

The complaint

Mr W complains about the advice given by abrden Financial Planning And Advice Limited ('abrden') in relation to the transfer of benefits from his defined-benefit ('DB') occupational pension scheme. He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr W is being represented by a professional third party but for ease of reading this decision I'll largely refer to representations as being made by Mr W.

What happened

Mr W held benefits in a DB scheme from a period of employment between May 1981 and November 2005.

Mr W was referred to abrden for advice by another business, which I'll call Firm S. I understand that this was because Firm S didn't hold the relevant permissions to advise on the potential transfer of benefits from a DB scheme. Mr W was initially referred in May 2006.

In May 2006, abrden asked Mr W to complete a letter of authority so that it could gather information about his existing pension. It requested a transfer value from the trustees of the DB scheme and this was provided on 15 June 2006. The cash equivalent transfer value ('CETV') of Mr W's DB pension at that time was £177,053.76.

abrden wrote to Mr W on 27 July 2006. The letter said it had recently spoken to him regarding a potential transfer of his DB scheme benefits in order to release 25% of the value as tax-free cash ('TFC') while not taking an immediate pension income. The letter said abrden would be happy to look into this in more detail for Mr W and enclosed a form to be completed about his circumstances. It also said terms of business were enclosed and details of the cost of abrden's services. The letter itself also mentioned its fees.

It appears there wasn't a great deal of further contact between the parties until late 2007.

An updated transfer value was obtained from the scheme administrators in November 2007. At that time the CETV of Mr W's DB pension had increased to £216,852.37

A fact-find was completed setting out information about Mr W's circumstances and objectives. Mr W was about to turn 50, in good health, had three children and was going through a divorce. As part of the divorce settlement the property that was jointly owned was going to be transferred to his wife, but so would liability for the remaining mortgage. Mr W was unemployed at the time, having recently closed down his business, part of the reason for which was attributed to the divorce. He had debts from the business of approximately £41,000. And after the divorce it was recorded he'd remain responsible for these debts and his assets would consist of his DB scheme pension.

The notes said Mr W had been referred by Firm S, specifically by a family member working for it. Mr W wanted to access the maximum possible TFC from his DB scheme pension but didn't want to take an income, as he didn't intend to retire until age 65, so was looking at

transferring. He said he intended to use the funds to clear the business debts in his name and use the remainder to start up a new business once the divorce was finalised. Mr W said the debts needed to be repaid in January 2008. Because Mr W was unemployed it was noted that taking borrowing to address the debt was not possible and abrdn recorded that he had no other assets. abrdn noted that Mr W was a former financial adviser, from the period of time in which the DB scheme benefits were accrued. And as a result, Mr W was aware that he was giving up a valuable arrangement. But abrdn said he considered accessing TFC was the only option and “an action of last resort”.

The fact-find notes said that abrdn showed Mr W a transfer value analysis (‘TVAS’) report at the time, which illustrated that achieving the growth needed to replicate the benefits being given up was unlikely. And it says it told him it wouldn’t recommend a transfer. But it said that despite this Mr W said he was determined to proceed. The notes say the adviser informed Mr W that “he would need to confirm refusal to act upon my recommendation in writing before I could consider offering advice on a suitable pension”. And it was agreed that abrdn would confirm its recommendation to stay in the scheme in writing.

abrdn also carried out an assessment of Mr W’s attitude to risk, which it deemed to be ‘balanced to moderately aggressive’ or seven on a scale of one to ten, with one being lowest risk and ten highest.

The fact-find was signed by both the adviser and Mr W on 6 December 2007.

On 7 December 2007, abrdn sent Mr W a letter confirming its discussion. This repeated that Mr W’s objective was to access TFC to clear his debts of approximately £41,000 and leave a surplus with which to start a new business – as he didn’t have any other assets with which to achieve this. abrdn said it was “strongly recommending that you do not transfer your benefits” out of the DB scheme as “this would involve the loss of some very valuable guarantees”. The letter explained, as an attempt to demonstrate the effect of transferring, abrdn had prepared and enclosed a ‘critical yield analysis’. The critical yield being the level of annual investment growth required of a new pension to enable Mr W to purchase benefits at retirement equivalent to those he was giving up. It said this was 11.4% before accounting for taking TFC, which it said would only compound the figure. And abrdn said it didn’t even consider recommending a transfer where the critical yield was in excess of 8% and the yield here was definitely beyond the level it would deem acceptable. The letter concluded by saying abrdn could provide a more detailed analysis of its recommendation not to proceed, but it would need to charge a fee, so it hadn’t done so at that stage.

On 8 December 2007 Mr W sent abrdn a handwritten letter. In it he said;

“I understand fully and accept that you are advising me to leave my pension fund with the [DB scheme].

However, I wish to proceed with the transfer of my fund for the following reasons:

- 1. I need to maximise the tax free lump sum available as I need to settle business debts and also have some money remaining to fund a new enterprise. As there will be approximately £54,000 available when the fund is transferred as opposed to £40,000 approximately if the fund remains in my [DB scheme], the transfer is imperative to meet my needs.*
- 2. I do not want to take income from my remaining fund and the [DB scheme] does not offer the flexibility I must have.*

Please therefore find a suitable investment vehicle to receive my pension transfer and help me meet my financial aspirations.”

On 12 December 2007, abrdrn sent Mr W a further recommendation. The letter explained that in its previous letter it had recommended that Mr W not proceed with a transfer. And it stressed that it had not changed that original recommendation. But on the basis that Mr W had insisted he wanted to proceed and was aware of the implications, it was writing to set out its recommendation of what it believed to be a suitable pension and investment, based on his circumstances – including Mr W's experience as a financial adviser for over twenty years. abrdrn recommended a self-invested personal pension ('SIPP') with a named provider and an investment split that it thought matched Mr W's attitude to risk. I understand the transfer went ahead in line with this recommendation.

Mr W's representative complained to abrdrn in January 2024 on his behalf. They said abrdrn had provided unsuitable advice by recommending that Mr W transfer his benefits away from his DB scheme. They said Mr W was financially inexperienced and hadn't understood the risks involved in a potential transfer.

abrdrn didn't uphold Mr W's complaint. It said it had advised against a transfer and that its advice had been clear. It also noted that, given Mr W previously worked as a financial adviser for over 20 years, it was confident he'd fully understood this advice and did not agree with the representative that he was inexperienced. abrdrn said Mr W had insisted that he wanted to proceed with a transfer in order to access and maximise TFC to pay off his business debts. So, abrdrn had agreed to advise him on the basis he was an insistent client, and it didn't agree this was unsuitable.

Mr W referred his complaint to the Financial Ombudsman Service. This was considered by one of our Investigators who didn't think the complaint should be upheld. She said abrdrn's advice not to transfer appeared suitable. But as Mr W had insisted, it hadn't done anything wrong by helping him on an insistent client basis. And, while abrdrn's process for this might've been better, she thought, based on his circumstances, Mr W would have always looked to go ahead.

Mr W's representative asked for the complaint to be reviewed by an Ombudsman. They said he'd been in a state of poor mental health at the time of the transfer so hadn't been in a position to make significant financial decisions. They said they also didn't believe Mr W would've been aware of the insistent client route without the adviser informing him of this. And the representative said they didn't believe abrdrn should've allowed him to transfer on this basis or that his best interests were served by transferring.

The Investigator wasn't persuaded to change her opinion. While she said she was sorry to hear about Mr W's ill health at the time, she was satisfied he was motivated to repay his debts and had no other way of doing so. So, she still felt he'd have always sought to proceed with the transfer. As agreement could not be reached, the complaint was referred 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.

Mr W says that transferring his benefits away from his DB scheme was not in his best interests and advice to do so was unsuitable. But abrdrn's advice was that a transfer wasn't suitable for Mr W so it didn't recommend he go ahead. So, I don't see the need to address the suitability of this advice in detail as both parties broadly agree.

I would note that I agree a transfer wasn't in Mr W's best interests. abrdrn explained that it thought this because the annual rate of return Mr W would've needed his new pension to

attain to replicate the benefits he was giving up was unlikely to be achieved. And it also said he was giving up valuable guaranteed benefits. I agree with the reasons abrdn cited. I'd also add that while I understand Mr W *wanted* to clear debts I don't think this necessarily was a good enough reason to impact his retirement benefits. The information from the time suggested he considered this a last resort but it isn't clear if all possible options other than doing so were explored. And it also appears, in the letter where he said he wanted to proceed with the transfer, that Mr W identified he could potentially take benefits from the DB scheme at the time and still address the majority of his debts. While he said he didn't *want* to take an income and *wanted* flexibility, I don't think that means this course of action was what was best for him. So overall, I can't see any persuasive reasons why a transfer was in Mr W's best interests.

As I've said though, there doesn't appear to be a disagreement about this. So, I've gone on to consider the process abrdn followed and whether it was fair for it to still assist Mr W after he indicated he wanted to disregard its advice.

Although there was no set definition of 'insistent client' in the regulator's handbook, it was generally understood to be a term used to describe a customer who wanted to proceed with a transaction against the advice they had been given.

There had previously been rules in place relating to insistent clients when the Personal Investment Authority ('PIA') was the Regulator and the PIA Adopted Rules applied. And the then regulator's (the Financial Services Authority – 'FSA') Conduct of Business rules had also contained rules about how firms should treat insistent clients. These specific requirements were not replicated in the Conduct of Business Sourcebook ('COBS') rules which came into force in 2007. Although, COBS 19.1.9 did say that:

"If a firm proposes to advise a retail client not to proceed with a pension transfer or pension opt-out, it should give that advice in writing."

Nevertheless, at the time the advice was given, I think it was good industry practice for firms to ensure that customers who wanted to go ahead with a transaction against an adviser's recommendation should have it clearly documented that the consumer was acting against the recommendation, and that they wanted to proceed in any event.

The COBS rules in the regulator's Handbook required abrdn to 'act honestly, fairly and professionally in accordance with the best interests of its client'. In addition, COBS required abrdn to provide information that was clear, fair and not misleading. So, abrdn's recommendation had to be clear and Mr W had to have understood the consequences of going against the recommendation.

The Principles for Businesses ('PRIN') were also in place at the time of the advice and the following principles are also of relevance:

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.

I've thought about all of these things when looking at what has happened here. And having done so, I do have some concerns about some of the things that happened here.

The DB scheme pension would've provided Mr W with a guaranteed income for the rest of his life from the point he retired. And as abrdn pointed out, this guarantee was valuable. However, in its written advice abrdn didn't highlight prominently the projected annual pension

that would be provided by the scheme. I can see it obtained a retirement estimate from the trustees of the scheme in November 2007, setting out the annual pension it was estimated Mr W would receive at his normal retirement age (65). But that figure wasn't directly quoted in either of the recommendation letters to Mr W. And I think it ought to have been as this was important information that Mr W could've used for comparison. The notes from the fact-find indicate that during the discussion prior to the written advice, this may have been discussed. But regardless, I'd still have expected it to have been directly referenced in the written advice bearing in mind the requirement to provide clear, fair and not misleading information.

I also can't see that abrdn obtained information from the trustees of the DB scheme about the benefits that could be drawn from the scheme from age 50. It is clear that Mr W wanted to access his benefits at the time of the advice, as he was about to reach age 50. But this was an option he already had under the DB scheme – indeed he referenced this in his letter saying he wanted to proceed against the recommendation and abrdn mentioned it was an option in its second recommendation. If abrdn had gathered this information and provided it as a monetary example, it could've provided a direct comparison of the two options for Mr W to consider; I think this would've been appropriate. But instead, the first recommendation did not comment on this option and just relied on the critical yield to support the advice. And the second recommendation letter, after Mr W said he wanted to go ahead, simply said that taking benefits under the existing scheme had been discounted because Mr W didn't want an income and "this option would offer a considerably lower tax-free cash lump sum". The contents of Mr W's letter saying he wanted to go ahead indicates he understood this and even may have had knowledge of the relevant figures. But I still think it would've been appropriate for abrdn to obtain and include this information in its recommendation.

The initial recommendation letter was also only two pages in length (albeit with critical yield analysis included as an appendix). And in my view, it was light on information specific to Mr W – such as the benefits that his existing scheme provided as set out above. The letter explained at the end that the reason the analysis was limited was that abrdn would've charged a fee for more in depth analysis, so it hadn't provided this at that stage. I understand the reasoning that was cited. And the second recommendation did include additional information about Mr W's circumstances. But as I've explained, I also think this letter omitted monetary examples that in my view ought to have been included, given their significance to the advice. So overall, I don't think the communication was as clear as it ought to have been.

Ultimately though the recommendations, given in writing, did clearly state that abrdn did not recommend a transfer and that it thought Mr W should not proceed. It also made it clear that going ahead was against its recommendation. And the handwritten letter from Mr W documents that he was aware of this and wanted to proceed. And, given his previous extensive experience of over 20 years as a financial adviser, I think it was reasonable for abrdn to believe he was aware that he was acting against its advice.

I'm conscious that the option of potentially disregarding abrdn's advice seems to have been discussed prior to written advice being given. And that the requirement for Mr W to explain in writing that he was refusing abrdn's recommendation was discussed. The notes in the fact-find support that the adviser talked about this with Mr W, when saying they wouldn't recommend a transfer. And I'm not sure discussing the option to disregard the advice before it had been provided in writing was necessarily appropriate.

That being said though, the information abrdn had indicated that Mr W had significant experience as a financial adviser. And in the attitude to risk questionnaire Mr W was recorded as agreeing that he had sound financial experience to help him make investment decisions. And he also strongly disagreed that his investment experience or knowledge of financial terms was limited. So, again I think it was reasonable, based on what it knew, for

abrdn to believe Mr W's level of knowledge and experience was high. And contrary to what his representative has argued, I think he likely was familiar with and aware of the option to proceed against abrdn's recommendation. So, I can't rule out that Mr W mentioning this was part of the reason it was discussed when it was.

Mr W's letter explaining he did not want to accept abrdn's advice and still wished to transfer indicated that he had understood its recommendation not to proceed. But he had still decided to do so. His representative has said that, due to his personal circumstances at the time, he wasn't in the right frame of mind to make that decision. But there is nothing reflected in information from the time that indicates Mr W made abrdn aware that he was struggling, or anything that in my view ought to have made abrdn question his decision making. While it was clearly recorded that he was going through a divorce and had closed down his business I don't think this meant that abrdn should've thought he was incapable of managing his finances. And indeed, the information was consistent about how he planned to proceed following his divorce. I also think Mr W's recorded financial experience meant it was reasonable for abrdn to believe, after he'd indicated as such, that Mr W understood the risks involved.

That brings me on to thinking about whether any of the issues with the advice have resulted in Mr W being in a different position than he otherwise would've been. Or whether he would always have insisted on transferring.

Mr W was referred to abrdn by an introducer. And indeed, abrdn's notes indicate it was a close relative of Mr W's working for the introducer firm who made that referral. So, it wasn't the case that abrdn approached him, rather Mr W contacted abrdn for specific advice about his DB scheme. The documents indicate that as far back as May 2006, Mr W was interested in potentially accessing TFC from his DB scheme pension without drawing an income. So, I think not only did he ask abrdn for advice, but he was also already thinking about transferring his pension and, by the time of the advice, had been doing so for over a year.

I also think the information available is consistent in showing that Mr W had a clear use for his TFC in mind. The fact-find, which he signed agreeing the information was accurate, confirmed that he had debts from his previous business of roughly £41,000, that these were due to be repaid in January 2008 and that he had no other assets available to support these payments. I'm also satisfied he indicated he intended to return to work following his divorce and wanted an additional sum to help start a new business. And due to him not working at the time, I'm satisfied Mr W viewed accessing his pension as the best option to achieve this and that he was motivated to do so.

The information recorded in the fact-find, which again Mr W signed to say he agreed with, said he'd decided to transfer and although this was an "action of last resort" he was "determined to proceed".

Taking all of this into account, and thinking about Mr W's level of experience and relevant knowledge, based on his specific circumstances, I think he would always have sought to transfer his DB scheme to address his stated objectives. On balance, I think he was aware that he was giving up guaranteed benefits but had concluded that he wanted to proceed, regardless of the advice of abrdn. And even if further information had been included in the recommendation, based on what I've seen, I think it's likely he'd have still asked to proceed on an insistent client basis. So, even though there were things that abrdn could've done better, I don't think this would've resulted in Mr W being in a different position.

abrdn advised Mr W on which pension provider to use for his SIPP and on investments it thought were suitable. Based on what I've seen the recommendation seems to have been consistent with, and appropriate for, his attitude to risk as recorded at the time. And I haven't

seen anything that leads me to believe this didn't reflect Mr W's attitude. So, the recommendations made by abrdn appear reasonable.

My final decision

For the reasons I've explained, I don't uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 June 2024.

Ben Stoker
Ombudsman