

The complaint

Mrs W has complained about Premier Benefit Solutions Limited trading as Premier Wealth Planning's ('PWP') service when she approached it for advice about transferring her defined benefit ('DB') occupational pension to an alternative arrangement.

Mrs W's husband, Mr W, represented Mrs W both in dealing with PWP and in referring her complaint to this Service.

What happened

Mrs W was a deferred member of her former employers DB scheme. In 2021, when Mrs W was aged 59, the DB scheme administrators wrote to her. They enclosed a pack of information about her entitlement under the scheme which included three options: to remain in the scheme and take a full pension; to remain in the scheme and take a lump sum of tax free cash ('TFC') and a reduced pension; to transfer the cash equivalent transfer value ('CETV') from the scheme to an alternative arrangement. The administrators said that if Mrs W was considering the third option then her former employer would pay for PWP to give her advice.

Mrs W contacted PWP. It spoke with her and Mr W and gathered information about her current circumstances and objectives in retirement. Amongst other things Mrs W said she was still working and hoped to continue to do so until at least 65. She was the principal income earner. Mr W wasn't working and wasn't likely to start work again. He had an uncrystallised defined contribution ('DC') pension worth around £30,000. They lived in their own home mortgage free. They had savings of around £36,000 in total. They would like to buy a motorhome costing between £30,000 and £38,000. They wanted to keep at least £20,000 as an emergency fund.

PWP gathered further information, including an updated CETV from the DB scheme's administrators, which showed that Mrs W's DB fund:

- had a CETV of almost £128,000 guaranteed until 31 December 2021;
- would pay her a full pension at age 65 of around £6,000 a year, or TFC of around £29,500 and a reduced pension of roughly £4,400.

PWP then completed its advice in two stages: abridged advice and full advice. After the abridged advice stage PWP did further analysis, including obtaining an appropriate pension transfer report ('APTA') and a Transfer Value Comparator ('TVC'). In November 2021 it sent Mrs W its suitability report, setting out its analysis and recommendations. It recommended that Mrs W should not transfer out of her DB scheme. Amongst other things it said she had no need to transfer at that time and she would be unlikely to match her DB scheme benefits by transferring to an alternative pension arrangement.

Mr and Mrs W spoke with PWP in early December 2021. In brief they were disappointed with the recommendation not to transfer. They felt PWP's advice hadn't reflected their desires and their understanding of the risks involved. PWP said its advice was that Mrs W's pension

funds were safer in the DB scheme and it couldn't make a positive recommendation to transfer when Mrs W had no immediate plans for the money. PWP said it would review its advice.

Mr W contacted PWP around two weeks later. He said PWP had told him it would review its advice but that hadn't happened. On 20 December 2021, one of PWP's partners noted he'd reviewed the case and spoken with Mr W. PWP's partner was satisfied with its original advice.

Mr W spoke with PWP's partner in April 2022. He said his wife's situation had changed. The partner was talking on his mobile phone and wasn't in the office. He told Mr W he would get someone to call him back.

Mr W spoke with PWP's partner again in June 2022. Mr W said he'd been waiting for the return call since April. The partner apologised for not calling Mr W back during that call. He said Mr W could either choose to appoint PWP or another IFA to review the situation but he added that, owing to the state of the market, it was likely the CETV would have reduced.

In August 2022 Mr W complained to PWP about its advice and service. It acknowledged the complaint but didn't formally reply.

Mr and Mrs W then brought their complaint to us. One of our Investigator's looked into it. In her assessment of the complaint she focussed on the suitability of PWP's advice. She pointed out that the regulator's guidance is that advising firms like PWP should begin the advice process from the perspective that a transfer will be unsuitable for most people. She noted that PWP had given a number of reasons for why a transfer wasn't in Mrs W's best interests. She agreed with its analysis and, having done so, she didn't think PWP needed to take any further action.

Mr and Mrs W didn't agree so the complaint's been passed to me to decide.

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.

In arriving at my determination 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 regulator's Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

And, while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus my decision on what I see as being the key outstanding issues at the heart of Mrs W's complaint and the reasons for my decision.

The applicable rules, regulations and requirements

What I've set out 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 PWP's 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 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 broadly similar reasons to those given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that, when considering a transfer from a DB scheme:

"a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests."

So, the starting assumption is that a DB transfer is unsuitable. This is known as the "presumption of unsuitability". It follows that PWP should only have considered recommending a transfer if it could clearly demonstrate on the evidence available at the time that it was in Mrs W's best interests.

Did Mr and Mrs W complain about the suitability of PWP's advice?

In response to our Investigator's complaint assessment Mr W said their complaint wasn't about the suitability of PWP's advice. Instead it was about PWP's service and in particular that it hadn't arranged to review its advice as it had said it would.

Mr W said that in one of two complaint forms he and Mrs W sent to this office, under a heading of *"How would you like the business to put things right for you?"* they didn't mention the advice only that PWP hadn't reviewed it.

However, having carefully considered the full file I can understand why our Investigator felt that Mr and Mrs W's complaint focused on the content and quality of PWP's advice.

At an early stage after PWP gave its advice, Mr and Mrs W told PWP they were disappointed with it. They also sent PWP an email in which they set out their *"reasons for disagreeing with [the adviser's] recommendation not to transfer the funds"*. And they put forward their *"concerns and counter-arguments"*. In other words they weren't happy with the advice and thought the outcome was wrong. Put another way they didn't think the outcome was suitable for them.

Further when they complained to this office, amongst other things, Mr and Mrs W made numerous comments that indicated they were unhappy with the quality - and therefore the suitability - of PWP's advice. For example they said:

"[PWP's] decision to not recommend a transfer came as a huge shock to both of us."

"[the adviser's] calculations regarding our then financial situation were completely wrong... Most of his calculations did not make sense"

"we believe the advice was incorrect due to the poor way it was conducted. Including calculations that made little sense, that would also have lost us benefits, and a statement that we didn't understand the process, yet were not given the opportunity to demonstrate otherwise"

"We feel the 'free' advice has been wasted due to the unprofessional conduct of Premier Wealth."

They added that PWP had not recommended the transfer for "*spurious reasons*".

All of the above comments (amongst others) paint a clear picture that Mr and Mrs W were very unhappy that the advice did not go the way that they had hoped it would. Also, that they felt the advice wasn't of the quality they expected. So there's clear evidence on file, that when Mr and Mrs W complained to both PWP and this Service they were unhappy with the content, quality and outcome of PWP's advice.

Mr W's since said that they only referred to the outcome of the advice to give background to their complaint. But, as I've said above, I think the manner in which they set out their concerns gave the impression that their complaint was centred on the quality and suitability of PWP's advice and the outcome that led to. In other words that they felt that PWP should have come to a different conclusion.

It is the case that Mr and Mrs W did not refer to the *suitability* of PWP's advice when they completed our complaint forms. But, they were clear that the principal outcome they were seeking from making their complaint was for PWP to pay for alternative advice from another adviser of their choosing.

But before I could reasonably direct PWP to pay for further advice I'd need to be persuaded that there was something wrong with PWP's advice. It wouldn't be fair for me to instruct PWP to take on the financial burden of paying for alternative advice, unless its own advice was in some way unsuitable, unfair or unreasonable.

So, in order to determine whether or not I could direct PWP to pay for further advice from a different advising firm, I first need to consider PWP's advice and whether or not its recommendation was suitable for Mrs W. But, as Mr and Mrs W have said that isn't the focus of their complaint I've kept my comments brief.

Was PWP's advice suitable?

In Mr W's response to our Investigator's complaint assessment he's suggested that our staff are unlikely to have the required qualifications to be able to assess suitability of advice. However, while I understand the point he's making, we're not required to hold the same qualifications as pension transfer advisers in order to comment on the suitability of regulated advice. Indeed it is something that we do regularly. When doing so we're required, as explained above, to take into account the relevant law and regulations as well as standards. But our remit is broader than that and our tests are more flexible than simply looking at compliance with regulations. Instead we're required to decide whether a firm like PWP has dealt with a consumer fairly and reasonably in all the circumstances of the complaint. And that's what I've done below.

It's clear Mr and Mrs W were disappointed with PWP's conclusion that she shouldn't transfer her DB funds. It seems they were expecting the outcome to be a positive one, so I can understand their dissatisfaction that the transfer didn't happen. But after careful consideration I think PWP's advice was reasonable in the circumstances.

DB pensions are a valuable resource and their benefits are considered to be difficult to match (at a similar cost) compared with other pension products available on the open market. And that's one of the reasons why the regulator insists that consumers require regulated DB transfer advice before a transfer may go ahead. DB pension schemes generally provide a safeguarded, guaranteed and index linked income for their members at

virtually no risk to the member themselves. The alternatives generally rely on returns from the investment markets. And those bring with them investment risks. So transferring guaranteed benefits from a DB scheme to an investment environment puts those otherwise safeguarded benefits at risk.

Further transferring from a DB scheme is a one-off event; once transferred there's no going back – the benefits are lost forever. So, when giving DB pension transfer advice PWP's role wasn't to simply do what Mr and Mrs W wanted it to do, no matter how convinced they were that a transfer was suitable for Mrs W. Instead PWP was required to understand their wants and needs, not just their thoughts, wishes and desires. And, in order to meet its regulatory requirements, PWP could only make a recommendation to transfer if it was convinced, on contemporary evidence, that it was in Mrs W's best interests.

In this instance, after completing full advice, PWP concluded that a transfer wasn't in Mrs W's best interests. In coming to that conclusion, PWP obtained an APTA and a TVC which indicated that Mrs W would most likely be worse off in retirement by transferring. PWP also identified that Mr and Mrs W could meet their financial needs while Mrs W remained in her DB scheme. I've noted that Mr W has taken issue with PWP's analysis of the figures, but, having looked at those carefully, I feel its analysis is sound.

PWP said Mrs W had no need to put her DB funds at risk, in order to achieve her financial goals. Essentially, PWP's analysis showed that if Mr W used TFC and his full tax allowance from his DC pension it would allow Mr and Mrs W to buy a motorhome without touching the DB scheme funds. And, as Mrs W intended to carry on working they could continue to use her funds for day-to-day outgoings and had no immediate need to transfer her DB funds and put those at risk until such point in time that they did need them.

Further, PWP's analysis showed that Mrs W would be extremely unlikely to match the benefits from her DB scheme by transferring. In other words it thought Mr and Mrs W would be better off if she remained in the scheme. So PWP didn't think the contemporary evidence clearly demonstrated that transferring was in her best interests. I appreciate that Mr and Mrs W will disagree with me, but I think PWP's analysis is fair and reasonable. So I think its advice was appropriate in the circumstances.

Did PWP review its advice?

When Mr and Mrs W raised their concerns about PWP's advice, the adviser concerned said he would put those to his manager to review the advice. Mr and Mrs W believe that PWP reneged on that undertaking to review the advice. But, I think they're mistaken.

PWP's explained to us that it passed the matter to one of its partners to review. In December 2021 the partner reviewed the advice and found it to be sound. So it didn't think the advice needed any correction. PWP told us that the partner spoke with Mr W to explain this.

In contrast Mr W's said that the partner told him on two occasions that a review would be arranged. The inference being that the partner would arrange for someone other than himself to review the advice. But I think Mr W has misunderstood.

Mr W gave us some call recordings both with PWP's initial adviser and its partner. Unfortunately he didn't have a recording of the December 2021 call with the partner and neither did PWP keep a recording of that call. But, PWP's file shows that the initial adviser did refer his advice for review. It also shows that the partner reviewed the advice and found it to be sound. That is the partner was satisfied that the advice and recommendation were

suitable for Mrs W. The file also shows that the adviser then spoke with Mr W to explain the outcome of his review.

I've noted that when Mr W spoke with the partner in April 2022 Mr W acknowledged that they'd had a "*good long chat*" about the matter previously. And the partner said in the April call that he remembered reviewing the case. So I'm satisfied that PWP did arrange for the case to be reviewed as it said it would and the partner carried out that review in December 2021. I'm also satisfied that the partner gave the outcome of that review to Mr W in the December call. It follows that I don't agree with Mr and Mrs W that PWP had offered to review the case but failed to do so.

That said it does appear there may have been some miscommunication on the matter. It seems that during the December 2021 conversation the partner told Mr W that PWP could review the case again at some point in the future. And I note that during the April 2022 conversation the partner told Mr W that he would put the wheels in motion for that review to take place. But, if he took any follow up action, it doesn't appear PWP acted upon it, as it didn't contact Mr and Mrs W again.

While I haven't heard the December 2021 call, I think it's likely that either the partner didn't make himself clear or Mr W misunderstood the scope of any further "review". Mrs W's former employer was covering PWP's costs for providing its initial advice. That fee would almost certainly have included the costs of an initial review following Mr and Mrs W's dissatisfaction with it to ensure its advice was suitable for Mrs W. But, once PWP had completed that process and was satisfied its advice was appropriate it had discharged its duty to deliver advice as paid for by the employer. So, any further "review" would not have involved PWP picking the matter up again and revisiting its earlier decision. Instead it would have been a separate advice process. And that process would have attracted a fee, which Mr and Mrs W would have been liable to pay. But it's not clear whether Mr W was aware of that.

I do understand it must have been frustrating for Mr and Mrs W that PWP didn't arrange to contact them following the April 2022 call. But, I note the partner did apologise for not arranging that contact in the subsequent June 2022 call. It's worth commenting that, while the partner didn't get back to them in April 2022, Mr and Mrs W didn't have to limit their contact with PWP to the partner alone. They could have contacted it via their initial adviser or from other details available from PWP's website. So I don't think the partner's failure to get back to them prevented PWP giving further advice. But, if Mr and Mrs W had contacted PWP again I think it would have made it clear at that point that any further advice would attract a fee. And, on balance, given their dissatisfaction with PWP's advice to date, I don't think they would have paid that fee. So, I don't think their position is materially different because the partner didn't arrange further contact with PWP.

For completeness, I'm aware that Mr and Mrs W were unhappy that PWP acknowledged their complaint but then didn't provide a formal response to it. The regulator gives firms like PWP eight weeks to consider a complaint. In this case that didn't happen. But the regulator allows for complaints to be referred to our service in those circumstances. So, while I can understand that PWP's failure to provide a formal response to their complaint was a further source of frustration to Mr and Mrs W, it didn't prevent them from bringing their concerns to our Service. And it hasn't affected the outcome of our considerations of it. It follows that I don't think PWP needs to take any further action.

My final decision

For the reasons given above I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 12 September 2023.

Joe Scott
Ombudsman