DRN-3049660

The complaint

Mr T complains about the advice given by Bluesky Wealth Management Limited to transfer the benefits from his defined-benefit (DB) occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this caused him a financial loss.

What happened

Bluesky hasn't provided a full copy of any sales documentation. I've only received the recommendation letter and its response to the complaint. So, what I have to look at is limited. But what I understand about how the transfer took place is below.

In early 2019 Mr T entered his details onto a website that traded as an appointed representative of Bluesky. This website said that it would assist Mr T to *'access cash from your pension without having to retire'*. It said he could do this by transferring his DB pension value to a personal pension.

As far as I know, Bluesky used the information Mr T provided to the website to obtain a transfer value from his DB scheme. And advise Mr T about transferring his DB benefits.

Bluesky says that it put Mr T through an 'initial triage' process and he then had some contact with an advisor. It hasn't provided any further detail about this. So, I don't know how, or to what extent, Bluesky completed a fact-finding exercise to gather information about Mr T's circumstances and objectives.

Bluesky described Mr T's attitude to risk (ATR) at the time of sale as being 'conservative'. I don't know how it arrived at this ATR.

On 21 March 2019, Bluesky advised Mr T to transfer his pension benefits into a personal pension with a third party. The suitability report said the reasons for this recommendation were that Mr T could release some of the cash he wanted from his pension immediately by making the transfer. It listed some of the advantages of making the transfer.

Mr T complained in 2020 to Bluesky about the suitability of the transfer advice. His representative said that:

- The advice process, and reasons for recommendation, were very brief. There wasn't a full consideration of Mr T's circumstances.
- Mr T didn't need to release the cash from his pension to repay debts. As he was still working he could have managed his finances another way and not transferred his DB scheme benefits.
- The transfer was not suitable for Mr T. His attitude, and capacity for risk, were low and he couldn't afford to give up his DB scheme benefits.

Bluesky didn't uphold Mr T's complaint. It said:

- Mr T had requested to access his tax-free cash (TFC) as he was overcommitted on debt.
- This was confirmed in the initial triage process and the subsequent advice process.
- Mr T was provided with full information about the transfer and he agreed with it at the time. He wasn't pressured into transferring his DB scheme benefits.
- He was made well aware of the risk of the transfer and benefits he was giving up, there were strongly worded caveats and warnings on the website.
- The DB transfer was suitable for Mr T, given his circumstances at the time.

Mr T referred his complaint to our service. An investigator upheld the complaint and said that Bluesky should pay compensation. He said that it wasn't clear that the advice was suitable for Mr T. Or that he was an insistent customer. This was partly due to the lack of information that Bluesky had provided

Bluesky didn't respond to the investigator's opinion, despite being given several opportunities to do so. As the complaint hasn't been resolved it has been 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, 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 its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Bluesky should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Bluesky should have investigated whether the transfer of the DB scheme benefits was financially viable. And it should have made a full Appropriate Pension Transfer Analysis (APTA) which would show that it had evaluated all of the Mr T's options. It should also have produced a Transfer value comparator (TVC). This would show what sum of money Mr T would need to invest at a risk-free rate to provide equivalent benefits to the DB scheme at retirement. This should take the form of a lump sum figure which can be compared directly with the DB transfer value.

Bluesky said in the final response letter that these would have been done. But it hasn't provided any further evidence to show that it actually completed them. And it hasn't referred to what would have been in these analyses in its suitability report. So, I'm not persuaded that it fully looked into the viability of the transfer.

The suitability letter did say that the DB Scheme would provide an increasing yearly income of £5,746.48. But it said a realistic income from the personal pension would be between

£3,480 and £4,980. And it said that *'in all likelihood the income would be les compared to the income from the DB scheme.'*

So, I think it's clear that Bluesky understood Mr T was likely to be worse off in retirement if he transferred out of the DB scheme. But I don't think the warnings it gave about the downside to the transfer were enough to fully inform Mr T about how the transfer would affect him financially. Bluesky has said that there are warnings about making a DB pension transfer on its website. But these are generic and aren't an adequate replacement for fully informing Mr T about the individual circumstances of his transfer and providing a suitable recommendation.

Given Mr T was likely to be worse off at retirement, I think a transfer out of the DB scheme was unlikely to be in Mr T's best interests.

Of course, financial viability isn't the only consideration when giving transfer advice, as Bluesky has said in this case. It thinks that Mr T had a 'desperate' need for the TFC to repay some debts. And there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and TFC needs

The main reason that Bluesky said that Mr T needed to transfer his DB scheme was so he could access his TFC. Bluesky says he needed to do this to repay some debts that he was having problems meeting the repayments for. It does seem established that Mr T did want to transfer and access some of his pension fund. And that Bluesky was aware of this.

But Mr T says that this wasn't essential. He says he did have some debts to repay but he didn't need to repay them all immediately. He used some of the TFC he released to pay for things for his house as well as repaying some debt.

In order to say that the transfer was suitable for this reason I would need to see some detailed investigation, or advice, from Bluesky that demonstrates it had determined this was the case at the time of sale. And I'd also need to see that Mr T's need to transfer, and access his pension fund, outweighed the financial disadvantages of the transfer.

But I don't have this evidence. In fact, I can't see a mention of any debt repayment at all in the suitability letter. So, in the absence of any detailed rationale around this from the time, I can't say the advice was suitable for this reason. And what Mr T has said also seem reasonable and consistent. So, I'm not persuaded that he needed, rather than wanted, to transfer for this reason.

I also can't see evidence that Mr T had a strong need for variable income throughout his retirement. This doesn't seem to have been discussed.

So, I don't think it has been established that Mr T had a genuine need for flexible pension arrangements or that he needed to transfer his DB benefits to access his TFC.

Death benefits

In the suitability letter Bluesky said the death benefits through the personal pension were more flexible than Mr T's DB scheme. Although, it doesn't appear that the transfer was recommended due to the death benefits offered by the personal pension.

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 were likely an attractive feature to Mr T. But whilst I appreciate death benefits are important to consumers, and Mr T might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Bluesky explored to what extent, if any, Mr T was prepared to accept a lower retirement income in exchange for higher death benefits.

Suitability of investments

Bluesky recommended that Mr T invest in one of Royal London's pension funds (it's not clear which one, but it would have been at least partly equity based). As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr T, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr T should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that flexibility, and in particular the immediate access to his TFC, would have sounded like attractive features to Mr T. But Bluesky wasn't there to just transact what Mr T might have thought he wanted. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, based on the evidence I've seen, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T was very likely to obtain lower retirement benefits and in my view, there were no other compelling reasons which would justify a transfer and outweigh this. Mr T shouldn't have been advised to transfer out of the scheme just to repay some debts, which don't appear to have been unmanageable, especially as no alternative means of doing this seem to have been explored.

So, I think Bluesky should've advised Mr T to remain in his DB scheme.

Of course, I have to consider whether Mr T would've gone ahead anyway, against Bluesky's advice.

I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring out of the DB scheme, against Bluesky's advice.

I'm not persuaded that Mr T's want for cash was so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If Bluesky had explained that Mr T could likely meet all of his objectives without risking his guaranteed pension and making the transfer I think that would've carried significant weight.

So, if Bluesky had provided Mr T with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice. And, I don't think Mr T would have insisted on transferring out of the DB scheme.

In light of the above, I think Bluesky should compensate Mr T 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 Mr T, as far as possible, into the position he would now be in but for Bluesky’s unsuitable advice. I consider Mr T would have most likely remained in his DB scheme if suitable advice had been given.

Bluesky 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.

For clarity, Mr T has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 T’s acceptance of the decision.

Bluesky may wish to contact the Department for Work and Pensions (DWP) to obtain Mr T’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 T’s SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr T’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 T 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% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the ‘compensation amount’. This amount must where possible be paid to Mr T within 90 days of the date Bluesky 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 Bluesky to pay Mr T.

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.

My final decision

Determination and money award: I uphold this complaint and require Bluesky Wealth Management Limited to pay Mr T 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 would additionally require Bluesky Wealth Management Limited to pay Mr T any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Bluesky Wealth Management Limited to pay Mr T any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Bluesky Wealth Management Limited pays Mr T the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr T.

If Mr T accepts this decision, the money award becomes binding on Bluesky Wealth Management Limited.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T 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 Mr T to accept or reject my decision before 21 July 2022.
Andy Burlinson
Ombudsman