

The complaint

Miss T has complained about the advice given by Leabold Financial Management Ltd to not transfer her defined benefit (“DB”) occupational pension scheme to another pension. She feels the advice was based on inaccurate information and didn’t meet her objectives.

For reference, for completeness and ease the figures I quote below have been rounded.

What happened

Miss T held various pensions. She felt her DB pension would provide little benefit to her children if she died. So her main objective was to transfer it to another pension so that she could manage it herself and then leave a legacy to her children when she died.

An initial triage meeting was held over the telephone. Miss T later completed risk questionnaires and a Fact-Find which enabled Leabold to gather information about her circumstances and objectives. A further meeting then took place, again over the telephone. I’ve seen these documents and I’ve listened to recordings of the two calls.

The transfer value of the DB pension was £756,000.

On 31 July 2023 Leabold advised Miss T to not transfer the DB pension. The advice report said the reasons for this advice were that the DB pension contained valuable guarantees that considerably reduced the risk of Miss T being unable to meet ongoing spending needs in retirement; and transferring the pension exposed her to costs and losses that Leabold felt were unjustified.

Leabold instead advised Miss T to take tax-free cash (£220,000) and monthly income (£2,750) from the DB pension; to then use the tax-free cash to buy an annuity (which would provide monthly income of £1,000); and to use part of the income to buy life insurance (with a sum insured of £756,000, costing £1,200 per month).

Leabold said its advice would provide Miss T with a guaranteed income for life which was protected from inflation at no risk or cost to her. And it would enable her to use existing capital for property investment and to leave some money to her children upon her death (in lieu of what they would have received had she transferred the DB pension). Leabold recognised this would mean Miss T paid more income tax but it felt the benefit of a guaranteed income for life outweighed the additional tax burden.

Leabold also advised Miss T to retain two free-standing additional voluntary contribution (“FSAVC”) plans that she held.

On 14 September 2023 Leabold issued a further advice report. This concentrated on an additional voluntary contribution (“AVC”) plan that Miss T held (which had been omitted from the first report) and the two FSAVC plans. Leabold advised Miss T to retain the AVC plan. It now advised her to transfer the two FSAVC plans to the AVC plan. No advice on the DB pension was given in this report.

Miss T told Leabold she was disappointed with the advice because it didn't give her a solution that she wanted ie to use her DB pension to provide a legacy for her children which would grow over time. She said she was clear that she didn't need or want more income than what she was already receiving (although she recognised that Leabold's advice would provide her with more net income every month).

Our investigator didn't think the complaint should be upheld. In summary, she felt Leabold's advice was suitable and that its recommendations enabled Miss T to meet her objectives while taking the least amount of risk with her pension. Miss T disagreed with our investigator so the complaint has been passed to me to decide.

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.

Miss T has said the issue here is that the advice didn't meet her objectives; it's not advice to transfer the DB pension or not transfer it. But Miss T's main concern at the start of the advice process was that the DB pension wouldn't pay much to her children when she died. Her main (if not only) objective therefore was to leave a ensure a legacy was left to her children from the DB pension. Accordingly, I think the two issues are intrinsically linked.

Although Leabold provided advice on all of Miss T's pensions, the nub of the complaint in my view concerns the advice to not transfer the DB pension. I've therefore concentrated on this advice and on the specific issues that I think are important in determining whether or not the advice was suitable. While I've considered them, I haven't addressed every point the parties have made or every question they've asked – particularly if I don't think they make a difference to the outcome.

Leabold was required to act in Miss T's best interests and to provide her with suitable advice. It also had to bear in mind the provisions of the Conduct of Business Sourcebook ("COBS") – specifically COBS 19.1.6G (sometimes referred to as the *presumption of unsuitability*) – where the regulator says that the starting assumption is that transferring a DB pension is unsuitable, and that a recommendation to transfer should only be made if the advisor could clearly demonstrate that transferring was in Miss T's best interests.

The presumption of unsuitability is in place to protect consumers from receiving bad advice to swap guaranteed retirement income provided by a DB pension for income provided by an alternative pension that isn't guaranteed. This is because such a swap exposes consumers to the risk of their retirement income running out because their pension pot reduces to zero – because they've spent it all or because of poor investment performance. It's a high bar for an advisor to overcome.

It's also important to note the primary purpose of a pension is to provide an income in retirement – it's not, for example, to act as a quasi life insurance policy for others to benefit from.

So, Leabold couldn't simply provide Miss T with advice that was in line with or would achieve what *she wanted* to do. It was required to provide suitable advice based on what it thought was in her best interests. And it could (should) only have advised Miss T to transfer the DB pension if it could *clearly demonstrate* that transferring was in *her* best interests.

These requirements can lead to a situation like we have here where there's a conflict/dispute as to what is in a consumer's best interests and, therefore, what constitutes suitable advice. On the one hand, Miss T sought advice that would enable and/or support her in transferring

the DB pension in order to provide a legacy for her children. But, on the other hand, Leabold didn't think transferring the DB pension was in her best interests.

The financial viability of a transfer – essentially whether a consumer is going to be better off by transferring – is always something an advisor should consider. This is because if a consumer is going to be worse off financially, for advice to transfer to be suitable there needs to be a very good reason why the consumer *needed* (rather than *wanted*) to transfer the DB pension.

In this case the transfer value of the DB pension was £756,000 and the cost of an alternative pension providing similar benefits was assessed at £769,000. So it would have cost Miss T more to get similar benefits from an alternative pension and she would have been worse off in comparison – albeit very slightly – if she transferred the DB pension. However, Miss T said in the two phone calls that she didn't need any income from the DB pension and she would never need it. She also said she was clear in her mind that there was no point in drawing income from the DB pension if she didn't need the money. Accordingly, I think it's clear that if Miss T transferred the DB pension she had no intention of drawing a retirement income from it. So I think the financial viability of transferring the DB pension was less important in this instance.

The Fact Find shows that Miss T received income totalling £56,740 from three sources – “UK Land”, “Employed Income” and “Deposit account interest”. It also shows that Miss T's monthly income from these sources (ie without income from the DB pension) exceeded her monthly outgoings. It also looks to be the case that Miss T had the financial capacity to lose her DB pension in its entirety without it materially affecting her income stream.

So I can see why Miss T felt she didn't have any need for the income provided by the DB pension (at least at the time of the advice and in the immediate future). However, when giving the advice Leabold had to consider the full picture – including that Miss T might live a long life and that her financial position might not always be as outlined in the Fact Find.

In my view, the main issue here is Miss T's clear preference to pass on whatever remained of her DB pension to beneficiaries of her choice upon her death. Death benefits were payable under the terms of the DB pension but Miss T was single and she didn't have any dependent children. And she was clear with the advisor that she had no need for the spouse's or dependent's pension that the DB scheme provided. So I don't think Miss T losing these benefits as a result of transferring would have disadvantaged her.

However, using the figures outlined above, if Miss T had drawn income from the DB pension and bought an annuity she would have had extra annual income of £45,000 (£33,000 from the DB pension and £12,000 from the new annuity). This would have been taxed at 40% so the extra net income would have been £27,000. The life insurance premiums totalled £14,400 annually. So, Leabold's advice to not transfer the DB pension and to draw income from it and buy an annuity instead would have put Miss T in the position of having life insurance that could be paid to her children upon her death and having additional net annual income of £12,600.

I appreciate Miss T's point that she would pay more income tax. However, her monthly net income would be £1,050 higher than it was previously (although I accept she said she didn't want or need extra income) and she would still be providing a legacy (albeit indirectly) from the DB pension to her children. And the income from the DB pension and annuity was guaranteed for life. In that situation, it's difficult in my opinion to conclude that Leabold's advice to not transfer the DB pension was unsuitable and/or not in Miss T's best interests. Similarly, it's difficult to conclude that transferring the DB pension and giving up the

guaranteed income by doing so was in Miss T's best interests when there was an alternate way of funding a legacy for her children.

I'm aware that the sum insured on the recommended life insurance policy wouldn't have increased – which in turn means its value in real terms due to inflation would have decreased. But there's no guarantee on how much, if anything, the transferred amount from the DB pension would have increased. There was a risk it might even have decreased. Nevertheless, Leabold felt the cost of including inflation protection wasn't justified and I don't think that was wholly unreasonable given that the sum insured secured the transfer value of the DB pension.

Summary

In my view, the fundamental situation here is that Miss T sought advice in order to take action with her DB pension that she *wanted* to take. Of course, it's her money and she is entitled to do what she wants with it (subject to whatever rules, terms, law etc were in place). However, what Miss T wanted to do wasn't necessarily or automatically in her best interests. And Leabold had to take Miss T's best interests into account when giving the advice. It wasn't required to take her children's best interests into account. Nor was it required to give Miss T advice that simply matched what she wanted to do.

Because of the presumption of unsuitability the starting point was that transferring the DB pension was unsuitable and Leabold could only have advised Miss T to transfer it if it could *clearly demonstrate* that transferring was in her best interests. The only reason I can see for recommending a transfer was because it was in line with what Miss T wanted to do given her overall wealth. But this in my view wasn't a clear demonstration that transferring was in her best interests – particularly given that Leabold showed how Miss T could meet her main objective of leaving a larger legacy (in comparison to what was available under the DB pension) for her children by alternative means without any risk of giving up the guaranteed income provided by the DB pension.

So, for the reasons outlined above, I conclude that the advice was suitable.

Incorrect information

Miss T raised concerns about information Leabold relied on in providing its advice being inaccurate. This included income of around £30,000 from savings income being ignored. This income was recorded in the Fact Find as part of Miss T's overall income. So although it wasn't specifically mentioned in the advice report as part of Miss T's overall retirement income if she drew income from the DB pension I think it's more likely than not Leabold took it into account when giving the advice. In any event, it doesn't affect my overall conclusion because even if the income was specifically mentioned it remains that Leabold's advice would have provided Miss T with additional risk free net income and the ability to provide a legacy for her children.

Miss T also referred to questions answered on the transfer risk questionnaire – she left some answers blank as she didn't think they applied to her but Leabold answered them as “no opinion”. In my view *no answer* is to all intents and purposes the same as *no opinion* and doesn't have any effect on the suitability of the overall advice.

Miss T also referred to an inaccurate record in respect of property she owned. The Fact Find Miss T completed records two flats that she owned as “250k” and “200k” and immediately under that is another property written as “Bath 400k”. The printed copy of the Fact Find records the other property as “Both 400k”. Miss T therefore feels Leabold underestimated her assets. I'm not persuaded this was the case. This is because in a telephone

conversation before the advice was given Leabold asked Miss T for clarification asking if she meant 450k or if there was a third property and Miss T confirmed that she had another property in Bath that was valued at £400,000. I'm therefore satisfied that any confusion was cleared up before the advice was given.

Overall, I'm satisfied that in giving the advice Leabold full took account of Miss T's financial circumstances.

Sundry issue

I'm aware that sitting behind this complaint is a dispute between Leabold and Miss T about payment of Leabold's advice fee. In essence, Leabold is demanding payment for its services but Miss T feels Leabold was in breach of contract so it's not entitled to payment.

I don't have any authority to decide if either party was in breach of contract – that would be for a Court to decide. I also don't have any authority over Miss T – so it's not for me to make any judgement on whether or not she has to pay the advice fee.

In considering a complaint I only have authority over Leabold and I can only compel it to take action I feel is warranted to resolve things. However, as I've concluded that the advice was suitable I don't feel there are grounds for me to make Leabold waive the fee.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 30 January 2025.

Paul Daniel
Ombudsman