

The complaint

X complains that Wren Sterling Financial Planning Limited's advice not to transfer the defined benefits in his deferred occupational pension scheme (OPS) to a personal pension was unsuitable.

What happened

X approached Wren Sterling in early 2022 to discuss a potential transfer of his OPS to a personal pension. X had the opportunity of financial advice from Wren Sterling that would be paid for by his OPS provider.

In summary, Wren Sterling recorded X's circumstances at the time of advice as follows:

- X was aged 53, married with [REDACTED] financially dependent children
- X had a further personal pension with a fund value of £680,000. He had £250,000 in other investments and around £288,000 in cash savings.
- X owned his residence, valued around £1,000,000 and a rental property valued around £320,000. He had an outstanding mortgage balance around £670,000.

Wren Sterling recorded X's stated objectives as:

- To retire at 55 whilst he was fit enough to enjoy it. He had been diagnosed with [REDACTED] and was being treated at the time of advice.
- Wanting flexibility and estimated needing a household income around £11,250 a month in early stages of retirement, reducing as he got older.
- To leave the maximum possible lump sum death benefits for his family

Wren Sterling issued its written recommendation to X in a suitability report in April 2022. It explained the value of the benefits in the OPS and the comparative value of those with transferring the estimated cash equivalent transfer value (CETV). And explained that it didn't think a transfer was suitable for X for the following reasons:

- It couldn't assess the implication of X's [REDACTED] diagnosis as having an impact on his life expectancy based on what it knew at that time. It had suggested waiting until a prognosis was better understood, but X confirmed he didn't want to wait and would have considered transferring even if he hadn't known about his health condition.
- Wren Sterling considered that X's existing defined contribution pension funds and non-pension assets could be used to provide a legacy in the event of X's death and that his deferred OPS benefits were his only secure income source before reaching state pension age.
- Giving up his guaranteed OPS benefits wasn't key to X's ability to retire at age 55 or having a flexible income stream. He had other potential income streams in the form of rental income, investments, and defined contribution pension income. Plus the potential for a significant pension commencement lump sum from the OPS at the point X decides to start taking that.

- Simply having control over the transfer value as a pension fund is not a good enough reason to make a transfer in X's best interests.
- Wren Sterling explained that X was still a year and a half from being able to take any pension benefits. So didn't need to commit to giving up his OPS benefits at this stage. He potentially wouldn't need to consider accessing this OPS for years given the size of his other assets.

X disagreed with Wren Sterling's recommendation. He complained about the suitability of its advice. He didn't think it had properly considered his overall circumstances. He thought that the advice may have been biased as Wren Sterling's advice was funded by the OPS. X explained that his CETV had dropped leaving him potentially much worse off if he were to transfer against Wren Sterling's advice.

Wren Sterling didn't uphold X's complaint so X brought his complaint to our service. Our investigator looked into what happened and explained why she didn't think that Wren Sterling had treated X unfairly. X didn't accept this opinion and asked for the case to be reviewed by an ombudsman.

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.

When considering a complaint about pension transfer advice, whether that advice was to transfer or not to, I take 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 Wren Sterling's actions here.

- PRIN 2.1 - Principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 2.1 - Principle 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 interest's 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 defined benefit OPS transfer.
- The regulator, the Financial Conduct Authority (FCA), states in COBS 19.1.16 that the starting assumption for a transfer from a defined benefit OPS is that it is unsuitable. So, Wren Sterling should have only recommended a transfer if it could clearly demonstrate that the transfer was in X's best interests.

Was Wren Sterling's advice unsuitable?

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.

I can see that part of the reason for X's complaint is that he doesn't think that Wren Sterling gave adequate consideration to his health. Or that Wren Sterling didn't explain the importance of that on the recommendation it would ultimately make. I've considered this but I don't think that Wren Sterling acted unfairly. It set out its advice process in a fair and clear way. And Wren Sterling explain that it actively discouraged X from going through the advice process at the time he did, because his diagnosis was quite new. It appears that it made it clear that it might be able to better assess the impact of it when the full implications were better understood. I think it was a good example of Wren Sterling complying with principles 6 and 7, and with COBS 2.1.1R above.

Wren Sterling had a regulatory responsibility to analyse X's pension transfer in a certain way. It included obtaining the Transfer Value Comparator (TVC). And Wren Sterling explained in its suitability report that the TVC showed that the cost of providing the benefits already available in the OPS was over £400,000 more than the CETV (which was around £770,000). Whilst that calculation is based on a figure being invested at a risk free return, when X was prepared to take some risk in investment returns, it is still a large gap. And indicated how valuable the benefits in X's OPS already were.

In this case though Wren Sterling also showed a critical yield. Which are the average annual returns needed on the CETV to provide the same benefits as the OPS would. To age 65 that was 3.4% a year for the 11 years left to the scheme retirement age of 65. Wren Sterling assessed this as potentially being achievable for someone with X's attitude to investment risk. Which may not have been unreasonable. But also indicated that taking benefits earlier meant a higher investment return was needed. Giving a comparison at age 55 – when X wanted to retire – where a return of over 30% was needed. Which clearly was not achievable. So I think there was still a risk that transferring would leave X with benefits that were, overall, of a lower value.

Wren Sterling looked at X's overall financial circumstances though. Which I would expect it to have done. And it determined that X was likely to be able to achieve his objective of early retirement without having to transfer his OPS benefits. He had a defined benefit personal pension with a fund value around £680,000. And also had access to other savings and investments that were over £500,000. And Wren Sterling were also aware of a defined contribution that X's wife had with a fund size around £150,000.

Wren Sterling came to the conclusion that, in spite of the fact that X's pension may grow to a position where at age 65 it might be able to provide equivalent benefits to his OPS, X didn't need to take the risk to be able to meet his objectives. Wren Sterling simply didn't think it was in X's best interests to take on all of the investment risk with his OPS, that would still form an important part of his income in retirement. And I think that was a fair and reasonable conclusion for it to reach.

I'm sorry to hear of the health issues that X has. It must have been a lot to deal with by itself without considerations regarding his retirement planning. It explored his physical health in a reasonable way. But, given the information that Wren Sterling had, I don't think it was unreasonable for them to consider that it was quite likely that these benefits would have to provide for a long retirement. Which was the primary purpose of the guaranteed benefits in that OPS.

And X's OPS offered a spouse benefit that was 67% of the pre-commuted pension. Wren Sterling provided X with a comparison of death benefits. It showed that the capital value of the death benefits in the OPS were better than the CETV. And that it would take around ten

years before the opposite became true. And that was based on an assumption where no income was being taken or eroding the residual fund value that was transferred. When Wren Sterling understood that X would be financing his retirement from age 55 across a number of sources of income. So I think it would have been unreasonable for Wren Sterling to have downplayed the importance or value of the death benefits that X already had with his OPS.

I understand that X wanted to transfer the CETV to a personal pension. And I am sure he had considered his options quite carefully. But our service doesn't expect financial advisers to simply facilitate a customer's wishes. Principle 6 and COBS 2.1.1R are clear on that. I would expect Wren Sterling to fully assess the circumstances and make its own recommendation based on that.

In deciding a fair and reasonable outcome for his complaint I also need to recognise that COBS 19.1.16 placed a strict regulatory presumption on Wren Sterling in considering this type of transfer. As I referred to earlier, Wren Sterling could only recommend the transfer for X if it could **clearly demonstrate** that the transfer was in his best interests. It has explained that it wasn't able to clearly demonstrate that. And for the above reasons, I don't think that its conclusion and therefore its advice was unsuitable.

X has expressed a concern that Wren Sterling's recommendation was biased by the fact that it was being paid for by his OPS. But I have seen no evidence of that being the case. Wren Sterling's recommendation is specifically tailored to X's circumstances and I consider it to have followed the rules and guidance for advising on pension transfers.

My final decision

For the above reasons I'm not upholding X's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X to accept or reject my decision before 14 November 2023.

Gary Lane
Ombudsman