DRN-4461919

The complaint

Mr L complains about the advice given by Woodgrange Associates (IFA) Ltd trading as Advies Wealth (AW) 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 L approached AW in 2022 to discuss his pension and retirement needs. The evidence shows Mr L sought advice as he had significant debts, including debts with HMRC, and he was concerned about entering bankruptcy. He was worried doing so would lead to him not being able to continue his career as he'd fail the *'fit and proper person test'* required to work in his role. He was earning approximately £70,000 a year at the time and his expenditure was only just met by his income.

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

On 17 March 2022, AW advised Mr L to transfer his pension benefits (the majority coming from the DB pension subject to this complaint but two other much smaller pensions were also transferred) into a SIPP and invest the proceeds via a discretionary fund manager (DFM). The suitability report said the reasons for this recommendation were based on Mr L's objectives to:

- Clear his debts. This was important to him as he wanted to protect his ability to practice by preventing bankruptcy. For this reason, he wanted to take his tax-free cash as soon as he turned 55 in the coming months.
- He wanted to be able to get on the housing market.
- He wanted to 'guarantee the financial future' of his children.

Mr L complained via a claims management company in 2023 to AW about the suitability of the transfer advice because:

- He'd lost all his accrued and future guaranteed benefits.
- He believes the funds he was transferred into, were too high risk for him.
- He didn't fully understand the implications of the recommendation and all the risks involved.

AW didn't uphold Mr L's complaint. It said Mr L approached them as someone of professional standing who had significant debts which were forcing him towards bankruptcy. And if he'd have been made bankrupt, he'd have lost his license to practice. As such, it believes the advice was suitable as this was Mr L's only option to prevent this.

Mr L referred his complaint to our service. An investigator didn't uphold the complaint. She explained that in terms of overall benefits received, the advice to transfer would likely not have been beneficial. However, there was a strong and compelling reason to transfer regardless, due to Mr L's debts and the implications this could have for him. And it was clear Mr L was very anxious to have the debts cleared as quickly as possible. So the investigator felt the advice to transfer was suitable. However, she felt the investment option selected was too high risk for Mr L. But Mr L didn't choose to proceed with the DFM selected in any event, so no redress would be due.

Mr L's representatives disagreed they said:

- The adviser has simply presented two options to Mr L, that of bankruptcy or transferring his Defined Benefit pension to release funds to pay his debts.

- There were many alternative courses of action that were not considered or recommended by the adviser. For example, Mr L's debts were unsecured and there was no consideration given to negotiating with his commercial creditors to reduce payments, freeze interest or to come to some other arrangement. None of these debts would have led to bankruptcy and, at worst, coming to some agreement with these creditors would have impacted on his ability to obtain credit in the future, but certainly not forced him to cease practicing.

- In terms of debts to HMRC of £30,000, this is a far more serious matter as HMRC could potentially have forced Mr L into bankruptcy. However, there is no evidence that the adviser recommended any negotiation with HMRC. HMRC will only consider making an individual bankrupt if all other options have been exhausted. Mr L was in a distressing situation and relied on the adviser to produce a viable solution after examining all the options available. The adviser did not do this. The adviser presented only the transfer of the pension as a solution to raising funds.

- Even in the worst-case scenario, bankruptcy would have excluded Mr L from practising for 12 months. The adviser's solution was therefore a permanent solution to a temporary problem.

- We believe that an adviser should give good advice and not just sell financial products. The adviser has not demonstrated that they have acted in Mr L's best interests as per COBS 19.1.6

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 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 AW'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, AW should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L's best interests. And having looked at all the evidence available, I'm satisfied it was in his best interests.

Financial viability

As the advice was given post October 2018, the business was required to carry out a Transfer Value Comparator (TVC). This showed the funds that would need to be invested at the time of transfer on a so-called 'risk-free' basis (government bonds), to provide the same income as the DB scheme at normal retirement age. The value of this was £1,149,914. This can be compared with the transfer value offered by the scheme of £742,884. The difference between the two represents the additional growth Mr L would need to achieve to match the value of his benefits from the scheme at his normal retirement age.

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 L's benefits at age 60 was 11.56% per year. 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 3.1% per year for five 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.

Mr L's intention at the time was to retire at 67 and the critical yield calculated at this age was 4.85% for all benefits taken as a pension.

I've taken this into account, along with the composition of assets in the discount rate, Mr L's 'lowest medium' attitude to risk and also the term to retirement. There would be little point in Mr L giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 4.85%, I think Mr L was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

For this reason alone, a transfer out of the DB scheme wasn't in Mr L'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.

Flexibility

Mr L had significant debts of approximately £60,000, which were causing financial difficulty as he didn't have sufficient income to cover this. Mr L did not have any savings or other assets he could've used to meet these debts. And due to the debts Mr L had with HMRC there was a possibility he could face bankruptcy. This could've had big repercussions due to his profession. It is clear from the evidence from the time that this was a big concern of Mr L's, and he was very keen to take his tax-free cash as soon as possible to pay off these debts. He made it clear to AW that he wanted the funds accessible as soon as possible.

Mr L's representatives have argued there were other options such as debt management plans and consulting with HMRC to see what options he may have had to avoid bankruptcy. And worst case scenario Mr L would still have been able to work in more junior roles and any sanction would only apply for one year. I've considered these points, however, I think its clear Mr L didn't want to take any risks in terms of his career. He was receiving a salary of around £70,000 and he had outgoings that almost matched his income. So, any drop in salary could've exacerbated his debt issues. I think Mr L was intent on raising cash to meet his debts, relieve the stress that the potential implications had put on him and he also wanted to get on the property ladder. And this is what Mr L used the money for, he was able to pay off his debts and he's told us he bought a house. So, I think the requirement for a lump sum immediately was an utmost priority to Mr L. And I think it was a fair conclusion of the adviser that this requirement was compelling, given the advantages it presented to Mr L's quality of life.

Mr L's only other option to raise the funds required was to take benefits from the scheme at age 55. However, to do so he'd have to take income and Mr L didn't require ongoing income if he could continue to work. And he'd said his intentions were to retire at 67. The implications of taking income early, would've been a reduced sum each year – and Mr L once his debts were cleared wouldn't have needed additional income to that extent from 55 to 67. Whereas, by transferring but keeping the majority of funds invested, he had flexibility on how he could take income and the opportunity to take an annuity later when he needed to replace his income in retirement. And the later the annuity is taken the likely higher value he'd receive in retirement. Mr L's state pension would also kick in at 67 and together with his income from his SIPP, the income models produced by AW showed he'd likely been able to meet his needs income needs in retirement.

So I think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave his funds invested until a later date. By accessing his TFC, Mr L has been able to clear his debts, continue practicing in his career and purchase a property.

Although this meant Mr L wouldn't be able to take as much income from his pension at 60 or 67 as he would've been entitled to through the DB scheme, I'm satisfied this was necessary in the circumstances.

Death benefits

Mr L wasn't married at the time and wanted the option of leaving whatever remained of his fund to his two children. So, I don't think losing the guaranteed spouses benefit in retirement disadvantaged Mr L. And I think he preferred the ability to pass on whatever remained of his pension to a beneficiary of his choice on death.

Investment selection

I agree with the investigator that the investment strategy selected through a DFM was too high risk for Mr L's circumstances and recorded risk and loss capacity profile. However, Mr L chose not to take forward this recommendation and he sought advice from other parties about how to invest his funds from the transfer. So, this isn't a point I need to consider further as the advice here had no detriment to Mr L as he didn't follow it.

Conclusion

I'm satisfied that the advice to transfer was suitable in Mr L's circumstances. I think releasing tax-free cash was in Mr L's best interests due to the potential ramifications his debts with HMRC could've had on his career. It also allowed him to purchase a property. The recommendation also allowed Mr L to retain his remaining benefits invested until his planned retirement date of 67. The alternative of taking benefits from the scheme at 55 wouldn't have provided this flexibility. And the income models AW produced showed Mr L's income in retirement could be met (even at low growth returns) by the transferred pension(s) and his state pension from age 67.

My final decision

For the reasons explained, I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 22 December 2023.

Simon Hollingshead
Ombudsman