DRN-4695191

The complaint

Mr H complains that Delta Financial Management Limited (Delta) gave him unsuitable advice to transfer deferred benefits that he had in a defined benefit (DB) scheme pension to a self-invested personal pension (SIPP). Mr H now believes that the advice wasn't in his best interests and he will be worse off in retirement as a result.

What happened

Mr H explains that he was approached by Delta regarding his DB pension in late 2015.

Mr H was in periodic contact with Delta after that initial contact. With cash equivalent transfer values (CETV) quotes being obtained from his DB scheme over that time.

In January 2020 Mr H paid Delta for its Pension Information Report (PIR). Which didn't provide Mr H with a personal recommendation about the suitability of a transfer for him. But provided information about his options.

Shortly after the provision of the PIR Delta arranged for Mr H to attend a presentation with a third party investment company. Where potential investment options were presented to Mr H based on Delta's assessment of Mr H's attitude to risk.

Delta obtained a CETV from Mr H's DB scheme in June 2020. It offered a CETV around £2,258,000 made up of 3 periods of accrual:

- Pre-1997 = £620,000
- Post-1997 = £1,060,000
- Post-2007 = £628,000

The scheme allowed partial transfer of these components although the pre 97 part needed to be included in any partial transfer. The deadline for securing this CETV was 30 September 2020.

In late August 2020 Mr H told Delta that he wanted to go ahead with a partial transfer of his deferred benefits. Delta obtained signatures from Mr H on the transfer application and SIPP forms on 19 September 2020.

On 25 September 2020 Delta provided Mr H with its suitability report. It recommended that Mr H transfer the pre-1997 and post-2007 parts of his DB scheme as Mr H suggested.

Delta set out Mr H's circumstances as:

- He was aged 52 and married with two dependent school aged children.
- Recently returned to the UK after 10 years of living overseas.
- Intending to continue working until age 55, after which he may consider stopping work.

Delta recorded the following objectives for Mr H:

- Spreading the risk whilst retaining part of his DB scheme benefits to meet future income needs.
- To withdraw the entire pension commencement lump sum (PCLS) prior to retiring and defer taking income until needed.
- Not wanting to be tied to the DB scheme when he commenced taking his benefits.
- Minimum income requirement is around £46,000 a year net in retirement.
- Wanted to preserve benefits for his beneficiaries in the event of his death.
- Wanted to secure and withdraw part of benefits privately taking advantage of pension freedoms.
- Wanted to appoint a dedicated investment manager to manage his pension fund.
- Wanted to invest his pension and draw benefits as tax efficiently as possible.

Delta's report cover letter recommended the transfer to give Mr H the ability to withdraw the maximum PCLS when he reached age 55. But that he should defer taking any income until it was required. It explained that retaining the post-1997 benefit in the DB scheme would mean he could still have a secure pension element. The letter explained to Mr H that his overall CETV had risen from around £1,500,000 in March 2018 to £2,258,000, It emphasised that this was a rise of 56% compared with his defined benefits over the same period rising only from £60,418 to £62,920.

Mr H followed Delta's recommendation and did a partial transfer of his DB scheme benefits.

Mr H later complained to Delta about the suitability of the advice to partially transfer his DB scheme pension. He didn't think Delta had given him correct information and he thought he was put under unfair pressure and rushed to transfer.

Delta looked into Mr H's complaint and didn't uphold it. Delta said that its recommendation met Mr H's objectives. And gave him the flexibility in income to meet his income needs early. It didn't think he had been rushed in the transfer having been in conversations with him since December 2015 about transferring. Delta made reference to a post that Mr H had placed on an online forum for members of his occupation that it said was evidence that Mr H hadn't felt pressured at the time. It challenged Mr H on why he deleted the comments made on the forum.

Our investigator looked into what happened and thought that Mr H's complaint should be upheld. In summary, the reasons that our investigator thought the recommendation was unsuitable were:

- The transfer analysis that Delta showed us indicated that transferring benefits would make it very unlikely that Mr H could match or improve on the benefits that he already had in his DB scheme.
- The flexibility of income wasn't needed enough to warrant the transfer. It wasn't clear that Mr H was dependent on that to be able to retire at the earlier age that Delta documented as being an objective for Mr H.
- The difference in the way that death benefits would be paid by a defined contribution pension didn't provide enough of a reason to sacrifice guaranteed benefits. And alternative ways to provide security for Mr H's wife and dependents weren't explored. She said the existing death benefits in the DB scheme were already valuable.
- Consideration was given to the financial security of the DB scheme, even though it wasn't explicitly cited in the suitability report as a reason supporting a transfer. She recognized that there were likely to have been legitimate concerns that Mr H had regarding the funding of his scheme given the impact that the covid pandemic had on his employer's industry. And the existing funding deficit of his DB scheme prior to that. But she didn't think that the risk of his DB scheme failing and defaulting to the

pension protection fund ('PPF') was so great that it warranted the transfer of the deferred DB scheme pension.
- Overall, our investigator concluded that Delta should not have recommended that Mr H transfer his DB scheme benefits. And thought that, if advised to remain within his scheme he would, most likely, have followed that advice.

Delta challenged the outcome that the investigator came to. It thought that she'd misunderstood details and that she hadn't taken into account the fact that it had provided a recommendation that enabled Mr H to meet all of his objectives which couldn't have been done with the benefits available in his DB scheme. So this case was passed to an ombudsman to decide.

I issued a provisional decision to both parties to explain why I was minded to uphold Mr H's complaint. I summarise my rationale as follows:

- I explained that I thought that the analysis Delta carried out showed that this transfer was unlikely to produce benefits that were as valuable as those already offered by his scheme.
- I considered whether the greater flexibility in the way that benefits could be taken made this transfer in Mr H's best interests. And explained that I didn't think it did because I thought that the evidence indicated that Mr H's needs could already be met from assets he had without sacrificing his DB scheme benefits.
- I considered whether the different death benefits from a defined contribution pension fund made this transfer suitable. And didn't think it did because Mr H's existing benefits provided valuable death benefits and there was no evidence that Mr H's existing provisions either weren't sufficient or that alternatives to transferring had been fully explored.
- I considered that Delta said Mr H had an objective of having more control of his pension fund. But Mr H's relative lack of investment experience and attitude to risk didn't persuade me that it was in his interests to transfer in order to have a large pension fund and responsibility for investment returns.
- I acknowledged that there were valid concerns at the time about the financial position of the DB scheme. It had a deficit but had a plan in place to address that. That plan had arguably been impacted by effects of the covid pandemic. But I thought that the conclusion that Delta reached in its recommendation – that this wasn't a reason to transfer – was reasonable.
- I set out what I considered to be a fair way to put things right for Mr H taking into account his likely tax position when taking benefits from this pension.

In response to my provisional decision Delta responded to disagree with what I'd said. I summarise the points it made as:

- It had to consider a client's needs. And it again made the point that an income requirement of £100,000 a year until age 67 could not be achieved by the DB scheme at any stage before its normal retirement age of 65.
- It referred again to the PIR that it provided Mr H around eight months before its recommendation as evidence that the DB scheme offered security and certainty and that Mr H would generally be better off remaining in that scheme.
- It referred again to the evidence that it had previously submitted regarding Mr H's posts on a forum after the pension transfer had completed. And again made the point that Mr H understood the advice provided.

- It addressed its disagreement with comments Mr H had made in the course of the investigation about its advice to reduce the liability for Lifetime Allowance (LTA) taxation.
- It provided further evidence about the way it had applied potential LTA when it compared the DB benefits explaining why its projections were correct. It said that it considered whether Mr H could meet his objectives by transferring and that he would be able to.
- It accepted that Mr H had no need to immediately support his income needs from his pension for 10 to 15 years. But said that accessing the tax free cash enabled Mr H to benefit from investment growth on that sum in a tax efficient way.
- It said that it was considering the principle of foreseeable harm when assessing the changes in the CETV for Mr H's DB pension. And, whilst changes to the CETV wouldn't give an overriding reason to justify a transfer, it didn't think potential movements could be ignored because the timing of the transfer may have been questionable.
- It explained that it had considered that Mr H was likely to live overseas and would want to be able to take his pension benefits in a more tax efficient way. And that transferring enabled him the freedom to achieve that.
- It disagreed with what the provisional decision said about death benefits. And explained the illustration it had provided Mr H again.
- Delta has said that, the fact that it turned down a subsequent request from Mr H for a second transfer of DB benefits, is evidence that it understood that its role was not simply to transact what Mr H may have wanted.

Mr H responded to my provisional decision. He disagreed with elements in that decision, disputing my finding about parts of the recommendation that Delta gave. He still disagreed with the accuracy of the information Delta's suitability report contained. He reiterated arguments why he didn't think Delta's advice had been suitable. He didn't think that my provisional decision was fair in the reasoning I gave for dismissing the independent TVC he'd obtained. And he didn't agree with the nominal deduction that I'd proposed in my provisional means of redress because he is no longer a UK tax resident.

After considering Mr H's points about the fair way to treat the notional tax that would be due on any compensation I changed my view on what I'd said in my provisional decision. In that I had suggested that any compensation that Mr H was due, where it could not be paid into his pension, should be adjusted for tax. And presumed Mr H's marginal rate of tax in retirement would be 40% and that 25% of any compensation paid into his pension would be taken tax free. I wrote to both parties to explain that I had changed my mind on this detail because I didn't think Mr H would have further entitlement to tax free cash through his pension as his existing pension could already use his full allowance.

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 considered all of the evidence obtained over the course of investigating this complaint as well as giving consideration to all of the arguments put forward in response to my provisional decision. And my final decision is to uphold Mr H's complaint for similar reasons that I have already outlined to both parties. But will set out again in what follows.

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 Delta's actions here.

- PRIN 2.1 – Principle 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*
- PRIN 2.1 – Principle 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.

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, Delta should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr H's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

I explained in my provisional decision that, when referring to financial viability, I'm referring to the likelihood that a transfer could provide equivalent or better benefits than those that were already available to Mr H. Which is a part of the analysis that the regulator requires businesses to do for pension transfers. I will start with this although I appreciate that Delta has explained that it didn't recommend a transfer on the basis that Mr H's existing pension benefits could be replicated or improved upon. However, I also recognise that Mr H says that he didn't interpret Delta's advice as telling him that he was likely to receive lower overall benefits.

Delta carried out two transfer value analysis reports showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). I've asked Delta about this and it has explained that the first report uses standard TVC assumptions. But the second report is adjusted to more accurately reflect the way that Mr H's DB scheme re-values the different elements that make up the benefits. The second report produces higher estimates for the schemes benefits at ages 55 and 65 and therefore higher critical yields. Delta said that was the most accurate one to use and was what it relied on in the suitability report that it gave Mr H. I agree that was fair.

Mr H subsequently commissioned his own TVC that, he says, shows Delta's figures to be inaccurate. I explained in my provisional decision that I had not attached weight to that evidence because it didn't use the same CETV. So wasn't a fair comparison. I refer to this merely to make clear that it has been considered but that I don't think it has a bearing on the outcome of this complaint.

I would expect to see Delta's suitability report giving a reasonable view on whether or not Mr H was likely to experience a high enough investment return to improve on his existing benefits. And given the fact that Delta's TVC included the relevant critical yields to ages 55 and 65 it ought to have referenced the achievability of this.

The regulator's projection rates for investment returns had 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 Mr H's balanced attitude to risk and also the term to normal retirement of age 65. Given the lowest critical yield, to age 65, was 7.53%, I think Mr H was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. The critical yield figures for earlier retirement ages than 65 would have been even higher and made a transfer even less financially viable in terms of overall value of benefits.

Delta also explained in its suitability report that an investment return of 7.53% wouldn't be achievable without exposure to investments that were beyond Mr H's attitude to risk. So I think that this was a reasonable conclusion. And on page 30 of the suitability report Delta noted in bold "*since the rate of investment return required to match the annuity comparison is high, I also envisage that there is a very high degree of risk that you will receive a lower pension by transferring your* [DB scheme] *if you were to subsequently purchase an annuity".* So I think that Mr H ought to have understood that his existing benefits probably couldn't be replicated if he transferred.

In response to my provisional decision Delta also pointed out that it had highlighted in the PIR, it issued in January 2020, that the DB pension offered certainty and security. And that Mr H would generally be better off remaining in the DB pension. Which is correct. And was evidence that I considered prior to my provisional decision. The PIR started by explaining that it wasn't a recommendation and only briefly summarised the benefits of the DB scheme. Yet it went on, over the course of 42 pages to provide information on Mr H's options. But without making any recommendations. Its purpose seems to have been to enable Mr H to consider his options. Having considered his options, and decided to move to full financial advice and a recommendation, this report had served its purpose. And the subsequent suitability report became the key information that led Mr H to decide to transfer his pension.

Overall though, I agree with the conclusion that Delta offered regarding the likelihood of Mr H being able to achieve the necessary return to be able to match the benefits he already had. But I think that its overall message was less clear. Even allowing for the background information that Mr H had been given months earlier in the PIR. The covering letter to the recommendation and much of the analysis highlighted to Mr H how much his CETV had improved. And that its value was very high at that time. And correspondence leading up to the recommendation warned Mr H about the fact that changes in gilt yields could bring the CETV down. Whilst true, I think this information and the comparison of the CETV available by June 2020, with previous CETVs, was focussed on far more prominently than the comparison with the value of benefits being given up in the DB scheme. And I don't agree this was fair. The CETV was reflected in the TVC, and allowing for its increased value over previous CETVs, still didn't provide a favourable comparison to the DB pension on a like for like basis. And this should have been the clear and unequivocal message, without being diluted by the amount the CETV had improved.

Delta used a projection of taking benefits from the SIPP to inform Mr H that the results of its comparison showed that his SIPP could support comparable income to age 124. And that at his life expectancy of 87 the fund would have a value around £1,800,000. But this was based on assumptions and only reflected one way of Mr B using these pensions. It would have provided certain reassurance of the sustainability of his pension fund in these circumstances. But this didn't replace the purpose of the TVC which showed that this transfer was not favourable in terms of overall value.

On this point I think it is worth noting that, given the size of the existing pension and the CETV involved, the options available to Mr H were all attractive. The benefits he had with his DB scheme were already valuable. But the transfer value was also large and, dependant on how benefits are taken and on investment returns, is also likely to provide valuable benefits in retirement. And given that Mr H's existing pension provision had Delta done nothing were already very good, the question here is whether transferring and investing them could improve their relative value.

In considering the TVC and subsequent analysis though, I don't think the evidence could have led Delta to believe that Mr H would have more valuable benefits by transferring. It was more likely than not, that the most valuable way to utilise the DB scheme was by taking the benefits that it already offered.

But an assessment of financial viability like this isn't the only consideration when giving transfer advice, as Delta has argued in this case. There might be other considerations which mean a transfer is suitable. I've considered this below.

Flexibility and income needs

I don't think that Delta clearly demonstrated that flexibility in taking retirement benefits was really in Mr H's best interests. This is because, based on the evidence I've seen, I don't think Mr H had a genuine need to access his PCLS earlier than would have been available to him under his DB scheme. I say this because the suitability report explains that Mr H was likely not to need to take benefits from his pension for many years. It stated that he was unlikely to need to take any income from his pension for 10-15 years. Which was probably reasonable given the understanding Delta had of Mr H's financial position. Delta identified other potential assets from which he could fund his lifestyle. Delta recorded its understanding that Mr H would likely have had around £2,000,000 in equity from property if his plans came to fruition.

I also can't see evidence that Mr H had a strong need for variable income throughout his retirement that couldn't be achieved through the use of other assets. Again, this was something that had been identified by Delta through its understanding about Mr H's intention regarding realising capital he held in property. So, whilst I don't doubt that retiring early would have required a higher level of income whilst his children were still of school age and in private education, I am not convinced that accessing his pension benefits was the only way to have achieved this objective. I haven't seen evidence that Mr H had an immediate need for the additional income until he chose to stop work. So I'm not persuaded that there was an imperative in moving his DB scheme to a cash fund when it seems clear that Delta had formed the view that he didn't need to access any benefits from the scheme for 10 to 15 years. Whilst that may not have turned out to be the case, I think it would have been more reasonable to have relied on that information.

Delta advised Mr H to take his maximum PCLS at age 55. But it also appeared to acknowledge that Mr H had no real need for that sum either. Or any specific plan about what to do with it. Hence the suggestion that it be invested to enjoy investment gains. I don't see that as a valid objective warranting a transfer. Rather, it was instead something that would be prudent after a transfer, of so large a sum, to mitigate the increased exposure to the LTA charge that such a transfer created.

I'm also not persuaded that Mr H intended to stop working at 55. In fact, I think his plans at the time of the advice were far from clear. He'd undergone a lot of changes in the time since Delta first started to look into the transfer for him. There is no clear fact find completed ahead of the advice. Instead there appears to be a piecing together of information over a lengthy period of time. Some of the key information seems to have been obtained following Delta obtaining a CETV for Mr H in November 2019. Which included an attempt to obtain an idea of income and expenditure. But it was evidently difficult for Mr H to understand his likely position himself with so much uncertainty. I say that because he emailed Delta on 27 December 2019 to explain that he didn't know where he would be living or the future of his children's schooling. But he was clear that he expected to have other assets when he could leave where he lived at the time and explained it would be possible to live off those assets while ring fencing his pension.

So I'm satisfied that, should Mr H choose to stop working early, he could have met his likely income needs through the other assets he had. And that the DB scheme would have continued to provide him the option of an income later that would more than meet the expenditure that Delta calculated for him – around £46,000 a year, not including school fees. It was estimated that Mr H's DB scheme in total at age 65 would provide a gross income in the region of £90,000 a year after the likely effect of the LTA was considered. So, even though Mr H had a stated aspiration of having an income of £100,000 a year in retirement (reducing to £50,000 once his children were no longer in private education), the suitability report acknowledged that Mr H didn't need to use his pension to raise that sum.

Mr H was only 52 at the time of the advice, and based on what I've seen he didn't have concrete retirement plans. As Mr H had 5 years before he was even thinking of stopping work, and even longer before he (or Delta) thought he needed to access his pension benefits, 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 Mr H to give up his guaranteed benefits in 2020 when he didn't know what his eventual needs in retirement would be. If Mr H later had reason to transfer out of his DB scheme to take advantage of Pension Freedoms he could have done so closer to when he needed to access benefits from this pension. And even though the CETV at the time appeared attractive, Delta's analysis showed his benefits remained more valuable by remaining in his DB scheme.

I'm not persuaded that the potential that Mr H's currently available CETV was at a high point, which may not be available again, was a fact that made this transfer suitable for him. It was reasonable to make Mr H aware of this, but it didn't make a transfer in his best interests where there was no evident need for the flexibility that transferring provided. And for the reasons I've given, I'm not persuaded that there was.

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 Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married and had school age children. So the dependent's pension provided by the DB scheme would've been useful to his dependents if Mr H predeceased them. It was particularly valuable as it paid a two thirds spouse pension, based on the pre-commuted pension. I don't think Delta made the value of this benefit clear enough to Mr H. 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, Delta should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr H genuinely wanted to leave a legacy – on top of the potential other assets from the property – for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Delta should've instead fully explored life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured of £936,000 – a figure that Delta said reflected the CETV after reduction of the PCLS and payment of LTA excess charge. This was discounted by Delta because of the cost (£1,316.66 per month). But I don't think that this was a balanced way of presenting this option to Mr H.

Basing the quote on the transfer value of Mr H's pension benefits, after allowing for taking PCLS and paying the LTA excess charge, essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. I think that the starting point ought to have been to ask Mr H how much he would ideally like to leave to his family, in addition to the other assets and the existing DB scheme benefits. I think this would likely have been lower than the figure Delta chose to use in its illustration. 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.

Overall, I don't think different death benefits available through a transfer to a SIPP was a reason to consider this transfer was suitable against the likelihood of providing retirement benefits of a lower overall value. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr H's desire for control over his pension benefits was overstated. Mr H was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. I can see that he also had a money purchase pension. But that was also a workplace scheme that had been set up by his employer to replace the DB scheme. And I've not seen persuasive evidence that Mr H took an active part in the investment strategy in that.

In the questionnaire that he completed for Delta he stated that he'd need someone to manage his investments. So, I don't think that this was a genuine objective for him – it was simply a consequence of transferring away from his DB scheme. It introduced the potential need for ongoing financial advice and fund management that wasn't something he'd ever needed to be concerned about with this pension.

I'll now comment on the funding position of Mr H's pension scheme as I can see it has been a feature in the correspondence in this case. I think that it's clear that the DB scheme was in deficit. But Mr H's employer had a recovery plan in place to remove the funding deficit over time. The impact of the covid 19 pandemic on Mr H's employer's industry was particularly severe. I appreciate that now, with hindsight, things don't look so bleak. But I think the reality at the time of the advice was that Mr H and his colleagues were likely concerned. There was talk of redundancies by Mr H's employer and Mr H explains that pay cuts were agreed to in order to secure colleagues jobs. So I would be surprised if this was not something Mr H was aware of. And something that, in correspondence leading up to the recommendation that Delta most likely drew to Mr H's attention.

On page 19 of its suitability report Delta provides a balanced summary of Mr H's employers circumstances and the impact on the DB scheme funding. It wasn't unreasonable for Delta to provide commentary on the crisis facing Mr H's industry at that moment. But I also think that the conclusion that it reached, that "*on its own this is not a reason to move benefits out of* [your DB scheme]", was reasonable.

I can see that, even though Delta didn't comment further on the protection available through the Pension Protection Fund (PPF) in its suitability report, it did refer back to the comments it had made earlier in its PIR. It explained that the protection available if Mr H's scheme defaulted to the PPF after he was claiming benefits was 100%. But it did point out that the protection was reduced for deferred benefits to 90%. And that there was a cap that was significantly below the level of benefits Mr H was entitled to from his DB scheme. By June 2020 though, there was a court ruling regarding age discrimination. That had the likely effect of removing the cap and thereby increasing Mr H's protection from the PPF. It was still subject to appeal but I've seen correspondence that indicates Delta was aware of this and shared this information with Mr H. So overall, I agree that Delta's view, that the funding position of the DB scheme did not warrant a recommendation to transfer, was fair.

Use of DFM

Delta recommended that Mr H use a DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr H, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr H should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

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 Mr H. The CETV represented a large sum of money. Delta had been in contact with Mr H over a number of years and Mr H had seen his CETV go up significantly over that time. And Delta clearly summarised that improvement in its recommendation to Mr H. So I don't doubt that the idea of a transfer became increasingly attractive as the CETV rose. But Delta wasn't there to just transact what Mr H might have thought was in his best interests. The adviser's role was to really understand what Mr H needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr H was suitable. Even though Mr H still retained an element of his DB scheme benefits, by transferring Mr H was very likely to obtain less valuable retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Overall, the evidence from the time didn't reflect any pressing need to access the benefits in a way that was different than was already available. Delta recognised Mr H had no need to take benefits for 10-15 years. And he was within 13 years from the DB scheme normal retirement age at which time the benefits clearly exceeded his income need. And provided excellent spouse benefits which Mr H had told Delta his wife was far more comfortable with.

So, I think Delta should've advised Mr H to remain in his DB scheme.

Of course, I have to consider whether Mr H would've gone ahead anyway, against a recommendation from Delta not to transfer. And Delta has pointed out that it thinks Mr H wanted to transfer his pension.

It points to an email that he sent on 8 July 2019 asking Delta to take another look at his pension transfer again because he argues that transfer values were looking very healthy. As well as contact after this transfer regarding a transfer of his remaining DB scheme benefits. To be clear, I don't doubt that Mr H was interested in a transfer. And I think it's very likely he'd spoken to colleagues who had transferred already and was aware of improving CETVs.

But I don't think that means that Mr H was necessarily set on a transfer irrespective of the consequences. And I say this on the basis that, up until the recommendation he received in September 2020 I don't think Delta had properly informed him of the consequences or suitability of transferring.

Delta informed Mr H, on a number of occasions, of his option to transfer and what his transfer value was. In 2016 for example, Delta explained to Mr H that he would need to opt out of being an active member of his scheme to secure individual protection 2016 (protection against the reduction in LTA) and then he could consider transferring. Delta obtained a CETV in January 2016 and sent Mr H a number of emails trying to arrange a meeting to discuss a pension transfer. I haven't seen that it provided any formal recommendation at the time. But the DB scheme didn't allow partial transfers until 2019 according to the evidence I've seen. Which means that in 2016 Delta were seeking to advise Mr H on a full transfer of his DB benefits. And, even though it didn't go ahead, I haven't seen evidence that was due to Delta giving any formal recommendation.

Further periodic correspondence took place but I've seen no formal recommendations that Delta gave, in spite of having obtained further CETVs from the DB scheme. So, again, I accept Mr H was interested, but not so much so that he got as far as confirming to Delta to go ahead with a suitability assessment. Which included when the CETV in January 2019 had reached £1,900,000. Which was already a large increase from the January 2016 CETV of £888,000. I think this is persuasive evidence that Mr H was neither in a rush to transfer, nor so motivated to do so that he would have transferred against a clear recommendation telling him that it wasn't in his best interests.

As I've said, I think that it's significant that Delta never went so far as providing Mr H with a personal recommendation until September 2020. Mr H has said that he thought that Delta wouldn't provide a recommendation unless it knew that he would go ahead with the transfer. I haven't seen any documentary evidence to indicate that Delta told him that. But I can see that Delta didn't provide a suitability report for any of the earlier CETVs that it obtained for Mr H. And, for the CETV it obtained in June 2020, it only proceeded to provide a written recommendation after Mr H told them in an email that he wanted to do a partial transfer of his DB scheme. So I can understand Mr H's view that he had to make his mind up before he was provided with all of the information he should have had.

And I don't think that Mr H stating in his emails that he wanted to transfer, prior to receiving the suitability report, is evidence that he'd still have wanted to do so if the suitability report had recommended against it. Like I think it should have. The suitability report should have provided a clear recommendation against transferring for the reasons that I've referred to earlier. All of which would have been providing opinion and analysis that Mr H was seeing for the first time after four years of discussion with Delta.

Delta has repeatedly referenced comments that it says Mr H posted on an online forum and later deleted. I'm inclined to accept that the quoted comments were posted by Mr H. And that reflects that he was initially happy with the advice. But I would expect that to be the case. Were it not, then I don't think he would have accepted Delta's recommendation. And it is a reflection of his understanding of the transfer, based on what Delta had told him. But it wasn't evidence that the transfer was suitable. Just that, at the time of posting, Mr H didn't consider it not to be. It is evident that he later changed his mind when he spoke to others and began to worry about the implications of the transfer. And started to question whether it had truly been in his best interests. I don't think that any post represented anything other than Mr H's thoughts based on the advice Delta had given him. So I've attached little weight to this in considering whether Mr H would have transferred if he'd been given suitable advice.

Delta has also offered the opinion that, it subsequently turned down Mr H's request to transfer his remaining DB benefits. This is contested by Mr H and I am not making a determination on this as it does not affect the suitability of the advice subject of this complaint. Which was made independently of that. I don't think that the suggestion that Mr H may still have been interested in a further transfer is evidence he'd have transferred against advice. As the only personal recommendation he'd received from Delta up to that point had been that transferring was in his best interests.

In light of the above, I think Delta should compensate Mr H for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Delta has queried whether Mr H would accept a decision that compelled him to purchase an annuity – it believes he would turn this down, thereby demonstrating his desire for flexibility that the SIPP offers. It is evident that Mr H will benefit from flexibility by virtue of the position he is in now, but that has only arisen because of the unsuitable advice. And ultimately the regulator has set out what it deems to be appropriate redress to put right instances of unsuitable defined benefit pension transfer advice. And I see no reason to depart from this in the circumstances of this complaint. In any case, there is no working market for providing deferred annuities, even if Delta had offered to put such a resolution in place.

Putting things right

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

Delta 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, Mr H has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 Mr H'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, Delta should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - its 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 Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts Delta's offer to calculate how much of their redress could be augmented, request the necessary information, and not charge Mr H for the calculation, even if he 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 Mr H's end of year tax position.

Redress paid to Mr H as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income had it been paid into his pension. So, in line with DISP App 4, Delta 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 when benefits are taken.

I've explained to both parties that, since my provisional decision, I've decided that Mr H would not be able to take any part of this additional pension as a tax free lump sum. That's because, under UK taxation rules, a consumer can only take tax-free cash up to a maximum of £268,275. Mr H's existing pensions will put him over the maximum amount of tax-free cash available to him. So any further sums, were it possible to be added to his pension, would be subject to tax at his marginal rate.

Mr H has corresponded on the issue of likely future tax liability. But the reality is that he is not able to say where he will be living at the point of taking income from his pensions. In the absence of compelling evidence to the contrary I think it is fair to presume that Mr H will be subject to tax at 40% on these sums. Meaning Delta may make a notional deduction of 40% to cash lump sum payments to take account of notional tax.

Delta should also pay Mr H £250 compensation for the distress and inconvenience he was caused. He has explained that he was unhappy to receive his suitability report so close to the expiry date of his CETV which he felt rushed him into accepting its recommendation. He has also explained he experienced worry and embarrassment as a result of transferring this pension which he's come to think of as a serious mistake and undermined his future financial security.

If payment of compensation is not made within 90 days of Delta receiving Mr H's acceptance of my final decision, interest must be added to the compensation at the rate of 8% per year simple from the date of my final decision to the date of payment.

Income tax may be payable on any interest paid. If Delta deducts income tax from the interest, it should tell Mr H how much has been taken off. Delta should give Mr H a tax deduction certificate in respect of interest if Mr H asks for one, so he can reclaim the tax on interest from HMRC if appropriate.

Where I uphold a complaint, I can award fair compensation of up to £375,000, 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 £375,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Delta Financial Management Limited to pay Mr H the compensation amount calculated as set out above under '*Putting Things Right*', up to a maximum of £375,000.

Recommendation: If the compensation amount exceeds £375,000, I will also recommend that Delta Financial Management Limited pays Mr H the balance.

If Mr H accepts my final decision, the money award becomes binding on Delta Financial Management Limited.

My recommendation would not be binding. Further, it’s unlikely that Mr H can accept my final decision and go to court to ask for the balance. Mr H 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 Mr H to accept or reject my decision before 26 April 2024.

Gary Lane
Ombudsman