DRN-4957376

The complaint

Mr R has complained that Audley Wealth Limited didn't advise him to begin taking his defined benefits from his occupational pension scheme (OPS) after he was made redundant in December 2021.

What happened

On 1 February 2022, Mr R met with Audley Wealth to discuss his pension income options after being made redundant in December 2021. He was unsure whether he would stop working or take up the new role he'd been offered. Mr R was due to receive a redundancy package of around £15,000 at the end of February 2022.

Audley Wealth gathered further information about Mr R and his pension provision before providing him with its recommendation on 30 June 2022. Audley Wealth recommended that Mr R transfer an Ascentric pension plan (a result of a consolidation of defined contributions Mr R had previously held in 2019) to AJ Bell and defer taking benefits from his defined benefit pension until his 65th birthday in 2024.

Mr R accepted Audley Wealth's recommendation and transferred his defined contributions into the AJ Bell pension plan. Mr R began to draw an income from the AJ Bell pension and left his defined benefit pension to be drawn until he was 65. Mr R also agreed to enter an ongoing advice arrangement with Audley Wealth.

In early 2024, Mr R received a newsletter from his defined benefit pension scheme. He said he was surprised to read that members who left the plan after 1994 could take all their defined benefits at age 60 unreduced. Mr R was under the impressions that Audley Wealth had advised him to leave his defined benefits where they were until age 65 to avoid any potentially early withdrawal penalties.

Mr R confirmed this with the scheme administrator and alerted Audley Wealth to the fact that he could have been taking benefits for more than four years without penalty. Audley Wealth then assisted Mr R in beginning to take his defined benefits.

Mr R complained to Audley Wealth on the basis that he'd missed out on more than four years' worth of pension benefits. Mr R said that, had he been aware that he was entitled to more than £9,000 a year, he would have taken the additional income and potentially retired earlier.

Audley Wealth declined to uphold Mr R's complaint, saying in summary that the higher level of guaranteed income at 65 (as compared to age 60 or 63) would have been more valuable to Mr R than taking lower pension benefits earlier, even if it was without penalty.

In support of this position, it said that the pension which would have been paid at age 60 was £10,320 pa, whereas the pensions which would have been payable at ages 63 and 65 were £11,849 pa and £14,082 pa respectively.

It said that Mr R hadn't needed the additional income which would be produced by the defined benefits in 2022, as he could rely on his defined contribution scheme benefits if required. He would be paying more tax than was necessary at an earlier point.

Further, as the defined benefit pension would be higher at age 65, should Mr R predecease his wife, who was nine years younger than him, she would also receive a higher pension.

Mr R disagreed that he didn't need the money and couldn't see how the tax implications would have deterred him from accessing his defined benefits. And so, dissatisfied with Audley Wealth's response, Mr R referred the matter to this service.

Our investigator considered the complaint, but didn't think that it should be upheld. He said the following in summary:

- As Audley Wealth only became authorised by the FCA in January 2022, he could only consider advice given from that point onwards.

- Prior to it providing its recommendation to Mr R in 2022, Audley Wealth obtained an immediate retirement quote and a projection to age 65 from the administrator of Mr R's defined benefit scheme. This indicated that if Mr R retired immediately, he'd receive a £11,849 yearly income, or a tax free cash sum of £59,246 and a reduced income of £9,246. The projected benefits to age 65 were £12,167 pa or a tax free cash sum of £60,839 and a reduced income of £9,331.

- Mr R was therefore projected to receive a greater benefit by deferring his defined benefit pension income beyond age 63, although the investigator conceded that the difference wasn't significant. And the income modelling undertaken by Audley Wealth indicated that Mr R would be able to sustain his £3,500 pm household income without needing to access the defined benefits. This meant that Mr R could maximise his defined benefit income before taking it.

- Audley Wealth hadn't advised Mr R that there *would* be penalties if he took his defined benefits at age 63 and the recommendation made sense on the basis of the available information. And although there may have been an alternative way of taking his pension income, this didn't mean that the advice given by Audley Wealth was unsuitable.

Mr R disagreed, however, saying the following in summary:

- His issue was that Audley Wealth had never informed him that he could begin taking his defined benefits without penalty. This advice should have been offered to him, but it was never mentioned until he raised it himself.

- When he contacted Audley Wealth in January 2024 to inform it that he could have taken his pension without delay from age 60, the adviser told him to contact the scheme administrator straight away and start the withdrawal process without delay. This surely demonstrated that the adviser hadn't been aware that he could take his pension without penalty before 65, Mr R said.

As agreement couldn't be reached on the matter, it was referred to me for review.

I issued a provisional decision on 24 July 2024, in which I set out my reasons as to why I thought the complaint should be upheld. The following is an extract from that decision.

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

And having done so, I think Mr R has a point. I accept that in some instances the prospect of annual revaluation in deferment may be justification to defer taking the benefits. But having considered the actual amount of defined pension Mr R could have received at age 63, compared to that which was projected to age 65, there seems to have been no compelling reason to delay taking his defined pension benefits until age 65 - rather there was significant financial advantage in taking those benefits at age 63.

At age 63, Mr R could have received £11,849 pa, or £59,246 as a tax free cash sum and a reduced pension of £9,246 pa. And at age 65, this was projected to be £12,167 pa, or a tax free cash sum of £60,839 and a reduced pension of £9,331 pa.

So in the intervening two years before age 65, Mr R could have received £59,246 as the lump sum and two years of income totalling a gross amount of £23,698.

By deferring for two years, Mr R would have an additional £1,593 as tax free cash and an additional gross pension of £85 pa. Assuming Mr R lived for a further 18 years (ONS data), this would mean that he would have £1,530 additional gross income by deferring, and £1,593 in additional tax free cash.

But combined, this clearly comes nowhere near the amount which he would have lost - £23,698 gross (after basic rate tax around £18,000 and after higher rate tax around £14,000) by not beginning to take his defined benefits at age 63.

It seems that Audley Wealth was in possession of these projections, and so it would have been able to determine the same outcome.

But this option, which even after tax would mean that Mr R would very likely be better off, wasn’t presented to Mr R. And had it been, I think it’s more likely than not that Mr R would have taken it.

He may have been able to cover his income requirements by accessing his defined contributions, but it seems unlikely to me that Mr R would eschew the notion of additional income if the above was put to him. He would have been able to save it, or immediately gift it if it was truly surplus to requirements to avoid it falling into his estate for inheritance tax purposes.

This was in my view a clearly more financially beneficial outcome for Mr R. And so I’m currently minded to uphold the complaint on that basis.

Putting things right

My aim is to put Mr R as closely as possible in the position he would otherwise be, had Audley Wealth Limited suitably advised him to begin taking his defined benefits in 2022.

As it transpired, my understanding is that Mr R actually received £61,657 as a lump sum and pension income of £9,248 pa when he took his benefits this year. And so, although the tax free lump sum was slightly higher, Mr R is in fact receiving less by way of income than he would have done at age 63

Audley Wealth Limited should therefore firstly pay to Mr R the lost two years’ income which he would have received from the scheme, with a notional deduction for income tax which he would actually have paid on that income. To each (assumed monthly) notional payment *which would have been made by the scheme should be added 8% simple interest pa from the date each payment would have been made up to the date of settlement.*

From the overall redress amount determined above Audley Wealth Limited may deduct the increase in the tax free lump sum which Mr R received in 2024.

But Mr R would have had his tax free lump sum sooner as well. And so Audley Wealth Limited should also pay Mr R interest at 8% simple pa on the amount of tax free cash he would have received in 2022 from the date that it would have been paid up to the date of actual payment in 2024. And it should then add interest to that calculated interest sum, again at 8% simple pa, from the date that the tax free cash was paid up to the date of settlement.

To redress Mr R for the loss of future income, and to simplify matters, Audley Wealth may simply multiply the £2 pa by the expected 18 year additional life expectancy and pay Mr R an additional £36."

In response, Audley Wealth made the following comments:

- It wished to clarify that it didn't advise Mr R to take benefits directly from the scheme – he did this of his own volition and Audley Wealth only assisted him in completing the Lifetime Allowance form.

- It also requested clarity on the figures quoted so that it could calculate redress. It said that, at one point, the provisional decision had described Mr R as being worse off by £2 pa but at another, that he would better off by £85 pa.

- The documentation Audley Wealth had received indicated that Mr R received £62,191 as a tax free cash sum and a reduced income of £9,328, rather than the respective figures of £61,657 and £9,248 quoted in the provisional decision. This would indicate that he was in fact receiving an additional £82 pa for the rest of his life.

- It further said that it understood the pension payments were backdated to December 2023 and so the period without payment was June 2022 to December 2023, i.e. 19 months' payments rather than 24.

Mr R accepted the provisional decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm grateful to both parties for their further comments. With regard to those made by Audley Wealth, I'd firstly acknowledge what it has said about the assistance it provided to Mr R. I understand Mr R's position is different, but I don't think it makes a difference to the outcome here.

Addressing the apparent discrepancies in the figures, I'd clarify that the £85 pa which Mr R would have been better off at age 65 was the projection made when he was 63. The £2 pa loss figure was, as far as I could tell from the illustration of benefits produced in January 2024, the actual reduction Mr R incurred by taking his benefits later.

The pension figures which Mr R received quoted by Audley Wealth derive of an earlier illustration from December 2023. These may well have been the final figures Mr R received, but Mr R will be able to provide confirmation of the actual figures, and if he accepts this final decision, he should do so directly to Audley Wealth so that it may undertake the redress calculation. Mr R should similarly also provide confirmation as to the date when the pension payments began.

Putting things right

My aim is to put Mr R as closely as possible in the position he would otherwise be, had Audley Wealth Limited suitably advised him to begin taking his defined benefits in 2022.

As set out in the provisional decision, Audley Wealth Limited should therefore firstly pay to Mr R the lost income which he would have received from the scheme (to be determined by confirmation from Mr R as set out above), with a notional deduction for income tax which he would actually have paid on that income. To each (assumed monthly) notional payment which would have been made by the scheme should be added 8% simple interest pa from the date each payment would have been made up to the date of settlement.

From the overall redress amount determined above Audley Wealth Limited may deduct the increase in the tax free lump sum which Mr R received in 2024, if it was higher.

But Mr R would have had his tax free lump sum sooner as well. And so Audley Wealth Limited should also pay Mr R interest at 8% simple pa on the amount of tax free cash he would have received in 2022 from the date that it would have been paid up to the date of actual payment. And it should then add interest to that calculated interest sum, again at 8% simple pa, from the date that the tax free cash was paid up to the date of settlement.

If there is a loss in future income, and subject to Mr R’s confirmation of the figures (as above), to simplify matters, Audley Wealth Limited may simply multiply the annual loss by the expected 18 year additional life expectancy and pay Mr R the total sum.

My final decision

My final decision is that I uphold the complaint and direct Audley Wealth Limited to undertake the above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr R to accept or reject my decision before 6 September 2024.

Philip Miller
Ombudsman