DRN-3374179

## The complaint

Mr W complains about the advice given by Pareto Financial Planning Limited (Pareto) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes it has caused a financial loss.

## What happened

Mr W approached Pareto in 2015 to discuss his pension and retirement needs. He was looking to review his retirement provision in general.

Pareto completed a fact-find to gather information about Mr W's circumstances and objectives. This showed that he:

- Was aged 55, married with non-dependent children.
- Was self-employed and earning £2,000 per month. His wife was employed and earning £4,000 per month. Their expenditure totalled £3,000.
- Had a SIPP with Standard Life which he started in 2011. Its current value was £52,641.42.
- Their property was worth £300,000 and it had an outstanding mortgage of £180,000
- They had had joint savings of £37,000.

Pareto also carried out an assessment of Mr W's attitude to risk, which it deemed to be six out of ten or 'balanced to adventurous'.

On August 2015, Pareto advised Mr W to transfer his DB pension benefits into his SIPP and invest the proceeds in line with his attitude to risk. He had 25 years of service within the DB scheme and received a transfer value of approximately £470,000.

The suitability report said the reasons for this recommendation were broadly that he wanted; the ability to retire early, control and flexibility of his pension which included taking lump sums before retirement, better provision for his dependents, increasing his pension cash lump sum benefits upon his death at retirement and tax free lump sums at retirement.

It was recorded that he wanted £50,000 per year in retirement and this may not be achievable through his existing provision. Pareto thought the transfer was particularly suitable for him as he had a higher attitude to investment risk and he was looking for much more flexibility than the DB scheme could provide. He wanted to self-invest.

Mr W complained in 2021 to Pareto about the suitability of the transfer advice. He said that the growth rate that the transferred out funds needed to achieve was very high at 11.7%. He doesn't recall that this, or that any of the other downsides of transferring the pension, were fully explained to him.

Pareto didn't uphold Mr W's complaint. It said that, overall, it thought the recommendation to transfer was suitable and appropriate for him at the time, based on the information he supplied.

Mr W referred his complaint to our service. An investigator upheld the complaint and recommended Pareto to pay compensation. She thought that the transfer wasn't financially viable and Mr W shouldn't have been advised to make it. The fact that he wanted flexibility and different death benefits didn't change this. Mr W shouldn't have been advised to transfer his DB scheme benefits.

Pareto disagreed, they said that:

- The advice to transfer the DB scheme benefits was suitable for Mr W.
- He wanted to access his tax free cash so he could repay some debt and reduce his outgoings.
- He wasn't under pressure to make the transfer.
- Mr W was knowledgeable about financial matters and he had been in touch numerous times about the pension transfer. He had already decided to transfer when he met them.
- So, Pareto thinks he would have made the transfer in any event.
- The DB scheme pension may not have met his needs at age 65.

The investigator wasn't persuaded to change their opinion. He didn't think Mr W was pressured to transfer his DB scheme benefits. But he also didn't think that Mr W was an insistent customer. And even though the DB scheme my not have met his stated aims it wasn't suitable to transfer it as it wasn't financially viable. And even though Mr W was an experienced investor this doesn't necessarily mean that he wanted to take the risk the transfer represented. Overall, the transfer wasn't financially viable and so it wasn't suitable for him

As no agreement has been reached the complaint was 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, Pareto should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr W'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*

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. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, 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.

The critical yield required to match Mr W's benefits at age 65 was 11.75% if he took a full pension.

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 1 October 2017, and was 4.1% per year for 9 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've taken this into account, along with the composition of assets in the discount rate, Mr W's 'balanced to adventurous' attitude to risk and also the term to retirement. There would be little point in Mr W giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 11.7%, I think Mr W was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his attitude to risk.

For this reason alone, a transfer out of the DB scheme wasn't in Mr W's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Pareto has said in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

*Flexibility and income needs*

I don't think Mr W really required flexibility when he made the transfer. This is because, based on the evidence I've seen, I don't think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave his funds invested until a later date.

I do note that Mr W's personal circumstances had recently changed. I understand that he had recently become self-employed and this had led to his income reducing, and perhaps becoming less certain. And he did have some credit related outgoings, mainly his mortgage.

But I haven't seen any signs that he was having financial problems. I understand he, and his wife, still had enough to meet their day to day needs. He had some cash reserves and he was repaying, and or overpaying his debts. So, I don't think he had a pressing need for tax free cash.

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

It was recorded that Mr W wanted around £50,000 (in today's money) if he accessed his benefits at the scheme retirement age of 65. It was estimated that at 65, he would receive an annual pension of £40,763.11 from the DB scheme. This may have been reduced by Mr W's pension sharing arrangement, but he would have also received his state pension in time.

But this figure seems to be Mr W's initial thoughts about how much he would like, I haven't seen a detailed analysis of his expected income and expenditure at retirement. And, as I've explained above, the DB scheme was likely to provide the highest amount of income anyway.

So, I'm satisfied the DB scheme would be best placed to meet his income needs in retirement

Furthermore, Mr W was 55 at the time of the advice and based on what I've seen he didn't have concrete retirement plans. As Mr W had around ten years before full retirement, I think it was too soon to make any kind of decision about transferring out of the DB scheme.

Added to this Mr W, and his employer, were also contributing to a SIPP and this would give him some flexibility pension benefits going forward as more funds were added to it.

Overall, I can accept that Mr W was attracted by the idea of flexibility. But I've not seen a genuine need for it. So, any wants he had for flexibility shouldn't have overridden his pension requirements.

So, I don't think it was a suitable recommendation for Mr W to give up his guaranteed benefits now when he didn't really know what his needs in retirement would be. If Mr W later had reason to transfer out of his DB scheme he could have done so closer to 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 were likely an attractive feature to Mr W. But whilst I appreciate death benefits are important to consumers, and Mr W 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 W about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pareto explored to what extent Mr W was prepared to accept a lower retirement income in exchange for higher death benefits.

Furthermore, if Mr W genuinely wanted to leave a legacy for his family, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Pareto should've instead explored life insurance to a greater degree

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

*Control or concerns over financial stability of the DB scheme*

I think Mr W's desire for control over his pension benefits was overstated. Mr W did have some investment experience and he may have had an interest in, and the knowledge, to be able to manage his pension funds on their own.

But, again, I don't think that he had a genuine need to do this. And I don't think that if he fully understood that he was likely to receive significantly lower overall pension benefits that he would still have proceeded just to meet this aim. And again, he had some control over the investments he had in his existing SIPP.

And the funding of his employer's DB scheme was not in a position such that Mr W should have genuinely been concerned about the security of his pension.

*Suitability of investments*

Pareto recommended that Mr W invest in a range of funds. And Mr W hasn't complained that these funds used were unsuitable as such. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr W, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr W should have been advised to remain in the DB scheme and so the investments in these funds wouldn't have arisen if suitable advice had been given.

*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 Mr W. But Pareto wasn't there to just transact what Mr W might have thought he wanted. The adviser's role was to really understand what Mr W needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr W was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr W 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. Mr W shouldn't have been advised to transfer out of the scheme just to repay debts early, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. Whilst I'm sure he found the idea of greater flexibility attractive I don't think he *needed* it at this time of life.

So, I think Pareto should've advised Mr W to remain in his DB scheme.

Of course, I have to consider whether Mr W would've gone ahead anyway, against Pareto's advice. Pareto says that this is the case and that Mr W was the driver behind the transfer.

I've considered this carefully, but I'm not persuaded that Mr W would've insisted on transferring out of the DB scheme, against Pareto's advice. Ultimately this pension accounted for the majority of Mr W's retirement provision. So, if Pareto had provided him 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.

I'm not persuaded that Mr W's want for different death benefits or flexibility were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If Pareto had explained that Mr W that risking his guaranteed pension might mean he was significantly less likely to meet his retirement objectives, I think that would've carried significant weight. So, I don't think Mr W would have insisted on transferring out of the DB scheme.

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

Our Investigator recommended that pareto also pay Mr W £350 for the distress caused by the unsuitable advice. I don't doubt that Mr W has been caused distress and concern in relation to his retirement planning. And I'm conscious this wouldn't have happened but for the unsuitable advice. And so, in the circumstances, I think the award the Investigator recommended is fair.

**Putting things right**

A fair and reasonable outcome would be for the business to put Mr W, as far as possible, into the position he would now be in but for Pareto's unsuitable advice. I consider Mr W would have most likely remained in his DB scheme if suitable advice had been given.

Pareto 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 W 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 W's acceptance of the decision.

Pareto may wish to contact the Department for Work and Pensions (DWP) to obtain Mr W'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 W's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr W'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 W 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 W within 90 days of the date Pareto receives notification of her 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 Pareto to pay Mr W.

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.

In addition, £350 should be paid to Mr W to reflect any distress and inconvenience caused.

**My final decision**

Determination and money award: I uphold this complaint and require Pareto to pay Mr W 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 Pareto to pay Mr W any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Pareto to pay Mr W any interest as set out above on the sum of £160,000.

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

If Mr W accepts this decision, the money award becomes binding on Pareto.

My recommendation would not be binding if he does not accept my decision. Further, it's unlikely that Mr W can accept my decision and go to court to ask for the balance. Mr W 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 W to accept or reject my decision before 19 August 2022.

Andy Burlinson
**Ombudsman**