

The complaint

Ms G is unhappy that she was led to believe abridged advice would satisfy the applicable rules and allow her to transfer benefits from her defined benefit (DB) pension scheme to a personal pension. She said that because of this she paid Performance Wealth Management Limited (PWM) for abridged advice but subsequently learned this was not sufficient.

What happened

Ms G had a DB pension and in March 2021 she received a cash equivalent transfer value (CETV) showing it was valued at around £53,000. Ms G wished to transfer the funds into a personal pension. However, because DB scheme benefits are “safeguarded” and Ms G’s safeguarded benefits were worth more than £30,000, the paperwork informed her that she legally needed to take advice prior to transferring to a defined contribution (DC) scheme.

In May 2021 Ms G said she spoke to PWM who provided her with quotes for abridged advice (£1,250) and full advice (£7,750 later revised to £6,500). Ms G said given the value of the benefits, it wasn’t worth paying thousands of pounds for full advice and would only transfer if abridged advice would suffice.

Before any work by PWM commenced, Ms G contacted the DB scheme administrators (who I’ll refer to from now on as ‘B’) on 29 June 2021, to enquire about whether abridged advice would be enough. She said B confirmed abridged advice would be sufficient if it met the requirements of The Pension Schemes Regulations 2015.

The same day B sent Ms G an email which said in relevant part:

I refer to our telephone conversation earlier today regarding a potential transfer from the Fund.

When you seek advice in regards to the transfer, your financial advisor will need to provide a statement in writing confirming they are an FCA authorised independent adviser. This statement has to contain the necessary information as set out in The Pension Schemes (Appropriate Independent Advice) Regulations 2015, which includes your details and the transfer value they have provided advice about.

If you receive Abridged Advice, we will be able to accept this as long as the statement from your adviser contains the information above.

If the recommendation is not to transfer, which will be the case for Abridged Advice, you can still transfer from the Fund. The outcome of the advice is not important to the Fund, only that you have received some advice.

This was later forwarded to PWM, though there is dispute regarding when this happened and whether it occurred before the Abridged Advice was agreed.

On 2 July 2021 PWM sent Ms G an email which explained that it estimated that a number of hours would be required to provide her with advice

about [her] option to transfer the [CETV] to [her] established [Self-Invested Personal Pension (SIPP)] ... As you wish to manage the proceeds yourself, I must warn you that it is unlikely that we will make a positive recommendation to transfer. However, if you wish to proceed to commission the advice I can confirm that we would be willing to do so for a capped cost of £1,250. If it takes longer to prepare the advice we will do so at our risk. The Report will constitute full advice on the matter.

On 21 July 2021 Ms G sent PWM an email which said in relevant part:

[B] have confirmed that they will require a letter from you as follows:

'This should be in the form of a statement in writing from the FCA authorised independent adviser confirming that advice has been provided. This statement has to contain the necessary information as set out in The Pension Schemes (Appropriate Independent Advice) Regulations 2015. Where the individual adviser does not appear on the FCA register, it would be helpful if this statement could be countersigned by a senior individual in the firm who appears on the FCA register to facilitate the necessary checks'

Provided that this letter and any other forms which B or [SIPP provider] require you to fill in are included in the price of £1250 including VAT then I would like to proceed.

Ms G then instructed PWM to provide her with advice. A client agreement, initial disclosure document, DB transfer process document and DB transfer agreement were provided to and signed by Ms G in August 2021. And the Abridged Advice report stating that a transfer wouldn't be advised was provided to her on 16 September 2021.

Ms G then submitted this to B. On 30 September 2021 Ms G received an email from B indicating that some information was missing from the report. Specifically, the Financial Advice statement was missing "the Firm and Adviser's FCA number" and "the FCA Act which they have permission under listed." B said without this they couldn't verify the advice given.

Ms G let PWM know about this and the adviser responded the next day to say he would arrange "for the document you require to be prepared."

Ultimately, an updated statement wasn't provided. PWM explained this was because it would require PWM to confirm that they had provided Full Advice, which they hadn't.

Ms G subsequently asked PWM for a refund. When this wasn't provided Ms G complained to PWM. And when PWM didn't provide her with a response to this complaint, she brought her concerns to the Financial Ombudsman.

PWM told us that Ms G didn't provide them with the 29 June 2021 email until 11 October 2021, after they'd completed the Abridged Advice. PWM also said

Had Ms [G] made us aware [B] required confirmation of the advice being in accordance with 'The Pension Schemes (Appropriate Independent Advice) Regulations 2015' we could have advised her that the following sentence stating 'if you received Abridged Advice, we will be able to accept this' did not comply with the FCA COBS rules 19.1A.5.[R].

And asked that we reject the complaint in its entirety.

One of our investigators looked into Ms G's complaint. She didn't agree that PWM hadn't been made aware of what was required of it before the abridged advice was given. She

further noted that B said abridged advice may satisfy the rules, and this was correct if Ms G had benefits worth less than £30,000. She thought as a professional financial business it was PWM's responsibility, not Ms G's, to know what advice was sufficient under COBS 19.1.A.5. Accordingly, the investigator thought the complaint should be upheld.

To put things right the investigator said Ms G should be refunded the fee she paid for the abridged advice plus interest. She explained this was because abridged advice was never going to be sufficient for Ms G to transfer her DB scheme benefits to a defined contribution scheme. And had she known this from the outset, Ms G never would have taken advice. The investigator also thought PWM should compensate Ms G £200 for the loss of expectation regarding the transfer of her DB scheme benefits.

Ms G accepted the investigator's view but thought £500 compensation was more appropriate.

PWM responded to reiterate their position and to say that Ms G was provided incorrect information by B before she requested PWM provide her with abridged advice so if anyone mis-led Ms G, it was B, not PWM.

The investigator considered all of this but wasn't persuaded by either party to change her view.

As agreement couldn't be reached, the complaint has been passed to me for 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.

Having done so, I have reached the same conclusions as the investigator and for broadly the same reasons.

At the outset I think it is important to explain, it is my role to fairly and reasonably decide if the business has done anything wrong in respect of the individual circumstances of the complaint made and – if I find that the business has done something wrong – award compensation for any material loss or distress and inconvenience suffered by the complainant as a result of this.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

The parties to this complaint have provided detailed submissions to support their position and I am grateful to them for doing so. I have considered these submissions in their entirety. However, I trust that they will not take the fact that my decision focuses on what I consider to be the central issues as a discourtesy. The purpose of this decision is not to address every point raised in detail, but to set out my findings and reasons for reaching them.

When considering what is fair and reasonable, I have taken into account relevant law and regulations; regulator's rules, guidance and codes of practice; and what I consider to have been good industry practice at the time.

PWM was required to follow the relevant rules set out by the regulator. All of this needs to be considered through the lens, so to speak, of the overarching principles for businesses – in

particular, principles 1 (integrity), 2 (due skill, care and diligence), 6 (customer's interests) and 9 (reasonable care).

It is not in dispute that Ms G wanted to transfer regardless of whether the advice recommended doing so. It is also not disputed that Ms G didn't want to pay for full advice. So a transfer could only go ahead if abridged advice was sufficient. Believing that it was, Ms G contracted with PWM for this advice.

I appreciate that PWM feel if any party was responsible for misleading Ms G into believing B would accept abridged advice as suitable to allow a transfer away, it was B. And PWM told this service "we provided Ms [G] with Abridged Advice in good faith on the understanding that she had clarified with [scheme's] administrators [] this is what she required."

I've thought about this and looked carefully at everything I've been provided from this time. Having done so, I think PWM should have known and told Ms G that abridged advice would not be sufficient before she agreed to and paid for this service.

I've seen evidence that before PWM agreed to provide Ms G with any advice they were aware of both the value of Ms G's safeguarded benefits and where she intended to transfer these benefits. This is important because under Section 48 of the Pension Schemes Act of 2015 full advice is required when safeguarded benefits in excess of £30,000 are being transferred to a defined contribution (DC) scheme. A DC scheme does not provide for safeguarded benefits so a transfer of this kind would mean the loss of these valuable benefits. Full advice isn't required if safeguarded benefits are moving to another DB arrangement.

I don't know what Ms G told the B when she sought information about what advice was required before she could transfer. So I don't know if B knew of the intended receiving scheme. And I've seen no evidence that PWM knew of what B were told when it said abridged advice would be accepted. Considering that the advice requirements were set by law, not B, and varied depending on the value of the safeguarded benefits being transferred and the type of receiving scheme involved, I would have expected PWM, as financial professional, to have satisfied themselves as to the completeness and accuracy of the information provided to Ms G by B. This is especially true when, as is the case here, the understanding of what is being communicated conflicts with legal requirements.

Though to be clear, I have seen no evidence which suggests B told Ms G (and that she then told PWM) that abridged advice was all that would be required for her to transfer to a DC scheme. Rather, from what I have seen, the information provided to PWM referenced the regulatory requirements as a whole and were provided to them before abridged advice was agreed or provided.

I would expect a professional financial adviser, acting with integrity and in their client's best interests, to know what the law required regarding advice to transfer safeguarded benefits and whether its services would meet those requirements. In this case, PWM have confirmed to this service that it was aware that abridged advice would never have been sufficient to allow a transfer of safeguarded benefits in excess of £30,000 to a DC scheme. So I don't think it fair or reasonable that it didn't make this clear to Ms G from the outset instead of letting her proceed on the basis of an incorrect understanding of what would be accepted.

And had PWM done so, in the circumstances of this complaint, I'm persuaded Ms G would not have gone ahead with the abridged advice. So I consider it would be fair and reasonable for PWM to refund the fee Ms G paid, with interest.

I've also thought about whether Ms G has suffered any non-financial loss as a result of PWM's actions. Having done so, I think Ms G has experienced a loss of expectation regarding the transfer of her pension. To put this right PWM should pay her £200 compensation.

I've also considered what Ms G has said about the inconvenience this has caused her and the seriousness of the issue. But while I know this will be disappointing to Ms G, I don't think further compensation is warranted.

Putting things right

My aim in awarding compensation is to put Ms G in the position, or as close to the position, she would now be in but for PWM's actions. In this case, I consider that had things gone as they should have, Ms G would not have instructed PWM to provide her with abridged advice and so would not have been charged for this service.

Therefore, PWM should refund Ms G £1,250 plus 8% simple interest from the date this fee was paid until the date it is refunded to Ms G.

PWM should also pay Ms G £200 for the non-financial loss she has experienced because of PWM.

My final decision

For the reasons explained, I uphold Ms G's complaint and direct Performance Wealth Management Limited to pay her compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 28 April 2023.

Jennifer Wood
Ombudsman