

The complaint

Mr B complains that Professional Independent Advisers Limited (trading as PIA Wealth Management) gave him unsuitable advice to transfer out of a defined benefit occupational pension (OPS) with a former employer into a personal pension.

Mr B is represented in bringing this complaint. But, for ease, all comments and actions will be noted as Mr B's.

What happened

Mr B was made redundant from a former employer in 2004, having apparently been employed there for about 19 years. He was a member of its OPS.

He took advice from PIA in 2005. PIA subsequently carried out a "*pensions and life assurance review*" and wrote to Mr B on 3 May 2005 to confirm the actions taken on his behalf following his "*instructions to proceed*". According to its system notes, this letter was PIA's suitability/recommendation letter. In it, PIA made the points set out below:

Mr B's defined benefit OPS

PIA said that in response to Mr B's request in March 2005 to transfer the benefits from this pension, it explained the transfer process and the need to consider the result of a transfer analysis. PIA noted that in line with its "*prediction*" a critical yield of 12.69% per year would be needed to match the benefits Mr B would be giving up. However, Mr B had since "*insisted*" PIA help him to transfer his pension. According to PIA's notes, Mr B felt there was a risk that, due to underfunding of his former employer, G's, pension scheme (largely because the UK workforce was being run down), he didn't think he'd be able to draw benefits by the time he reached pension age.

So, PIA proceeded to help him transfer his OPS to a personal pension with a company I'll refer to as C, with which he'd previously held investments and had been happy with. PIA also noted that after comparing the benefits between a buy-out plan and a personal pension, it thought a personal pension offered more flexibility and suited Mr B's personal requirements. He was then advised to transfer his pension benefits into a range of investments such as property, equity; gilt and fixed interest funds to suit his balanced risk profile.

Future pension provision

PIA noted that Mr B was now self-employed and was in non-pensionable employment. So, he opted to boost his pension provision with a regular monthly contribution of £100 gross (£78 a month after tax) into his personal pension.

In addition, Mr B decided to take out a life assurance policy to provide cover of £100,000 on a joint life basis over fifteen years to provide cover whilst his children were dependant. He'd previously paid into a Free-Standing Additional Voluntary Contribution plan (FSAVC), but had discontinued his contributions since leaving his employment with G. It was decided that fund would remain invested as it was for the time being.

Mr B transferred his OPS with a transfer value of £39,381.88 to company C.

A few months later, he also transferred his FSAVC with a transfer value of £13,914.15, into a personal pension with C.

According to a letter that PIA sent to Mr B in July 2005, part of the reason for him transferring his FSAVC was because of its lower charges and because he wanted to consolidate his pensions, so they were held with one provider.

Around 2009, having received updated advice from a different adviser, Mr B transferred his funds away from C to a new pension arrangement with a different provider.

In July 2020 Mr B's representative complained to PIA. It said PIA had mis-sold Mr B an investment that wasn't suitable for him. It referenced (amongst other things) various rules from the regulator's code of business sourcebook (COBS) around assessing suitability and asked PIA to look into things.

PIA initially thought the complaint had been made too late. However, it said it had looked into things and interviewed the pension specialist who gave the advice in 2005. Amongst other things, it felt the evidence showed that Mr B had been presented with all of the facts and would have had time to reflect on them before instructing PIA to proceed with the recommendation. It was also satisfied he'd been made aware of the risks and that the investments recommended would be seen as at the "*lower end of balanced*". PIA didn't uphold the complaint.

Mr B contacted our service and PIA again initially felt that the complaint had been made too late (especially as it thought there would have been a detailed discussion when Mr B took updated advice in 2009). However, it later agreed for our service to look into the merits of the complaint.

One of our investigators looked into things and didn't think PIA had acted fairly. He noted that Mr B opted for a personal pension as he thought it offered more flexibility given his personal requirements. However, he noted that Mr B's personal pension fund would need to achieve a growth rate of more than 12.69% to outperform his OPS. And he thought that was very unlikely given the relevant discount rate at the time, which was 7.6%. That together with the composition of assets when compared to Mr B's medium attitude to risk and the number of years until retirement, meant it was likely Mr B would receive benefits of a substantially lower overall value than his OPS.

And whilst the investigator noted Mr B had some concerns about G's pension fund being underfunded, he'd seen no evidence to suggest PIA explained the protection that might be offered by the Pension Protection Fund – even if there were concerns about the future funding of G's pension fund. The investigator thought PIA should have made this clear given Mr B's concerns at the time. So, in summary, he didn't think the transfer was suitable, or viable in financial terms, also taking account of Mr B's capacity for loss and limited investment experience. Nor did he think PIA had done enough to demonstrate why its advice was suitable. And the investigator felt that, if PIA had given suitable advice, Mr B would have left things as they were.

PIA didn't agree and provided additional comments and documents for the investigator to consider. Those included:

- its assertion that Mr B wouldn't have been advised to transfer;
- it said it had "*absolute confidence*" that the correct procedures and protocols would have been carried out during its discussions with Mr B. Not least because the adviser (who was still employed by PIA) has an "*impeccable pedigree*";
- in summary, PIA felt its adviser would have tried as hard as possible to persuade Mr B to stay in the OPS with G. Especially as at the time it fielded a number of enquiries from current and former workers with G due to concerns that the company was in financial difficulty. It's since indicated that Mr B's might have been the only

such transfer to have gone ahead.

Our investigator considered the additional information but didn't feel it changed the outcome overall. And whilst he noted PIA's position that Mr B 'insisted' on transferring, he didn't feel that was the same as him being an 'insistent client'. He said that, had Mr B been categorised as this type of client, he'd have expected to see that Mr B had signed a declaration showing he'd gone against PIA's advice not to transfer.

PIA asked for the case to be referred to an Ombudsman, so it'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.

Even though PIA has been unable to find its client file, it's adamant that it would have told Mr B not to transfer and would have done everything possible to persuade him to stay in the OPS. And whilst Mr B can't remember a lot of what happened due to the passage of time, he clearly thinks PIA didn't give him suitable advice.

Where there are gaps in the evidence, as there are here, I need to consider, on balance, what's most likely to have happened. That means determining how likely it is, given its assertion, that PIA gave Mr B a clear recommendation not to proceed with the OPS transfer, but he did so anyway.

What was PIA required to do?

In order to determine whether PIA acted fairly and reasonably, I've first considered the rules in place at the time.

PIA had to start from the position of assuming that it wouldn't be in Mr B's best interests to transfer his OPS. And through the form of a 'fact find' (specifically with pension transfers in mind), PIA would have had to find out (amongst other things) why Mr B wanted to transfer his OPS.

That was particularly important in Mr B's case, as he was only around 43 years old at the time – so he was about 22 years away from retirement. He'd also recently become self-employed. So, it seems to me that having the security of an OPS (with guaranteed and valuable funds) to help fund his retirement probably became all the more important.

PIA was also required to provide a meaningful illustration in which it highlighted Mr B's objectives and how they could be best achieved. It also needed to highlight the benefits of remaining as well as transferring out of the OPS. Part of that process involved considering the transfer value of Mr B's OPS and the growth needed if he was to match the benefits being given up. But overall, PIA needed to give Mr B sufficient, clear information to make an informed investment decision based on a firm understanding of the risks involved and a knowledge of what protection, rights, expectations, and options he might be giving up.

Was PIA's advice suitable?

As I said, a lot of the information that would have been helpful here isn't available. And there were clearly discussions between Mr B and PIA during March and into April 2005. But without any notes, it's not possible to determine exactly what was discussed, or the extent to which PIA explored Mr B's needs. Nor is it possible to say how detailed an explanation it gave him about the risks of going ahead with the OPS transfer at that time.

However, after very careful consideration, based on the evidence I do have available and what I know about Mr B's circumstances at the time, I think I have to conclude, on balance,

that PIA didn't give Mr B sufficiently clear information to explain that transferring out of his OPS probably wasn't in his best interests. Had it done so, it seems unlikely to me that Mr B would have gone ahead with the OPS transfer. I'll explain why.

From what I can tell, the main reason Mr B approached PIA was because he was worried about the future viability of G's pension fund. As I understand things, he'd been a member of that fund for around 19 years. So, I can certainly see why he'd want to try and safeguard his future pension benefits. And he may even have seen or heard press reports at the time or spoken to other former colleagues who were also concerned. I can see that, conversations with PIA continued into April 2005 by which time, the Pension Protection Fund (PPF) had been set up. From what I know about the PPF, it was specifically intended to protect against the kind of situation Mr B was worried about (his former employer being unable to pay his pension), and I think PIA would have known that. Seeing as this seemed to be the key reason for Mr B wanting to transfer his OPS, even with the limited information available, I'd still have expected to see that PIA had discussed this with Mr B. And had it done so, it might have been enough to allay Mr B's fears.

It's worth saying that it wasn't uncommon for defined benefit (DB) schemes to be underfunded, and that wasn't necessarily a concern if the sponsoring employer was solvent. But if Mr B had legitimate concerns at the time of the advice about G potentially running into difficulties with an underfunded scheme, I think it would have been reasonable for PIA to discuss the possibility of the DB benefits being covered by the PPF. And, as PIA maintains that it tried to persuade Mr B to remain in his OPS, an explanation of this kind may have been enough to persuade Mr B that staying in the OPS was the right thing to do. But I've seen no evidence to suggest that PIA discussed this with Mr B nor is it mentioned in any of its responses to this service – including when it responded to our investigator's assessment.

PIA sent Mr B a "*suitability/recommendations*" letter dated 3 May 2005. These letters are really important, as they're often the basis upon which the client decides whether to accept the firm's advice or not. So, regardless of what was or wasn't discussed at the meetings with PIA, I'd have expected it to cover off its advice in more detail. And if PIA had made it clear at its meetings that it didn't advise Mr B to transfer, I'd have expected the suitability/recommendations letter to reflect that. Not least because it would have given Mr B a final opportunity to reflect on PIA's advice and decide whether he really wanted to go ahead. But there's little information about the discussion apart from PIA briefly mentioning the critical yield needed (the implication seeming to be that it would be difficult to achieve) but Mr B wanted to go ahead in any event.

There's little else recorded about Mr B's objectives either, although Mr B's since indicated he might have been looking for some investment growth. That's not an unusual objective. But again, PIA needed to think about that in terms of things such as Mr B's attitude to risk and the critical yield needed just to match the values being given up in the OPS, let alone outperform the OPS. As I've indicated, PIA clearly had some regard to the critical yield needed if Mr B was to *match* the valuable and guaranteed benefits he was giving up. But in my opinion, again, irrespective of what it may already have told Mr B at the meeting, I think it needed to say much more about what the critical yield meant in real terms.

I say that because in all likelihood, once Mr B had transferred out of his OPS, the actual value needed just to match the benefits being given up was likely to have been higher once charges were factored in. And, if Mr B was to secure any investment growth then, realistically, the critical yield would be even higher. Otherwise, it doesn't seem worthwhile to transfer a valuable and guaranteed pension simply for things to stand still. In any event, the growth rate that was reasonably expected to be achieved at the time was only 7.6 % with 22 years to go to retirement. So, it seems highly unlikely to me that Mr B's investment was

going to achieve the growth needed so as to outperform his OPS – especially when factoring in that Mr B was a balanced investor. And I think that was another important reason not to transfer.

But I'd have expected PIA to explain things in those terms when discussing the critical yield. Again, I've seen no persuasive evidence it did so. I think everything points to the fact that Mr B was probably going to be worse off in retirement, especially as his personal pension plan was subject to investment risk. And I think PIA should have made that crystal clear to Mr B to help him make an informed decision. Given that pensions are retirement savings and Mr B had apparently invested in his OPS for about 19 years, it seems reasonable to assume that he wouldn't have gone ahead had PIA given him the kind of explanations I've referred to. Especially when it appears he had no pressing need to transfer at that point.

I'm also not persuaded by PIA's argument that it gave Mr B sufficient time to reflect on its advice before going ahead. I say that because the day after sending its suitability/recommendations letter, it appeared to set the transfer wheels in motion.

PIA seems wedded to the notion that Mr B was insistent on going ahead irrespective of its advice. I'm not persuaded by that argument. I've seen no evidence Mr B was an experienced investor. And, as I've said, I can't see that he had a pressing need to transfer his OPS in 2005 when he was in his early 40s. I also need to keep in mind that he approached PIA for advice, so it was for PIA to do the right thing and make sure it gave him suitable advice. If it felt so strongly that it wasn't advisable for Mr B to transfer, it could even have said it wasn't willing to facilitate a pension transfer and walked away.

On balance, for all of the reasons I've set out, if PIA did advise Mr B not to proceed, I don't think it did so in clear enough terms, so that he'd have fully understood the risks he'd likely be taking in transferring out of his OPS. And, on that basis, I can't fairly say it gave Mr B suitable advice. As I've indicated, I'm also not persuaded that Mr B would have gone ahead if PIA had given him clear advice not to proceed. But even if PIA thought Mr B was insistent about going ahead, I would still expect it to have documented that to show that Mr B understood the risks of what he was doing. I've seen no evidence that happened either.

For completeness, I'll acknowledge here that Mr B has since transferred his personal pension funds to a different provider (although it seems they're invested in very similar funds to those he was in before). But as I've concluded that Mr B would likely have remained in the OPS had PIA given him more suitable and clearer advice, PIA now needs to consider whether Mr B has suffered a financial loss as a result of its actions.

Putting things right

A fair and reasonable outcome would be for Professional Independent Advisers Limited to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme. PIA must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

Professional Independent Advisers Limited may wish to contact the Department for Work and Pensions (DWP) to obtain Mr B's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P).

These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr B's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr B's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr B as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% here overall from the loss adequately reflects this.

The compensation amount must where possible be paid to Mr B within 90 days of the date Professional Independent Advisers Limited receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes Professional Independent Advisers Limited to pay Mr B.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

Where I uphold a complaint, I can award fair compensation of up to £160,000 plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £160,000 I may recommend that the business pays the balance.

Determination and money award: I require Professional Independent Advisers Limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000 I additionally require Professional Independent Advisers Limited to pay Mr B any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Professional Independent Advisers Limited to pay Mr B any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000 I also recommend that Professional Independent Advisers Limited pays Mr B the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr B.

If Mr B accepts my decision, the money award is binding on Professional Independent Advisers Limited. My recommendation is not binding on Professional Independent Advisers

Limited. Further, it's unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

I uphold this complaint and require Professional Independent Advisers Limited to settle the complaint as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 26 April 2022.

Amanda Scott
Ombudsman