DRN-5098953

The complaint

Mrs and Mr B complained about the advice Mrs B was given in relation to the transfer of the benefits from her three defined-benefit (DB) pension schemes.

The crux of the complaint is that Mrs B went to Liverpool Victoria Financial Services Limited ("LV") seeking regulated financial advice about potentially transferring all three schemes to a type of personal pension plan. Mrs B's clear preference was to transfer the three DB schemes because she believed a personal pension would offer much greater flexibility going forward, and she was confident that she would be able to grow the transferred funds to a much greater degree by investing for growth in selected funds and stocks.

LV recommended that Mrs B *shouldn't* transfer and charged Mrs B a fee + VAT for providing that advice. Mrs B says this is unfair because her stated preference was for transferring away and LV had no process by which she could insist or override its advice. She also makes some complaint points about the accuracy of the data and information contained within LV's suitability report.

Essentially, because of all these areas of dissatisfaction, Mrs B wants the fee she paid reimbursed.

What happened

I'd like to apologise to the parties for the time taken for this complaint to reach this stage.

The pensions concerned related to three DB schemes which arose from previous and current employments Mrs B had. I'll refer to these three DB schemes as "Pension S", "Pension LG1" and "Pension LG2" respectively. The respective normal retirement ages (NRA) in each case were 65, 67 and 67.

Information was gathered about Mrs B by LV which recorded her circumstances of that time as follows:

- Mrs B was 55 years old and married to Mr B who was 56.
- Mrs B was employed and earned an annual salary of around £11,955. Mr B was already retired and drawing down from a defined contribution pension of his own at the rate of £8,500 per year.
- Mrs B had a medical condition which means she derived some state benefits comprising £3,541 (personal independence) and £4,000 (a carer allowance it seems was paid to Mr B). They also earned (joint) interest on savings comprising around £11,000 per year and investment dividends of £5,600 per year. They owned their own home outright and had no debts or financial dependents.
- The cash equivalent transfer values (CETVs) were £45,725 ("Pension S"); £48,335 ("Pension LG1"); and £14,844 ("Pension LG2").

On 24 April 2024, LV issued a suitability report recommending that Mrs B *should not* transfer any of her DB pensions, despite her preference clearly being for the opposite. Mrs and Mr B made some representations to LV explaining why they had strong feelings about transferring away from these DB schemes being much the more attractive option for them, but LV declined to change its recommendation and reiterated that it's advice to remain in the three DB schemes was sound.

They then made a formal complaint using LV's internal process, but it didn't uphold her complaint. On 1 July 2024 it sent her a final response letter explaining its rationale and defending some points Mrs B had raised about general inaccuracies and attention to detail contained in the suitability report.

Still unhappy, Mrs and Mr B contacted the Financial Ombudsman Service to raise a complaint against LV. One of our investigators looked into their complaint and concluded that it wasn't one we should uphold. Ultimately, the investigator said LV was probably correct, given Mrs and Mr B's circumstances, to recommend that she should not transfer away. The investigator pointed out that these were three valuable schemes which were all index-linked and guaranteed to pay out annual pensions for the rest of Mrs B's life. He added that whilst there were a few minor mistakes in LV's suitability report, he didn't think these made any material difference to what was the correct advice overall.

As this complaint couldn't be informally resolved between the parties, it now falls to me to make a final decision.

I'm very sorry to disappoint Mrs and Mr B, but I'm not upholding this complaint.

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 also 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 Business (PRIN) and the Conduct of Business Sourcebook (COBS). 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 WXYZ's actions here.

- 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.*
- 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.

I have further considered that the regulator, the Financial Conduct Authority (FCA), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme, is that it is unsuitable.

Introductory Issues

I'd like to start by acknowledging that Mrs and Mr B are obviously upset because they consider Mrs B's three pensions to be 'her own money'; I do understand the point being made. And not unreasonably, Mrs B seems to have gone to LV with a fairly firm view about how she wanted to use the monies from these pensions in the future. This basically involved transferring them to a personal scheme and then investing each of the three CETVs for growth. Mrs B felt that hers and Mr B's financial knowledge and experience could mean they could adopt a relatively aggressive attitude to investment risk until Mrs B reached the age of around 60. At this point Mrs B envisaged retiring and entering pension drawdown which she could draw upon flexibly.

However, when enacting the pension freedoms legislation effective from 2015, Parliament decided that certain safeguards were necessary with regards to transferring away from DB schemes. Accordingly, any pension scheme with a CETV of £30,000 or over requires the obtaining of regulated financial advice.

Mrs B contracted LV to provide that advice and I note that at the start of this process she signed a declaration to confirm her understanding of LV's terms of business. These were broadly that the fee being charged was set out clearly on that form which Mrs B duly signed. She was also told at the same time that LV would only recommend transferring away from a DB scheme if it was clearly in the interests of a client to do so. It was also explained that where a client wanted to go against the recommended advice – and to transfer even if advised not to – then LV would not facilitate this. LV also explained that should such a situation arise, its experience was that many businesses would not facilitate a transfer due to the regulatory risks involved.

So, I think it's reasonable to point out that upon starting her advice journey with LV, Mrs B was made aware that her obvious preference of transferring might not be fulfilled. I note that Mrs B paid LV's advice fee 'up front' on this basis.

The suitability of transferring the DB schemes

LV looked into Mrs B's full circumstances before concluding what its recommendation should be. I've noted it carried out financial analysis of Mrs B's three DB pensions, looked into her (and Mr B's) financial affairs, and took account of Mrs B's desire to transfer which she'd set out in a questionnaire. It seems that the LV adviser also took into account the FCA's direction which was that the starting point with these types of situations should always be that transferring probably isn't suitable. Having done this, LV concluded that the transferring of these three DB schemes was *not* in Mrs B best interests – it recommended that she should not transfer away from any of the three schemes.

I've considered whether this was fair and reasonable.

LV looked at the transfer value comparators (TVC) in respect of all three DB schemes. The TVC is essentially the estimated cost of buying a pension which is similar to the DB scheme, if purchased on the open market. For "Pension S" the TVC showed that Mrs B would need to spend £13,960 more than what she was being offered by the CETV, just to get a pension with broadly equivalent benefits. For "Pension LG2" the cost was £999 more. So, for these two DB schemes, this form of analysis was showing that from a strict financial comparison, transferring wasn't worthwhile – it was more costly. For "Pension LG1" however, there did seem to be a difference as purchasing an equivalent pension was £3,804 cheaper.

LV also appears to have carried out analysis into the critical yield rates in each case. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It too is part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable. For "Pension S", "Pension LG1" and "Pension LG2" respectively the critical yields were 7.73%, 4.72% and 5.79% at the NRA in each case. Of course, one would need to obtain these percentage growth rates year-on-year until retirement, just to match the respective DB pension benefits in each case. And I've borne in mind that new charges associated with managing a new defined contribution (DC)[1] scheme would then occur – charges not present at all with any of Mrs B's three DB schemes.

It's possible to enter into a protracted debate about whether exceeding these growth rates might have been achievable. However, in my view, exceeding these growth rates every year until retirement, whenever that might be, would have been challenging. Although I've noted Mrs and Mr B's confidence that they could aggressively grow her transferred funds, and indeed had past experience in doing so, I've seen no hard evidence of this. In 2024, the UK had long been in a sustained period of uncertainty with interest rates sharply rising in recent months due to an inflation shock. Bond yields had been affected by volatility and geopolitical events were unpredictable. Against this backdrop, it's possible that achieving annual growth rates of around say, 7 or 8%, *may* have been achievable, but the LV adviser clearly didn't think so and I don't think that view was unreasonable.

Mrs B didn't appear to have had any personal experience of managing investments of a similar nature, and whilst Mr B seems to have been managing his own DC pension affairs with some confidence, I've seen no direct evidence of him consistently outperforming the market over a sustained period to this degree. I say this only to demonstrate the difficulty in exceeding the likes of the above percentages over the medium term. In my view, there would be little point in transferring away from these three schemes only to obtain lower benefits overall. So, I don't think the above description shows a compelling reason why LV should have recommended that Mrs B should have transferred away, as opposed to waiting until the NRAs in each case and then accessing her three DB pensions in exactly the way they were intended.

Were there any other reasons to transfer?

I accept that there may also have been other possible reasons to transfer, rather than just simple and straightforward financial comparisons. However, I'm afraid I don't think Mrs B had a clear rationale for transferring other than apparently being convinced that she needed flexibility.

The analysis had showed Mrs B might expect to receive a pension of £3,576 at the age of 65 ("Pension S"); £3,270 at the age of 67 ("Pension LG1"); and £1,189 at the age of 67 ("Pension LG2"). There were some flexible options available depending on whether Mrs B wanted to take tax-free cash and reduced pensions at the respective NRAs.

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[1] A defined contribution pension is a scheme that builds up a 'pot' of money to pay you a retirement income. They're sometimes called money purchase pensions.

In my experience the notion of ‘flexibility’ in this context is often used, but often ill-defined too. I’ve seen no reason as to why Mrs B would need flexibility in her situation; the money was not needed for any particular reason and in any event she and Mr B had plenty of liquid cash available elsewhere. As our investigator explained, Mrs and Mr B already had what appeared to be liquid savings of over £287,000 and Mr B had a flexible DC pension pot comprising £375,000. I’ve also noted that Mrs B still intended to work for at least five more years. So, I don’t think that irreversibly transferring from the three relatively modest DB schemes at this point in time could be easily defended, particularly when the adviser was specifically required to follow the FCA guidance (which was that transferring isn’t usually suitable). With all their resources in mind, I can see no reason why Mrs B couldn’t fulfil her desire to stop working at around the age of 60 and crystallise one of her three DB schemes at the age of 65. The other two DB schemes would follow, at the age of 67. And thereafter, both Mrs and Mr B were entitled to the full state pension.

Incorrect figures and information

Like our investigator, I can see the adviser made some mistakes in the suitability report when setting out one of the DB pensions projected annual figures and some errors with the tax-free lump sum data. I accept this was annoying for Mrs B to see, but these were minor errors which have no effect on the overall ‘direction of travel’ of the transfer advice.

In any case, Mrs B strong preference was – and appears still is – for transferring away from these schemes. So, essentially, the mistakes wouldn’t have mattered. This is because Mrs B knew what the three CETVs were, and she wanted to move these to a new DC pension scheme – in this scenario there would have been no annual DB pensions or associated lump sums.

Nevertheless, I do think LV should reflect on these errors and provide appropriate feedback to the adviser concerned about the importance of attention to detail.

Summary

Overall, I think the LV adviser acted in Mrs B’s best interests. The recommendation was based partly on comprehensive analysis which tended to show, from a direct financial comparison, transferring away certainly wasn’t merited for either “Pension S” or “Pension LG2”. The comparison in relation to “Pension LG1” was less conclusive.

However, these weren’t the only issues the adviser needed to consider. I think Mrs B’s health was an area of uncertainty and indeed, concern. Connected with this was Mrs B’s reliance on state benefits amounting to around £7,541 per year which I think the adviser was right to be cautious about. Similarly, reliance on income from savings and investments could change depending on the economic climate and interest rates.

With these uncertain factors in mind, I think the LV adviser was justified in arriving at a decision to not recommend transferring. In fact, by remaining in her three DB schemes, I can see how this placed Mrs and Mr B in a satisfactory financial position. On one hand they had the joint flexibility provided by Mr B’s DC pension and their other liquid savings and investments; whilst on the other they could retain the certainty provided in Mrs B’s three DB schemes which were index-linked and guaranteed for life. They also provided reasonably good death benefits for Mr B if Mrs B passed away first.

I acknowledge there were some minor errors in LV’s reports. I do accept that lapses like this are concerning, especially when paying for a service which one expects accuracy to be important. However, the mistakes were trivial in the overall scheme of things and like our investigator, I don’t think these changed anything.

For these reasons, I'm not upholding this complaint.

My final decision

I do not uphold this complaint.

I do not direct Liverpool Victoria Financial Services Limited to do anything more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B and Mr B to accept or reject my decision before 4 June 2025.

Michael Campbell
Ombudsman