DRN-5390823

Financial Ombudsman Service

The complaint

Mr K complains that the recommendations H V Financial Planning Ltd ('HV') took in relation to his pension and investments was not in his best interests. He says his investments have not achieved the targeted growth and believes he's been placed in the wrong funds. Mr K also says no annual review meetings have taken place and there's been no standardised reporting of performance.

Mr K has two separate complaints dealing with these matters. This complaint is about the advice given by HV to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension arrangement. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

The following is a summary of the key events and background leading up to this complaint.

Mr K first met with HV to discuss his retirement planning needs in 2016. HV completed a fact-find to gather information about Mr K's circumstances and objectives. And it also carried out an assessment of Mr K's attitude to risk, which it deemed to be 7 on a scale of 1-10 or 'highest medium' for the purposes of his pension.

Things didn't progress at this stage. But in May 2017, Mr K met with HV again to discuss matters and it completed an updated fact-find. The key details recorded here are as follows:

- Mr K was 46 years old, married, working and in good health.
- He and his wife jointly owned their home, which was mortgaged on a repayment basis.
- They owned a buy-to-let property, which was also mortgaged on an interest-only basis – the outstanding balance was around £245,000. This produced a monthly income of around £1,700.
- They had cash savings of around £75,000 and the fact-find completed in 2016 recorded that they each held share and equity-based investments.
- Mr K's objectives were to retire at 65 with a joint income need of around £50,000, to preserve his pension for his children and to extract tax-free cash to use for his children and to have sufficient retirement income.
- Mr K held two DB occupational pension schemes and he held a Self-Invested Personal Pension ('SIPP') valued at around £11,000, which he was looking to add to. His wife also held a number of existing pensions.

In January 2017, HV recommended that Mr K make a lump sum contribution to his existing SIPP of £11,000. And then in a report dated 6 June 2017, HV advised Mr K to transfer one of his DB pension scheme benefits into a SIPP. HV recommended the proceeds be invested in an investment portfolio with a 65% equity content with the remaining 35% invested in bonds, gilts and commercial property-based funds. The report noted that the expected return from a portfolio of this nature was 5% a year.

The suitability report provided some extra detail to the fact-find document. Of relevance here is that Mr K had two dependent children, he and his wife's equity-based investments were value at around £80,000 and based on HV's projections of a joint income need at 65 of around £72,000 (around £10,000 less if savings were removed), this could be met from his and his wife's existing pension schemes, the expected income from Mr K's SIPP assuming he maintained an £11,000 a year contribution, and their rental income. The report noted that at 67 he and his wife would each receive their state pensions.

In summary HV's reasons for this recommendation were to meet Mr K's need for flexibility and the ability to access funds at 55 and to pass on his pension benefits to his children upon his death. HV noted that based on the critical yield Mr K's DB scheme benefits could be replicated via the SIPP and that the DB scheme benefits in question were in excess of Mr Ks' required retirement income and seen as surplus income.

In 2023, Mr K complained to HV about the performance of his investments. But the same day, he withdrew his complaint and HV sent him a letter confirming he didn't want to proceed. But in 2024, Mr K asked HV to re-open his complaint because he said he'd only now understood the level of underperformance of his investments while it was managing them, and so he wanted to complain about the advice he received.

HV said Mr K had brought his complaint out of time because it said in its closure letter in 2023 that he had six-months to come back to them if he wanted it re-opened. And it said it didn't consent to us considering the matter.

An ombudsman colleague ultimately decided that Mr K's complaint was not out of time and so it was one we could consider. Following this, HV issued its final response to the complaint in which it said it didn't uphold it. In summary it said the advice was suitable because it met Mr K's objectives for his retirement and estate planning. It said his DB pension wasn't his only source of secure retirement income and he wanted to invest to try and achieve a higher level of benefit at retirement. It said the SIPP the pension was transferred into also met his needs.

One of our investigator's considered the matter and they upheld it. In summary they said the advice to transfer wasn't suitable. They said it wasn't clear why Mr K needed flexibility with his pension when he was still 19 years away from retirement. They said any flexibility he might have wanted could be achieved by using his SIPP he was contributing to. They said Mr K's income needs would have been met by him retaining his DB scheme benefits offering him peace of mind – he didn't need to take any risk to improve on the benefits. They said they weren't persuaded that lump sum death benefits was a reason to transfer when he was likely to receive lower benefits overall as a result of transferring – this shouldn't have been prioritised over his own financial benefit. And they said they didn't think the transfer was financially viable given the critical yield and Mr K's medium to high attitude to risk.

HV disagreed. It said Mr K was a high-risk investor with extensive knowledge and experience of investing. It said Mr K actively analysed the advantages and disadvantages of the recommendation demonstrating he understood things before going ahead. It said Mr K had a significant need for life cover with a young family and due to his health, he couldn't obtain traditional life cover.
It said Mr K's DB scheme wasn't the only source of guaranteed income, he had another DB scheme and rental income which provided further financial stability. It questioned the value of the critical yield because Mr K's priority was to secure higher death benefits, so the Hurdle Rate was a more relevant measure. It said this all demonstrated the transfer was in Mr K's best interests.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

What I've decided – and why

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

I've 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'). And 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 HV'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator. My reasons are set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, HV should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr K's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

HV carried out a transfer value analysis report (TVAS) as required by the regulator, showing how much Mr K's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme. This is known as the critical yield.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

Mr K was 46 at the time of the advice and wanted to retire at 65, although reference was made to him possibly wanting to access benefits at 55. HV produced critical yields based on these two ages. The critical yield required to match Mr K's benefits at age 55 was 10.16% if he took a full pension and 8.96% if he took tax-free cash and a reduced pension. For age 65 the figures were 5.61% and 5.13%, respectively.

This compares with the discount rate of 4.4% per year for 18 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr K's attitude to risk and also the term to retirement. I can see that HV says Mr K's attitude to risk was high. But importantly, while that was Mr K's overall assessed profile, the suitability report said that following a discussion about the level of risk Mr K wanted to take for his retirement goal, it was decided a 'medium to high' approach was suitable (this was also reflected in the earlier attitude to risk assessment HV carried out in 2016.) And a portfolio comprised of 65% equities with an expected return of 5% a year net was deemed suitable for this approach.

In my view, there would be little point in Mr K giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 5.13% based on retirement at age 65 (they were significantly higher for early retirement) taking all of the above into account, I think the critical yield was highly unlikely to be achieved consistently. Importantly, this was higher than the expected or targeted return the recommended investment portfolio was aiming to achieve, and it was above both the discount rate and the regulator's middle projection rate. And once again, the critical yield was the return needed each year to retirement just to stand still – Mr K would need to achieve returns in excess of 5.13% consistently to be better off at retirement based on retiring at 65.

So, I think Mr K was likely to receive benefits of a materially lower overall value than the DB scheme at retirement, as a result of transferring and investing in line with the recommended approach.

I can see HV says the Hurdle Rate was a more appropriate measure because death benefits was the priority. The Hurdle Rate is the return needed to purchase an annuity to provide benefits equal to the value of the scheme but assuming no spouse's pension, no increase in payments and no guarantee. In this case the rate was 2.58% based on a reduced pension with tax-free cash. I'll explain below why I don't think the transfer was suitable based on prioritising death benefits. And I think the critical yield as a measure goes a long way to demonstrate the value of the benefits Mr K was considering giving up, and is why the regulator required firms, like HV, to produce them as part of the transfer analysis. To only focus on the Hurdle Rate, in my view downplays the importance of the critical yield.

Overall, based on financial viability alone, I think a transfer out of the DB scheme was not in Mr K's best interests. But financial viability isn't the only consideration when giving transfer advice. There might be other considerations, as HV has argued, which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

The suitability report referred to Mr K wanting to ensure he had flexibility in how he withdrew his pension funds and how much. It said this was important because, if necessary, he might want to access larger sums in the early part of his retirement.

I'm mindful here that Mr K was around 19 years away from his expected retirement and still nine years away from when he could access his pension benefits, so I don't think Mr K's retirement plans could reasonably be fully understood at this stage. And the language used in the suitability report about accessing funds – it said 'if necessary' – supports that. It is the not the language which in my view describes a firm plan or need for flexibility. I think the reference to flexibility here was simply describing a feature or consequence of transferring to a personal pension arrangement.

Much of the flexibility HV said Mr K wanted was access to a larger cash lump sum from age 55 without drawing an income. It said Mr K had several lump sum objectives from helping his children on the property ladder and paying for weddings and giving them a good start in life, as well as having the option of using some of the monies towards paying off his interest only mortgage on his investment property in case he couldn't refinance beyond age 65.

Firstly, Mr K couldn't possibly know at this stage when, or if, his children might get married or want to buy a property, so know when these funds might be needed. And the amounts needed for these things weren't quantified. I also don't consider these things speak to a strong or genuine need to access his tax-free cash earlier than the normal scheme retirement age and leave the funds invested until a later date. Again, much of the language used in the suitability report around Mr K's lump sum objectives referred to 'if required,' 'if necessary' or 'having the option.' These were not firm objectives that in my view demonstrate a need for flexibility and so demonstrate a transfer was in Mr K's best interests.

Secondly and more importantly, the suitability letter said that Mr K would be saving towards these objectives through the use of additional savings in ISAs and using further contributions to his pension – as I set out earlier on, Mr K intended to contribute around £11,000 a year to his SIPP. So, it appears these objectives were already being addressed and catered for, and that Mr K's DB pension benefits didn't need to be transferred at this stage to achieve things.

So, it seems Mr K already had a degree of flexibility available to him – if that's what he ultimately required. He had the ability to access lump sums using his ISAs (Mr K and his wife already had a not insignificant amount invested here) and importantly he could use his SIPP flexibly in the future. Mr K also had the option of taking a lump sum and a reduced pension from his DB scheme. So, I think retaining his DB scheme benefits and using his other means available to him could reasonably provide him with the flexibility and lump sum objectives he might need in the future – if indeed that was what he required.

Turning to Mr K's income need. HV says that Mr K's DB scheme was surplus to requirements as a reason to justify the transfer.

HV's analysis showed that Mr K would be entitled to an annual pension of around £10,200 from his DB scheme plus a cash lump sum of around £27,000 at age 65. At 65, jointly Mr K and his wife's combined pension income was forecast to be just over £46,000 a year. HV said that its cash flow projections showed that they'd need just over £72,000 a year at 65, which would be more than met when the rental income of around £30,000 was included. And this income figure included an allowance for Mr K and his wife to save money. An expenditure figure of closer to £62,000 was deemed the basic expenditure amount required at 65.

On the basis that Mr K and his wife's joint income needs could be met in retirement by retaining his DB scheme benefits, it's unclear to me why it was necessary or appropriate for Mr K to put that at risk by transferring out. Mr K's DB scheme provided a solid foundation, a guaranteed and escalating income for life. Mr K had property income, which HV has described as providing further financial stability. But this couldn't reasonably be seen as guaranteed. Mr K also had a significant mortgage debt against the property. If Mr K's rental income did cease or dry up for a period, by retaining his DB pension, Mr K could be secure in the knowledge that his joint retirement income needs could still be met. Removing the rental income, at 65 Mr K would have a shortfall until his and his wife's state pensions would be payable. But I think this could easily be met from both the cash lump sums their combined pensions offered and their other means.

In my view, the focus of Mr K's investment risk taking ought reasonably to have been focused on building Mr K's SIPP funds to supplement the joint retirement income need, leaving his guaranteed DB scheme pension in place to provide him with security in retirement.

Taking all of this into account, I haven't seen anything to support that Mr K had a genuine need for flexibility in his retirement benefits at the time of the advice. I think it was simply a feature or a consequence of transferring to a personal arrangement. I also think it was too soon to make any kind of decision about transferring out of the DB schemes in favour of future flexibility given the likely impact to Mr K's retirement benefits. Mr K's retirement income needs could also be met by retaining his DB scheme benefits. So, I don't think it was a suitable recommendation for Mr K to give up his guaranteed benefits when he did. And if Mr K later had reason to transfer out of his DB scheme, he could have done so closer to retirement.

Death benefits

The primary reason it appears HV recommended the transfer was to meet Mr K's objective of wanting to provide lump sum death benefits and to leave his pension to his family / children. HV has said that the transfer provided valuable death benefits, which Mr K had a strong need for given he had a young family. It has also said that, because of medical reasons, traditional life cover wasn't available to Mr K as an alternative.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely an attractive feature to Mr K. But whilst I appreciate death benefits are important to consumers, and Mr K might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr K about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement, not as a legacy planning tool.

It appears that although for medical reasons it wasn't possible to obtain traditional life cover for Mr K as an alternative and/or at a reasonable cost, Mr K was otherwise in good health. So, I'm not persuaded that Mr K's health status at the time meant it was suitable on this basis alone to transfer to take advantage of lump sum death benefits. It doesn't appear Mr K's life expectancy, for example, was significantly limited.

I'm also mindful that, while HV says Mr K had a strong need for death benefits, the wider evidence HV has provided around the advice it provided to him over the relevant period, shows that Mr K had existing life cover of £800,000. And in a report HV produced in January 2017, it said that based on Mr K's income, this amount was in excess of its usual method for calculating an appropriate level of life cover. So, while Mr K might have wanted to make further provision, I'm not persuaded the need was as great as HV has argued was the case to justify the transfer.

I think the spouse's / dependent's pension of 53% provided by Mr K's DB scheme would have been useful to his family if Mr K predeceased them. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. So, given Mr K's recorded good health, there was every possibility he would live a long life, which would mean he'd need his pension to last for many years. And as a result, the likelihood existed that the fund would be depleted over time and so there would not be a large sum left to pass on anyway.

But in any event, I think HV should not have encouraged Mr K to prioritise the potential for higher death benefits through a personal pension arrangement over his security in retirement. And I don't think a transfer to achieve different death benefits justified the likely overall decrease of retirement benefits for Mr K.

Suitability of investments

HV recommended that Mr K invest his SIPP in a portfolio, which it deemed matched his attitude to risk. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr K, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr K should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility and the potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr K. But HV wasn't there to just transact what Mr K might have thought he wanted. The adviser's role was to really understand what Mr K needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr K was suitable. He was giving up a guaranteed, risk-free and increasing income, which when combined with his and his wife's other provision was demonstrated to meet their retirement income needs. So, there was no need in my view to risk that. By transferring, Mr K was likely to obtain lower retirement benefits overall, and in my view, there were no other particular reasons which would justify a transfer and outweigh this. I don't think Mr K should have been advised to transfer out of the scheme to have the ability to access his pension flexibly when his retirement was many years away and it wasn't clear if, and when he might want access to lump sums. I also think the potential for higher or different death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think HV should have advised Mr K to remain in his DB scheme.

Of course, I have to consider whether Mr K would have gone ahead anyway, against HV's advice.

I've considered this carefully, but I don't think that Mr K would have insisted on transferring out of the DB scheme, against HV's advice. While Mr K clearly had some existing knowledge and experience of investing, I'm not persuaded he was an experienced investor such that he possessed the requisite skill, knowledge, and confidence to go against the advice he was given.

I can see HV says that Mr K actively analysed the advantages and disadvantages of transferring and so understood the risks involved and what he was doing. And I can see the suitability report referred to these. But ultimately HV recommended he transfer. It wasn't for Mr K to work out and decide what was in his best interests – that was HV's role here.
I see no reason why Mr K wouldn't have trusted the advice he was given. So, I think if HV

had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

I'm not persuaded that any concerns Mr K had about his death benefits were so great that he would have insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests. If HV had explained that Mr K could meet all of his objectives without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr K would have insisted on transferring out of the DB scheme.

In light of the above, I think HV should compensate Mr K for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

Putting things right

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

HV must therefore 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.

For clarity, Mr K has not yet retired, and he has no plans to do so at present.
So, 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 K'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, HV should:

- calculate and offer Mr K redress as a cash lump sum payment,
- explain to Mr K before starting the redress calculation that:
  - their 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 their redress prudently is to use it to augment their DC pension

- offer to calculate how much of any redress Mr K receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr K accepts HV's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr K for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr K's end of year tax position.

Redress paid directly to Mr K as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), HV may make a notional deduction to allow for income tax that would otherwise have been paid. It seems reasonable to assume that Mr K's likely income tax rate in retirement will be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

My final decision

For the reasons above, I've decided to uphold this complaint, and I instruct H V Financial Planning Ltd to put things right in line with the approach set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 June 2025.
Paul Featherstone
Ombudsman