The complaint

Mrs D complained about advice she was given to transfer the benefits of a defined-benefit (DB) occupational pension scheme to a type of personal pension arrangement, in 1990.

She says the advice was unsuitable for her and believes this has caused a financial loss.

Although Mrs D originally dealt with a different company back in 1990, Greenwood Financial Planning LLP is now responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Greenwood".

What happened

Mrs D was a deferred member of the occupational pension scheme which was operated by her previous employer which she'd worked for until 1988. She'd accrued around 10 years' worth of benefits. The information gathered about Mrs D at the time of the advice was broadly as follows:

- Mrs D was 31 years old, unmarried and in good health.
- She lived in a home which she owned with a mortgage with her partner (who subsequently became her husband).
- The cash equivalent transfer value (CETV) of Mrs D's DB pension was £8,792 and the normal retirement age (NRA) was 60.

Greenwood first dealt with Mrs D in 1989 and set out its advice in around early 1990. We no longer have access to any suitability report (or similar) giving the reasons for Greenwood's advice but as I'll explain more about later, we do have several other 'point of advice' records. Greenwood recommended that she transfer her DB scheme to a type of personal pension arrangement and into a with profits fund. She accepted this advice and so transferred from her DB scheme.

In 2022 Mrs D complained to Greenwood about its advice, saying she shouldn't have ever been advised to transfer out of her DB scheme. In response, Greenwood said it hadn't done anything wrong and was acting on the financial objectives Mrs D likely had at the time.

Mrs D referred her complaint to the financial ombudsman service. One of our investigators looked into the complaint and said it shouldn't be upheld. Greenwood agreed with this and also said that, in any case, the complaint was made about events too long ago; it said it was outside the jurisdiction rules we operate under about time-barring complaints.

I issued a jurisdiction decision about this complaint a few weeks ago explaining that I wasn't minded to exclude Mrs D's complaint under these rules. I said hers was a complaint we *could* consider.

However, with these 'out of time' issues dealt with, the complaint remains unresolved because Mrs D still thinks the advice to transfer was unsuitable. I'm therefore now issuing my final decision about the actual merits of her complaint.

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. 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. Having considered all the available evidence I'm not upholding this complaint for broadly similar reasons to those our investigator gave.

The applicable rules, regulations and requirements

It's fair to say that in 1990 the rules about transferring from a DB scheme to a personal pension were not as comprehensive as they are now.

At the time of the advice the applicable regulator was the Life Assurance and Unit Trust Regulatory Organisation (LAUTRO). Its code of conduct said advisers should not advise customers to convert, cancel or allow to lapse any occupational pension, unless they genuinely believed it to be in the consumer's best interest and clearly disclosed all relevant consequences and disadvantages of doing so.

Introductory issues and points of complaint

In bringing her complaint Mrs D used an analogy with her now ex-husband's situation. She says that he and she had worked for the same company – a large multinational firm – in the 1980s. And although they started and finished with that company at slightly different times, there were lots of similarities in their length of service, roles and pay structures. They were members of the same occupational pension scheme.

Mrs D's main point of complaint is that when she sought pension advice in 1989/90, she received very little from her adviser by way of financial analysis or explanation about the values of transferring away. So, she implies the transfer advice wasn't clear or based on evidence that she'd be better off or that transferring away from a large DB scheme was in her best interests.

She compares this with Mr D who is now her ex-husband. It seems it came to her notice many years later that he had sought very similar pension advice in 1994 from the same firm and in what she says are very similar circumstances to her own. But Mrs D says Mr D was advised *not* to transfer away and into a personal pension arrangement. More so, she says he was given a full suitability report and an in-depth analysis showing why he shouldn't transfer, whereas she was effectively provided with no such information in her case.

Mrs D also says that she was distressed to learn in around 2019 – some 29-years after she originally transferred away from her DB scheme – that Mr D had still remained a member of the DB scheme throughout the intervening years and that *"his pension had grown to £245,700".* Mrs D says her transferred pension had only increased from £8,792 to around £73,000 over 29-years or so.

In addressing these points, I'll start with the value of Mr D's pension. To be clear, I think the amount quoted by Mrs D would have been a CETV apparently offered to Mr D in 2019. DB schemes are valued completely differently to defined contribution (DC) schemes. The latter have a simplistic fund which goes up and/or down, whereas the former promises to pay a pension each year for life and it contains guarantees such as index-linking. Sometimes an offer will be made by DB scheme trustees for a member to leave the scheme, but there are strict rules around whether this is possible or suitable.

I therefore think it's very important here to explain that this CETV offer Mr D was given in 2019 relates to a completely different set of circumstances. Firstly, we don't know whether Mr D's pension might have been more than Mrs D's from the outset or whether he added more later on. We also know that his pension will have grown by having had the substantial benefit of decades worth of notional growth in the intervening period. But to compare her £73,000 now with Mr D's £245,700 simply isn't a fair comparison.

This is because we know CETV offers have changed significantly over the years and are based very much on specific market and economic conditions. The overall health of the DB scheme will be pertinent too. We know for example, that any offer made in 2019 to Mr D would have benefitted from Gilt yields and interest rates being at an historic low. The effect of this meant CETVs were inflated by the standards of today – and if Mr D were to be offered a CETV now, I'm sure this value would have materially decreased.

The cost of buying a pension annuity would have also been very high in 2019. So, if Mr D did accept the CETV, get it through the regulatory procedures, and then tried to replicate his existing benefits in an annuity, this would have cost him a lot of money. On the other hand, if he were to do the same now, buying an annuity would cost considerably less due to substantial changes in Gilt yields.

However, there's no evidence that Mr D would, in all reality, have been able to actually access such a sum in 2019. I don't know what he eventually did with his CETV, but by law he'd have needed to obtain a regulated financial adviser's advice to transfer and he'd have to prove to his DB scheme trustees that he had gone through this process. The regulator's stance on these types of transfer has changed substantially over the years; we now know its starting position is that transferring from a DB scheme is most likely *not* suitable. So, the point I'm making here is that accessing £245,700 might not have been in Mr D's best interests however high and attractive this figure looks. He'd be giving up valuable guarantees, inflation-proofing, and death benefits and so he'd need to persuade an adviser that all these things were worth giving up.

I've also considered Mrs D's points about her not being given any relevant documentation in 1990 about transferring. I'm certainly not implying that Mrs D is providing us with anything other than her best recollections of events. But I've thought about the likelihood of her paying for financial advice and then being given nothing. I think this is unlikely and at the very least, I think she would have challenged this. I can also see we've been provided with information (from the time) about the with profits fund she was recommended to join and some projections about her pension growth. We also have some comparisons about her existing scheme and the one she was being recommended to transfer to. I think she would have been given sight of these things, although I accept remembering this might be very difficult after such a long time.

Conversely, her points of complaint also refer to Mr D being given quite a lot of analysis and documentation by the same adviser. So, I think if the same adviser had provided a suitability report to her then husband in 1994, I think it's more likely than not that they did the same for Mrs D in 1990. As I say, I'm sure Mrs D is giving her honest and genuine recollections now. But these events were a very long time ago and remembering everything that happened won't be easy. As our investigator also explained, the rules about pension transferring were much less strictly regulated back then. And although Greenwood is now able only to provide certain pieces of documentation, I think these on their own probably met the requirements of the time.

The financial viability of the transfer

If transferring now, to demonstrate the financial comparisons between her then current DB scheme and transferring out to a personal pension arrangement, Greenwood would be required to refer in its transfer analysis to 'critical yield' rates or the transfer value comparator. However, these weren't requirements at the time. Instead, Greenwood used some growth assumptions that could be applied to her £8,792 if she transferred away.

It also said by comparison that Mrs D's existing DB scheme, if she didn't transfer from it, could be expected to pay out an annual pension at the NRA of 60 (in 2019) of £2,089 together with a tax-free lump sum of around £6,000.

Greenwood's analysis *("retained benefits of staff pension fund" - dated 30 April 1990)* projected two growth scenarios commonly used at the time.

For example, it took Mrs D's transferred sum of around £8,792 and applied forward annual growth rates of 8.5% and 13% respectively. These provided a likely pension, at the NRA of 60, of £5,080 per year (8.5% annual growth) and £19,100 per year (13% growth). Alternatively, if taking a tax-free lump sum upon retiring at 60 *and* a reduced pension, the projections were for an annual pension of £3,800 per year and tax-free cash of £13,700 – or using the 13% growth assumption – an annual pension of £14,300 per year and a tax-free lump sum of £44,700. Because these scenarios were both in excess of the DB pension that Mrs D had been told she might get if remaining in her current scheme, I think the recommendation to transfer was largely based on these comparisons. The adviser, in my view, thought her best interest lay in transferring away.

In short, the projections showed that by transferring away, she would probably be better off when she retired.

I've thought about whether these projections were reasonable. Clearly, in today's market an annual growth projection rate of 13% or even 8.5% might seem high and probably unachievable without taking high investment risks. But for comparison, the growth assumptions published by the then regulator were actually 8.5% per year for a lower-end projection, 10.75% per year for mid-growth, and 13% for the higher-end projection.

The regulator has provided further guidance, using financial viability test (FVT) figures which calculate the approximate growth that might reasonably have been acceptable using a consumer's age, their scheme's NRA, and the date when the advice to transfer was given. I've calculated the FVT in Mrs D's case and it was 13.6% per year for just over 28 years until retirement. The Bank of England base rate was also 14.88% at the time of the advice.

What this means, in my view, is that the growth assumptions used at the time were not unreasonable. They do seem high now and I accept that these growth rates may not have eventually materialised. But it seems to me that Greenwood issued them in accordance with contemporary evidence and the guidance of that time. And it wouldn't be fair for me to apply hindsight and say these assumed growth rates now look too high.

Were there any other factors to consider?

We don’t have a suitability report fully outlining the rationale for transferring – this isn’t disputed. But I have explained above that one such reason for transferring was probably the assumption that Mrs D’s pension could grow outside the DB scheme to such an extent that made transferring away worthwhile.

Nevertheless, Mrs D was very young by pension standards, so I’ve considered this carefully. I think it’s fair to say attitudes and regulations relating to pension transfers have changed since 1990. So, whilst I think the adviser should have been wary of Mrs D’s age, she was still unmarried at the time and they may have taken into account that the spouse’s benefits found in her DB scheme were not of direct use to her. I wouldn’t agree with this though, mainly because I think as a 31-year-old woman, there was every chance her marriage status might change at some future point. A similar point could be made with regards to future children who might stand to receive something if Mrs D passed away as a member of the DB scheme. However, as I understand it, there’s no evidence Mrs D was in anything other than in good health and so with no husband or children yet, the adviser may have concluded that the benefits of potential growth outweighed the other benefits found in the DB scheme.

Ultimately, as regards the full and documented rationale for transferring, I can’t say what happened in full because no records of these particular conversations have survived. But LAUTRO advisers were guided by a code of conduct at the time which meant they had to exercise due skill, care and diligence and deal fairly with investors. They were unable to make unfair judgments or criticisms of other investments or occupational or state policies. These rules reached a much ‘lower bar’ than might be said of today’s standards, and so I can’t say Greenwood acted incorrectly or didn’t follow the rules in place at the time.

Summary

I’m sorry to disappoint Mrs D, but I am not upholding her complaint.

As I’ve said above, Mrs D has used comparisons of ‘today’ (many decades after the advice she was given) to compare her and her ex-husband’s experience of having similar DB pensions from the late 1980s. Whilst I understand the temptation to do this, these comparisons need contextualising. And so her analogy of being *“£150,000 worse off now”* just isn’t right or a fair reflection of the comparisons between two quite different types of pension scheme.

The first part of her complaint focussed on her being given much less information about transferring away than her husband was given by the same adviser four years later. But I think if she’d have been literally given nothing having paid for financial advice, then she’d have raised this as being unacceptable. I think it would have also prompted her husband not to use the same firm four years later, although we know he did.

I accept, that to a degree, Greenwood has fallen somewhat short of what we’d normally expect as regards full document retention. The Pensions Review process of the late 1980s-to-1990s was established by the regulator as a result of fairly widespread concerns about some consumer’s being unsuitably advised to leave DB schemes. That alone should have prompted Greenwood to retain more documentation regarding Mrs D’s transfer. Greenwood also implied it had actually included Mrs D’s case within the Pensions Review exercise of the mid-1990s, when in reality, it can’t evidence this.

However, whilst I think Greenwood probably destroyed some documentation from these events over time, probably as a result of ‘weeding’ and/or a company buy-out, there still remains a large enough file of documents related to this case for me to make a decision.

Using this documentation, I can see that the figures and assumptions used at the time to compare Mrs D's pension options were most likely realistic and appropriate. Looked at through the lens of 1990, the assumed growth rates would have seemed sustainable and the evidence would have looked like there was a solid financial case for Mrs D to transfer from her DB scheme to a personal pension arrangement. I also think Mrs D was told enough about the potential for her 'new' pension to be subject to market risks, whilst her 'old' one wasn't. She was told that what she might get in pension depended on the performance of the with profits fund.

That Mrs D was at the time unmarried and had no children may have also played a minor part in the recommendation to transfer away.

However, essentially I think that the complaint here is really about poor performance of the funds. Having transferred, the funds recommended ultimately performed less well than forecast. Mrs D's comments around the jurisdiction issue were essentially that she never revisited her pension until 2019 when her ex-husband and her had cause to compare their respective outcomes. I fully understand not monitoring one's pension might not be unusual – many people don't do this. But by leaving her transferred funds for so long without oversight, her pension balance became the victim of market forces and whilst it has certainly grown, overall the growth has been less than hoped for or predicted.

I can't hold Greenwood responsible for the poor performance. When she transferred, I think Mrs D understood her pension could fluctuate. I think it's more likely than not that she was given the information she was required to be given.

My final decision

I do not uphold this complaint.

I do not direct Greenwood Financial Planning LLP to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs D to accept or reject my decision before 27 February 2024.

Michael Campbell
Ombudsman