the defined benefit pension represents a very small portion of a consumer's overall retirement provisions, or because a consumer absolutely needs (rather than wants) immediate cash that can only be obtained by transferring – but this is very much the exception to the rule and the bar the advisor has to overcome is very high.

In this case I'm not persuaded that the reasons for transferring were compelling enough to make it clearly in Mr B's best interests. For example, Mr B wanted flexibility in how he could take his pension benefits. But he already had some flexibility in that respect from an existing personal pension. And he was five years away from retirement so it wasn't known what his income needs would be at that point. Mr B also wanted death benefits from the pension to be paid to his wife. But the defined benefit pension paid death benefits to his wife via a spouses pension and he already had some death benefit provision for his wife via the personal pension.

Another reason Mr B gave for wanting to transfer was to maximise his income potential. No analysis was done in respect of the financial viability of transferring, ie:

- a comparison of the retirement benefits provided by the defined benefit pension and the benefits that might be provided by a personal pension, and/or
- an analysis of how much a personal pension would need to grow by in order to match the benefits being given up.

That's not a criticism of Pension Works because that sort of analysis wouldn't ordinarily be done as part of an abridged advice process – it's normally part of the full advice process. But even if a transfer is financially viable it’s not always the case that transferring is in the consumer’s best interests.

With the above in mind, I conclude that Pension Works treated Mr B fairly when it advised him to not transfer the pension. In summary, in my view there weren’t any compelling reasons why Pension Works should have departed from the default position that transferring wasn’t in Mr B’s best interests.

In closing, Mr B has commented on the drop in CETV but this doesn’t mean the advice he received was unsuitable. This is because Pension Works was only required to give advice based on Mr B’s circumstances at the time – not based on what might happen at some unknown point in the future. I accept the CETV has dropped, but Pension Works couldn’t predict what would happen to CETVs in the future. The CETV dropped because of prevailing market conditions – not because Pension Works’ advice was unsuitable.

My final decision

I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 29 November 2023.

Paul Daniel
Ombudsman