complaint

Mr J is unhappy with the advice to transfer the benefits he held in his former employer's pension scheme to a personal pension arrangement with pension provider A. Mr J is also unhappy about the subsequent advice to transfer his benefits from pension provider A to pension provider B . Mr J has also complained that he was not made aware that his pension income could change.

background

Mr J wrote to Moneywise IFA Ltd (Moneywise) in March 2006 asking for advice on how he could pay off his debts. He had outstanding credit card balances of over £30,000 and had to pay a further capital gains tax bill of over £20,000 following the recent sale of two investment properties. The tax bill was due to be paid in January 2007.

At the time of sale Mr J's relevant circumstances were recorded as follows:

- He was 58 years old, married and in good health.
- He had outstanding interest only mortgages of £232,500.
- He was employed with annual earnings of £23,000.
- He had no other savings or investments.
- He had worked for his previous employer (through which his occupational pension benefits were accrued) for over 20 years – ceasing in 2003.

Mr J also owned a number of buy to let properties.

A representative of Moneywise wrote to Mr J in June 2006 to set out the different options available. Mr J's objective was recorded as being to take as much cash from his pension arrangements as possible in order to repay his debts and his tax bill.

The letter from the business representative stated that Mr J could take the benefits from his former employer's occupational pension scheme. It said that this would provide Mr J with a tax free lump sum of £30,929.80 along with a gross index-linked pension of £10,309.93 per annum from age 60. If the benefits were taken early then they would be reduced.

The letter said that if Mr J wanted to receive a higher tax free lump sum than under the former scheme he could transfer out of the employer's pension scheme to a personal pension. Under the personal pension arrangement the maximum tax free lump sum would be increased to around £60,000. Mr J could then use this to clear his credit card balances and to put aside funds to meet the capital gains tax bill that was due to be paid before the end of January 2007. At that time the transfer amount available from the employer's pension scheme was shown as being over £240,000.

In June 2006 Mr J signed a form to confirm that he wished to proceed with the recommendation to transfer to a drawdown plan with pension provider A. The benefits were transferred in July 2006. Mr J initially withdrew a tax free lump sum of over £35,000 and the remaining monies were initially invested into the deposit fund. In September 2006 the funds remaining were invested into a variety of different funds.

In October 2006, the business stated that Mr J wanted to take the remainder of the available tax free lump sum from the policy. It also noted that Mr J wanted to take the maximum

available income of nearly £13,000 per annum from the policy as he had given up work early.

The letter from the business stated that Mr J could purchase an annuity of £7,757 per annum but that as a result he would lose control of his funds. Under the drawdown arrangement income of between £0 and £12,976.81 per annum could be taken. The letter from the business warned that taking the maximum income level would lead to the depletion of the fund and could lead to a much lower pension in the future. It was agreed that the position would be reviewed in two years time when Mr J's wife would start drawing her pension.

Mr J signed a statement to say that he had received and understood the statements warning of taking maximum income but that he still wanted to go ahead.

In July 2009 the business noted that the funds had fallen in value in the previous year when the stock market crashed. His income withdrawals continued at the maximum level of just over £13,000 per annum. The letter referred to an investment in a property fund of £6,020 that had been suspended. The transfer value in July 2009 of the drawdown plan was noted as approximately £121,000.

In July 2009, the business recommended that Mr J transfer to a new SIPP with pension provider B as it considered that a move to a discretionary fund management basis would be beneficial. The policy with pension provider A was then transferred to a SIPP with pension provider B. Mr J continued to take the maximum available income from his pension drawdown arrangement.

In 2011, the income that Mr J was allowed to take was reviewed and it decreased to the new maximum of £6,746.27 per annum.

Mr J complained to Moneywise in November 2011 about the advice he had received. He asked Moneywise to confirm the reasons for the advice he had been given and made the following relevant comments:

- He was concerned that the value of his pension fund had reduced in such a short period of time.
- The Government Actuary's Department (GAD) limits that applied to his withdrawals were never explained.
- He wondered whether the advice provided by Moneywise was in his best interests – especially the advice to transfer from his former employer's pension scheme to pension provider A.
- The advice provided had caused him to suffer a financial loss and he was now *'in limbo'* because he held a fund in his SIPP that was suspended.

Mr J used the remaining funds in the SIPP to purchase an annuity in April 2012. This was a with profits annuity with a required rate of return of 5.05%. The annuity was payable monthly in advance, with a 100% spouse's pension and no guarantee period.

Moneywise rejected the complaint about the advice that it had given. However it did make an offer to purchase a holding in one of the funds held within Mr J's SIPP that was suspended. This enabled Mr J to purchase an annuity at that time. It also refunded all fees that Mr J had paid since November 2011.

This offer was made without prejudice to Moneywise's *'overall position on liability'*.

Mr J accepted this offer in June 2012.

In November 2012 the adjudicator wrote to the business concluding that Mr J's complaint should be upheld. The adjudicator was of the opinion that Moneywise should have advised Mr J to take the benefits from his employer's pension scheme in 2006 – rather than advising him to transfer those benefits to a personal pension with pension provider A.

Moneywise did not agree with the adjudicator's assessment arguing that:

- Mr J's income, as recorded in the fact find from November 2005, was a total of £52,400 per annum – not £23,000 as recorded by the adjudicator.
- It was aware that Mr J could take his benefits earlier than age 60. It accepted that this was not pointed out in the suitability letter. It noted that the reduction applied meant that the lump sum available would be £28,919 which was not a considerable amount in the circumstances when looking at the lump sum in isolation.
- Mr J didn't want to take income from the previous employer's pension scheme because his then income was more than sufficient and he wanted to retain control of his pension funds and to keep his monies invested.
- It did not consider that the adjudicator's suggestion that Mr J could have entered into a repayment plan with his credit card providers was satisfactory because Mr J was a regular purchaser of properties. A repayment plan would have affected his credit history which would have had an impact on any future remortgaging and borrowing requirements. Mr J also required a large tax-free cash lump sum and did not have a need for further income at the time.
- Mr J's long term plans were to sell his buy-to-let properties in order to provide an additional income in retirement if required.

Mr J agreed with the adjudicator's conclusions stating:

- He had no idea that he could have had a comparable income from his previous employer's pension scheme. This income was index-linked and therefore valuable. Moneywise had advised him to transfer away from the previous employer's pension scheme as he wasn't allowed to take a pension until age 60. He wondered whether the representative was qualified to advise on pensions.
- He had not heard of GAD rates and didn't know that his pension income could halve as it had. GAD rates were not explained to him by Moneywise.
- He was persuaded that a later transfer from pension provider A to pension provider B (who he presumed was part of Moneywise) was in his best interests. He queried whether this transfer was recommended in order to give Moneywise commission.
- A representative of Moneywise had not explained whether the pension could be transferred to his children. If this had been explained then they would have purchased an annuity while rates were much higher.
- He was unable to purchase an annuity in 2011 because his funds were suspended.
- He was in a mess when he approached Moneywise for advice. Most of his properties had been sold. He was seeking advice because of his debt position.
- The information in the fact-find document from November 2005 was irrelevant. It was not until March 2006 that he realised he had a large tax bill. Also the income from the buy-to-let properties held had dried up as almost all of them had been sold.

In my provisional decision I concluded that the advice provided to Mr J to transfer his deferred pension benefits from his former employer's scheme was appropriate given Mr J's urgent need to raise cash to pay off his credit card bills and the tax that he had to pay in the following January. However I considered that Mr J should have been advised to take out an annuity – rather than entering into a drawdown arrangement.

Mr J responded saying that:

- He did not understand the findings or whether the compensation proposed in my provisional decision was more beneficial than that proposed by the adjudicator.
- Since July 2011 he had lost an approximate amount of £500 per month. He queried whether the final calculation of redress due would compensate him for that or whether it was included in the future pension calculation.
- He had received financial advice when purchasing the annuity. He was not pensions literate and therefore relied totally on the advice he received.

Moneywise made the following summarised comments:

- Mr J's annual income had been incorrectly recorded as being £23,000 in its recommendation letter of 13 June 2006. It provided a copy of an application form from November 2005 in which Mr J had recorded his various sources of income. This showed that his gross taxable income (including net rental income) was £39,524. His wife's income was recorded as being £32,000.
- In July 2006 Mr J's income was made up of a basic wage of £28,000 per annum along with regular overtime/allowances of £4,000 per annum. This didn't include his wife's salary which had been recorded as £32,000 in late 2005.
- Its records showed that Mr J still owned buy-to-let properties at the time of advice. It had provided advice regarding a remortgage on one property in October 2006 (after the pension transfer). It had also previously arranged a remortgage in 2003 over a nine year term on another property so it was likely that he still owned that property. The representative from the time recalled that Mr J had also let out his main property.
- The income he was receiving demonstrated that Mr J had no requirement for additional income at the time of the initial advice to transfer into drawdown.
- Mr J had approached Moneywise in October 2006 and requested that the remainder of his tax-free cash be paid and that the maximum level of income should be paid. He had given up work. The fact that he might give up work had not been disclosed as an objective at the time of the initial advice.
- The suitability letter issued to Mr J at the time quoted the figure that Mr J could receive as an annuity. The adviser also recalls discussing the various options available to Mr J – including taking an annuity. But Mr J didn't want to lose control of the fund.
- Moneywise had warned Mr J that he shouldn't take the maximum available income from the fund. Its documentation demonstrated that purchasing an annuity was suggested to Mr J, as well as taking a lower level of income, but that the client had insisted on taking the maximum available income.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I remain of the view as set out in my provisional decision.

I am aware that whilst Mr J still retained some buy-to-let properties at the time of advice. He had significant debts. It was established by Moneywise at the time of advice that he had no way of repaying them other than to access his pension provision before his normal retirement date. In view of the overwhelming desire to get the maximum tax free cash that he could I do not consider that the advice to transfer was inappropriate. It appears that this was the only way in which Mr J could repay his debts completely at that point.

Moneywise has said that Mr J had an income at the time of advice that was higher than the amount that had been recorded in the fact find. It has also referred to Mrs J's wife's salary at the time. In my opinion however even if I was to use the revised figures provided by Moneywise the advice for Mr J to enter into a drawdown arrangement, rather than purchase an annuity, was unsuitable.

The only pension provision that Mr J had was held in his former employer's scheme. It is recorded that he had no other savings or investments and had significant financial liabilities. Transferring to a drawdown arrangement meant that Mr J's pension provision would be subject to continued investment risk and charges. I do not consider that Mr J had the capacity to take on this risk with his sole pension provision. In my opinion the business should have recommended that Mr J take the maximum tax free lump sum and then use the balance to secure an annuity. This would have involved no financial risk to Mr J.

I note that Mr J elected to start taking the maximum available income from the drawdown policy in October 2006 – approximately three months after the transfer. Moneywise has said that Mr J had not disclosed that he might give up work at the time of the initial advice to transfer. But the suitability report from June 2006 said that Mr J *'may wish to commence taking an income in January 2007'*. It's my opinion that the appropriate advice was to recommend that Mr J purchase an annuity in July 2006 rather than entering into a drawdown arrangement. I do not consider that the flexibility of being able to take maximum income – and therefore depleting the fund – was an option that was suitable given Mr J's circumstances. Indeed I note that after the fund had been depleted Mr J complained to the business about the advice that he received.

I therefore consider that Moneywise should have advised Mr J to take out an annuity – rather than recommending he enter into a drawdown arrangement from which he took maximum income.

The Financial Ombudsman Service aims where possible to put an investor who has received poor advice into the position that they would have been in had appropriate advice been given. These calculations are complex and will compare the benefits that Mr J has received with those that he would have received and will take some time to complete. It is therefore not possible to quantify the loss at this stage.

The redress calculation is as set out in my provisional decision and will allow for the high levels of income taken from the drawdown arrangement originally and the fact the level of withdrawals fell following the review that was carried out.

my final decision

Where I uphold a complaint, I can make a money award requiring a financial business to pay compensation of up to £150,000, plus any interest and/or costs that I consider appropriate. If I consider that fair compensation exceeds £150,000, I may recommend the business to pay the balance.

determination and award:

I uphold the complaint.

I consider that fair compensation should be calculated as follows:

past loss / gain

1. Moneywise IFA Ltd should establish the total gross income that Mr J has received from his pension arrangements since outset to the date of settlement. This should include the income paid by both pension arrangements with pension provider A and pension provider B and the payments from his current annuity provider.

2. The lump sum remaining (after payment of tax free cash in 2006) of £182,279.51 would have provided a total gross annuity of £10,162.08 per annum from the outset. Based on this Moneywise should establish the total income that would have been paid up to the date of settlement.

   This is based on the best annuity rate of 5.575% that would have been available to Mr J at the time (source: Moneyfacts). The annuity basis selected was with a 100% spouse's pension and payable monthly in advance with no guaranteed period. This replicates the way in which Mr J elected to take his income when he later purchased the annuity with his current annuity provider.

3. The past gain / loss is (1) – (2). If there is a past loss then this should be paid to Mr J as a lump sum.

future loss

Mr J receives an income which is dependent on the performance of his current annuity provider's with-profits fund. Therefore, the future level of income payable cannot be predicted. As a result Moneywise should calculate any future loss suffered by Mr J as follows:

1. The current annuity provider has confirmed to this service that, should Mr J have converted this income on his policy anniversary of 10 April 2013 to a guaranteed annuity, then he would have received a level income of £4,233.12 per annum.

2. The annuity income that Mr J could have received had an annuity been recommended in July 2006 would have been £10,162.08 per annum.

3. There is therefore a future loss of income of £5,928.96 per annum with a 100% spouse's pension, no guaranteed period and payable monthly in advance.

4. The business should obtain the cost of securing the annuity in (3) with a competitive annuity provider on impaired life rates (if these are available).

5. The cost established in (4) should be reduced by any past gain that Mr J has experienced (if applicable).

6. Using the sum in (5) Moneywise IFA Ltd should establish the level of annual annuity that can be provided using a competitive current annuity rate (with a 100% spouse's pension, no guaranteed period and payable monthly in advance).

7. Moneywise IFA Ltd should set up the annuity in (6) for Mr J. It may be that Mr J is entitled to an impaired life annuity following the stroke that he suffered in January 2012. The level of annuity calculated in (6) can be set up as an impaired life annuity if available.

Mr and Mrs J should assist Moneywise IFA Ltd in completing any forms required in order to obtain a quote for an impaired life annuity.

If an annuity cannot be set up then Moneywise IFA Ltd should pay Mr J the amount under point (4) less any past gain as a lump sum net of notional tax of 20%. This represents the tax that Mr J would have paid on any annuity payments.

Moneywise should also make an immediate payment of £250 in respect of distress and inconvenience it has caused by the advice provided and its failure to respond to Mr J's complaint within a reasonable timeframe.

My decision is that Moneywise IFA Ltd should pay Mr J the amount produced by that calculation - up to a maximum of £150,000.

recommendation

If the amount produced by the calculation of fair compensation exceeds £150,000, I recommend that Moneywise IFA Ltd pays Mr J the balance.

This recommendation is not part of my determination or award. It does not bind Moneywise IFA Ltd.

Whether Mr J can accept my decision and go to court to ask for the balance is uncertain. Mr J may want to consider getting independent legal advice before deciding whether to accept this decision.

Adrian Hudson
ombudsman