DRN-5069715

The complaint

Mr W experienced a life changing event in 2019. He decided to retire and draw from his pension (a Standard Life ('SL') Self-Invested Personal Pension ('SIPP'), beginning from April 2020. He says abrdn Financial Planning and Advice Limited ('abrdn') failed to advise him in his best interest, because it recommended, and led him into, a drawdown arrangement in the SIPP without any consideration or discussion of an annuity.

He says, in 2023 he took the initiative to obtain alternative advice on the matter and arranged a joint life 100% annuity from Canada Life ('CL') with a guaranteed income for life, and a higher monthly income than he had under the drawdown arrangement. He considers that abrdn should have advised him towards an annuity, and presented him with information about this alternative, but that it instead prioritised the generation of fee revenue from the drawdown arrangement it unsuitably recommended.

Mr W seeks compensation, including a refund of the fees he paid to abrdn between 2020 and 2023.

What happened

Mr W says he met with his abrdn adviser in February 2020 to discuss his retirement plan, in the context of the 2019 event. He believes that context ought reasonably to have prompted the adviser to consider and advise on the option of an enhanced annuity, but that did not happen. He notes that there continued to be no mention of an annuity in reviews conducted thereafter, even after his portfolio lost value of around £80,000 in a single year, and even during a specific review in which the adviser commented that, based on the arrangement, his pension fund would probably be depleted by the time he reached his early 80s.

In 2023 he says he was prompted by an impending change in abrdn's service and departure of his adviser to seek alternative advice externally, and that he did so through Pension Wise and Moneyhelper. Thereafter, he secured the CL annuity.

His dissatisfaction with abrdn's advice between 2020 and 2023 is his main complaint, and he notes that SL's key facts document even has content that poses the question about which, between a drawdown arrangement and an annuity, is the correct choice, yet abrdn never considered this question.

Mr W has also mentioned that he was insulted by abrdn's offer to help him arrange an annuity, after he had done so himself and after it had missed many opportunities between 2020 and 2023 to do so; and that the delay in disengaging abrdn from his pension prior to the transfer to CL resulted in a loss in its value of around £6,000.

abrdn mainly says –

- its consideration of Mr W's retirement plan began in November 2019, when it met with him to discuss the plan;

- at the time he sought monthly retirement income, from the SIPP, of £2,000;

- the adviser looked into the option of an annuity/enhanced annuity but ruled it out because, based on annuity rates at the time, the size of his pension fund meant his income requirement could not be met from an enhanced annuity;

- evidence of the annuity quotations obtained at the time shows that this option was considered and would have been discussed with Mr W;

- the adviser then looked into an alternative, he noted that Mr W wanted to remain invested and that he had Tax Free Cash ('TFC') in his pension of £39,000 from which he could withdraw £2,000 per month;

- in January 2020 he asked for a £15,000 lump sum withdrawal from the TFC, during a review in March 2021 a £3,000 withdrawal from the TFC was also requested/arranged, and, in this review, he confirmed his plan to reduce monthly drawings to £1,500 from the following month;

- in November 2021 abrdn reviewed the arrangement, it noted that the TFC would soon be depleted and that subsequent withdrawals may fall into a higher rate tax threshold;

- it conducted a cash flow analysis, for Mr W and his wife, to look into sustainability of their income, and concluded that their income covered their usual expenditure (with income from Mr W's pension contributing towards their discretionary spending);

- at the time, Mr W sought to achieve greater growth in his pension, whilst also preserving liquidity, so the idea of an annuity remained discounted at this point for this reason (as it would not have allowed for continued investment of the pension alongside flexibility of withdrawals);

- the adviser recommended a "3 pots" approach, whereby one pot would be the pension's cash account, holding two years' worth of required income and fees, another pot would hold, invested within a lower risk fund, a further two years' worth of income and fees, and the last pot would be invested for growth, in line with his risk profile;

- the strategy was reviewed in December 2022 and both sides agreed to retain it, without changes;

- in March 2023 Mr W instructed a reduction of monthly drawdown from £1,592 to £1,450 in order to stay within the 21% tax band;

- a new adviser was in place when he instructed, in September 2023, the liquidation of the SIPP ahead of the CL annuity purchase, the adviser simply sought to understand and execute his instruction, and as part of that she reasonably offered to look into annuity options for him but she also accepted his wish to proceed by himself, but for his position at the time the adviser intended to conduct a full review and to look into (and discuss) his needs and all relevant options with him;

- the reduction in the pension's value at the point of liquidation was due to market fluctuations, which abrdn had no control over, and the possibility of which it conveyed to Mr W at the time.

As part of its complaint response conclusion, abrdn said to Mr W – "*In recent times annuities have been at a record high so I fully accept why this option is attractive to you now. However in the early days of your drawdown plan, having the ability to withdraw lump sums (£15k in 2020 and £3k in 2021) appears to have been important to you. Equally as important was having the flexibility to manage your income within the 21% tax band and an annuity would not have allowed either of these options. Because of these reasons, I have to tell you that I cannot agree with your assertions and therefore am unable to uphold your complaint*."

The complaint was referred to our service and one of our investigators looked into it. She concluded that it should not be upheld, broadly for the same reasons given by abrdn. In the main, she said –

- Mr W engaged with abrdn in November 2019 and again in January 2020; in the latter he asked for a £15,000 withdrawal from the pension (as confirmed in the adviser's withdrawal report of 14 January); the adviser's full report the following month confirmed Mr W's desire to take £2,000 per month income from the pension and to remain invested, within the pension, in line with his low to medium risk profile; later in 2020 both sides met again in September to review the arrangement (leading to a recommendation report in October); in March 2021 Mr W requested another lump sum withdrawal (this time £3,000) from the pension, and reduced the monthly income withdrawal to £1,500; further reviews happened in November 2021 [which, I note, was reported in February 2022] and December 2022 [which, I note, was reported in May 2023, but the report appears to have been misdated '2024']; he reduced the monthly income again in March 2023; by September 2023 he was pursuing the annuity himself and in the following month the SIPP was fully liquidated as he had instructed.

- There is evidence from abrdn that around January 2020 it obtained annuity quotations for him from Aviva, CL, Scottish Widows and Legal and General, and none of the quotes met his £2,000 per month income requirement, even without taking TFC.

- Evidence from the time shows that Mr W wanted regular access to monthly withdrawals and the ability to access the TFC if and when needed. Overall and in these circumstances, the adviser's recommendation of withdrawals from the TFC was not unreasonable. Even though the adviser did not report to him that annuity quotations had been considered (and discounted) there is evidence that he had done that and that he had given due consideration to the annuity alternative.

- Mr W's two ad-hoc withdrawals would not have been possible in an annuity, so he benefited from the flexibility in the solution recommended by abrdn.

- In the November 2021 review his risk profile changed to 'medium'. He wanted to take more risk to achieve greater growth, but he also wanted to preserve liquidity in the SIPP. This led to the 3 pots approach recommended by abrdn, with the first pot in cash, the second in a low risk profile fund and the third in a medium risk profile fund. The review report confirmed that Mr W wanted to continue drawing from TFC until it was depleted, which was likely to happen around March 2022. Thereafter he intended to draw taxable income. At the point of this November 2021 review he did not anticipate any further needed for lump sum withdrawals, but evidence in the report shows he still valued the peace of mind in knowing he retained flexibility in the SIPP to make such withdrawals.

- In the December 2022 review, he sought to continue with the 3 pots approach but he wanted assurance that he had enough cash for the income withdrawals to cover 15 months – the adviser recommended a partial liquidation for this purpose. At this point he confirmed he no longer wanted flexibility and that his sole requirement was tax efficient income. Prior to this, the SIPP had given Mr W the flexibility, that he wanted, to change his income and to withdraw lump sums whenever needed, both of which he did. When he spoke to abrdn in September 2023 he referred to annuity rates being at an all-time high and to his desire for higher income security through an annuity. He was entitled to change his mind at the point, but until then abrdn's advice had met the objectives he held prior to changing his mind.

- Even if he had been offered an annuity at the outset, it is unlikely he would have accepted it, given his need for flexibility at the time. There is no evidence to support his claim that he wanted a guaranteed income, at the time, over the benefit of flexibility in the SIPP.

Mr W strongly disagreed with this outcome. He mainly repeated points he had previously submitted, repeated his claim for a refund of fees and said –

"*The key aspects are that AFPAL never on any occasion provided us with any Annuity quotes* …"

"*My major concern following* [the 2019 life changing event] *was to provide a secure income for me and then my wife on demise, without worrying about stock market fluctuations. I admit that I did take advantage of the flexibility of the Income Drawdown but, would happily have sacrificed this flexibility for the certainty of a Guaranteed Annuity*."

"*In summary, AFPAL have failed to adequately address my Demands & Needs and quite frankly the advice has fallen short of that to be expected from a competent firm of Financial Advisers*."

Mr W has also emphasised that the point(s) at which abrdn was reviewing the £80,000 loss of value in the pension, and at which it made the comment about the pension being depleted by the time he reached his early 80s, was when abrdn, at the latest, ought reasonably to have considered an annuity to be in his best interest.

The investigator was not persuaded to change her view, and the matter was referred to an Ombudsman.

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.

Having done so, I have reached the same conclusion expressed by the investigator. I do not uphold Mr W's complaint.

The regulator's Principles for Businesses, at Principle 2, requires a firm to conduct its business with due skill, care and diligence. Principle 6 requires a firm to pay due regard to the interests of its customers and treat them fairly. COBS 2.1.1R requires a firm to act honestly, fairly and professionally in accordance with the *best interests* of its clients and in relation to designated investment business carried on for a retail client. COBS 9 and 9A (for non-MiFID and MiFID related advice) sets out a firm's obligation to assess the suitability of its advice to clients.

The above stands as unexhausted but nevertheless meaningful regulatory context relevant to Mr W's complaint, especially to his overarching allegation that abrdn failed to uphold his best interest in its advice between 2020 and 2023. Its obligation to do that – uphold his best interest – was indeed ever present throughout this period. However, the circumstances of a case usually define what was/is more likely (than not) to have been in a client's best interest, and Mr W's case is no different.

In broad terms, there are a number of key elements for a firm to address when assessing suitability (or otherwise) of a recommendation – the individual's profile at the time of the recommendation (including his/her instructions, objective(s), personal circumstances, risk profile, capacity for loss and investment knowledge/experience); whether (or not), on balance, the recommendation was suitable for that profile; and whether (or not), on balance, the individual was properly informed about the nature of the recommendation, its costs and its risks.

Overall and on balance, I am not persuaded that abrdn's recommendations to Mr W between 2020 and 2023 were unsuitable, and further below I will address each of them. Yes, it held a duty to uphold his best interests. However, it was also obliged to uphold his stated objective(s) and to honour his instructions, unless there was cause for it to consider that either (or both) was not in his best interest – in which case, it would have been expected to advise against them, with reasons. For the reasons given below, I am not persuaded that it should have advised Mr W against his objectives and instructions. I note his view that he "… *would happily have sacrificed … flexibility for the certainty of a Guaranteed Annuity*", but I consider it to be a view mainly based on hindsight and on the change in his profile that happened in 2023, as I treat below. I have not seen evidence to persuade me that prior to that change of profile he would have entertained the sacrifice he refers to.

This decision will be published. I will not go into the details of the life changing event Mr W experienced in 2019 – in order to avoid the risk of breaching his anonymity – but it is sufficient to say that the event justified his decision to execute his retirement plan shortly thereafter. In such a plan, and with specific regard to retirement income, I acknowledge that an advising firm would normally be expected to present annuity and drawdown arrangements as two of the main options. However, available evidence shows – and it does not appear to be disputed – that the profile Mr W presented to abrdn from late 2019 and until around the December 2022 review was one in which he wanted income, flexibility to make lump sum withdrawals and retention of the SIPP's exposure to investments.

The suitability report issued to him in February 2020 confirms that the £2,000 per month (or £24,000 per year) income and remaining invested (in the SIPP) were both prioritised as "Essential" for him. Investment *growth* in the SIPP was stated as a desired priority. The January 2020 fact find documentation that fed into the report noted as follows – "*Client is wanting regular access to monthly withdrawals and values the peace of mind of knowing that he can take a lump sum as and when required if necessary*", and in terms of 'access', "*Regular withdrawals and ad hoc lump sums as necessary - client doesn't think this will be needed at all*".

Despite the note that said Mr W wanted flexibility for ad hoc lump sum withdrawals, but did not think they would be needed, it is noteworthy that very shortly after the date of the fact find document abrdn was writing to him (on 14 January 2020) with regards to his need for a £15,000 lump sum withdrawal (required for a specific tax bill purpose). As the investigator and abrdn have pointed out, another lump sum withdrawal was made in the following year.

Faced with a client whose core objectives included a requirement to keep the pension fund invested and a desire for flexibility to make lump sum withdrawals as and when needed – neither of which would have been possible in an annuity arrangement – it was not unreasonable for abrdn to have focused its attention, in terms of its advice to Mr W, on the drawdown arrangement option (in which both core objectives were possible).

Furthermore, evidence of the annuity quotes mentioned in the investigator's view shows that abrdn's due process in advising Mr W included, in January 2020, action in seeking and obtaining annuity quotes specifically for him. From the evidence I have seen, none of the quotes (from CL, Aviva, Scottish Widows and Legal and General) obtained by abrdn at the time met his need for £2,000 income per month. The quotes offered lower figures, Aviva seemingly offering the highest amongst them, of just under £1,700 per month, without deduction of TFC from the purchase price.

Therefore, even if, for the sake of argument, disregard was applied to the *essential* level of priority Mr W attached to the SIPP remining invested – which could not reasonably have been disregarded by abrdn – and to his desire to access ad hoc lump sum withdrawals, and even if he was prepared to go without the TFC, it does not appear that his *essential* requirement for £2,000 per month income could have been met based on the purchasing value/power of his pension fund and the annuity quotations received by abrdn at the time.

The above findings also apply to Mr W's expectation that abrdn should have looked into annuities when his pension lost significant value and when it took the view that, based on the drawdown arrangement, his pension would be depleted by the time he was in his early 80s. The loss of value was an investment event that did not automatically mean an annuity must or should be considered.

The view that Mr W says was later expressed, by abrdn, about depletion of the pension in the future might, in his opinion, have been ground to consider an annuity. However, this prospect was obvious from the outset. Furthermore, as I noted above and address further below, the pursuit of growth was always a part of the agreed arrangement. After some time, Mr W even revised his risk profile in order to increase his chances in this pursuit, the hope or plan being that such growth will sustain and extend the life of the drawdown arrangement.

The arrangement clearly never had a component that guaranteed income for life. It relied on investment performance and the rate at which withdrawals reduced invested sums, so any comment about the pension potentially being depleted at a point in the future was nothing new. Mr W would have known this was a possibility, if not a probability, from the start, but his objectives meant it was part of the risk he knowingly undertook, in order to have the flexible access to lump sum withdrawals and ongoing pension investment (and exposure to growth) that he would not have had in an annuity.

abrdn's first recommendation to Mr W was the £15,000 lump sum withdrawal advised in January 2020. Available evidence shows that this arose from specific circumstances related to a tax bill that urgently had to be paid (with, it appears, a looming deadline), so abrdn's recommendation appears to have been essentially borne from either his expressed requirement for the specific and urgent withdrawal or his instruction of such withdrawal. In either case, the recommendation met his specific need in a tax efficient way, given that the withdrawal was from the pension's TFC. For these reasons, I do not consider this to have been unsuitable or contrary to his best interest.

The next recommendation was in February 2020, which advised the regular £2,000 income withdrawals from the TFC. Again, this was essentially requirement or instruction based. The £2,000 amount appears to have been initiated by Mr W, based on his consideration of the minimum income he needed from the pension. For the reasons given above, this drawdown (from the TFC) arrangement was not unsuitable. The idea of beginning the drawdown from the TFC was tax efficient. I note the investigator's view that abrdn could have enhanced its recommendation with a mention of the annuity alternative and of the quotations it had received in that respect. For the sake of transparency, to Mr W, I agree, but I retain the view stated above that it could not have been a viable option given the essential and desired elements of his objectives that would have been defeated by an annuity and given the fact that none of the quotations met his minimum income requirement (even if he did without withdrawing the TFC before buying the annuity).

There is no evidence of anything from Mr W, in the review leading to the October 2020 recommendation, to suggest a change to his previously held objectives. As such, there remained no need to look into an annuity and there was no cause to question the ongoing drawdown arrangement. The recommendation focused on liquidating assets to cover the income withdrawals for 15 months, which was a reasonable step in the arrangement; and a reduction of the income withdrawals to £1,500 from April 2021 onwards, based on him beginning to receive his state pension at the same time (which meant he would not need as much from the drawdown as he previously did). In the circumstances as they were at the time, neither of these recommendations strike me as unsuitable. Indeed, they were broadly a form of management of, and within, the ongoing drawdown arrangement.

The March 2021 recommendation advised the £3,000 lump sum withdrawal. Whilst the purpose of the withdrawal was different, the core circumstances were the same as the January 2020 withdrawal – in the sense that this too appears to have been a recommendation from abrdn that was essentially borne from either Mr W's requirement for or instruction of the specific withdrawal and, in either case, the recommendation met his need in a tax efficient way (given that the withdrawal was from the pension's TFC). On balance, and for these reasons, I do not consider this recommendation to have been unsuitable.

The next recommendation was in the February 2022 financial planning report prepared for Mr W and his wife, following the November 2021 review. There was further management of, and within, the ongoing drawdown arrangement, whereby the SIPP was to remain invested but fund switches within it were needed to rebalance it to match Mr W's revised medium risk profile (and his drive to achieve better growth in the pension); and whereby the 3 pots strategy was proposed to address both the income withdrawal and ongoing pension investment aspects of the arrangement (with the third pot, dedicated fully to investment growth, holding the majority of the SIPP's value). The report reflects that his objectives to maintain both core aspects remained in place and had not changed. On balance, and in these circumstances, I do not consider that there was cause to look into an annuity alternative (which could not have catered for both core aspects, and would have provided only income) at this point, or that the recommendation was unsuitable for Mr W.

Around March 2023 Mr W's instruction to reduce his monthly income withdrawal to £1,450, in order to stay within the 21% tax band, was implemented by abrdn on an execution only basis. Then in May 2023 abrdn's financial planning report was produced for him, following the December 2022 review. The same core aspects (income and ongoing pension investment) of his objectives remained, and were reflected in the report. Liquidations were recommended to fund 15 months income and fees, so this too was further ongoing management of the ongoing drawdown arrangement. I have not seen evidence that an annuity should have been considered at this point.

Mr W's new abrdn adviser introduced herself to him in her email of 12 September 2023. In his response of 19 September, he said –

"*Thank you for the introductory email.*

However, I have decided that a Lifetime Annuity is more suitable for my needs. Please as an interim step can you arrange for all my portfolio to be transferred to Cash."

Both sides appear to have had a discussion on 21 September and the adviser followed that up with her report dated 25 September, in which she reflected and addressed Mr W's instruction, warned of the following with regards to the instructed liquidation –

"*The portfolio value outlined above is subject to fluctuations and may be higher or lower at the actual date of the sales. We will confirm the final figure to you in due course*."

"*You will be moving this capital an* [sic] *environment where the value of your investment could fluctuate in line with market conditions into a risk-free environment. Should you delay the purchase of your annuity, you will therefore no longer benefit from potential additional investment growth within this capital*."

and gave notice of the following –

"*Once the funds are sold to cash, you will have no investments with us which will result in the disengagement of our ongoing service. You will therefore need to liase* [sic] *with Standard Life directly to arrange the annuity purchase with the residual funds within the SIPP*."

It is clear that Mr W's objective(s) changed markedly at this point, but there was essentially nothing for abrdn to do. He had made the decision to purchase an annuity and he had instructed liquidation of the SIPP for that purpose. He essentially took the matter into his own hands. This is in no way a criticism. He was fully entitled to act as he wished with his SIPP and with his retirement plan. However, the point to note is that the profile he adopted in September 2023 had not previously been presented, and at the time he presented it abrdn's service was, in real terms, being terminated – especially as he did not need it to secure an annuity, given that he had done that himself – so there was nothing meaningful it could do in response to the change of his profile.

Overall, on balance and for the reasons treated above, I do not consider that abrdn gave Mr W unsuitable advice or that it failed to deliver its ongoing advisory service, to him/his SIPP, in his best interest. I imagine that any offer from the new adviser to assist him in arranging an annuity was not intended to insult him and was made from goodwill. She had been newly appointed to his account, which suggests she had no previous history with Mr W and no involvement in the period during which he claims he should have been recommended an annuity. In the absence of evidence that abrdn unduly delayed the SIPP's liquidation and in the presence of evidence about the warning to Mr W about fluctuations in the market potentially affecting the liquidation value, I also do not find ground to hold it responsible for the loss of liquidation value he has referred to.

My final decision

For the reasons given above, I do not 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 5 March 2025.

Roy Kuku
Ombudsman