DRN-3224557

The complaint

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

Wealthwise Corporate Financial Management Limited is responsible for answering this complaint. To keep things simple I'll refer to "Wealthwise".

What happened

Mr T approached Wealthwise in late 2015 to discuss his pension and retirement needs. Wealthwise completed a fact-find in January 2016 to gather information about Mr T's circumstances and objectives. A summary was broadly as follows:

- Mr T was 54 years old, long-term unemployed, divorced and living with a close family relative. He was described as having left work in 2010 due to poor health and he had an ongoing anxiety disorder.

- Mr T's only income or assets at the time were described as state benefits of £580 per month. He had no mortgage and had around £5,000 of debt which he was paying back at £225 per month as part of an individual voluntary arrangement (IVA). There were around two-and-a-half years left to run on the IVA.

- Wealthwise said the Cash Equivalent Transfer Value of Mr T's pension was around £155,000. The scheme had a normal retirement age of 65.

- In the light of recently changed rules - 'pension freedoms' - Mr T had an aspiration to access his pension within the next year or so, at the age of 55.

In February 2016, Wealthwise went on to recommend in its suitability report that Mr T should transfer out of his DB OPS and into a personal pension plan. It noted Mr T's intention to access the pension at 55 and to drawdown cash thereafter to 'support his lifestyle'. Wealthwise pointed out that he'd be able to access his funds more flexibly and pass on money after his death in a way that suited his circumstances.

Mr T acted on the advice by transferring out. He is now represented by a company acting on his behalf which says Mr T was given advice by Wealthwise that was unsuitable and has caused him losses. The complaint has been referred to our Service. One of our investigators looked into the complaint and said we should uphold it. They thought Mr T would not have transferred out if Wealthwise had given him suitable advice.

Wealthwise didn't agree with our investigator and I have considered everything that it said with care. As the complaint couldn't be resolved informally, it's come to me for 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.

Having done so, I've decided to uphold the complaint.

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. This means Wealthwise 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).

Having looked at all the evidence available, I'm not satisfied the advice to transfer out was in Mr T's best interests.

Financial comparisons and viability

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.

Wealthwise said the critical yield required to match Mr T's OPS benefits at age 65 was 10.07% if he took a full estimated pension of £9,185 per year. Wealthwise didn't say what the critical yield was if he'd opted to take a tax-free cash element at 65 and a reduced pension, but it said the critical yield was 7.27% when compared against the Pension Protection Fund (PPF). I've noted that whilst the pension trustees said the OPS overall was in deficit, there's no evidence or suggestion that it was in danger of being transferred to the PPF at that time.

I've also noted 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 October 2017 and was 4.2% per year for 10 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.

I have kept in mind that Mr T's aspiration at the time was to access his pension savings at around the age of 55, rather than 65. Nevertheless, the above figures demonstrate, in my view, just how much Mr T's transferred funds would need to grow by even to match those in his OPS.

I've taken all these figures into account, along with the composition of assets in the discount rate and Mr T's low attitude to risk. There would be little point in Mr T giving up the guarantees available to him through his OPS only to achieve, at best, the same level of benefits outside that scheme. But here, given what I've pointed out above, I think that by transferring out, Mr T was likely to receive benefits of a substantially lower amount, whether his retirement plans came sooner or later.

Wealthwise provided very little analysis which showed whether, or for how long, Mr T might have been able to meet his financial needs in retirement if he transferred out. So there was nothing I've seen for Mr T showing how the funds might be depleted, or indeed used up completely, at certain ages. Some information was provided to Mr T about probable growth rates in the new funds if he transferred out, but as Wealthwise will know, past performance is no guarantee for future performance.

So, taking account of all these things, I consider the discount rates and the regulator's standard projections to be much more realistic methods in determining the long-term effects of transferring from his OPS. And in this case, all these indicate that transferring out made Mr T worse off in the long-term.

All of this means that it was likely that Mr T would end up with less valuable benefits overall by transferring. Of course, I accept 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 therefore considered these below to see if the transfer was suitable in spite of the potentially lower benefits.

Flexibility and income needs

In its suitability report Wealthwise said Mr T would benefit from much greater freedom and flexibility than his OPS if he transferred out. However, I think Wealthwise poorly defined what these terms really meant in Mr T's circumstances.

I don't think Mr T required the flexibility Wealthwise inferred. Mr T had very modest financial means and I think it's also fair to say he was probably being faced with a challenging time in his life when he sought the advice. So, I can certainly see how the prospect of a lump sum from his pension at the age of 55, and a subsequent income or drawdown, might have seemed very useful to him. I think in his situation, this would have represented a lot of money.

However, based on the evidence I've seen I don't think it's clear that Mr T had a genuine need to access his tax-free lump-sum cash earlier than the normal scheme retirement age and either leave the funds invested until a later date or start drawing them down. Whilst obviously an attractive prospect, this needed to be considered very carefully in Mr T's vulnerable situation and balanced against other aspects of his overall financial circumstances.

I've noted that we now know Mr T did eventually go on to access all the pension some time later, several months after the advice was given. But what he went on to do wasn't known at the time of the advice, so it wouldn't have formed any consideration for the recommendation that Weathwise gave. Put another way, Wealthwise's recommendation didn't become more suitable just because of what Mr M did much later on.

I also haven't seen anything showing that – however modest Mr T's financial means were at that time – he needed money to such an urgent extent as to make all other considerations, such as his longer-term retirement security, much less important. There's no suggestion, for instance, that his housing situation was at risk at that time or that his debts weren't being properly managed. And whilst I see he didn't enjoy problem-free health, I've seen nothing showing his life expectancy was considered so short as to make transferring out urgent.

On the other hand, by being advised to access the pension at a comparatively young age, Mr T was being exposed to the risk of having less income later in life. And I think his circumstances were such that he would have needed an income in the years ahead, particularly given his health condition and his living situation. I think that at the time it was likely Mr T may have needed at some point in the future to find new accommodation or to pay more for the home he was in; my understanding is the premises he lived in was council owned and leased to an elderly relative.

Furthermore, because Mr T was only 54 at the time of the advice, and based on what I've seen, he didn't have concrete retirement plans. I think this just added to the fact that it was simply too soon to make any kind of decision about transferring out of the DB scheme – after all, this was his major retirement provision.

Accordingly, I don't think it was a suitable recommendation for Mr T to give up all the guaranteed benefits the OPS came with when he didn't really yet know what his needs in later life would be. If Mr T later had reason to transfer out of his OPS he could have done so closer to retirement age. I can't see evidence that he had a strong need for cash and a variable income at this point, when considering what he'd also have to forgo to get these.

Death benefits

This issue was cited by Wealthwise as of importance to Mr T who was divorced but had four children. I understand three were adults and the remaining child lived with their mother. 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 most likely an attractive feature to Mr T. But whilst I appreciate death benefits are important to consumers, and he might have thought it was a good idea to transfer a 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.

Whether the death benefits were improved following a transfer depended on how much remained in the pension fund at the point of Mr T's passing. Given average life expectancy, and the size of the fund, it was always likely that this fund would be entirely depleted prior to Mr T's death providing no death benefits. I don't think that Wealthwise made this clear.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr T. I can't see any evidence which shows he placed passing on wealth at or near the top of his objectives for his pension.

Control or concerns over financial stability of the DB scheme

I think Mr T's desire for control over his pension benefits needed to be considered with everything else that was known. There's no evidence he was an experienced investor and I cannot see that he had an interest in or the knowledge to be able to effectively manage his pension funds. I don't think that this was a genuine objective for Mr T – it was simply a consequence of transferring him away from the DB scheme.

I've seen no direct evidence, nor has it been really suggested, that he funding of Mr T's OPS was in a position such that Mr T should have genuinely been concerned about the security of his pension. Furthermore, if the scheme did end up moving to the PPF, I think Wealthwise should have explained that this was not as concerning as Mr T thought. As I've explained above, Mr T was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

Summary

As I've demonstrated above, 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 Mr T. But Wealthwise wasn't there to just to transact what Mr T might have thought he wanted. The adviser's role was to really understand what he needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T was suitable. It's not clear whether, or to what extent, there was an option for Mr T to access his pension early whilst remaining in the OPS. I can't see it was discussed in any detail.

Instead, what Mr T was advised to do was to give up a guaranteed, risk-free and increasing income provided by his OPS. By transferring out, Mr T was very likely to obtain much lower retirement benefits and in my view there were no other particular reasons which would justify a transfer or outweigh this. Mr T shouldn't have been advised to transfer out of the scheme just to repay debts that were moderate, affordable and already within a formulated IVA. The potential for higher death benefits wasn't worth giving up the guarantees associated with his OPS.

So, I think Wealthwise should have advised Mr T to remain in his OPS. Of course, I have to consider whether he would have gone ahead with the transfer anyway, if advised against it. I have carefully considered Wealthwise's responses to the complaint points and also that it said Mr T went on to eventually access all his funds without, it says, its knowledge. However, in following Wealthwise's recommendation to transfer out, Mr T was in a very different position than he would have been. He had by then, easy access to funds that he ought not to have had. So, accessing those benefits was made easy for him.

I therefore don't think it's reasonable to conclude that what he did (eventually accessing all the funds) means he'd have gone against professional advice to stay in his OPS. And I certainly can't conclude that Mr T's mind was made up prior to meeting with Wealthwise: I think it's more likely that he'd have still followed a more suitable recommendation, even if that meant not transferring out and deferring taking his benefits.

So, to be clear, I'm not persuaded that Mr T would have insisted on transferring out of the OPS, against advice, had it been to remain in. I think if Wealthwise had provided him with clear advice against transferring out of the OPS, explaining why it wasn't in his best interests, I think Mr T would have accepted that.

In light of the above, I think Wealthwise 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 Wealthwise to put Mr T, as far as possible, into the position he would now be in but for its unsuitable advice. I consider Mr T would have most likely remained in his DB scheme if suitable advice had been given.

Wealthwise 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 T's acceptance of the decision.

Wealthwise 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 Wealthwise 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 Wealthwise 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 Wealthwise pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Wealthwise Corporate Financial 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 Wealthwise Corporate Financial Planning 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 Wealthwise Corporate Financial 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 Wealthwise Corporate Financial 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 Wealthwise Corporate Financial 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 8 July 2022.

Michael Campbell
Ombudsman