

The complaint

Mrs T complains about the advice given by Dobson & Hodge Limited (D&H) to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

Mrs T approached D&H in January 2018 to discuss her pension and retirement needs. Mr T was already a customer of D&H and in previous meetings where his own pension was discussed, the adviser suggested Mrs T's pension could be transferred due to her ill-health.

D&H completed a fact-find to gather information about Mrs T's circumstances and objectives. D&H also carried out an assessment of Mrs T's attitude to risk, which it deemed to be cautious to moderate.

On 8 January 2018, D&H advised Mrs T to transfer her pension benefits into a SIPP and invest the proceeds into the funds set out below:

Fund	Split
Jupiter Distribution	15%
M&G Optimal Income	15%
Old Mutual Cirlilum Balanced	15%
Henderson UK Absolute Return	10%
Unicorn Mastertrust	10%
Vanguard Lifestrategy 40%	10%
Henderson Strategic Bond	8%
Invesco Corporate Bond	7%
Fundsmith Equity	5%
Newton Global Income	5%

The suitability report said the reasons for this recommendation were:

- Mrs T was concerned about her health and expects to have a lower than average life expectancy
- She intends to retire before her normal retirement date and is seeking the ability to take benefits in a flexible manner
- The flexibility to draw higher benefits in her early years of retirement was important
- Later in life her pension would be surplus to required income once her husband's pension was in payment and state pension(s)

Mrs T complained in 2022 to D&H about the suitability of the transfer advice because she believed she should have been advised to remain in the DB scheme.

D&H acknowledged the complaint but did not issue a final response, so our investigator looked into matters.

Our investigator upheld the complaint and required D&H to pay compensation. She explained that there was no immediate need to transfer the DB scheme and Mrs T still had nine years until she planned to take early retirement. The investigator felt transferring likely meant Mrs T would be worse off, and she would've been better off remaining in the DB

scheme and considering her options closer to her planned retirement age. The business did not respond and so the complaint has been passed 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.

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 Businesses ('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 D&H'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 largely the same reasons given by the investigator.

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, D&H should have only considered a transfer if it could clearly demonstrate that the transfer was in Mrs T's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

D&H carried out a transfer value analysis report (as required by the regulator) showing how much Mrs T's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield).

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

Mrs T was age 46 at the time of the advice and wanted to retire at 55. The critical yield required to match Mrs T's benefits at age 55 was 6.79%.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 3.7% per year for nine years to retirement. 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 have used age 55 as the date of retirement as Mrs T has been consistent on this being her objective. However, for completeness the critical yield at 65, the scheme retirement age, was 4.01%.

I've taken this into account, along with the composition of assets in the discount rate, Mrs T's low-medium attitude to risk and also the term to retirement. I think Mrs T was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement at age 55, as a result of investing in line with that attitude to risk.

For this reason alone a transfer out of the DB scheme wasn't in Mrs T's best interests. Of course financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

Mrs T wished to retire early due to ill health, and this seems to have been her motivation in seeking advice. In the suitability report D&H did consider the option of early retirement from the scheme, confirming this would lead to a reduced pension. D&H also confirmed between age 46 and age 55 the benefits from the DB scheme would increase in line with scheme increases.

D&H say because of the other income that Mrs T and her husband had, her DB scheme was surplus to requirements and could be used to increase their benefits at the start of their retirement – as was one of her requirements. However, Mrs T was only age 46 at the time of the advice, and whilst she'd had ideas about her retirement, these plans weren't concrete. As Mrs T had nine years before she could think about accessing her pension, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mrs T to give up her guaranteed benefits now when she didn't know what their needs in retirement would be. If Mrs T later had reason to transfer out of the DB scheme she could have done so closer to retirement. There was in my view no benefit to transferring at this stage and to be better off Mrs T was relying on substantially outperforming market trends over a number of years which given her attitude to risk was unlikely.

Furthermore, Mrs T in retirement would've likely had access to other sources of money. These could've been used to increase expenditure and income in the early years of retirement without losing valuable guarantees and in all likelihood maximising her retirement income. And she also had the option to take tax-free cash from the scheme which could've been used to increase expenditure in the early years of retirement.

I acknowledge that it wouldn't be up to an adviser to tell Mrs T that she shouldn't have the aim of, for example, retiring early. However, it was the responsibility of D&H to explain to Mrs T why she didn't need to make an irreversible decision on relinquishing valuable safeguarded benefits at that time. And the pension transfer was a decision that could be delayed until she got closer to retirement and had a clearer idea of her needs.

Mrs T had been in hospital around the time of the advice, and there were concerns about her health. But unless a person is given a terminal diagnosis with less than 12 months to live, which doesn't apply here – there would be no benefit in transferring benefits early. As they wouldn't be accessible to at earliest age 55 in any event.

Summary

I don't doubt that the flexibility, control and potential to release more cash earlier than through the DB scheme would have sounded like attractive features to Mrs T. But D&H wasn't there to just transact what Mrs T might have thought she needed. The adviser's role was to really understand what Mrs T needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs T was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs T 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 at the time.

I'm not persuaded that Mrs T's concerns about her health were so great that she would've insisted on the transfer knowing that a professional adviser, whose expertise she had sought out didn't think it was suitable for her or in her best interests.

In light of the above, I think D&H should compensate Mrs T for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs T, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs T would have most likely remained in the occupational pension scheme if suitable advice had been given.

D&H must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, Mrs T planned to retire at age 55. So, compensation should be based on her taking benefits at this age.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mrs T's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, D&H should:

- calculate and offer Mrs T redress as a cash lump sum payment,
- explain to Mrs T before starting the redress calculation that:
 - their redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and

- a straightforward way to invest their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mrs T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs T accepts D&H's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs T for the calculation, even if she ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mrs T's end of year tax position.

Redress paid to Mrs T as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, D&H may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mrs T's likely income tax rate in retirement – presumed to be 20% . So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Dobson & Hodge Limited to pay Mrs T the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Dobson & Hodge Limited pays Mrs T the balance.

If Mrs T accepts this decision, the money award becomes binding on Dobson & Hodge Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs T can accept my decision and go to court to ask for the balance. Mrs T may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 24 October 2023.

Simon Hollingshead
Ombudsman