DRN-5128257

The complaint

Mr B complained that he was given unsuitable advice to transfer a defined benefit (DB) pension scheme, to a self-invested personal pension (SIPP), in 2016.

Pensions and Annuities Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "PAL".

What happened

The pension in question here related to a DB scheme from a previous employment from some considerable time in the past but which had grown in value over the years. At the time of the advice this DB scheme was in deferment. Mr B had accrued a small number of years' service with this scheme and initially he was given a cash equivalent transfer value (CETV) of £64,555. This figure was then updated a short time later to £79,883. The normal retirement age (NRA) of the DB scheme was 65.

It seems that Mr B had originally received some advice from a different independent financial adviser (IFA) which he chose to terminate his relationship with. Mr B then went to PAL for regulated pension advice. Information gathered about his circumstances as of around June 2016 was broadly as follows:

- He was 58 years old and married to Mrs B.

- Mr B worked in the travel sector which at the time meant he and Mrs B lived apart for some periods. They owned a total of four residential properties of which three were in the United Kingdom (UK). It seems Mr B lived much of the time in one of the UK properties and Mrs B lived in their property abroad (a country in the European Union (EU)). The other two properties were rented out.

- The total value of all their four properties was estimated at around £904,000 with about £461,00 of this being mortgaged using three separate loans. Mr B also said at the time that he had a foreign business asset in the form of a glamping site. He said this business was worth £50,000 but we have few details about this.

- Mr and Mrs B had cash savings of around £1,000. But in addition to the outstanding mortgage(s) they had credit card debt of £7,000 and a loan (which I've assumed to be non-secured) of £9,000. Mr B apparently owed some money to his father.

- Mr B said he earned £25,000 per year (gross) working part-time. I have assumed that Mrs B's income to have been minimal, as it wasn't recorded during PAL's 'fact-find' exercise. But Mr and Mrs B also had rental income of £14,754 per year and £11,910 per year respectively from the two investment properties.

- In terms of pensions, Mr B had his differed DB pension (as above) and also a moderate defined contribution (DC) personal pension scheme. This was with a provider I'll call "Firm R" and comprised of £11,910 in total funds, as of 2016. Mr B had apparently *"rejoined"* his existing employer's DB scheme of which no records were made at the point of this advice.

- Mr B's retirement objectives weren't particularly clear at the point of the advice. But PAL says he wanted to generate around £20,000 to pay back some money to his father and also invest further in the glamping site he'd already started abroad.

I should make it clear that the only pension being complained about here is the deferred DB scheme which, in 2016, had a CETV of £79,883.

PAL set out its advice in a suitability report on 8 September 2016. In this, it advised Mr B to transfer out of the DB scheme, invest the funds in a SIPP, take out a 25% lump-sum free of tax, and then hold the remaining money in a type of cash fund inside the SIPP. PAL said this would allow Mr B to achieve his objectives. He accepted this advice and so transferred to the recommended SIPP.

In 2023 and aged 65, Mr B complained to PAL about its advice, saying he shouldn't have been advised to transfer out to a SIPP. In response, PAL said it hadn't done anything wrong and was acting on the financial objectives Mr B had at the time.

Disagreeing with this, Mr B referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' which comprised firstly of an explanation of why we had the powers to look into this complaint, and also that the merits of the complaint should be upheld in Mr B's favour. But PAL didn't agree either with our powers to look into the complaint (it said this was because it had been made 'out of time' under the rules we operate under) – or that Mr B's complaint should be upheld.

PAL has also said that it doesn't think that Mr B has lost any money. It said this was because even if PAL was directed to put Mr B back into a position he was mainly in before transferring, its calculations have shown that Mr B is still better off in financial terms as a result of having transferred. This is disputed by Mr B.

On 23 October 2024, I issued a jurisdiction decision explaining that the complaint *was* one we could look into.

I am now making a final decision about the merits of Mr B's 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 Businesses ('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 PAL'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. So, PAL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests.

I've also considered everything said by Mr B's representative in bringing his complaint (including its full acceptance of the investigator's 'View'). Likewise, I've considered everything said by PAL, the documentation it has sent and the voice 'memo' used to record the adviser's thinking when giving advice. And I've used all the other information we have to consider whether transferring away from the deferred DB scheme to a personal pension was in Mr B's best interests.

I don't think the advice was in Mr B's interests, so I'm upholding his complaint along broadly the same lines as our investigator.

<u>*Introductory issues*</u>

I think it's relevant to set the scene by explaining that prior to his dealings with PAL, Mr B had very recently engaged with a different IFA for advice on the same issues. It seems this advice had reached an advanced stage – we know this because PAL sent us some documentation from that previous advice which included details of the recommendation the IFA had made.

I've noted that the documentation from the first IFA had recorded some financial objectives for Mr B that he apparently wanted to pursue when considering his DB scheme and whether to transfer it. These objectives differed somewhat to those he evidently later discussed with PAL. This is because he appears to have told the first IFA of his desire primarily for a regular pension over the next eight years and a secondary desire to help a younger family member get on to the housing market. But it seems Mr B ended his relationship with the IFA after it recommended that, whilst he could transfer from his deferred DB pension scheme, he should only do so if then investing in an annuity to provide a steady income for retirement.

So, I've got no doubt that Mr B probably went to PAL with some preconceived ideas about his DB pension and how he wanted to proceed. The major theme in PAL's defence of this complaint is effectively predicated on the fact that Mr B wanted to access some cash straightaway. However, as I've said, the objectives he apparently had for that cash had substantially changed and from what I've seen this would have been known to the PAL adviser.

Mr B told the PAL adviser he'd like to pay his father back the £5,000 he'd borrowed and in total it was said he wanted to have around £20,000 released from his pension so he could also invest in another glamping business. So, I accept that at the outset of their relationship, Mr B probably focussed more on taking the CETV offer he had in order to 'cash in' the DB scheme and to release what he considered to be a very agreeable sum of money. Consequently, PAL's recommendation was to transfer away from the DB scheme to a SIPP and hold the money in a purely cash account where it wouldn't grow. Doing this would generate a tax-free lump sum of around the amount Mr B said he wanted for his immediate objectives, particularly as he could also transfer his "Firm R" personal pension of £11,910 at the same time.

However, it's important to remember that the regulated party here was PAL, and not Mr B. PAL was charging Mr B for its advice and the adviser's job wasn't to simply transact what Mr B might have thought was a good idea. Its job was to follow the rules and guidance set by the FCA and to recommend what was in Mr B's best interests overall. As I've said, those rules assume that the starting assumption for a transfer from a DB scheme is that it is unsuitable.

I think it's fair to say that Mr B's financial affairs were relatively complex by the standards of most other people. Mr B worked in the travel sector at the time and although Mrs B lived overseas in a property they jointly owned - and Mr B travelled there frequently - he said his tax domicile was in the UK where they also owned a house which Mr B gave as his 'home address'. Their longer-term retirement and residential intentions weren't yet fixed, and I think it's fair to point out that the recent 'Brexit' referendum of 23 June 2016 had signaled the UK's intention to leave the EU thus causing some uncertainty for Mr and Mrs B.

In total Mr and Mrs B owned four houses: they jointly owned a home overseas (valued in 2016 at approximately £160,000) in which Mrs B was living. They also owned a house here in the UK (value: approximately £250,000) which Mr B lived in. Mr and Mrs B also owned two other investment properties ('buy-to-let') in the UK. These were valued at approximately £180,000 and £314,000 respectively. So, Mr and Mrs B's collectively owned property value at the time he received PAL's advice, was around £904,000 of which £461,000 was mortgaged in three separate loans.

In this context, it was important to capture all the details about Mr B's financial affairs and his wider circumstances. These things were highly relevant to any advice he was about to receive, especially where leaving a DB scheme was involved.

However, it seems all Mr B's contact with PAL was on a non-face-to-face basis with everything conducted via telephone or electronic means. And in my view, the PAL adviser failed to clarify certain important aspects of Mr B's overall financial situation. For instance, it seems clear to me that Mr B didn't have a particularly good grip on his normal monthly incoming and outgoing financial situation. This would have been relatively complex given the income sources he and Mrs B had at the time - and the financing of their assets such as the buy-to-let properties. What he told the adviser was that day-to-day income and expenditure were probably just the same amounts. But there's no evidence the adviser really looked into this. I've not seen that any detailed list was composed of all Mr and Mrs B's income(s) and expenditure responsibilities. I think this would have been useful given the apparent complexity of their affairs. I also think this was important to assess their financial resilience, both at the time and, eventually, in retirement. So, with this in mind, I can't see that the adviser was able to comprehensively assess whether transferring Mr B's DB pension was in his best interests. I think a lack of recorded detail was also apparent in some other areas.

I say this because the information about Mr B's foreign business asset, said to be a glamping business, also wasn't recorded on the 'fact-find' exercise clearly enough. In my view, this means that the adviser again failed to clarify an important component of Mr and Mrs B's financial situation. PAL ultimately didn't collect detailed enough information about the £50,000 this business was said at the time to be worth. Nor was it made clear if Mr B was the only shareholder in the business, whether this sum was made up of capital assets or income, and / or whether this business was financed from any type of loan. In my view, it was important to capture this information, again because Mr B was considering using his DB pension to further invest in this type of business.

I think the business was also potentially relevant to what Mr B's overall income might be when he stopped working and moved more into retirement. So, details about this business were necessary as this could have impacted on the advice about whether or not he could leave his DB scheme and still have enough income to live on in later life.

I think a further uncertainty was a failure to gather enough information about Mr B's existing employer's pension scheme. This could have impacted, either way, on whether or not Mr B could really afford to give up the deferred DB scheme to fulfil some of the aspirations he had about investing more in his business. His existing employer's scheme – which he thought was a DB type of pension – may or may not have provided a reasonable retirement income. But the information recorded about this existing and current DB scheme wasn't clear. The suitability report implies he was currently paying £219 *into* this pension as it said, *"you explained that you also have a pension with* [your employer] *that you're currently paying £219 per month. You recently re-joined their scheme back in March 2015 and this is a final salary scheme".* This is further mentioned in PAL's commentary on Mr B's circumstances of that time – "[Mr B] *explained that he also has a pension with* [his current employer] *that he's currently paying out £219 per month and he has recently re-joined their scheme back in March 2015 as a final salary scheme"*.

However, I've seen post-advice descriptions of this being a pension which had already been crystalised and was being paid *to Mr B* (rather than him still making the same £219 contributions towards it). However, there's no mention of such an income anywhere else I've seen. We therefore have conflicting information about this pension, which is a significant void when trying to assess Mr B's potential retirement income. But in any event, the main issue here is that full details of this pension ought to have been clarified and recorded by the adviser as part of the advice process about potentially transferring from his deferred DB scheme. I don't think this pension was considered at all during the advice.

Finally, insufficient information was recorded about Mrs B's finances. There is a suggestion from the papers I've seen that she ran some sort of bed and breakfast. However, no details were shown as to the extent of this, whether this was profitable or whether she would continue to operate it when Mr B eventually joined her abroad in one family home. There's also no mention of a pension for Mrs B, other than a state pension, so I've assumed this means her main income was derived from buy-to-let property which was mortgaged.

So, even accepting the various financial assets Mr B had at the time, they were mostly all operating with some underlying debt. As the buy-to-let properties were financed with interest only mortgages, the business model assumed a reliance on property values increasing in the future, whilst the outstanding debt remained the same. This debt wasn't an insignificant amount.

By comparison Mr B's overall pension provision looked very weak. For example, as I'll explain in more detail below, at the time the advice was given, his deferred DB scheme would amount to only a small annual income of £3,638 per year in retirement from the age of 65. He could access the deferred DB scheme earlier, but of course this would result in a lower annual pension. Nevertheless, this deferred DB scheme appeared to be his main verified source of pension in retirement. It was both guaranteed and according to PAL's suitability report, had certain index-linking rises built into it. There were also some death benefits which would have meant a small, but again guaranteed, pension for Mrs B if her husband passed away before her.

Mr B's existing personal pension scheme with "Firm R" also added very little prospect of generating a meaningful retirement income. This pension was a DC scheme which was subject to market forces. This meant that from a retirement income perspective, Mr B was facing some considerable uncertainties upon giving up work and deciding to retire. It's true that if he didn't choose to sell any of their properties, he'd have some investment income to live off in retirement. However, there were no guarantees about the future of the residential property market. Nor were there any recorded details about whether Mr B was able to pay the mortgage(s) as a retiree with limited other independent income, or that he'd alternatively be able to sell the properties to pay off all his mortgage debts pertaining to these properties, and still be left with enough capital to fund a reasonable retirement, particularly if he'd given up his deferred DB scheme.

There also hadn't been a comprehensive assessment during the 'fact-find' exercise of what Mr and Mrs B's income needs in retirement might be. There was a passing reference to the UK state pension which Mr B thought would meet their needs, but details of whether Mrs B would qualify for a full state pension weren't clear.

It's possible to weigh up and argue, either way, the merits for the various different scenarios which could potentially have satisfied (or at least, supported) Mr and Mrs B's eventual financial requirements when they retired. What I mean by this is there were only vague references to selling properties to generate capital that could then help fund a decent retirement. This may well have been worth looking into in more detail as these types of arrangements might have supported a recommendation to transfer away from his deferred DB scheme. Costing these different scenarios in a thorough way might have produced a reasonable answer. But the substantive point here is that Mr B's retirement and how it was going to be funded without a pension, simply wasn't clear enough at the point of PAL's advice. In my view, Mr B's retirement strategy wasn't yet coherent and so its relationship with what he should or shouldn't do about the DB scheme wasn't clear either. How he and Mrs B were planning to fund a retirement, if transferring away and then just spending most or all of the CETV, wasn't properly investigated or costed.

Financial viability

I would normally address in very considerable detail, the financial comparisons between transferring away and into a SIPP, against remaining in the deferred DB scheme. I'd look carefully at the growth prospects of transferring away and whether these indicated that transferring might be worthwhile from a purely financial perspective in the longer-term.

However, in this case there's no apparent dispute from PAL now, in terms of a strict financial comparison, that transferring this DB scheme away and into a SIPP was going to mean less retirement income for Mr B. I therefore propose to summarise the issues rather than going into detail.

For example, PAL told Mr B in writing at the time that, *"… from an actuarial point of view ….. taking the transfer value of your* [DB] *scheme makes little sense".* So, having said that transferring appeared to make little financial sense - both to Mr B himself in 2016, and to our Service after a complaint had been made - it would be hard for PAL to argue now that there was such a reason to transfer. So, to be clear, I agree with PAL that strictly from a comparison perspective, transferring away wasn't financially viable.

PAL referred in its transfer analysis and suitability report to 'critical yield' rates. 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 is therefore part of a range of different things which help show how likely it is that a SIPP could achieve the necessary investment growth for a transfer-out to become financially viable. PAL told Mr B that the critical yield required to match his existing DB benefits for this scheme, at the age of 65, was 6.3% if taking a full pension. The relevant discount rate - which is a measure of how much an investment is likely to grow by – closest to when the advice was given was only 3.3% per year for 6 years to retirement. Had Mr B wanted to retire earlier, the discount rate for the age of 59 was only 2.3%.

Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor. In my view, this was already implying that reaching an annual growth rate outside the DB scheme to make transferring worthwhile, would most likely be very difficult when looked at through the lens of that time. We know, for instance, that we were in a sustained period of very low interest rates and bond yields and buying a pension on the open market with similar benefits would have been expensive. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%. Mr B was deemed by PAL to be a cautious investor, so a growth projection at the lower end was appropriate in his case. In August 2016, the Bank of England also reduced its base rate to 0.25%.

All these things show that transferring wasn't financially viable, but PAL still recommended that he should transfer. I've also noted some other indicators, such as annuity comparisons; these corroborated that leaving the DB scheme wasn't in Mr B's interests from a financial perspective. However, as I've said, I don't need to go into more detail on this.

Having said that, I accept PAL's recommendation that he should transfer out to a SIPP was not predicated on the financial comparisons with his current scheme. Rather, PAL said Mr B had different reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer *was* suitable for him, despite providing the overall lower benefits mentioned above over the longer term.

I've considered these below.

Other reasons to transfer

In my view, PAL's suitability letter of 8 September 2016 didn't give Mr B clear enough information about the importance of remaining in the DB scheme. I accept Mr B was provided with some warnings and other related information, but the recommendation was to transfer away with additional recommendations made about what should happen with the tax-free cash and the subsequent SIPP investments.

I've summarised Mr B's financial objectives discussed between him and the adviser as follows:

- Mr B apparently wanted to pay back his father and also invest in another glamping business project. The amount for both was estimated at £20,000.

- The PAL adviser noted Mr B thought the CETV represented a very good sum of money which he thought he ought to take, particularly as the amount on offer had recently risen by quite a bit.

- Transferring and moving into a cash SIPP produced much more flexibility for Mr B.

So, it seems the supporting reasons that PAL recommended the transfer out to a personal pension were largely for issues connected to the flexibility and control it offered to Mr B. I have therefore considered all these issues in turn.

- *Paying back his father and also investing in another glamping business.*

We know little about the loan to Mr B's father as few details were recorded about it. For example, it would have been useful for the adviser to know about expectations about the paying back of this loan and whether his father was in financial need. Even so, I accept Mr B probably had a genuine wish to pay this money back.

However, because the adviser had failed to record the income / expenditure commitments in enough detail, I don't think the adviser could have fully known whether this loan could have been paid by any other means without using a pension, which is designed to fund one's own retirement. The comment about income and expenditure largely being neutral received no challenge or insight and it may have been possible to repay what was a fairly moderate amount in monthly instalments, without the need to look for capital from elsewhere. This shows that paying back this fairly small loan by irreversibly transferring from a DB pension hadn't been properly thought through.

I think that Mr B was also keen to promote the glamping business as successful enough to invest more money in. But as I've said, I don't think the adviser could have really known whether this investment also merited irreversibly transferring from his deferred DB pension just to finance this. I think some further investigation about using his existing business as collateral, for example, could have been considered before making any recommendations to leave the DB scheme. Also, because 2016 was in the period of such low borrowing costs, some mortgage restructuring might have been more worthy of consideration: if PAL's advice really was promoting – as it now implies it was – a strong preference for Mr B remaining in his DB scheme, then recommending other actions first were more appropriate here.

Ultimately, it's not my role to say what PAL could have advised as regards Mr B finding the funds to fulfil his aspirations. I acknowledge that Mr B had said he didn't want to take out any other mortgage borrowing. But of course, there was an opportunity here to simply tell Mr B that his aspirations didn't look to be in his best overall interests if they involved him transferring his only real pension provision and effectively being left without enough to live on in retirement.

There were also options for Mr B to raise enough money substantially towards these two commitments without transferring from the DB scheme at all. He could have delayed his intentions to pay the £5,000 loan and / or invest more in the business. Delaying accessing his deferred DB scheme, for as long as possible, would have effectively meant moving towards a point where he'd be achieving an annual pension of around £3,041 and a tax-free lump sum of £20,274 at the scheme's NRA; he could have also taken earlier retirement involving actuarial reductions (dependent on when taken) on these amounts. He could also have accessed the DB scheme more or less straightaway thus still generating a tax-free lump sum of £12,757. He could, of course, have added a further 25% tax-free cash amount from his personal pension. This would have come up short of the £20,000 he was seeking but could have been supplemented in some of the ways I've mentioned above.

- *The CETV was a good amount of money / having flexibility to use the £79,883*

I do understand the point being made about the increase in the CETV and I accept the sum could have even represented something of a temptation to Mr B. But of course, as I've explained above, Mr B didn't appear to have much pension provision without this DB scheme. The main purpose of a pension is to provide an income in one's retirement and his overall provision for this was poor. So, I've seen nothing showing why Mr B wouldn't be more suited to drawing a regular, guaranteed and index-linked pension in exactly the way the DB scheme originally intended, even if this was relatively modest. He could use this to complement his more flexible financial resources which already existed elsewhere.

The evidence is also strongly suggestive, that by advising him to transfer, Mr B could potentially go beyond withdrawing just the 25% tax-free cash element of his transferred pension. I say this because the remainder of Mr B's transferred DB scheme was left in 'cash' in the SIPP, something PAL promoted as part of its recommendation to transfer. PAL said at the point of advice that leaving the residual fund in cash operated like *"a bank account inside your pension"*. So, the strong inference here, in my view, was that more withdrawals were imminent and that, in all likelihood, Mr B would deplete the remaining money that he'd transferred from his deferred DB scheme.

Flexibility generally sounds good. So, I'm sure the adviser telling Mr B that he could more flexibly manage his financial affairs probably sounded very positive, and indeed, was in accordance with Mr B's preconceived ideas when he went out to seek advice in the first place. However, based on the evidence I've seen from this complaint, there was no real case made out for using his main pension savings – the deferred DB scheme - to fund two objectives that could have been either largely funded from elsewhere or moderately delayed. There was no evidence that the new glamping concern had a business plan or had been properly costed or was at a stage where specific figures could be committed to it. And because the remaining sum was effectively held in a cash fund I think this element would have at best never seen any growth - the very low interest rate environment coupled with the SIPP fees charged would likely see the balance gradually reduce.

- *Other issues*

PAL and Mr B discussed the death benefits in his deferred DB scheme. I think from the evidence I've seen, a personal pension arrangement such as a SIPP was portrayed as being better owing to the retention of the full value of Mr B's funds if he died. Also, because the DB annual pension was relatively small, Mr B clearly wasn't impressed about the limited amount Mrs B might get upon his death.

Most people would like their loved ones to be taken care of when they die and the lump sum death benefits on offer here through a SIPP were probably made to look like an attractive feature to Mr B as Mrs B might have inherited the SIPP value tax-free in such circumstances. However, Mr B was only 58 and still in good health, and an obvious drawback with a SIPP's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. In this case, Mr B was clearly intending to use his transferred funds to pay back a loan and then continue to invest in his glamping business. And as I've also explained above, I think there was every reason to think that the remaining sum in the SIPP "bank account" was there for Mr B simply to spend – there seems no other credible reason to justify simply leaving it as 'cash'. So I think there was a real risk that Mrs B could have been left without any death benefits from the SIPP, whereas the DB scheme at least would have seen her receive a small, guaranteed income for the rest of her life if Mr B had passed first.

Finally, PAL referred me to what it says was a similar complaint case, which it says contains very similar features to this one and which was not upheld by the Financial Ombudsman Service. PAL says I should do the same here. Whilst I've looked at the case PAL has referred to, the fact remains that it contained material differences to Mr B's complaint and, as PAL is probably aware, the Financial Ombudsman Service decides each complaint it receives on its own individual merits. It would be neither fair nor reasonable for me to base my final decision on Mr B's case on anything other than the relevant evidence specific to his complaint.

<u>*Summary*</u>

I've considered all the issues in this case with great care.

I acknowledge that Mr B probably went to PAL with preconceived ideas about what he wanted to do. But the evidence shows Mr B's objectives were somewhat unclear in that they differed from what he'd told a previous IFA very recently. He then told PAL he wanted to repay a small family loan and invest more in an expanded glamping business and wondered if his deferred DB pension could be transferred to facilitate these aims.

In my view, PAL did, at best, a very limited job at properly assessing Mr and Mrs B's overall financial assets and income. It seems highly likely to me that Mr B's stated objectives could have been met without the need to irreversibly transfer away from his DB scheme. On the other hand, Mr B had very little pension provision and virtually no liquid savings. The adviser failed to clarify Mr B's intended pathway to, and at, retirement. I don't think the adviser could have known what his financial needs in retirement would be and how he was going to fund them.

PAL bases its defence of what happened on it being Mr B himself who wanted to access cash from this deferred DB scheme. Further, PAL refers to various warnings Mr B was given and that he signed some forms to say he understood the risks. I also recognise that PAL gave Mr B a certain amount of information and even weighed up a number of different options for him. However, as I've said, Mr B wasn't a pensions or investment expert. He paid PAL for its regulated financial advice. So, the adviser's role wasn't to simply follow Mr B's lead, it was to really understand what he needed and recommend what was in his best interests.

Despite the commentary and warnings which PAL says accompanied its advice, it nonetheless recommended to Mr B that he should transfer away. It further recommended that he should move to a specific SIPP, remove 25% as tax-free cash and then invest the remainder in something that would have seen no growth. This meant that upon transferring away from a guaranteed DB scheme, Mr B faced an uncertain retirement.

In my view therefore, PAL's advice was unsuitable. What Mr B was irreversibly giving up was a guaranteed pension. Although relatively small, this pension clearly made up an important minority of his security in retirement, providing as it did, a pension for the rest of his life. By transferring this to a SIPP arrangement, the evidence shows Mr B was likely to obtain lower retirement benefits and I don't think there were any other particular reasons which justified the transfer and outweighed this.

I've considered whether, even if properly advised to remain in the DB scheme, Mr B would have still insisted on leaving. However, on balance I think if the issues I've raised above had been genuinely and clearly communicated to Mr B, he would have come to the conclusion that transferring wasn't in his best interests.

In light of the above, I think PAL should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be for PAL to put Mr B, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr B would have most likely remained in the deferred DB pension scheme if suitable advice had been given.

PAL must therefore now undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, PAL should:

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - the redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest the redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts PAL's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr B for the calculation, even if he ultimately decides not to have any of the redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid to Mr B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PAL may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

As I don't think transferring was right for Mr B, I don't need to go on to say any more about the suitability of the particular investment fund used in the SIPP. That's because if advised correctly, the transfer should have not taken place at all.

Where I uphold a complaint, I can award fair compensation of up to £190,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £190,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I am upholding this complaint and require Pensions and Annuities Ltd to calculate and if appropriate pay Mr B the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Pensions and Annuities Ltd pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on Pensions and Annuities Ltd.

My recommendation would not be binding. Further, it’s unlikely that Mr B can accept my decision and go to court to ask for the balance. Mr B may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 4 December 2024.

Michael Campbell
Ombudsman