DRN-3569891

The complaint

Mrs V complained about advice she was given by Alterno Wealth Ltd which was an appointed representative of Pi Financial Limited. Pi Financial Limited is now responsible for answering this complaint, so to keep things simple, I'll refer to "PFL" when mentioning the business involved.

Mrs V complained that she was advised to transfer out of two occupational pension schemes (OPS) into a personal pension plan. She says the advice was unsuitable and as a result says she's worse off.

What happened

Mrs V met with a representative of PFL in late 2018 to discuss her retirement needs. Aged 55 years old at the time, Mrs V wanted to discuss her financial options. The pensions Mrs V was transferred out of were both defined benefit (DB) schemes which I'll mainly refer to as OPS1 and OPS2 and the normal retirement age for both schemes was 60.

The cash equivalent transfer values for Mrs V's two DB plans in 2018 were approximately £19,300 (OPS1) and £99,000 (OPS2) respectively. In both cases Mrs V was a deferred member of these schemes, meaning she'd left the employers some years before.

A summary of what PFL's 'fact find' revealed her financial / pension objectives to be going forward was as follows:

a) income flexibility whilst maximising the amount of tax-free cash she could access,

b) achieving growth in the new funds,

c) consolidating the administration of her pension(s), and

d) more options around the death benefits should she pass away.

As a result of the discussions, the PFL adviser recommended Mrs V transfer both OPS1 and OPS2 to a personal pension. Mrs V was also recommended to take the maximum tax-free cash element available to her after the transfer out, with an option of going into drawdown to access money if needed. The adviser said this would help Mrs V achieve her overall retirement objectives.

One of our investigators comprehensively looked into the complaint and said that both OPS1 and OPS2 should not have been recommended for transfer to a personal pension. The investigator said the investments would have been unable to grow enough to match the benefits she had in the two DB schemes. They said Mrs V should be compensated in line with the regulator's DB transfer redress methodology.

PFL responded by disagreeing with the investigator's view and I have considered all the points it has made with great care. As the complaint couldn't be resolved informally, it was passed to me to make an ombudsman's decision.

In June 2022 I issued a provisional decision upholding the complaint. I said I thought Mrs V ought to have been advised to stay in her two DB schemes. However, because of the financial situation she was in at the time of the advice, I said I thought what she would have most likely done was to access her DB pensions early, at the age of 56.

Mrs V's representative has replied to the provisional decision and the only substantive point made relates to when she might have accessed her DB pensions. The representative said Mrs V still maintains that if she had been suitably advised – not to transfer out of the DB schemes - she would have waited until she was aged 60. At this point, she says she would have accessed the DB schemes, rather than at the age of 56, which is what I said.

The significant of this is that it could affect the amount of redress Mrs V is due. However, I've considered this point already when I issued the provisional decision. And I've thought carefully about it again – and I'm afraid I'm not changing what I said in my provisional 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 am still upholding Mrs V's complaint. This is my final decision.

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, PFL should have only considered the transfers if it could clearly demonstrate that they were in Mrs V's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Overview

Mrs V had accrued deferred benefits having completed pensionable service, in each case, during the 1980s and 1990s onwards and the estimated pensions payable at both her schemes' retirement age of 60 was £1,280 (OPS1) and £4,552 (OPS2) per year. An earlier retirement than 60 years of age would have resulted in a lower annual pension for Mrs V in both cases. I explain a little more about this later.

Mrs V was married with grown up children not financially dependent on her at the time of the advice. She lived in a mobile home valued at approximately £20,000 owned jointly with her husband, Mr V, with no mortgage or loan outstanding. She and Mr V also owned a property abroad, which I understand required renovation. Again this property had no loan outstanding and the market value was said to be £32,000. They also had cash savings of £15,000. Mrs V wasn't working at the time of the advice, describing herself as unemployed, although what I've seen tends to show she was hopeful of getting a job imminently, commensurate with her skills and experience - she already had some interviews planned at the time of the advice.

Financial 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, 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.

When Mrs V was given the advice by PFL, its suitability report referred to the 'critical yield', a calculation used when comparing a DB scheme with what growth would be needed to buy an annuity. While the critical yield is a useful benchmark I note in Mrs V's case she was recommended to transfer out of her pensions and start accessing the tax-free element very soon, when she would be around 56 years of age.

However, by way of comparison, at age 60, the estimated annual pension Mrs V was entitled to for the OPS1 scheme was £1,280 per year. Alternatively, if she'd opted to take a tax-free lump sum of £5,980 with this the reduced annual pension would have been £897 per year. PFL said the critical yields for these options were 30.95% and 24.74% per year respectively, making the transfer out clearly something that would need to be considered very carefully indeed because these figures implied significant financial disadvantages in her leaving OPS1.

Similarly, for her OPS2 scheme at age 60, the estimated annual pension was £4,522 per year, or £2,907 if taking a tax-free lump sum of £19,382. PFL said the critical yields for these options were 22.34% and 14.94% respectively, again demonstrating just how difficult it would have been to match what Mrs V already had in her existing OPS schemes. When calculating the critical yield figures for accessing these pensions earlier than 60, the figures were even higher.

As well as the critical yield, PFL's suitability report also provided a further demonstration of just how much extra Mrs V would have to pay on the 'open market' to match the DB schemes she was already in. In the case of the OPS1 scheme PFL said she'd have to find over £37,000 to replicate the financial benefits of that pension, and for the larger OPS2 pension, around £116,000 would be required.

Further to these things, 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 3.0% per year for 4 years to retirement. Anything above the discount rate is likely to be harder to achieve. And for further comparison, the regulator's upper projection growth rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

So, I think it's fair to say all these things should have stood out as major risks, showing how comparatively much worse off Mrs V would be, from a financial viability perspective, by transferring out of OPS1 and OPS2 to a personal pension. I think it's also fair to say these risks were evident in PFL's own suitability report.

I see PFL also assessed Mrs V's attitude to risk (ATR) as 'high-medium' and her capacity for loss as 'medium'. However, I've looked carefully at her circumstances of that time and all the questions she answered, and I think PFL mis-judged this - everything I've seen tends to show she was not an experienced investor, and she only had modest financial assets. Documents from the time show that Mrs V had said that she wasn't a confident investor. She also preferred (investment) certainty and would tend to invest only around once a year, if that. I also think her capacity for loss was low, rather than medium, given the sum of the assets she had.

So, simply put, I think Mrs V's deferred OPS's were at their most valuable in their existing form and PFL's suitability report itself acknowledged the critical yields to be very high. This meant that matching her two OPS's with an open market product wasn't realistically achievable. Taking these things into account, along with the composition of assets in the discount rate, Mrs V's ATR and also the term to retirement, there would be little point in her giving up the guarantees and benefits available to her through her two DB schemes only to achieve poorer levels of benefits outside those schemes. In her case, transferring out was therefore clearly not a good option financially.

Flexibility and income needs

I don't think it's entirely clear that Mrs V yet had concrete retirement plans at the time the advice was given. Mrs V was only 55 years old and the advice was predicated largely on her accessing tax-free cash to help renovate her overseas property, rather than her future retirement income needs.

I also think that when looking together at both the fact-find and suitability report prepared by PFL for Mrs V, these too painted an unclear picture. In my view, the conclusion to draw from both these documents is that PFL didn't really know how Mrs V intended to take her pension benefits. For instance, on the issue of where Mrs V wanted to spend her retirement, the latter document was unclear despite this probably being an important factor to her retirement income needs. The report says she did not intend to move abroad but it also later says she might spend the majority of her time overseas. It also talks about Mrs V taking tax-free cash directly upon transferring out but with leaving the remainder sum(s) invested; elsewhere however, it is implied that she may have a need to drawdown more cash quite soon to supplement her income.

Mrs V was also said at the time to have had two job interviews already arranged with the intention of earning around £20,000 per year so the hope was that she would soon regain employment and have some earnings very soon. With this in mind, I think it's fair to say Mrs V's immediate plans involved working, probably full time (or close to it), rather than retiring.

I therefore don't think it was possible to say Mrs V required 'flexibility' to draw income from her pension savings at that point as was mentioned in the suitability report. I think her retirement plans were fluid, realistically referring to sometime in the considerable future.

The suitability report went on to offer 5 options as regards her pensions:

- to remain with the OPS1 scheme and start taking benefits at the age of 60
- remain with OPS1 and start taking benefits immediately, at around the age of 56
- remain within the OPS2 scheme and start taking benefits at the age of 60
- remain with OPS2 and start taking benefits immediately, at around the age of 56
- to transfer-out both DB pensions to a personal pension, to then access the maximum tax-free elements from each scheme and then leave the remainder of the funds invested until up to the age of 67

PFL advised the latter of these options and thus the transfer out took place. However, although other options around her DB pensions were mentioned in the report, these were not promoted enough. I think it's reasonable to say Mrs V had sought advice in the hope that she would be helped to understand the risks and complexities - after all, the evidence here is that she was inexperienced in these types of financial matters. So, PFL mentioning a risk, and then 'moving on' from fully explaining it and giving advice, does not abrogate any of its responsibilities as her adviser.

The principal rationale given by PFL for taking the option to transfer out of OPS1 and OPS2 was the immediate access to tax-free cash to help fund repairs to Mrs and Mr V's home abroad. I agree that renovating the house was no doubt an aspiration for Mrs V. But in my view, I also think it's important to point out that Mrs V didn't have much more than OPS1 and OPS2 by way of future retirement income. So, these formed a large part of her being able to stop working and they both came with guarantees and benefits found only predominantly in such schemes. Her state pension payable at the age of 67 was still over a decade away and I also think it would have been reasonable for PFL to have made more meaningful enquiries into Mr V's financial circumstances – although I note brief mention was made of a possible pension.

The suitability report went on to provide a series of 'cash flow' models. PFL implies that these demonstrated how Mrs V's financial retirement plans might have been viable over a number of years if she took up the recommendation to transfer out and I've considered this carefully. However, I disagree with PDL about these models. In comparing them with Mrs V's OPS's in turn, I think these merely showed her transferred-out funds would have been exhausted relatively quickly. In short, the cash flow models simply add more evidence to transferring out of OPS 1 and OPS2 being an unsuitable recommendation for her.

Mindful of these uncertainties, I went on to think about what Mrs V's retirement needs would be. She had said that in retirement she probably needed £600 - £800 per month to live on.

However, at 67, the age mentioned by her as potentially retiring, I think this would have been achievable with her existing DB pensions which could still have been accessed early to take tax-free cash from, thus achieving most of what she wanted in renovating her overseas home. I understand this may have required up to £25,000 to fully finish it, however Mrs V told us the immediate priority was more to get it liveable by fitting a bathroom because it didn't have one.

So, I think it was entirely possible for Mrs V's aspirations for her home abroad to be largely met, by prioritising what needed to be done and whilst still keeping an eye on her future retirement needs. Her pensions were modest - but the deferred benefits already enabled her to meet her target income when topping up her state pension at 67.

PFL's suitability report set out some options that were akin to this, but which were *not* recommended. However, considering everything Mrs V wanted to achieve, I think other options represented much better choices for her. In my view, these related to her accessing her two existing DB pensions early, at the age of 56, rather than transferring them both out to a private pension. In this case, there would certainly be some reductions in her longer-term defined benefits, but she would still have been able to access some immediate tax-free cash, have a small pension income from OPS1 and OPS2 and use her anticipated salary – all until her preferred retirement at the age of around 67, when she'd get her state pension.

For OPS1, tax-free cash of £5,194 could be accessed at the age of 56 with an annual pension of £779. And for accessing OPS2 early, a tax-free element of £14,363 and an annual pension of £2,174 was achievable at 56. In both cases certain death benefits of 50% were retained, which I've noted were important considerations for her, and both were index-linked.

On the evidence I've seen therefore, I don't think there's enough to say it was in Mrs V's best interests to access tax-free cash specifically by transferring out of OPS1 and OPS2 to a personal pension plan. Mrs V already had the opportunity to access tax-free cash (almost £20,000) from within her two DB schemes, even at the age of 56. She would then have had almost £3,000 per year index-linked income. She was also intending on working again and there is a suggestion Mr V may have had *some* income – all of which would have helped address the short-to-medium term financial aspirations they had around fixing-up their home abroad. And as PFL itself highlighted, retaining her 'rainy day' fund as much as possible – her £15,000 in cash savings - was a sensible thing to do.

In short, I don't think it was a suitable recommendation for her to give these two DB pension schemes up when she couldn't really know what her circumstances and needs in retirement would yet be.

Death benefits

Death benefits can be 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 plan were most likely an attractive feature to Mrs V. But whilst I appreciate death benefits were important to her - and she might have thought it was a good idea to transfer her DB schemes to a personal pension because of this - the priority here was to advise her about what was best for her retirement provisions.

Mrs V also told us that the issue of death benefits was not fully explained to her by PFL and she was led to believe transferring out was the only way to pass these on. But the spouse's pension provided by the two DB schemes would have been useful and important to Mr V if Mrs V predeceased him. However, PFL seems to have discounted this largely on the basis that Mr V was nine years her senior. Overall I don't think this mattered to the degree PFL said and it didn't make the value of the existing death benefit clear enough to Mrs V. These benefits were guaranteed and not dependent on investment performance, whereas the sum remaining on death in a personal pension was.

Summary

In my view, the recommendation Mrs V was given in relation to transferring out of the two DB schemes (OPS1 and OPS2) substantially underplayed the risks of giving up a secure income(s) with the guarantees and benefits I've referred to. It wasn't suitable advice.

As I've demonstrated above, the chances of Mrs V achieving growth rates which could have matched the financial benefits of her existing schemes was very unlikely. The advice overlooked this.

The recommendation also failed to take enough account of the other retirement options available to Mrs V, whilst still preserving the important benefits from her existing schemes. I completely understand how Mrs V would have found the prospect of some additional tax-free cash at the age of around 56 to be appealing, particularly as she had a desire to carry out some renovations on her property abroad. However, the advice took insufficient notice of what she was giving up to achieve this and the fact that she could already draw tax-free cash from her existing schemes, very close to the amount she needed.

Finally, the issues of 'flexibility' and 'consolidation' were exaggerated by PFL. The former was poorly defined and not needed by Mrs V, in my view. The latter was largely irrelevant since Mrs V's existing pension schemes required very little input from her and were run by trustees.

I am therefore upholding Mrs V's complaint and in doing so I'd like to emphasise that I have considered what PFL now says: that her investments have subsequently performed quite well since the transfer. This may be the case, but this isn't relevant to what was going on at the time of the advice. In particular I think it fails to consider what Mrs V was advised to give up.

I have also now considered the issue made on Mrs V's behalf of when she would probably have accessed her DB schemes if she hadn't transferred out. I'm sticking to my view that this would have been at the age of 56 for the reasons I've explained. Accessing *some* cash at 56 is what Mrs V considered a major priority at the time.

I therefore think PFL failed in its duty when providing regulated advice to Mrs V. I haven't seen persuasive reasons why she needed to transfer out of her two DB schemes. The evidence points the other way.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs V, as far as possible, into the position she would now be in but for PFL's unsuitable advice. I consider Mrs V would have most likely remained in her DB scheme if suitable advice had been given. Given her wish to raise money, and her access to her benefits, I think that it's more likely than not that Mrs V would have accessed her deferred benefits in line with the quotes given for age 56.

PFL 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, Mrs V has not yet retired, and she has no plans to do so at present. So, compensation should be based on her having taken her deferred benefits at the age of 56, 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 Mrs V's acceptance of the decision.

PFL may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs V'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 Mrs V's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs V'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 Mrs V 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 her likely income tax rate in retirement - presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Destress and Inconvenience - Our investigator recommended PFL should be required to pay £250 for the distress and inconvenience caused. I have considered this and take note that PFL repeatedly failed to begin an investigation into the complaint, citing that Mrs V had withdrawn it when in fact she had not. It failed to promptly supply a business file allowing an investigation to commence, so I agree that an award of £250 is appropriate. In my view, these actions and inactions caused Mrs V distress and considerable delays as she had to re-iterate several times that her complaint was one she wanted to pursue.

To be clear, PFL must pay £250 for distress and inconvenience in addition to the pension redress.

The payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mrs V within 90 days of the date PFL 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 PFL to pay Mrs V.

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'm now upholding this complaint and require Pi Financial Limited (PFL) to pay Mrs V 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 PFL to pay Mrs V any interest on that amount in full, as set out above.

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

Recommendation: If the compensation amount exceeds £160,000, I also recommend that PFL pays Mrs V the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mrs V. If Mrs V accepts this decision, the money award becomes binding on PFL.

My recommendation would not be binding if she doesn't accept. Further, it's unlikely that Mrs

V can accept my decision and go to court to ask for the balance. Mrs V 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 Mrs V to accept this final decision before 5 August 2022.

Michael Campbell
Ombudsman