

## The complaint

Mr G complains about Highwood Financial Services' ('Highwood') advice in connection with his desire to transfer the benefits from his defined-benefit ('DB') occupational scheme to his existing Self-Invested Personal Pension ('SIPP').

## What happened

Our investigator partly upheld Mr G's complaint. Mr G disagreed with the investigator's opinion. The complaint was then passed to me.

I issued my provisional decision saying that I thought it should be partly upheld in line with the investigator's conclusion – but I wanted to expand on my reasoning. A copy of the background to the complaint, and my provisional findings, are below in italics and form part of this final decision.

## What I said in my provisional decision

### ***"What happened"***

*The background and circumstances leading up to this complaint are known by both parties, so I haven't set everything out in detail here. And for the sake of clarity, I understand that around the time in question Mr G also received advice from Highwood about transferring an existing personal pension to his SIPP. Because this doesn't form part of this complaint, I've not referred to this here. The following sets out what I consider are the key points.*

*In 2021 Mr G approached Highwood for advice about his DB pension scheme because he was interested in transferring the benefits to his existing SIPP to ultimately access a lump sum to facilitate the purchase of a holiday property and pay off his mortgage.*

*In February 2021 Mr G completed a fact-find to help Highwood understand his personal circumstances at the time. Amongst other things, this recorded that:*

- Mr G was soon to be 54, he was married and employed as a director in his own company.*
- He owned his own home, which had an outstanding mortgage of around £276,000 at a monthly cost of around £1,900.*
- Mr G's household income was around £1,465 a month with essential expenditure of around £4,400 a month. Mr G wasn't drawing an income from his business.*
- In addition to his DB pension, which had a Cash Equivalent Transfer Value ('CETV') of around £300,000, Mr G had an existing SIPP valued at around £474,000 and a personal pension valued at around £34,000.*

*On 8 September 2021 Highwood produced its abridged advice report referring to a meeting of July 2021. The report confirmed the information contained within the fact-find completed in*

February 2021 and it also referred to a DB transfer questionnaire Mr G completed in June 2021. The report said that Mr G had agreed a purchase price on his investment property, which he'd part financed with a bridging loan. It said he intended to clear the loan using his tax-free lump sum from his pension when he reached age 55.

The report also set out Mr G's objectives for wanting to transfer his pension into three categories – Financial and lifestyle planning, death benefits and a reduction in benefits due to insolvency of sponsoring employer. Under the first heading, the report provided more granular detail about Mr G's objectives, which included improving his personal cashflow; repaying his bridging loan; clearing his credit card balance; repaying or reducing his mortgage; and helping his children with further education fees and assisting them with getting onto the housing ladder.

The report set out the details of Mr G's DB scheme including what he could expect to receive at normal retirement age – it also referred to cashflow planning analysis reports carried out by the adviser as part of the advice. The report concluded by saying that, based on the analysis and Mr G's current financial situation, the adviser wasn't satisfied that remaining in his DB pension scheme met his current and expected future income and expenditure needs and the associated objectives. The report gave the reasons why, which included that in the adviser's opinion, transferring Mr G's DB pension benefits into a personal pension arrangement could improve his day-to-day cashflow and his ability to absorb unexpected expenditure. The report recommended that Mr G proceed to full advice.

In October 2021 Highwood issued its Pension Planning or suitability report. In summary it recommended that Mr G remain in his DB pension scheme. The report set out a number of considerations and reasons for the recommendation – but in short the adviser didn't believe giving up a guaranteed and inflation proof pension at a time of entering an inflationary period was in Mr G's best interests because he didn't have the capacity to absorb investment loss. It said that while a transfer might meet Mr G's stated objectives, these were pre-retirement, working life objectives. The adviser considered that remaining in the DB scheme would meet Mr G's in-retirement objectives without jeopardising his financial security.

In early 2022 Mr G complained to Highwood about the advice he received. In summary he said that he believed he'd lost out as a result of the advice not to transfer; he'd had to pay significant fees when he believed there was only ever going to be one outcome; and he believed the full advice report would recommend the transfer based on what he'd been led to believe by the adviser beforehand. And he said it was on this basis that he decided to take a bridging loan to fund the purchase of his investment property.

Highwood didn't uphold the complaint. It provided a detailed response to Mr G's complaint points. But in summary it said that it believed its advice was suitable.

It said that Mr G was clearly told about the fees; the abridged advice letter was clear that the adviser needed to proceed to full advice to see whether a transfer was in Mr G's best interests; it disputed that Mr G's decision to fund his property purchase was based on what it had told him – it said he decided on the funding option several months before the abridged advice was given; and while it understood Mr G's viewpoint about his financial needs now being greater than those later in life, it said it couldn't recommend a transfer at the expense of his future retirement needs.

Mr G then brought his complaint to our Service. One of our investigator's looked at everything and they recommended Highwood pay Mr G £300 in compensation. In summary they thought Highwood had gone further than it should have done when it delivered its abridged advice to Mr G. They said Highwood gave a strong indication that it thought it would be in Mr G's best interests to transfer his DB scheme and the reasons why. They said

*this overstepped the regulator's guidance and they thought Mr G had been misled. But they didn't think he'd been misled to the extent that he wouldn't have otherwise proceeded to full advice – they believed Mr G's intentions to use his pension funds for his investment property meant he would've still gone ahead if things had happened as they should have. And they didn't think Mr G entered into a bridging loan based on any advice Highwood gave – they said Mr G entered into the agreement to buy the investment property before any advice and recommendation was given. But overall they thought Mr G had suffered distress and inconvenience as a result of Highwood's wrongdoing, so they recommended it pay Mr G £300.*

*Highwood accepted the investigator's findings.*

*Mr G disagreed. While I have read in detail everything Mr G has said, in summary he made the following key points:*

- The advice process was drawn out - it took from February until June 2021 for the initial engagement letter to be sent by Highwood.*
- He set out what he wanted to do in an email on 10 May 2021, but he wasn't told at this stage that it wasn't a good idea or might not be possible.*
- He says the adviser told him on three occasions during Zoom meetings prior to the abridged advice report that they would facilitate the transfer.*
- He says he would not have entered into a short-term bridging loan if he'd had any doubt that the funds wouldn't be released from his pension. He says he would've taken out a buy-to-let mortgage, which he ultimately had to do. He says these extra costs need to be considered – he effectively raised finance twice. It is incorrect to say that he took out the bridging loan before he received advice.*
- He had to transfer his existing SIPP funds to cash in December 2021 to repay the bridging loan in March 2022. Because it was not re-invested by Highwood he's lost out on possible investment growth.*
- He ended up transferring his SIPP to another provider, which incurred costs. He feels these need to be considered as part of the compensation for Highwood's wrongdoing.*
- The current transfer values are likely to be significantly less, which also needs to be recognised.*
- The £300 compensation does not reflect the financial loss incurred or the toll the whole matter has taken on his health.*

### ***What I've provisionally 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. 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 Highwood'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 provisionally decided to uphold this complaint in part and award Mr G compensation for distress and inconvenience. My reasons are set out below.*

### *The regulator's position*

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Highwood should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr G's best interests.

### *Abridged advice*

*In providing Mr G with advice on his DB pension, Highwood first took him through an abridged advice process as permitted under FCA rules. Mr G says that it was during this stage of the process that Highwood said it would recommend he transfer the benefits of his DB pension.*

*Abridged advice was introduced by the FCA in 2020. Its aim is to provide advice at a lower cost. And while it begins the same way as full advice, including a full fact-finding exercise, it can only result in two outcomes. COBS 19.1A sets out what these two outcomes are and how a business, like Highwood, should act in giving abridged advice:*

*"A firm giving a retail client abridged advice must either:*

*(1) Make a personal recommendation that the client remains in their ceding arrangement; or*

*(2) do all the following:*

*(a) inform the client that they are unable to take a view on whether it is in the client's best interests to transfer or convert without undertaking full pension transfer or conversion advice, even when the firm considers that it may be in the client's best interests;*

*(b) check if the client wants the firm to provide full transfer or conversion advice and check that the client understands the associated cost"*

*Highwood's abridged advice outcome was communicated to Mr G in a letter of 8 September*

2021. As I set out in the background section above, the letter referred to cashflow planning analysis reports – both savings and income and expenditure - in which the adviser also considered the scenario of a transfer of Mr G's CETV to a theoretical personal pension. The report's conclusion was a recommendation that Mr G should proceed to full advice to allow for a full transfer analysis. But in reaching this conclusion, the adviser said the following:

*“Based on the analysis and your current financial situation I am not satisfied that remaining in your defined benefit pension schemes meets your current and expected future income & expenditure needs and the associated objectives for the following reasons;*

- Your income is insufficient to meet your needs and is likely to remain so until state pension age (67), even if you draw your reduced scheme pensions at age 55.*
- If you draw your pensions at age 55 it is likely to impact on eligibility for universal credit especially when combined with the [X] Property.*
- In the interim your income deficit will need to be met by savings you don't have and therefore have to be met by your existing personal pensions, significantly depleting the capital value.*
- There will undoubtedly be unexpected expenditure during this time, either in the form of emergency lump sum e.g. property or vehicle related maintenance, repairs, replacement or above inflation cost of living increases and I'm not sure how this would be met. You do not have an extravagant lifestyle so this lack of financial resilience does give me concern.*
- I have not conducted a full pension transfer analysis as this is not permitted by FCA rules where Abridged Advice is concerned. However, based on the outline theoretical analysis illustrated above, it appears that transferring the CETV's offered by the schemes into individual personal pensions could improve your day to day cashflow and your ability to absorb unexpected expenditure.*

*Your position is improved in the scenarios which assume that [Mr G] starts to draw or receive a regular net income of £2,000 per month from his 55<sup>th</sup> birthday until age 60, but this is not the current reality and to achieve it could compromise your business, work and health objectives.*

*On this basis, I recommend that you proceed to full advice so we can complete a full transfer analysis.”*

*In my view the adviser went further than I think it was fair and reasonable to during the abridged advice service, which led to a reasonable expectation by Mr G that it was likely the full advice would lead to a positive recommendation to transfer the benefits from his DB scheme.*

*In my view the adviser's analysis during this advice stage, while admittedly not full transfer analysis, went further than was necessary or appropriate. And in doing so I think this led them to reach and express findings that weren't fair and reasonable in the circumstances.*

*I accept the adviser did not go as far as saying here that they recommended Mr G transfer out of his DB scheme and it's clear that its ultimate recommendation was to proceed to full advice. But instead of saying that they couldn't take a view on whether it would be in Mr G's best interests to transfer, they said two things at the same time, which I think it was*

*reasonable for Mr G to think likely meant that it would be. Firstly they said that they weren't satisfied that Mr G remaining in his DB scheme would likely meet his current and future expenditure and associated objectives, and at the same time they also said a transfer of his CETV to a personal pension could improve his current income and expenditure needs. I don't think this was a fair and reasonable way to treat Mr G – I think it gave him a strong indication (ultimately a false one) that full advice would likely lead to a recommendation that he transfer to a personal pension arrangement.*

*I'm mindful here that in May 2021 Highwood set out in detail the advice journey it would take Mr G on in giving him DB pension transfer advice, including the interaction between abridged and full advice. It also indicated that full advice could ultimately lead to a recommendation that Mr G remain in his DB scheme. Indeed this was the advice Mr G had previously received from Highwood a few years earlier. But given the abridged advice report was issued to Mr G in September 2021, so several months after the May 2021 email, together with the fact that in my view it contained more specific and individual analysis and commentary as I've already explained, I still think Highwood went beyond what was fair and reasonable here and raised Mr G's expectations that the full advice would likely be a positive recommendation to transfer.*

*Nevertheless, I'm not persuaded that Highwood's wrongdoing here impacted Mr G in the way he describes or that it is responsible for the losses he says he experienced.*

*Firstly I don't think Mr G was misled by what Highwood concluded in its abridged advice report to the extent that, if things had happened as they should have, he wouldn't have proceeded to full advice. I think it is clear from what Mr G has said and the available supporting evidence that it was his intention and desire to use his pension funds towards the funding of his investment property. So I think if Highwood had said that it wasn't clear whether it was in Mr G's best interests to transfer from his DB scheme and he should proceed to full advice, without also leading him to believe that it would recommend he transfer, he would still have likely proceeded to take full advice. For this reason it's not fair that Highwood's advice fees should be refunded to Mr G.*

*Secondly, I can see that Mr G has made strong representations that it was on the basis of what Highwood indicated here, that he took out a bridging loan because he intended to use his pension monies to repay it once he reached 55. Mr G says he would otherwise have taken out a buy-to-let mortgage, which he had to do anyway, and so has effectively had to finance the purchase twice, which is the fault of Highwood. But I'm not persuaded by Mr G's argument. Mr G's decision to purchase the property was set out in his email of 10 May 2021, in which he indicated that completion was due in July or August 2021. And while this got delayed, Mr G did not receive Highwood's written abridged advice report until 8 September 2021. So the timeline doesn't fit – in my view I think it's more than likely than not that Mr G would've had to organise the finance to enable completion of his property purchase long before Highwood issued its abridged advice.*

*Mr G has said that Highwood told him on at least three occasions in meetings leading up to the abridged advice report that it would be recommending he transfer his pension.*

*But I've not seen enough evidence to support what Mr G says – so I don't uphold his complaint on the basis that Highwood's actions led him to take out a bridging loan when he wouldn't otherwise have done so.*

*So I don't intend to award any compensation in relation to Mr G's lending fees.*

*But I do think that Highwood's failure to act fairly and reasonably towards Mr G in giving its abridged advice did have an impact on Mr G. Ultimately the loss of expectation,*

*disappointment and frustration Mr G suffered materialised when Highwood delivered its subsequent full advice that he should remain in his DB scheme later on. But I think it stems from Highwood's failings as I have described above at the abridged advice stage. I understand that Mr G feels the impact on him has been greater. But taking everything into account, I agree with the investigator's conclusions here – I think an award of £300 for the distress and inconvenience caused to Mr G in this matter is fair in all the circumstances.*

*Full advice – Highwood's recommendation*

*As I said above, Mr G's ultimate disappointment and his complaint is about Highwood's full advice and recommendation that he should remain in his DB scheme. So I've considered the advice Highwood gave him.*

*Having done so, I think the conclusion reached by Highwood that transferring Mr G's DB scheme benefits was not in his best interests, was fair and reasonable in the circumstances.*

*It's clear from the advice paperwork and from what Mr G has said that, given his situation at the time, his short-term needs appeared more pressing than his longer term needs and that a transfer could likely satisfy them. But Highwood's role here wasn't simply to transact what Mr G wanted it to do. It's role was to advise Mr G, and in doing so it had to look beyond what Mr G wanted and his immediate needs and make a determination of what it believed was in his best interests overall.*

*From the recommendation report Highwood produced, it's clear that it believed Mr G's chosen path, which was to give up a guaranteed income in retirement for the opportunity to leave a higher legacy to his family, make debt repayment, address immediate cashflow needs and to support his children with university costs, wasn't in his best interests. Highwood's conclusion was that Mr G's needs were all pre-retirement or working life objectives rather than retirement objectives and that remaining in his DB scheme and drawing a scheme pension would meet those objectives without jeopardising his financial security. I also note that Highwood expressed concern that Mr G would be giving up a guaranteed pension that protected him against inflationary pressures when it appeared those inflationary pressures were increasing, which would likely impact on companies' profits and therefore investment performance. They said Mr G didn't have capacity to absorb investment loss. I think these were fair and reasonable conclusions for Highwood to make at the time.*

*I can see that one of Mr G's priorities was for his family to benefit from his pension. But in giving advice, the priority for Highwood was to make a recommendation concerning Mr G's retirement provision. That's because a pension's primary purpose is to provide an income in retirement – that's what it is designed for. It is not designed to be primarily used as an inheritance planning tool. So I don't think it was unreasonable for Highwood to place greater weight on Mr G's retirement income needs over potentially higher death benefits for his loved ones.*

*And in terms of Mr G's concerns about the insolvency of the employer of his DB scheme driven by a family member's experience of this, Highwood said that it didn't believe this was a concern given the funding levels, measures to reduce the current deficit and the protection afforded by the Pension Protection Fund. Again, I think this was a reasonable conclusion for Highwood to have reached and Mr G's concern wasn't a compelling reason to transfer.*

*I understand that Mr G disagrees with Highwood's advice and recommendation. But I'm satisfied Highwood's advice was based on Mr G's circumstances and needs at the time and that having considered these it deemed it wasn't in Mr G's best interests to transfer the benefits from his DB scheme to a personal pension arrangement. I don't think Highwood*

*acted unfairly or unreasonably here.*

*I can understand why Mr G might be frustrated that he had to go through Highwood's complete advice process before he was given the recommendation to remain in his DB scheme. But I'm satisfied it was necessary for Highwood to proceed to full advice to determine why it wasn't in Mr G's best interests to transfer. I recognise that many of the reasons given by Highwood as to why it wasn't in his best interests to transfer were reasons it ought to have known at the abridged advice stage. But importantly Highwood could only carry out the full transfer analysis – i.e. the Transfer Value Comparator ('TVC') and the Appropriate Pension Transfer Analysis ('APTA') – at the full advice stage. And this showed that Mr G would likely be worse off at his desired retirement age as a result of transferring his DB scheme benefits to a personal pension arrangement and exposing them to investment risk. I think it was important that Highwood carried this out in formulating its advice and determination as to why it wasn't in Mr G's best interests to transfer out of his DB scheme.*

*I can see that Mr G would like to go ahead with the transfer of his DB pension and he wants Highwood to allow him to do so as originally agreed. But in this case Highwood's advice is that Mr G should not transfer and it stands by its advice. It has also made it clear that it will not facilitate the transfer on an insistent client basis. Highwood isn't under any obligation to do so and I can't compel Highwood to do so. Mr G is free to approach another firm if he still wishes to transfer his pension.*

*For the sake of completeness, I want to address the other points Mr G raised for my attention and in response to the investigator's findings.*

*I understand that Mr G had to transfer his existing SIPP funds into cash in December 2021 to repay the bridging loan in March 2022. Mr G says that because it was not re-invested by Highwood, he's lost out on possible investment growth.*

*It appears from the series of emails Highwood has provided from around the time in question, that it was Mr G who instructed Highwood to invest his SIPP in cash and that because he hadn't yet decided on whether he intended to retain Highwood as his adviser Highwood was waiting for Mr G to instruct it before taking any further action. But in any event, Highwood has shown that by keeping his investment in cash in the run up to Mr G transferring his SIPP to another provider in June 2022, he's not lost out. So I don't think it is necessary to consider this matter any further.*

*Mr G has said that because he ended up transferring his existing SIPP to another provider, he incurred advice fees and charges and he feels these need to be considered as part of the compensation for Highwood's wrongdoing. But while I appreciate that Mr G felt that because his relationship had broken down he had no choice but to move things away from Highwood this was ultimately his decision. So I will not be instructing Highwood to compensate Mr G for the costs he incurred here.*

*Finally I understand that Mr G has expressed concern about the length of time the advice process took with Highwood. He's also said that it is likely the current transfer value of his DB pension is significantly less, which also needs to be recognised. But Highwood's advice was that it was not in his best interests to transfer his DB pension – so Mr G has not lost out as a result of any delay there might have been in the advice process.*

*And just because Mr G's CETV might now be lower doesn't mean Highwood's advice to retain his DB pension was unsuitable. As I have set out above, I think the conclusions reached by Highwood that it was not in Mr G's best interests to transfer his DB scheme to a personal pension arrangement was reasonable in the circumstances. But if Mr G still wishes*

*to pursue a transfer he is free to seek advice from another firm.*

### ***My provisional decision***

*For the reasons I have set out above, I intend to partly uphold this complaint and make an award of £300 in Mr G's favour."*

Highwood accepted my provisional decision and said it had nothing further to add at this stage.

Mr G disagreed. In doing so, Mr G repeated many of the arguments he's already made, so I haven't set everything out here again. In summary, Mr G referred to two emails of 13 February 2021 and 10 May 2021 he sent to Highwood during their interactions, which he says I have overlooked. Mr G says I have ignored the delays Highwood caused and he repeated the point about the length of time it took Highwood to produce its initial report and the resulting financial loss he's incurred.

Mr G says that he had to undergo a medical as part of the advice process and doesn't understand why he had a medical screening in September 2021 if there was no intention to progress the transfer of the pensions. Mr G also said that I've not recognised the fact Highwood missed the transfer value expiry dates.

Mr G expressed his dissatisfaction with the advice – in particular he made the point about how his pension will likely be worthless to his family because he was denied the opportunity of transferring his pension to a SIPP. Mr G also expressed his dissatisfaction with the award of £300. He says he finds it strange that I could find Highwood's advice to be wrong yet the firm keeps their fee. He says this doesn't return him to the position he would've been in. Mr G concluded by saying that Highwood missed all of the statutory deadlines when dealing with his complaint and says there isn't any point in having them if there aren't any consequences.

### **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, while I understand Mr G will be disappointed and I'm sorry to hear about his health issues, I've not been given anything new or a reason to change my mind – I've reached the same overall conclusion and for the same reasons as I set out in my provisional decision.

It is my view that Mr G has repeated the key arguments he made at the outset and his response to my provisional decision simply restates his position. As such I don't think it is necessary for me to repeat everything.

I can assure Mr G that I have considered all of the evidence presented to me in this complaint in reaching my decision. And this includes the emails he referred to in his response to my provisional decision.

In terms of the delays he says Highwood caused during the advice process - as I said in my provisional decision, Highwood's ultimate recommendation was for Mr G not to transfer his pension. So Mr G has not lost out as a result of any delay there might have been in the advice process.

I'm not persuaded that the medical screening Mr G has referred to was for the pension transfer itself – in my view this wouldn't be necessary for this kind of transaction. I think the need for a medical was in relation to Highwood's advice that Mr G should consider using a life assurance policy to provide lump sum death benefits to his family in the first instance rather than using his pension. The suitability report referred to Highwood submitting an application for underwriting to understand the cost of providing this type of cover to meet Mr G's need. So I don't think this was unnecessary in the circumstances.

As I said in my provisional decision, I understand that Mr G is unhappy with the advice he received from Highwood because it wasn't what he ultimately wanted. But that doesn't mean the advice was wrong or that Highwood should refund any advice fee. In my view the conclusion reached by Highwood that it wasn't in Mr G's best interests to transfer out his DB scheme was reasonable in the circumstances. And while I found that Highwood's abridged advice went further than it ought reasonably to have done, I still think it was necessary for Highwood to carry out the full advice process in formulating its advice and determination as to why it wasn't in Mr G's best interests to transfer out of his DB scheme to a personal pension arrangement. In my view it would not be fair in these circumstances for Highwood to refund any advice fee.

Finally Mr G has referred to Highwood's complaint handling and says it missed all of the deadlines. But this isn't something I can consider here – complaint handling is not a regulated activity. It is ultimately a matter for the regulator.

### **Putting things right**

Highwood should pay Mr G £300 for the distress and inconvenience caused during the advice process.

### **My final decision**

For the reasons above, I've decided to partly uphold this complaint. Highwood Financial Services should put things right as set out above. I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 31 May 2023.

Paul Featherstone

**Ombudsman**