

## **The complaint**

Mr S complains Pension Works Limited (PWL) provided him with misleading information, when he approached them to seek pension transfer advice, ultimately causing him to incur a financial loss.

## **What happened**

Mr S had a defined benefit workplace pension (DBS), from a previous employer about 20 years ago. He approached PWL in October 2020 to enquire about transferring that pension - then valued at about £390,000 – to a Self-Invested Personal Pension (SIPP). He wanted to place the funds in a SIPP, and then use those funds to purchase a large plot of agricultural land (which he'd been renting for many years for his new business) adjacent to his home.

Mr S was told by PWL he was too young for them to consider providing advice. Their policy was they'd only consider giving DBS transfer advice to a consumer who was within six months of their 55<sup>th</sup> birthday – Mr S was over nine months from that date. Mr S sought reassurance that his intended investment was possible, to be told on the phone by PWL's service agent she thought it may be possible, but would need discussing in a detailed 'fact-find' call with one of their financial advisers.

Mr S re-approached PWL in June 2021, one month before his 55<sup>th</sup> birthday. He again asked about transferring his DPS to a SIPP, and for the same reason. In an initial call, he explained he didn't want to unnecessarily incur PWL's advice fee if their advice would be negative. He had another call with PWL a few days later, during which he was asked whether he was a 'self-investor'. He asked what this meant, and following a vague explanation answered 'no'. The advice process was also explained to him in detail. Further information was sought and provided, and a formal advice call took place on 27 July 2021.

PWL's financial adviser made it immediately clear that PWL considered Mr S to be a 'self-investor', and as such they would not be able to provide the advice Mr S was seeking. The adviser explained the difficulties that could exist if a SIPP were to purchase commercial land or property – relevant legal issues would take time to resolve, and PWL didn't have the necessary experience to advise on that type of transfer, so they wouldn't be able to advise on whether such a transaction was in Mr S' best interests – the fundamental requirement when transferring a DBS pension was being explored. Unhappy PWL hadn't explained this to Mr S when he contacted them in October 2020, he complained to them. He said he was clear what his intention was, and believed he'd been given assurances from the outset such a transfer/subsequent investment was something that was (a) possible, and (b) something PWL would be able and willing to undertake.

PWL's Head of Compliance then contacted Mr S in October 2021 to try and explore an amicable solution. PWL suggested they'd be willing to consider his wish to transfer his DBS to a SIPP in the first instance, but that would still be as part of an official review process. And there was still no guarantee they would conclude a transfer was in his best interests. Mr S chose not to take advantage of this opportunity, as it appeared any such review would still not be able to consider a land purchase within the SIPP.

PWL didn't uphold Mr S' complaint. They said they'd been clear in the October 2020 call he would need to discuss his options in detail with an Adviser – once he was close enough to his 55<sup>th</sup> birthday – as it was the Adviser who was best placed to provide the detail Mr S was seeking. There was no further contact from Mr S until nearly eight months later, and he was then advised within six weeks PWL would be unable to provide the advice or consider the specific transfer he was seeking. PWL also mentioned Mr S had advised them, during his various calls with them, he had access to other personal funds that could have been used to purchase the land - suggesting the SIPP wasn't essential for the land purchase in any event.

Unhappy with this response, Mr S brought his complaint to this Service. Whilst he'd still not transferred his DBS, he'd now purchased the land using bank finance, personal funds and loans from family. He said he was now significantly worse off as a result – his DBS transfer value had reduced to £235,000, and not being able to purchase the land and place it in a SIPP had long-term tax consequences. He felt PWL were responsible for this.

One of our Investigators explained it was up to PWL to decide who they were willing to provide advice to, and in what circumstances, and they didn't provide advice to self-investors and insistent clients. But she did think PWL should have made it clearer to Mr S earlier in the process that they couldn't provide him with the advice he was seeking.

And because Mr S said he'd been unable to find any other Financial Advisor to provide the advice he'd been seeking in the intervening period, she felt PWL's delay in telling him they couldn't advise him hadn't contributed to any loss or change in his circumstances. But she felt Mr S experienced a loss of expectation because of PWL's actions and said they should pay him £200 compensation because of this.

Mr S didn't accept this and asked for his complaint to be considered by an Ombudsman, so it's been passed to me to consider further.

### **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.

Mr S has provided significant commentary and opinion on his complaint. I can assure him I've read and thoroughly considered everything he's said. I've also listened to all calls he had with PWL, including the two initial ones he had with them in October 2020, and those in June and July 2021. And having done so, I won't be asking PWL to do anything further, beyond paying the £200 compensation our Investigator suggested. I appreciate this will come as a big disappointment to Mr S, who feels very strongly about this matter, so I'll explain why.

#### *The October 2020 calls*

When Mr S first approached PWL in October 2020, he spoke with one of their phone agents. I've listened to those two calls. I think Mr S was extremely clear what his intentions were – to move his DBS to a SIPP to purchase some land. And he was clear in trying to seek reassurance from her that this was a process PWL could assist him with.

PWL's phone agent didn't give any indication in these calls this *wasn't* a service/advice PWL would be able to provide – in fact she suggested she may have come across such a situation sometime in the past (without giving any specifics). But she was also sufficiently clear, in my opinion, such questions could only be properly addressed during a formal fact-find call with one of their financial advisors. Mr S said he understood this.

Mr S also clearly explained his DBS allowed access/transfer from age 50 onwards and queried why PWL couldn't provide him with advice now, given this. The PWL agent made enquiries to see if this made a difference and called Mr S back two days later to advise their policy remained and they couldn't help him at that point. She said she'd understand if Mr S chose to seek another Firm if he wanted to explore an earlier transfer. Mr S asked if she could recommend anyone – she said she would have done if she knew any, but she didn't.

Mr S believes PWL had told him in these early calls they *would* be able to help him, and he was entitled to rely on what he was told. However, having carefully listened to both calls, I don't agree. I think PWL's phone agent was sufficiently clear that any technical questions about the type of transfer and investment Mr S was seeking to make could only be discussed with the Financial Advisor – and that was only after Mr S was close enough to his 55<sup>th</sup> birthday for PWL to consider taking him on as a client. Yes, the operative provided a vague recollection about similar past transactions, but that didn't constitute 'advice' of any sort. And I don't think there was anything in those calls that should have led Mr S to reasonably conclude PWL had told him they'd be able to undertake the transfers and investment he'd approached them about - PWL had provided no assurances in that regard.

Further, the second call ended with PWL acknowledging Mr S may choose to look elsewhere for quicker advice, with Mr S asking if the phone agent knew of anyone else – and so there was no apparent indication *at that stage* Mr S had made up his mind that he would be using PWL in any event.

The above being the case, I can't reasonably hold PWL responsible for the fact Mr S may have finished those October 2020 calls believing PWL said they would be able to help him with his DBS transfer, in the way he'd mentioned.

#### *Mr S' second approach to PWL in June 2021*

Mr S was similarly clear about what he was seeking to achieve when he called PWL again in June 2021. This time, however, I think the circumstances were different.

In Mr S' first call on 8 June 2021, he repeats what he wants to do with his DBS funds. The phone agent comments that PWL don't always say the best option is to leave a DBS where it is and advise against transferring it, and also says Mr S will need to complete a letter of authority (LOA), allowing PWL to get information from the DBS scheme. Mr S provides the signed LOA immediately, prompting a further call three days later from PWL, during which Mr S is asked to confirm certain information, including whether he is a 'self-investor'.

Mr S asked what a self-investor is, to be told it's "*someone who has their own personal pension which they manage themselves rather than a third party*". Hearing this, Mr S says he wasn't one. PWL say they've already contacted his DBS to get fund value information, and once received will arrange a detailed 'fact-find' interview with one of their financial advisers. PWL's agent explains in detail about the advice process.

PWL calls Mr S on 15 July 2021, and the fact-find is arranged for 27 July 2021. On this call, Mr S is told PWL consider him to be a self-investor, because he wanted to invest in land that *he* had identified. The financial advisor further stated such an arrangement was outside of PWL's remit, and their "investor proposition" usually involved advising clients to invest in "vanilla-type" investments such as stocks and shares.

Mr S pointed out he was asked if he was a self-investor in the earlier call, when he'd been very clear what his intention was, and the phone agent said nothing to suggest his answer was wrong. The adviser apologised for this misunderstanding, suggesting the phone agent probably didn't understand the question.

However, Mr S was asked specific – and clearly key – questions about self-investment on 11 June 2021 and answered honestly. He couldn't have been any clearer what his intention was, and I think he was entitled to reasonably conclude, after that call, PWL were able and willing to *consider* his DBS transfer proposal.

That's not to say I think Mr S could reasonably have thought PWL would *proceed* with his suggested transfer. There would still need to have been a full fact-find, which Mr S knew, which would have needed to conclude his DBS transfer was in his best interests.

But, there was a period between 11 June 2021 and 27 July 2021 (a period of just over six weeks) when I think PWL were in possession of enough information about Mr S' intentions to have at least alerted him his favoured investment was something they were unlikely to be able to progress. So, the next question is whether I think Mr S suffered any detriment during this period. And having considered what Mr S has told us, I don't think he did. I'll explain.

Mr S told us he was always aware he could have looked for another IFA to conduct an 'insistent client' transfer, but he chose not to as he wanted the advice service he believed PWL said they'd give him. And he's also since told us he did eventually try – after it was clear PWL wouldn't help him – to approach other IFA's to seek advice on his intended transfer. However, he's told us none of these enquiries resulted in him finding an IFA who would progress the transfer in the way he wanted. That's not a criticism of Mr S, or the efforts he made, but does reflect the problems he *did* face when he made enquiries in the market.

I think this strongly suggests, had PWL made it clear on 11 June 2021 they wouldn't act for Mr S in the way he'd hoped, he'd most likely have faced the same issues at that time trying to locate a 'willing IFA' to act for him as he experienced later on. So, I don't think he lost an opportunity to locate an IFA in that short period (or, clearly in the months that followed).

I also don't think he lost the opportunity to transfer his DBS pension in the way he wanted *because* PWL didn't tell him on 11 June 2021 they were unlikely to provide the advice he was seeking. And nor can I fairly say it's PWL's fault Mr S chose not to further explore the 'insistent client' options that may have been available in the market.

#### *Reduction in DBS transfer value*

Mr S was also unhappy PWL approached his DBS for an up-to-date transfer value. He thinks this fixed his transfer value for six months, preventing him from seeking another value at a later stage if he so wished – and him missing out on any increase in that value in that time.

PWL had secured a transfer value of just under £384,000, fixed for 90 days (not six months as he has suggested) dated 28 June 2021. However, I note Mr S told us by July 2022 (so only one year later), the transfer value had reduced to £270,000-odd (and has reduced further since).

As such, providing a guaranteed value until the end of September 2021 would appear (accepting I don't have information to show how the value changed in that period) to have provided an element of protection in relation to the transfer value of his DBS. As such, I don't see any detriment having been caused by PWL seeking a transfer value when they did.

### *Conclusion*

Whilst I think PWL should have told Mr S about six weeks earlier than they did it was unlikely they'd be able to consider his DBS transfer/reinvestment request in the way he'd hoped, I haven't seen any evidence to show this delay caused him any financial loss.

I appreciate Mr S did eventually purchase the land for the originally agreed price, using a mixture of savings and bank and family loans. He says purchasing the land in this way exposed him to increased bank interest, and not then being able to use his savings to repay the mortgage on his home.

He rightly points out the transfer value of the DBS in June 2021 was more than enough to have purchased the land outright – leaving his savings free to clear his mortgage. He explains, and I appreciate, he is now continuing to pay interest on the mortgage on his home, and has new loans (and interest) to fund the land purchase – all of which could have been avoided had he been able to use the DBS to purchase the land (although he accepts he still has his DBS, which remains untouched). He says this proves he is significantly worse off because of not being able to transfer and reinvest his DBS in the SIPP as he'd intended, and that is PWL's fault.

I do appreciate Mr S's distress at this situation, but for the reasons I've stated I don't think I can fairly hold PWL responsible for it. The evidence I've seen suggests Mr S would have been unable to fund the purchase of the land via the DBS transfer/SIPP purchase as (and when) he'd hoped in any event. And I can't fairly or reasonably hold PWL responsible for his subsequent choice to use savings and finance for the land purchase (or not to explore and pursue in more detail an 'insistent client' arrangement with another IFA), or any extra costs subsequently incurred.

But I do agree PWL's poor communication between 11 June 2021 and 27 July 2021 created confusion, and likely caused Mr S distress and inconvenience. And for this, I agree Mr S should be compensated, and I think the £200 suggested by our investigator is a fair award.

### **My final decision**

For the reasons set out above, I uphold Mr S' complaint, and require Pension Works Limited to pay him £200 compensation for distress and inconvenience experienced.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 26 May 2023.

Mark Evans  
**Ombudsman**