DRN-3325757

The complaint

Mr D complains about the advice he was given by Succession Wealth Management Ltd (SWM) regarding his personal pension plan.

What happened

In 2017 Mr D approached SWM for advice about whether he should access the funds held within his personal pension.

A fact find was completed which recorded Mr D's circumstances and objectives as follows:

- advice was required on accessing his pension
- he was aged 57 with no financially dependent children
- he was semi-retired but wanted to now retire fully
- he lived in a mortgage-free property worth around £350,000
- he owned three rental properties with repayment mortgages of about £170,000 £95,000 and £80,000; they provided a monthly income of £3,500 per house, less £600 for each for utilities
- his disposable monthly income was around £1,300
- his current account was overdrawn

On 23 March 2017 SWM sent Mr D its suitability report. Its executive summary advised Mr D to retain his personal pension. It stated, under the heading **Benefits**: *"You will receive a guaranteed annuity at age 60 of £10,900.80 p.a. This is the equivalent of having a pension pot of £323,000 now*."

SWM asked Mr D to review the report, to raise any questions, and to confirm his agreement to proceed with the recommendations.

Within the background of the report it states that SWM has, on Mr D's instructions, only assessed the suitability of accessing his pension fund.

It then summarises his financial position at the time of advice. It highlights, that in addition to his mortgages, he was seriously overdrawn (circa £40,000) and wished to resolve this situation as soon as possible.

It then discusses a **Contingency Fund**. For ease I've copied the paragraph below in its entirety:

> *Holding adequate liquid and secure cash reserves allows you to deal with any unforeseen circumstances that may arise. Having these reserves in place allows you to invest surplus capital over a longer time scale and to accept a degree of risk for funds invested for a longer period. From our discussions, you confirmed that your current level of funds held on deposit is completely depleted and therefore you have agreed the temporary overdraft with the bank manager to allow*

you to redecorate and improve the rental properties into a condition where you can once again derive an income from them.

We discussed how important it was to once again rebuild the reserves and create a contingency fund that will allow you to not only once again regularly maintain the properties but also create a contingency fund that will cover monthly expenditure for at least 3 months.

You confirmed your understanding of this, but felt the resolution of the overdraft and finding new tenants was your main concern at the moment.

His **Wealth Planning Objectives** were recorded as follows:

During our discussions, we explained how we could now help to oversee your entire financial portfolio in order to help you achieve your stated and agreed objectives. We have agreed that your specific and stated objectives are as follows:

- *Under the new pension rules you wish to access the total value from your pension funds prior to retirement to repay the majority of the overdraft.*
- *You wish to retire at 60 with a target retirement income of £21,600 per annum.*

You felt this was achievable if you settled the overdraft and returned to the income levels previously achieved on the multi lets.

Under the heading **Our Recommendations – Your Pensions** SWM clearly set out that the advice was to retain the pension in its current form until Mr D reached at least 60 years old.

It said the current total transfer value was **£32,639** and then provided the following age related income table:

Retirement Age	**Guaranteed Retirement Fund**
60	**£10,900.80 annuity per annum**
65	**£12,782.50 annuity per annum**
70	**£14,665.90 annuity per annum**
75	**£17,390.20 annuity per annum**

SWM then repeated and emphasised its advice to retain his plan and not to access it at this time, in any form. In support of this recommendation, SWM explained

- The benefit he would be sacrificing would be available to repay the overdraft in 3 years and would continue to provide an increasing income until death.
- He was not yet retired.
- He'd managed to live within his current level of income when the rental incomes were being received.
- He already had insufficient retirement provision and would not be able to meet his retirement objectives in terms of income levels in the future. So accessing this level of funds at that time would potentially impact Mr D's

ability to meet his desired income in retirement.

- There are other, more appropriate ways to raise the funds Mr D required, including a re-mortgage or a personal loan, which would allow his pension funds to remain in intact and grow in a tax efficient environment to provide him with a retirement income.
- Accessing his pension benefits at 57 would mean that Mr D would incur income tax and this could potentially be avoided by taking benefits at or after his normal retirement age. The £32,639 would be paid after the 25% tax free cash at emergency tax rates. This means that only around £8,159.75 would be paid tax free, and the remainder would be taxed at 40% (about £9,791 in tax)
- Therefore, of the original amount, Mr D would only receive £22,847.30 (though some of the tax paid might be reclaimed from HMRC).
- These funds could also end up being subject to Inheritance Tax.

Mr D followed SWM's advice and didn't access his pension funds. In November 2017 he refinanced his debts by re-mortgaging his three rental properties. He says that in order to get his new mortgage he had to include the old mortgages, his overdraft and a loan he had outstanding to pay for repairs to the rental properties. This re-mortgage was for over a longer term and at a higher interest rate than the original mortgages.

In 2020, when Mr D was 60, he contacted his pension provider about his pension benefits. But instead of the guaranteed annuity income of nearly £11,000 SWM had told him he'd get, his pension provider told him he'd get an annual income of about £4,000 (using plan's guaranteed annuity rate).

Mr D complained to SWM about the incorrect information it had given him. SWM said it had made an error in assessing the information it had been given by the pension provider. SWM apologised to Mr D but maintained its recommendation in 2017 not to access his pension remained valid.

Mr D wasn't happy with this so complained to our service. As a result of this referral SWM offered him:

- A refund of the cost of the advice and suitability report, totaling £402.50
- £500 for the trouble and upset he'd been caused.

Mr D didn't accept this. He said that if he'd been given the correct figures about his projected income on retirement, he would've accessed his pension funds to raise the money he needed to pay for the repairs to his rental properties. So he wouldn't have had to take out the new mortgage which was at a higher interest rate and over a longer period than his existing mortgage. So he didn't feel SWM's offer was enough because it didn't take this into account.

Our investigator agreed with Mr D and upheld his complaint. The investigator thought it likely that had SWM given him the correct projected income figures, he would've accessed his pension funds even if SWM had advised him not to. So he wouldn't have had to pay the additional interest on a new mortgage.

Our investigator also thought that given Mr D's drop in income due to the disrepair of his rental properties, non-payment of rent by the tenants, and the potential for increasing his income by making the required repairs, there wasn't enough evidence to say that waiting to access his pension until 2020 was suitable advice. He thought that had Mr D used his pension benefits in 2017 to repair the properties, he would've been better placed to reach his retirement objective of an annual income of £22,000.

So our investigator thought SWM should be liable for the additional costs Mr D incurred when he re-mortgaged in November 2017, and he told SWM how he thought these losses should be calculated.

SWM didn't agree with the investigator's view. It replied, in summary:

- Mr D had sought advice on whether he should access his pension in order to pay off part of his overdraft and replenish his cash funds.
- SWM advised him this approach wouldn't be suitable for him. It would mean giving up a long-term guaranteed pension income; may mean he couldn't meet his retirement objectives; and would lead to otherwise avoidable tax implications. It advised him he should consider other means of raising the funds he required, leaving his pension funds intact and growing in a tax efficient environment.
- It accepted the suitability report included an error, overstating the effective size of the pension pot Mr D would be sacrificing should he access it in 2017. However, even without this error, its advice to leave his pension plan untouched would've remained unchanged.

SWM requested that the investigator's view be re-assessed by an ombudsman. Its reasons for this are summarised below:

- It is unfair to hold SWM at fault on the basis of a hypothetical scenario in which it is speculated that Mr D would've acted against the advice received.
- The investigator's view that Mr D was mis-advised by SWM, and it should've advised him to access his pension in 2017, is irrational and based on hindsight. It maintained the advice to raise any funds required from other sources was entirely suitable and correct in the circumstances.
- The advice given in 2017 was within the limited scope required by Mr D. SWM did not provide, and wasn't asked to provide, a full financial review.
- Mr D's reasons for requiring the funds in 2017 had been inconsistent. The investigator had based his view on information which wasn't available to SWM at the time of the advice, and as such were entirely inconsistent with the original circumstances that had been presented.
- Had Mr D accessed the net amount available from his pension plan in 2017 (£27,743.15) this would've only paid off a fraction of his personal loan, leaving him with significant levels of debt and his overall position materially unaltered.
- There is nothing to show if Mr D looked at other options of raising the funds to clear his debts and/or make repairs. It is simply asserted that a re-mortgage was effectively the only option open to him.
- It wasn't fair or reasonable for the investigator to accept at face value the assertions made by Mr D as to his circumstances and the reasons for having to raise the funds.
- There is no causal link between the advice Mr D sought from SWM and his subsequent decision to re-mortgage.

- There were numerous discrepancies and ambiguities in the figures provided by Mr D regarding his personal circumstances and the re-mortgage.

These points were put to Mr D who didn't agree. He said SWM had fundamentally misunderstood the problem, and his intention for using the pension funds was clear at the time of the advice. He quoted the following line from the suitability report under the heading **Contingency Fund:**

> *…to allow you to redecorate and improve the rental properties into a condition where you can once again derive an income from them.*

And

> *You confirmed your understanding of this, but felt the resolution of the overdraft and finding new tenants was your main concern at the moment.*

He thought this clearly showed his intention for the funds, and the only reason he found himself in a worse off financial position was due to SWM's flawed advice.

The investigator responded to SWM's points but maintained his view that the advice given by SWM was unsuitable. He said that had Mr D used the transfer value of the pension plan to repair the properties, he could've rented them out to provide an income for him before and after retirement of between £23,000 and £27,000. And if the correct projection had been used, at the time of the advice the pension would've only given him an annual income of around £3,000. And he said Mr D had since told him that he needed the funds from his pension plan to make the necessary repairs as he'd used up his overdraft. And the re- mortgage he had to take had a higher interest rate and was over a longer period.

He also said that he thought the wrong information SWM had given Mr D was the only reason he re-mortgaged. And although he accepted that Mr D would still have been left with debts even if he'd been given the right information, SWM should be responsible for redressing the extra interest he'd have to pay over the entire term of his re-mortgage.

In response, SWM disagreed. In summary it said:

- The investigator's view didn't take into account the limited scope of the advice required by, and given to, Mr D.
- It was speculation on a hypothetical scenario that Mr D would've acted against the advice given by SWM, and therefore it is unfair to hold it responsible for losses incurred from a hypothetical scenario. And even if SWM had used the correct projection figures, the advice to look to other sources to raise any required funds was entirely suitable and correct in the circumstances.
- Mr D was told by his pension company on 20 March 2017 that his pension had a transfer value of £20,641.58. The report from SWM to Mr D was dated only three days later and contained the vastly different incorrect value. This would've raised questions and doubt in the figures in SWM's report. And to base significant future investments on the report, when this was not its purpose is negligent and not connected to SWM.
- The purpose of the required funds was entirely inconsistent, and the investigator has based his views on the suitability of the advice on what Mr D has subsequently told him were his objectives at the time. However, this is inconsistent with what Mr D told SWM at the time of the advice.

- Mr D told SWM that he needed the funds to repay part of the overdraft and to replenish his cash reserves. There was no suggestion he urgently needed the funds to repair the properties.
- There were eight months between the date of the suitability report and when Mr D applied to the bank for the re-mortgage. This highlights the distinction between the advice SWM gave regarding not accessing his pension to repay part of his overdraft, and his later decision to re-mortgage.
- There was no evidence that any fund-raising alternatives to the re-mortgage were considered.
- There was no causal link between the advice sought by Mr D from SWM, and his subsequent decision to re-mortgage.

As no agreement could be reached the complaint was passed to me for a decision.

On 2 February 2022 I issued a provisional decision because I disagreed with the investigator's view that SWM should be held responsible for the additional mortgage costs Mr D had incurred. In my provisional decision I said:

Both Mr D and SWM have submitted a significant amount of evidence and arguments in support of their respective positions, and I've considered them all. But I'm only going to comment on those which are directly linked to what I consider to be the crux of this complaint. That is, what I think is more likely to have happened had SWM provided Mr D with advice based on the correct annual pension income.

It is accepted that at the time of the advice in 2017, Mr D had three rental properties upon which he was relying for his income. But these properties had fallen into disrepair and needed updating in order to maximise the potential rental income.

It is also accepted that each rental property was mortgaged, and Mr D was at the limit of his agreed current account overdraft.

Mr D says he approached his pension provider to ask about releasing its capital, but he was rightly told that before he was able to do that, he would need to show he'd received independent financial advice. So he approached SWM.

There is evidence and testimony fundamental to this complaint that is contradictory. And where this is the case, I've reached my decision on the balance of probabilities – in other words, what I consider is more likely to have happened in the light of the available evidence and the wider circumstances.

At the time of advice, SWM completed a handwritten 'fact find' document, a copy of which I've seen and summarised in the background section above. And there is no suggestion that the veracity of this document or its contents is in question. So it is a fair and reasonable position to take that SWM should've relied on this information about Mr D's personal and financial circumstances, in order to make a personal recommendation. And this document indicated that Mr D, although in significant debt, had a good income from the three rental properties, and a reasonable level of disposable monthly income.

SWM also obtained details of Mr D's personal pension. It used these, along with the 'fact find' to make a personal recommendation, which it sent to Mr D.

It is the accuracy of the content of this report, and the subsequent recommendation given by SWM which is the crux of this complaint. SWM have acknowledged that the projected size of

Mr D's pension pot, and the projected income it says he was guaranteed to receive from aged 60 was overstated. And Mr D says he only followed SWM's advice not to access the pension funds in 2017 because of the size and guaranteed nature of this projected pension it incorrectly said he would receive. He maintains that had he known the correct projected income, he would've accessed the funds, irrespective of SWM's recommendation.

But Mr D also says that some information included in the suitability report is inaccurate. He has told us that the condition of his rental properties, personal debt and income levels were significantly different to what was written. He says, contrary to what is in the suitability report, he had maximised his overdraft so was unable to pay for and complete the required repairs. Therefore, he wasn't receiving the stated rental income as not all the properties were properly habitable. This meant his only option at this point was raising additional cash.

But this isn't what is said in the suitability report, which includes the following paragraph:

> *Holding adequate liquid and secure cash reserves allows you to deal with any unforeseen circumstances that may arise. Having these reserves in place allows you to invest surplus capital over a longer time scale and to accept a degree of risk for funds invested for a longer period. From our discussions, you confirmed that your current level of funds held on deposit is completely depleted and therefore you have agreed the temporary overdraft with the bank manager to allow you to redecorate and improve the rental properties into a condition where you can once again derive an income from them.*

Having read this paragraph it is my understanding that Mr D had already secured a temporary overdraft for the redecoration and repairs, and so the pension funds weren't necessary for the repairs nor achieving improved rental income once the repairs were complete. And this is confirmed by the wealth planning objectives, one of which was:

- *Under the new pension rules you wish to access the total value from your pension funds prior to retirement to repay the majority of the overdraft.*

SWM could only make its recommendation on the information it was provided at the time. And I've not seen anything which suggests Mr D questioned at the time what SWM said his thoughts were about having a contingency fund, and his wealth planning objectives.

So, what I need to initially decide, is whether SWM's recommendation would likely have been different had the correct pension size and projected income been used. And I don't think it would've. I think this because the incorrect guaranteed pension income, although a significant factor, wasn't the only consideration. It was also noted that this pension was Mr D's only source of guaranteed income in retirement, and giving it up may have meant he would be unable to meet his retirement objectives. It would also have had tax implications whereby tax would need to be paid on the funds accessed, which wouldn't necessarily be the case if he left them until he was 60, only three years later. And given the level of monthly disposable income Mr D states he had in the fact find, I don't see anything which suggests he was unable to furnish his level of debt. So although it would've meant he had access to the funds immediately, when taking into account the short and long-term impacts, I don't think it would've been suitable advice to do this. So I think it is unlikely that SWM's advice would've been any different to that which it gave, albeit containing incorrect figures.

So, having come to the conclusion that had SWM used the correct figures in their recommendation it is likely that it would still have recommended Mr D not access his pension to raise the funds required, I have to decide what I think Mr D would've most likely done in this situation. And I don't think he'd have done anything differently. I think it is most likely that *he would've followed SWM's recommendation and left his pension fund untouched, and do as he has now done, and raise the additional funds in an alternative way. I'll explain why.*

Mr D is, by his own admission, an inexperienced investor. He is a professional landlord, but I can't see he has much experience or knowledge about pensions or retirement planning. So I think it is reasonable to assume that it is likely he would've followed the advice of a professional adviser. Now whilst I acknowledge Mr D's personal and financial circumstances documented in the 'fact find', and his financial position and wealth planning objectives documented in the suitability report both indicate someone who is quite heavily in debt, it doesn't indicate someone whose debts are unserviceable and who needs to immediately access the funds in his pension plan. Pensions are designed to provide an income in retirement, not to be an emergency fund or savings account. And Mr D's pension also contained safeguarded benefits, which are seen by the regulator as important enough that independent financial advice is required before they can be accessed flexibly.

And I think it is significant that Mr D didn't take out this new lending until about eight months after he received the advice from SWM. This also adds weight to the argument that his debts don't appear to have been unserviceable at the time of the advice, and so the advice not to access his pension at that time wasn't unsuitable.

Going against the advice of a professional independent financial adviser is a significant step, especially for someone who has little experience of pensions or retirement planning. So, taking into account that I've seen the 'fact find' and suitability report which both paint the picture of someone who is managing the level of debt they have, I think that had SWM, using the correct figures in its suitability report, advised Mr D not to access his pension fund, I'm satisfied he would've most likely followed that advice.

So, having come to that conclusion, it follows that I think SWM can't fairly be held responsible for the decision Mr D took to refinance his debts by taking out a new mortgage, over a longer term and at a higher interest rate. And so SWM aren't responsible for the additional costs incurred through this new lending.

But, as I've said above, its not disputed that there were inaccuracies in the figures used in the suitability report. And I think those errors were significant. It is incumbent on a financial adviser to ensure the information they include in any document, especially one that is advising a client, is accurate, so that the client can make properly informed choices. But our service isn't here to punish businesses when they get things wrong. We can ensure however, that people are properly compensated for the impact these errors have on them. So I think it is right that SWM have offered to refund the advice fee, and it has also offered to pay Mr D £500 for the trouble and upset it's mistake caused him. I think this is fair and reasonable in the circumstances.

I invited Mr D and SWM to respond and submit any additional information that they wanted me to consider.

SWM had nothing further to add. Mr D submitted a lot of information about his background, his properties, and the sequence of events which led to him seeking advice from SWM and subsequently obtaining the new mortgage. I thank Mr D for this, and I can assure him I've read and considered it all. But having done so, and also having reviewed all the evidence previously submitted, I've not changed my mind and my provisional decision stands. I'll explain why.

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 also considered again my provisional findings in light of Mr D's response to it.

Firstly, I've reconsidered whether it is likely that, had the error not been made with the figures in the suitability report, SWM would've recommended Mr D leave his pension in place. And I'm satisfied it would've. His pension was his only source of guaranteed income in retirement, and it was only three years from when he could've accessed it without the likely tax implications. And although the annual income it would've generated was much less than SWM had incorrectly stated, this income was guaranteed for life, with no investment risk. And his level of debt, although sizeable, appeared from the information recorded in the fact find, to be serviceable. So because of all of the above I'm satisfied it is more likely that not SWM would've advised Mr D not to access his pension funds at that time.

So, having decided that SWM, if using the correct figures, would've probably recommended to Mr D that he didn't access his pension funds, I need to decide what I think Mr D would most likely have done in these circumstances. But having considered everything he has submitted, I remain satisfied that it is more likely than not that he would've followed the advice and not accessed his pension.

As I said in my provisional decision, Mr D was an inexperienced investor, with little experience or understanding of pensions and retirement planning. And he has reiterated this point to me in his latest submissions. Going against the advice of a professional would be a big step, especially given Mr D's lack of experience in these matters, and doing so is relatively unusual. So I think it more likely than not Mr D would've followed its advice and explored, as he has done, alternatives for raising the funds he required.

Mr D has said SWM should pay him substantial recompense to put him in the place he would've been had he not used their professional services. But I'm afraid I don't agree. Mr D said he was told by his pension provider that he had to take independent financial advice because of the nature of his pension benefits. Under the regulator's rules, to access pension funds such as his, consumers have to obtain professional advice if they want to give up the valuable benefits attached to these plans to take the pension as a lump sum instead. So Mr D would've had to obtain advice in any case, and as I've said above, even if the correct figures has been used I'm satisfied that he probably would've been advised against accessing his funds.

So SWM can't fairly be held responsible for the decision Mr D took to refinance his debts by taking out a new mortgage over a longer term and at a higher interest rate, as I'm satisfied he would've most likely done this anyway. And my reasons for this are the same as I gave in my provisional decision. So it follows that SWM can't be held responsible for the additional costs Mr D incurred through this new lending.

But, as I said in my provisional decision, I do think that Mr D was caused distress and inconvenience when he discovered the errors SWM made in their suitability report. And given the nature of these errors it is right that Mr D shouldn't have to pay for the advice SWM gave him.

For all of these reasons, and the reasons outlined in my provisional decision, I'm satisfied the outcome I set out in my provisional decision is fair and reasonable.

Putting things right

SWM should, if it hasn't done already, refund Mr D its advice fee, and pay him £500 for the distress and inconvenience it has caused him.

My final decision

For the reasons set out above, my final decision is that I require Succession Wealth Management Ltd to, if it hasn't already done so:

- Refund to Mr D the £402.50 advice fee;

- and pay Mr D £500 for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 21 March 2022.

Chris Riggs
Ombudsman