DRN-3624768

The complaint

Mr C complains about Grosvenor Wealth Management Limited's (GWM) advice in connection with transferring 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 this has caused a financial loss.

What happened

Mr C was a member of his employer's DB scheme. In late 2016, on the recommendation of a colleague, he approached GWM for advice on the feasibility of opting out of the DB scheme and reinvesting his pension funds in specific shares to be held within a SIPP.

GWM gathered information about Mr C's DB scheme entitlements. It conducted a fact find with him and assessed his attitude to risk. It also commissioned a transfer value analysis report ('TVAS'). Amongst other things GWM noted that Mr C was aged 49, in good health, married with three children one of whom remained financially dependent on him and his wife. He had an investment portfolio worth around £30,000. He owned his home with an interest-only mortgage, which had an outstanding balance of around £145,000. It assessed his attitude to risk as "moderately adventurous". Mr C's DB scheme had a cash equivalent transfer value ('CETV') of around £285,500 which would pay him a pension in retirement of £22,940 a year.

In February 2017 GWM sent Mr C a letter setting out its advice. Such documents are usually known in the industry as suitability reports, so that's the term I will use in this decision. The suitability report noted that Mr C wanted to opt out of his DB scheme in order to: take control of his pension funds; achieve a better outcomes in retirement, and have the potential for improved death benefits. The report said that the growth rate required (the critical yield) from a SIPP was too high to recommend a transfer on "*monetary terms alone*" unless Mr C was confident that he could generate an average return of 9% a year. But the report concluded that transferring the CETV would achieve Mr C's stated objectives of:

- Increasing his pension
- Taking TFC at retirement
- Lump sum benefits on his death
- Provision for a spouse's and dependents' pension
- The security of his pension fund

Mr C opted out of his DB scheme and transferred his funds into a SIPP.

In 2021 Mr C complained about the advice GWM had given as he didn't think it was suitable for him. GWM didn't uphold his complaint. It said, amongst other things, that Mr C had already decided to transfer out of the DB scheme by the time he contacted GWM and asked it for advice on the feasibility of doing so. It told Mr C about the risks involved in transferring out of a DB scheme, including that he could be worse off in retirement as a result. And that as Mr C would be managing his own portfolio, it would be difficult for it to assess the likelihood of Mr C achieving the required returns.

Mr C brought his complaint to us. One of our investigators looked into it. She didn't think GWM had treated Mr C fairly. In short she said that a transfer wasn't in Mr C's best interests and GWM's suitability report wasn't clear on that point.

GWM didn't agree with our investigator's assessment of the complaint. Amongst other things it said that Mr C could "*bear the risk*" of transferring in order to achieve his objectives. That his income in retirement would have been well in excess of his modest outgoings. And that the TVAS report had showed that, with growth of less than 3% a year, Mr C could meet his income needs in retirement. It said that transferring also allowed Mr C to meet his broader objectives. In particular it would have paid enough TFC to repay his interest only mortgage. It added that Mr C was an experienced investor who fully understood the risks he was taking.

The investigator wasn't persuaded to change her opinion, so 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.

In responding to this complaint GWM has made a number of detailed points. I've thought about everything it's said. But in this decision I don't intend to address each and every issue but will instead focus on what I see as being the key points at the heart of Mr C's complaint and the reasons for my decision.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The applicable rules, regulations and requirements

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of GWM's actions here.

PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our investigator gave.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GWM should only have considered a transfer if it could clearly demonstrate that it was in Mr C's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Clarity of advice

It's apparent that at the time Mr C approached GWM for advice about transferring from his DB scheme he'd previously discussed the possibility with a colleague. And, having done so, he was clearly leaning towards a transfer with a vision of where he wanted to reinvest his DB scheme funds. He said he intended to transfer out of the DB scheme and join his employer's money purchase scheme. GWM's suitability report says that it would be "*imprudent*" for Mr C to take that action as it would result in the potential loss of benefits such as the death in service scheme. Mr C said he'd already decided to do so and only needed advice on whether or not it was feasible. He also said he was concerned, following recent press reports, that his pension value might drop in the future.

I understand that there will be instances where a client seeks financial advice with preconceived notions or concerns about the financial health of a pension scheme. But GWM was tasked with rationally addressing Mr C's concerns and providing an appropriately balanced view of his available options. And in order to recommend that Mr C should give up his safeguarded benefits GWM needed to be able to clearly demonstrate that doing so was in his best interests. And, if it didn't think it was in his best interests then it needed to make that plain to Mr C.

GWM's suitability report does set out some of the guarantees Mr C would be giving up by transferring. It also points out some of the risks inherent with such a transfer, in particular that the returns were dependent on investment performance. But GWM's report wasn't clear whether or not it was in Mr C's best interests to transfer. Indeed having read the report several times, it reads to me that GWM was not only saying that such a transfer was feasible but that he would benefit from doing so. For example the report makes the following comments:

"*if tax free cash is a priority, transferring to the personal pension regime would be a better option…*"

"*If securing better death benefits for your family is important, then transfer to a personal pension would seem to be preferable*…"

"*The time frame over which a transferred fund would remain invested is sufficiently long for the view to be taken that the average investment returns needed to achieve the outcome you desire should be achievable through a suitably constructed, diversified portfolio.*"

And it concluded by saying that - subject to "*caveats*":

"*we conclude that transferring the CETV should be able to achieve your stated prioritised objectives…*"

In other words, the final comment is that Mr C can achieve his goals by transferring out of the DB scheme. That, to my mind, does not clearly spell out to Mr C that transferring was not in his best interests and instead can be interpreted as advice to do exactly that. Given that transferring out of a DB scheme is a one-off event, once transferred there's usually no going back, if GWM's conclusion was that it wasn't in Mr C's best interests to transfer then it needed to spell that out far more clearly. As it stands I don't think the content of its suitability report was clear, fair and not misleading.

Financial viability

GWM carried out a transfer value analysis report (as required by the regulator) showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

GWM gave its advice during the period when this 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.

Mr C was age 48 at the time of the advice and the suitability report says he wanted to retire at age 62, although I note that the fact-find said that Mr C's desired retirement age was 60. The DB scheme's normal retirement age was 65. The critical yield required to match Mr C's benefits at age 65 was 7.3% if he took a full pension and 6.3% if he took TFC and a reduced pension. The critical yield increased to 8.5% and 7.1% respectively if Mr C retired at age 60. This compares with the discount rate of 4.3% a year for 16 full years to retirement at age 65 and 3.9% for retiring at age 60. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr C's moderately adventurous attitude to risk and also the term to retirement. There would be little point in Mr C giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 6.3%, I think Mr C 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 that attitude to risk.

GWM has provided cashflow models in its TVAS which it says shows Mr C would've been able to meet his needs despite the high critical yields by taking income by way of drawdown. I've considered this, but the TVAS models show that if Mr C's SIPP grew at the regulator's lowest projection rate of 2% then it would be depleted after Mr C turned 81 which is earlier than Mr C's life expectancy. It's notable that GWM's suitability report gives the depletion age as 85 but this is clearly a mistake as all the models show the depletion age as being 81 for the low growth rate. So, if there were market crashes or sustained periods of poor performance then there was a very real chance that Mr C's fund would grow at a much slower rate and would be depleted far sooner.

Also Mr C's fund would be further depleted by the SIPP provider's charges. Charges he would not have to pay if he remained in his DB scheme. But the suitability report makes no reference to these charges at all.

Further its notable that GWM didn't give Mr C advice on where to reinvest his funds. I understand that Mr C didn't ask for that advice as he had a clear intention of the stock he wished to reinvest in before he approached GWM. So GWM limited its advice and said that if Mr C invested in a "*suitably constructed, diverse portfolio*" he should be able to achieve the required returns. But the regulator has made it clear that in order to give suitable advice on a transfer or switch of pension benefits, the advice has to include the suitability of the underlying investments. And it's evident from the file that GWM was aware that Mr C intended to reinvest the pension funds in a single or very limited number of companies. That should have been a red flag to GWM. And even if Mr C hadn't asked for investment advice it should have been very clear to GWM that for Mr C to invest his entire pension fund in a single or only a few companies' shares would be an extremely risky strategy and one that wasn't worth taking. That's because Mr C would essentially be putting all/most of his eggs in one basket, so if the company or companies invested in suffered a significant fall in share values that could have a dramatic effect on Mr C's pension fund.

However, even if that wasn't the case. GWM itself identified that Mr C was unlikely to match the DB scheme benefits by transferring and said that it couldn't recommend a transfer on "monetary" grounds alone unless Mr C could achieve investment returns of 9% a year. That was higher than the regulator's highest projection rate of 8% a year and was something that was extremely unlikely particularly given Mr C's attitude to risk. So it wasn't in Mr C's best interests to transfer.

GWM's said that, as Mr C had very modest outgoings he didn't need the income from his DB scheme in retirement. But Mr C still had around 12 years until he was 60, 14 to 62, and almost 17 to 65. And his income needs could change before he reached retirement age. So I don't think it was in his best interests to recommend that he give up his safeguarded benefits in retirement when his financial needs in later life weren't fully understood and his retirement was some way off.

It's notable that in its response to Mr C's complaint GWM said its "*position remains that we would not have recommended a transfer.*" But that ignores the fact that it concluded its suitability report by saying that – subject to certain caveats – Mr C "*should be able to achieve* [his] *stated prioritised objectives*" by transferring. In other words, it was recommending a transfer in its suitability report in order to achieve his other objectives. So I've gone on to consider if meeting those objectives meant a transfer was suitable, despite providing overall lower benefits.

TFC

GWM's suitability report gives maximising TFC as Mr C's second highest priority. But the suitability report doesn't at any point explain why that was. Whilst it notes he had an interest only mortgage, it doesn't say that Mr C wanted to transfer his pension in order to have access to higher TFC in order to pay that mortgage. And there's no evidence that GWM discussed with Mr C why maximising TFC was worthwhile giving up guaranteed benefits for.

Mr C told us that as he had an interest only mortgage he wanted to maximise his TFC in order to pay that mortgage off. In response to our investigator's assessment GWM said that Mr C's DB scheme would pay Mr C TFC of around £105,800 at age 65, which wouldn't be enough to cover his mortgage. But, based on a consistent growth rate of 5% a year – the regulator's middle rate projection which might have been feasible given his attitude to risk – in a different fund Mr C could expect to take TFC of almost £152,000 which would allow him to repay the full amount owed. However, what GWM didn't say was that if Mr C's fund grew at the lowest rate of 2%, then it would only provide TFC of around £92,000 at age 65, which would be less than his entitlement under the DB scheme, and so clearly would leave him in a worse position.

GWM's role was to discern what Mr C's wants and needs were and why he wanted to transfer his pension. Its role wasn't simply to do what he wanted without appropriate analysis and challenge of his motives for doing so whilst discussing the implications of taking those actions with him. But I've seen little evidence of such a challenge even though that would have been necessary in order to help Mr C make an informed decision. Indeed I've seen no evidence that GWM explored with Mr C whether there was any other means of him being able to pay off his mortgage.

GWM's fact find suggests that Mr C had 14 years remaining on his mortgage term. It also shows that after paying his regular outgoings Mr C had a disposable income of over £2,100 a month. And he could have used some of that disposable income to take out a repayment mortgage that would also pay off the capital element of it. Alternatively, he could have diverted some of his disposable income into a suitable investment vehicle, over the remaining term of his mortgage with the aim of using that to repay it at the appropriate time. Also Mr C had an investment portfolio worth around £30,000 which he could have used in retirement to pay off some of his mortgage in 14 years time. But there's no evidence that GWM explored any of these options with Mr C. So I don't think GWM met its obligations to challenge his objectives in light of what he would be giving up. And I don't think it was in his best interests to transfer out of the scheme in order to have potential access to a higher TFC amount.

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 SIPP was likely an attractive feature to Mr C. That's because whatever was left within Mr C's SIPP at the date of his death would be passed on to his family. And, if that happened before his retirement or soon after then that would likely be a significant sum. In contrast the DB scheme would pay Mr C's wife 60% of his yearly pension after he died. But whilst I appreciate death benefits are important to consumers, and Mr C might have thought it was a good idea to transfer his DB scheme to a SIPP because of this, the priority here was to advise Mr C about what was best for his retirement provision. A pension is primarily designed to provide income in retirement – not a lump sum to family after death. But in transferring out of the DB scheme Mr C was essentially giving up a guaranteed, index linked, increasing income in retirement, for the potential for a lump sum for his family that they may not need for many years to come.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr C's wife would receive 60% of his pension on his death and that would be payable to her until her death. And I don't think GWM made the value of these death benefits clear enough to Mr C when compared to those available from a SIPP. Not only were they guaranteed and escalated but they were not dependent on investment performance or how much was left in the pot, whereas the sum available to Mr C's family on his death in a SIPP was.

Given the size of the CETV I can understand that Mr C might have thought that guaranteed a significant lump sum for his family on his death. But, the available fund was reliant on a number of factors, including investment growth. And, as I've said above, a period of poor performance could reduce the sum available as a death benefit. Further, the fund would reduce as Mr C drew down money from it. So if he took higher sums from it in the early years of his retirement, then that could significantly reduce the amounts available to live off, let alone to leave as a legacy for his family on his death.

If Mr C genuinely wanted to leave a legacy for his family, which didn't depend on investment returns, I think GWM could have explored life insurance with him. Mr C already had term insurance to cover his mortgage. But if he wanted an extra sum to cover his retirement years, then he could have taken additional cover out on a whole of life or term basis. I understand that such cover can be expensive. But if he didn't want to pay a significant premium then GWM's starting point ought to have been to ask Mr C how much he would ideally like to leave to his family. It could then have looked into cover for that sum.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr C. And I think GWM should have made this clear to him.

Control and concerns over financial stability of the DB scheme

GWM said that Mr C wanted control of the fund. And he did have some experience of investing, as he held a portfolio, which he described as "small" and worth in the region of £30,000. But it's not clear to what extent GWM explored Mr C's investment experience. And, while he didn't ask GWM for investment advice, as I've said above, his plan to reinvest his pension funds into shares in a single company – rather than spreading that risk across a number of funds, assets and equities, displays a certain amount of inexperience. So I think that if GWM had pointed this out to him and made it clear the extent of the risks he was taking then it seems likely he'd have thought again about his options.

It's also apparent that Mr C had some concerns about the future viability of the DB scheme. It was known to be in deficit at the time. But the funding of the DB scheme was not in a position such that Mr C should have genuinely been concerned about the security of his pension. And his employer had a plan in place to reduce the deficit over the coming years. So Mr C's concerns shouldn't have been a reason for considering a transfer. In reply to our investigator's assessment GWM said that its suitability report didn't comment on the financial stability of the scheme because it didn't believe it formed part of the rationale for whether the pension should be transferred or not. But GWM's suitability report refers to Mr C's concerns over a reduction in his CETV in the future and him wanting to "*secure"* it. In other words Mr C was concerned that the scheme deficit might have an effect on his pension value. So that was clearly something that was affecting Mr C's thinking and as such in order to give Mr C advice that was clear fair and not misleading, it should have been something that GWM addressed. But it didn't do so.

Summary

I think it's apparent that Mr C approached GWM with a plan to transfer out of his DB scheme and to reinvest the funds in a SIPP. But GWM wasn't there to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and clearly recommend what was in his best interests.

Ultimately, I don't think GWM's advice was suitable for Mr C. It simply wasn't clear enough that by transferring, Mr C 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. So, I think GWM should have clearly and unequivocally advised Mr C to remain in his DB scheme. But GWM didn't do that.

Of course, I have to consider whether Mr C would've gone ahead anyway, against GWM's advice, if it had provided clear advice not to opt out of his DB scheme. As I've said above, Mr C was leaning towards transferring when he approached GWM. And he was clearly prepared to take some risks with his pension when he did so. But it's also apparent that Mr C's investment strategy, that is intending to invest in just one or two companies, was somewhat short-sighted. And if GWM had made this plain to him; clearly explaining why transferring was not in his best interests; and that any advantages of doing so simply weren't worth giving up the safeguarded benefits for, I think Mr C would have accepted that expert advice and remained in his DB scheme.

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

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - https://www.fca.org.uk/publication/consultation/cp22-15.pdf

In this consultation, the FCA said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

A policy statement was published on 28 November 2022 which set out the new rules and guidance- https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

We've previously asked Mr C whether he preferred any redress to be calculated now in line with current guidance or wait for the new guidance/rules to come into effect. He didn't make a choice, so as set out previously I've assumed in this case he doesn't want to wait for the new guidance to come into effect.

I'm satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr C.

For clarity, Mr C 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 C's acceptance of the decision.

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

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect GWM to carry out a calculation in line with the updated rules and/or guidance in any event.

If the redress calculation demonstrates a loss, GWM should pay the compensation if possible into Mr C'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, GWM should pay it directly to Mr C 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 C within 90 days of the date GWM receives notification of his acceptance of my final decision. Further GWM must add interest 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 GWM to pay Mr C. 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. In those circumstances, 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.

My final decision

Determination and money award: I uphold this complaint and require Grosvenor Wealth Management Limited to pay Mr C 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 Grosvenor Wealth Management Limited to pay Mr C any interest on that amount in full, as set out above. Where the compensation amount already exceeds £160,000, I would only require GWM to pay Mr C any interest as set out above on the sum of £160,000.

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

If Mr C accepts this decision, the money award becomes binding on Grosvenor Wealth Management Limited. My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 17 March 2023.

Joe Scott
Ombudsman