DRN-4266395

The complaint

Mrs S complains about the advice given by Tuto Money Limited to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a personal pension. She says the advice was unsuitable for her and believes this has caused a financial loss.

What happened

Mrs S spoke to Tuto Money in 2015 to discuss her pension and retirement needs. She was unemployed at the time and was seeking advice about her pension.

Tuto Money completed a fact-find to gather information about Mrs S's circumstances and objectives. Tuto Money also carried out an assessment of Mrs S's attitude to risk, which it deemed to be very low.

On 12 October 2015, Tuto Money advised Mrs S to transfer her pension benefits into a personal pension. The suitability report said the reasons for this recommendation were that she wanted to access her tax-free cash for home improvements and a family holiday. And Mrs S wanted to be able to leave the fund to her son in the event of her death.

Mrs S complained in 2022 to Tuto Money about the suitability of the transfer advice because she said she wasn't informed of the benefits she'd be losing by transferring out of the DB scheme and alternative options weren't sufficiently considered. For example, to clear her debts, she could have borrowed from friends or family or entered into a debt management plan.

Mrs S wasn't looking to take any risk with her pensions and had no other assets to fall back on for her retirement. Mrs S believes she's suffered a loss as a result of the advice she was given.

Tuto Money didn't uphold Mrs S's complaint. It said the complaint had been made too late. Tuto Money said there had been lots of articles in the press in 2019 about the unsuitability of transferring DB schemes. And as Mrs S didn't complain until September 2022, she hadn't complained within three years of her knowledge of the point of complaint. Tuto Money didn't provide any dated evidence of the articles it referred to, just a google search of '2019 adverts for pension mis-selling'.

Mrs S referred her complaint to our service. An investigator upheld the complaint and required Tuto Money to pay compensation. The investigator said the complaint had been made in time – as there was no evidence Mrs S had seen the articles it referred to in 2019. And there was no other compelling evidence to say she should've complained earlier. The investigator felt the advice had been unsuitable as Tuto Money had failed to demonstrate the transfer was in Mrs S's best interests. And had they explained to her that she would likely be better retaining her DB benefits, the investigator thought that Mrs S would've accepted this advice and not transferred.

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.

jurisdiction

I've considered whether the complaint was one that we can consider. In doing so I've thought about Tuto Money's argument as to why the complaint had been made out of time. And whether there are any other reasons why the complaint isn't one we can consider.

Tuto Money believes Mrs S ought to have been aware in 2019 that the advice was possibly unsuitable as it says there was significant press interest in the matter. It's supplied evidence of a google image search for 2019 pension mis-selling. Which shows various adverts and articles on the matter. However, there is no evidence Mrs S was aware of these at the time. And I'm not persuaded that the media and press attention was such that it would've reached the average person who wasn't actively looking for this information. So I don't think this evidence shows that Mrs S was aware or ought to have been aware of her reason to complain in 2019. I've seen nothing else to suggest Mrs S has made her complaint outside the timescales allowed.

the merits of the 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've reached 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 Tuto Money'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, Tuto Money should have only considered a transfer if it could clearly demonstrate that the transfer was in

Mrs S's best interests. And having looked at all the evidence available, I'm not satisfied it was in her best interests.

Financial viability

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

The advice was given during the period when the Financial Ombudsman 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 in this case.

Mrs S was 55 at the time of the advice. The critical yield required to match Mrs S's benefits at age 60 (the normal retirement age of the scheme) was 24%.

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 3.4% per year for 4 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've taken this into account, along with the composition of assets in the discount rate, Mrs S's very low attitude to risk and also the term to retirement. There would be little point in Mrs S giving up the guarantees available to her through her DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 24%, I think Mrs S 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.

Mrs S had no significant assets or other sources of income in retirement bar the state pension. So her DB pension was of critical importance to her.

For this reason alone a transfer out of the DB scheme wasn't in Mrs S'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

I don't think Mrs S required flexibility in retirement. This is because based on the evidence I've seen, I don't think she had a genuine need to access her TFC earlier than the normal scheme retirement age and leave their funds invested until a later date. I say this because Tuto Money recorded that Mrs S needed the money to make home improvements and to take a family holiday. However, Mrs S didn't own her property and Tuto Money didn't record any detail about these plans. It should've been established, in light of her precarious financial situation and how important her DB pension was to her, what she needed the money for and if it was necessary at all.

Mrs S has told us she was in debt at the time – however Tuto Money made no mention of this in their reasoning for taking her benefits early. This wasn't part of the advice process but had it been considered, Mrs S could for example have taken out a debt management plan rather than using her pension to clear these debts.

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 personal pension was likely an attractive feature to Mrs S. But whilst I appreciate death benefits are important to consumers, and Mrs S might have thought it was a good idea to transfer her DB scheme to a personal pension because of this, the priority here was to advise Mrs S about what was best for her retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Tuto Money explored to what extent Mrs S was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mrs S was married and so the spouse's pension provided by the DB scheme would've been useful to her spouse if Mrs S predeceased him. I don't think Tuto Money made the value of this benefit clear enough to Mrs S. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, Tuto Money should not have encouraged Mrs S to prioritise the potential for higher death benefits through a personal pension over her security in retirement.

Furthermore, if Mrs S genuinely wanted to leave a legacy for her son, which didn't depend on investment returns or how much of her pension fund remained on her death, I think Tuto Money should've instead explored life insurance.

Ultimately, Mrs S wanted to leave whatever remained of her pension to her son, which would be a lot less than this if she lived a long life and or if investment returns were poor. So, the starting point ought to have been to ask Mrs S how much she would ideally like to leave to her child, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide. In reality Mrs S withdrew all her benefits after the transfer – and so the advantages of transferring for securing potentially higher death benefits were not achieved in any event.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mrs S. And I don't think that insurance was properly explored as an alternative.

The regulator – the FCA, has made it clear within guidance that advisers need to have understood a consumer's investment objectives before making a recommendation. A request or preference made by the consumer for a particular solution does not in itself amount to an objective. Advisers are required to understand the consumer's actual investment objectives so that they can advise on a suitable course of action to meet them.

As the investigator pointed out Tuto Money mostly referred to generic stock motives when describing Mrs S's objectives. There's little if any evidence to indicate these stock motive objectives were truly of importance to Mrs S to justify the guaranteed benefits being given up by transferring – particularly given the likelihood Mrs S would be financially worse off as a result of transferring. I'm therefore not persuaded Tuto Money has clearly demonstrated transferring was in Mrs S's best interests as per COBS 19.1.6G.

Tuto did note that Mrs S had specific objectives such as wanting to take her family on holiday and make home improvements. However, these specific objectives expressed by Mrs S didn't displace the need for Tuto Money to provide suitable advice, even if this challenged the pre-conceived intentions Mrs S appeared to have. The strength of these intentions has to be caveated with the fact Mrs S didn't have prior knowledge or experience of making decisions of this sort. So, she couldn't know for sure whether these intended actions were in her best interests.

Financial planning isn't simply about wish fulfilment and facilitating whatever course of action a client wishes to take. If an advising business considers a course of action to be unsuitable for their client, or otherwise not in their best interests, it's incumbent upon them to explain this – and why.

Mrs S wasn't in a good financial situation when she met with Tuto Money. And its clear from listening to her conversations with Tuto Money after she had taken her benefits that she is inexperienced when it came to financial matters. She said herself she'd not had money before and it seems after being advised to transfer she spent much of her pension. Tuto Money ought to have clearly set out the benefits of retaining her DB pension and how important it would be to her and her families' finances. Had it done so I think Mrs S would've listened as she had sought expert advice – and I think she would've retained her DB pension and taken her benefits from it at the normal retirement age.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mrs S. But Tuto Money wasn't there to just transact what Mrs S might have thought she wanted. The adviser's role was to really understand what Mrs S needed and recommend what was in her best interests.

Ultimately, I don't think the advice given to Mrs S was suitable. She was giving up a guaranteed, risk-free and increasing income. By transferring, Mrs S 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. Mrs S shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable (although this wasn't given as a reason), and the potential for higher death benefits wasn't worth giving up the guarantees associated with her DB scheme.

So, I think Tuto Money should've advised Mrs S to remain in her DB scheme. Of course, I have to consider whether Mrs S would've gone ahead anyway, against Tuto Money's advice.

I've considered this carefully, but I'm not persuaded that Mrs S would've insisted on transferring out of the DB scheme, against Tuto Money's advice. I say this because Mrs S was an inexperienced investor with a very low attitude to risk and this pension accounted for the majority of Mrs S's retirement provision – I think the importance of this money to her retirement plans ought to have been a cornerstone of the advice. Instead Tuto Money advised Mrs S to access this money early to spend on non-essentials. If Tuto Money had provided her with clear advice against transferring out of the DB scheme, explaining why it wasn't in her best interests, I think she would've accepted that advice.

Putting things right

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

Tuto Money 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 S has taken her benefits via various withdrawals from 2015 to 2017. However, as per the rebuttals assumptions set out in DISP APP 4, Tuto Money should use an assumed retirement age of 60, the normal retirement of the DB scheme. Whilst Mrs S did draw her benefits before that age, had she been given suitable advice to remain in the scheme, I think she would've followed this advice and taken benefits at her normal retirement 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 S'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, Tuto Money should:

- calculate and offer Mrs S redress as a cash lump sum payment,
- explain to Mrs S 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 S receives could be augmented rather than receiving it all as a cash lump sum,
- if Mrs S accepts Tuto Money's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mrs S 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 S's end of year tax position.

Redress paid to Mrs S 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, Tuto Money 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 S'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.

My final decision

I uphold this complaint and direct Tuto Money Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 October 2023.

Simon Hollingshead
Ombudsman