DRN-4229424

The complaint

Mrs K complains that Punter Southall Wealth Limited (PSW) gave her unsuitable advice to transfer the deferred benefits in a defined benefits (DB) occupational pension scheme (OPS) to a self-invested pension plan (SIPP). Mrs K says that she will have lower pension benefits as a result of this unsuitable advice.

What happened

Mrs K and her husband, Mr K, both met with PSW in June 2017 to discuss their combined pension and retirement needs.

PSW completed a fact-find to gather information about both Mr and Mrs K's circumstances. In the fact-find that PSW completed in June 2017 it ascertained that:

- Mrs K was 55 years old
- She was in full time work paying into an occupational pension scheme
- Mr and Mrs K had no dependent children
- They had a combined household annual income of £50,261 gross (£40,739 net) and combined household essential expenditure (including credit card payments) of £24,828
- They had an interest only mortgage with twelve years to run. Their house was valued around £245,000 with outstanding mortgage capital of £223,000 to repay in 12 years time
- Mrs K had deferred benefits in a DB scheme with a cash equivalent transfer value (CETV) around £170,000
- She was a contributing member of her employer's DB scheme
- She had no savings or investments
- She had credit card debt of £3,783 and an unsecured loan of £10,000 from her mother
- She expected to inherit around £30,000 from her mother at some point in the future

In the fact-find PSW listed Mrs K's objectives as being inheritability, control and flexibility. Recording that Mrs K wanted immediate access to £25,000 tax-free cash from her pension in order to repay credit cards and the loan to her mother, gift some money to her children and to have an emergency fund with the remainder. It recorded that both Mr and Mrs K may look to phase retirement from age 60 by reducing hours and fully retire at age 67.

PSW also carried out an assessment of Mrs K's attitude to risk, which it deemed to be 'balanced'.

On 25 July 2017, PSW advised Mrs K to transfer her pension benefits into a SIPP and invest the proceeds. The suitability report said the reasons for this recommendation were that Mrs K wouldn't be giving up valuable benefits that would have a detrimental effect on her standard of living. It said that the transfer would meet Mrs K's objectives of more investment control and flexibility to take tax-free cash immediately.

PSW wrote to Mrs K again on 30 August 2017 to explain that it had received an updated transfer value analysis (TVAS) for her pension transfer. That indicated that the critical yield – investment return needed each year for the transferred amount to provide benefits equivalent to those available from the DB scheme – was now 12.9% at age 60 (or 9.2% if taking tax free cash and a reduced pension). The letter explained that these levels of return were unlikely to be achieved, but that the transfer was still suitable because of her objectives of greater investment control, flexibility to vary her income, and beneficial death benefits.

Mrs K complained in 2022 to PSW because she didn't think that the advice to transfer had been suitable. Both she and her husband had been advised to transfer DB schemes in 2017 and PSW had contacted her husband following a review of its advice and compensated him for unsuitable advice. Mrs K said that, as her circumstances were the same as her husband's it couldn't have been suitable for her to transfer her DB scheme either.

PSW didn't uphold Mrs K's complaint. It said that it had employed the services of an independent third party who had reviewed Mrs K's pension transfer using the Financial Conduct Authority's (FCA's) Defined Benefit Advice Assessment Tool (DBAAT). That review considered the combined advice to both Mrs K and her husband. And found that it wasn't suitable to recommend that both Mr and Mrs K transfer the deferred benefits they held in DB schemes to meet their need for immediate funds. PSW explained that the review found that Mr K ought to have been advised to retain his DB scheme benefits, which would have meant less reliance on Mrs K's pension in retirement. So it wasn't unsuitable to transfer her DB scheme as a way to meet her objectives.

Mrs K referred her complaint to our service. An investigator upheld the complaint and required PSW to pay compensation. He explained why he didn't think that transferring was likely to provide benefits that were as valuable as those given up. He then considered the other reasons that PSW had said justified its recommendation. But didn't think that Mrs K had an unavoidable need to access tax-free cash at 55. And whilst accepting that transferring gave greater flexibility he didn't agree that Mrs K needed that flexibility.

PSW disagreed for a number of reasons including:

- The advice that was given considered the joint circumstances of Mr and Mrs K
- It has already accepted the finding of its review which is that Mr K should not have been advised to give up a guaranteed annual income of £9,858 at age 60 and have paid redress to put that right – improving the household financial position meaning Mrs K is able to bear the risks of her DB scheme transfer
- Mrs K had appropriate capacity for loss because her deferred DB scheme was only a small part of the overall household income
- The transfer addressed the income shortfall from age 60 to age 67
- The approach that the investigator took was incorrect and too narrow. It pointed out that COBS 19.1.6G (presumption of unsuitability for DB scheme transfers) was guidance and not mandatory. It considered it was to assist in support of the rules COBS 9.2.1R and 9.2.3R
- This case had been assessed already by very experienced specialists trained in the use of the DBAAT
- It dismissed the discount rate quoted by the investigator as being a reasonable assessment of likely return saying that the 5% medium projection was more relevant.
- It said that it still considered the transfer to be financially viable
- The critical yield approach isn't particularly relevant in this case because Mrs K intended to access benefits flexibly and improve death benefits. And PSW think that the single life critical yield of 5.2% is more relevant than the joint life rate of 9.2%
- The transfer would enable Mr and Mrs K to retire from age 60 without having to find

part-time work to meet their income needs, and for Mrs K to meet her immediate capital objective.

The investigator wasn't persuaded to change his opinion, so the complaint was referred to me to make a final decision. He explained that the lower figure of critical yield didn't reflect a proper comparison with the benefits Mrs K was losing. And that, whilst repaying debts was prudent financial planning, he didn't think it warranted giving up guaranteed benefits throughout retirement.

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 PSW'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 to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. I acknowledge PSW's point that this is guidance and not a rule. But the FCA have seen fit to issue this specific guidance because of the potential for harm in pension transfers of this type. So, I think that PSW should have only recommended Mrs K's transfer if it could clearly demonstrate that the transfer was in her best interests. And having looked at all the evidence available, I'm not satisfied it was.

Financial viability

Mrs K's DB scheme provided valuable guaranteed benefits in retirement. As well as a number of options about when and how she could take those benefits. In considering financial viability, what I'm looking at is whether Mrs K was likely to be better off overall by transferring this pension, based on the information PSW had. It was something that PSW were expected to consider.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. PSW have explained that there was no regulatory obligation on it to consider the discount rate in assessing this transfer. Which is correct. But I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mrs K was 55 at the time of the advice. The fact-find indicates that Mrs K and her husband were interested in reducing their working hours after age 60. But didn't indicate that they wanted or expected to stop working at that time. Both were working in occupations with ongoing DB pensions that they were members of. And they seemed content to continue working toward state retirement age of 67. Given their circumstances though, I think that accessing benefits in a way to facilitate a phased retirement from age 60 was a realistic objective. Both Mrs K and Mr K had deferred DB scheme benefits that enabled them access at age 60. So I think that it's more likely than not that Mrs K would have taken benefits from her deferred DB scheme by age 60 regardless of the recommendation from PSW.

According to the TVAS that PSW obtained in August 2017, the critical yield required to match Mrs K's benefits at age 60 was 12.9% if she took a full pension and 9.2% if she took TFC and a reduced pension. I think that it's likely that she would have taken the TFC available from her scheme given her interest in a lump sum. So, like our investigator explained, I think the critical yield of 9.2% is the more relevant figure. The purpose of this figure is to help determine the likelihood that transferring the benefits would produce benefits of an equal or better value. PSW suggest that the critical yield figure of 5.2% for a single life annuity comparison is more appropriate. But I disagree. I understand that Mr K may have had his own retirement benefits making him less dependent on spouse death benefits from Mrs K's pension. But that doesn't mean it wasn't a valuable part of her benefits or that it was okay to write it off as unimportant.

This compares with the discount rate of 3% per year for 4 years to retirement in this case. Taken from either the point of the initial recommendation in July 2017, or when the supplemental recommendation was sent in September 2017 after receipt of the full TVAS.

For further comparison, the regulator's upper projection rate at the time was 2%, the middle projection rate 5%, and the lower projection rate 8%.

I've taken this into account, along with the composition of assets in the discount rate, Mrs K's 'balanced' attitude to risk and also the term to retirement. There would be little point in Mrs K giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the relevant critical yield was 9.2%, I think Mrs K was likely to receive benefits of a substantially lower overall value than the DB scheme at age 60, as a result of investing in line with that attitude to risk.

In responding to this complaint PSW have stated they consider that the transfer was financially viable. But I think that statement misses the point. In considering the financial viability of this transfer I am considering whether it was likely to leave Mrs K better off overall for this specific product. And the evidence suggests that it would not have done. Of course financial viability isn't the only consideration when giving transfer advice, as PSW has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

I don't think Mrs K required the flexibility in retirement that PSW say she did. This is because based on the evidence I've seen, I don't think she had a genuine need to access her TFC immediately, and leave her funds invested until age 60. I say this because Mrs K and her husband were able to comfortably cover their expenses and repay their debts. PSW documented that their surplus of net income over expenditure was about £16,000 a year (after credit card repayments had been accounted for).

It was recognised that Mr and Mrs K had no other savings because they'd recently covered the cost of a wedding. They would have had a difficult period rebuilding their savings and paying off their debt. But they had the means to do so without transferring her DB scheme benefits. Mrs K has told us that she was not under pressure to cover the outgoings. And PSW should have looked closer at this. It recorded in the fact-find that Mrs K didn't want to take on other debt because of the cost. But that didn't mean that PSW had to discount it without proper comparison. There was, after all, a cost in giving up her deferred benefits as I've explained above.

I also can't see evidence that Mrs K had a strong need for variable income throughout her retirement. This is because PSW determined that Mr and Mrs K believed that they would need about £20-25,000 in retirement. But that seems conservative. And already a figure well below their potential retirement income if PSW had recommended they take their DB scheme benefits in the form they were intended. It was identified that Mr and Mrs K would likely have to find rental accommodation in retirement, and this would be an ongoing expense for the rest of their lives that would continue to increase. I can't see that a regular and increasing income wasn't in their best interests.

PSW has said that its advice will have enabled Mrs K to stop working at age 60 and be able to use draw down to cover any deficit in her household income until she reached state retirement age. And this is also the part of the premise that has been relied upon in the DBAAT review that PSW contracted. But that wasn't actually listed as an objective in the fact-find.

PSW's fact-find documented "*clients may both look to phase retirement from 60 by reducing hours at work and likely to fully retire by 67 when state pension kicks in*". This was the objective that PSW ought to have been considering. It didn't explore the extent to which either Mr or Mrs K would look to reduce hours. Or what additional income it would need to raise to allow them to do so. But Mrs K's deferred DB scheme could be taken at age 60. And the TVAS that PSW obtained showed that it would pay an annual salary around £6,200 a year (increasing for life) or a lump sum of £30,842 and an annual income around £4,600. And PSW were also aware that Mr K's deferred DB scheme guaranteed him an income around £10,000 from age 60 as well. On balance, I don't think that Mrs K needed to transfer her scheme in order to achieve her goal of reducing her hours at age 60 either. PSW should have made it clear to her that she was already in a strong position to do that if she wished when the time came.

It goes without saying that this early pension income would then be added to by the DB schemes that they were contributing to when they eventually stopped working. And then their state pensions at age 67. Which meant that the existing pension arrangements that Mr and Mrs K already had seemed to comfortably exceed the estimated household income needed in retirement.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mrs K. But whilst I appreciate death benefits are important to consumers, and Mrs K might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Mrs K about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think PSW explored to what extent Mrs K was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mrs K was married and so the spouse's pension provided by the DB scheme would've been useful to her spouse if Mrs K predeceased him. I don't think PSW made the value of this benefit clear enough to Mrs K. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, PSW should not have encouraged Mrs K to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

Furthermore, if Mrs K genuinely wanted to leave a legacy which didn't depend on investment returns or how much of her pension fund remained on her death, I think PSW should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mrs K. And I don't think that insurance was properly explored as an alternative.

Control

I think Mrs K's desire for control over her pension benefits was overstated. Mrs K was not an experienced investor and I cannot see that she had an interest in or the knowledge to be able to manage her pension funds on their own. So, I don't think that this was a genuine objective for Mrs K – it was simply a consequence of transferring away from her DB scheme and into a SIPP. And meant that the requirement and cost of ongoing financial reviews was likely to be necessary.

Independent skilled person review

I recognise that, prior to Mrs K making her complaint, PSW appointed an independent third party to review the advice that it provided Mr and Mrs K in 2017. And that it used the FCA's DBAAT in coming to its conclusion that Mrs K's transfer was suitable. The DBAAT is a tool designed to help guide users in determining whether DB transfer advice was suitable in a specific case.

I would assure PSW that, like our investigator, I have considered the third party assessment as well as all of the documents provided. However, I'm considering the advice PSW gave Mrs K independently and I'm not bound by what the skilled person decided. As set out at the beginning of the decision I've taken into account COBS 9 and COBS 19 as well as the Principles, FCA rules and guidance and good industry practice. Having done so I've reached a different outcome for the reasons set out above.

The skilled person review relied on the information provided by PSW. And in doing so concluded that Mrs K aspired to retire at 60. Meaning that she and Mr K would have needed some way to fund their lifestyle until age 67. But, as I explained, I think that assumption was incorrect. It didn't accurately reflect the comments recorded in PSW's fact-find. And doesn't reflect Mrs K's testimony – which the skilled reviewer would not have had. The fact that Mrs K intended to work up to age 67 in some form makes a significant difference to the outcome. It means that the existing benefits available to Mrs K through her DB scheme at age 60 were likely to be enough to enable her to reduce her hours if she wished.

The independent review also used a critical yield figure of 4.54%, which as I've explained above, was not accurate. It meant that I don't agree with the review's finding that the transfer was likely to also be financially viable.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mrs K. But PSW wasn't there to just transact what Mrs K might have thought she wanted. The adviser's role was to really understand what Mrs K needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs K was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs K was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mrs K shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable, and the potential for higher death benefits wasn't worth giving up the guarantees associated with her DB scheme.

So, I think PSW should've advised Mrs K to remain in their DB scheme.

Of course, I have to consider whether Mrs K would've gone ahead anyway, against PSW's advice. I've considered this carefully, but I'm not persuaded that Mrs K would've insisted on transferring out of the DB scheme, against PSW's advice. I say this because Mrs K was an inexperienced investor with a balanced attitude to risk and this pension accounted for an important part of Mrs K's retirement provision. So, if PSW had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

In light of the above, I think PSW should compensate Mrs K for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs K**,** as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs K would have most likely remained in the occupational pension scheme if suitable advice had been given.

PSW must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

For clarity, for the reasons I've given above, I think Mrs K would have instead taken her DB scheme benefits at age 60. So, compensation should be based on her taking benefits at that age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs K's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, PSW should:

- calculate and offer Mrs K redress as a cash lump sum payment,
- explain to Mrs K before starting the redress calculation that:
    - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mrs K receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs K accepts PSW's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs K for the calculation, even if she ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs K's end of year tax position.

Redress paid to Mrs K as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PSW may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mrs K's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

Determination and money award: I uphold this complaint and require Punter Southall Wealth Limited to pay Mrs K the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Punter Southall Wealth Limited pays Mrs K the balance.

If payment of compensation is not made within 90 days of PSW receiving Mrs K's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If PSW deducts income tax from the interest, it should tell Mrs K how much has been taken off. PSW should give Mrs K a tax deduction certificate in respect of interest if Mrs K asks for one, so she can reclaim the tax on interest from HMRC if appropriate.

If Mrs K accepts this decision, the money award becomes binding on Punter Southall Wealth Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs K can accept my decision and go to court to ask for the balance. Mrs K may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs K to accept or reject my decision before 13 September 2023.

Gary Lane

Ombudsman