Financial Ombudsman Service

complaint

Mr A has complained about the advice he received from Westminster Wealth Management LLP (WWM) to transfer his final salary pension scheme into a new Personal Pension Policy (PPP). He said that he was advised that he no option but to transfer his pension. Mr A also has concerns about being left without an adviser managing his investments for a period of time and his adviser gaining access to his pension accounts.

background

I issued a provisional decision on 9 October 2020. A copy is attached and forms part of this final decision. In the provisional decision I set out why I did not intend to uphold the complaint.

I have not received any further submissions from WWM.

Mr A did not accept the provisional decision. In summary he:

- Referred to the adjudicator informing him that the outcome of his complaint was unlikely to change if referred to an ombudsman.
- The critical yield used by WWM was overly optimistic and it would have been more reasonable to use the 'mid-point' of the relevant assumptions. The 7.1% rate is aggressive and highly unlikely to be achieved. Whilst his pension was with WWM it did not achieve this amount of growth.
- Does not agree with some of the findings that have been made about his understanding. He was only a pension trustee 'for a few months' and had no training or guidance – he resigned because it was far too complex for him tounderstand.
- He was pushed into making a decision to transfer without knowing what he was signing up to.

my findings

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

I appreciate that my findings will be disappointing for Mr A and that they are different than the adjudicator's. But that can be the result of an independent review. I have explained why I reached by findings in the provisional decision. As the adjudicator said before the complaint was referred to me, the complaint would be reviewed and a different decision could be reached. The fact she said it was unlikely does not mean that this does nothappen.

With respect to the assumed 'critical yield' or growth rate required, I did discuss that this was a significant rate to achieve but also commented that it was within the range of reasonable growth rates at the time. The fact that this was not achieved whilst Mr A was a client of WWM does not affect that. This is bearing in mind the evidence that indicates it was explained at the time that such rates were not guaranteed. I also said this was one factor to take into account – and discussed the other factors which affected the outcome on the complaint.

I did note what Mr A had said about his time as trustee and his level of understanding. I did not say that I assumed that Mr A had a high level of technical understanding. But I thought, on balance, that it was more likely that he could appreciate the material factors that applied to the transfer. That would include the growth rate to be achieve to equal benefits and the general nature of the guaranteed benefits being given up. Whilst I appreciate that Mr A has said he was pressurised into transferring, as I set out in the provision decision, the evidence does not support that or that Mr A could not make an informed decision has to whether to transfer or not.

My view of the complaint remains the same as set out in the provisional decision.

my final decision

I do not uphold the complaint or make any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 December 2020.

David Bird
ombudsman

copy provisional decision

complaint

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background

Mr A met with WWM in January 2015. A 'Fact Find' was completed which noted he was 44, single, and employed as an HR Director with a gross annual salary of £75,000. He also received around £3,000 net rental income per month from his buy-to-let properties.

Mr A held retained benefits within a previous employer's final salary (defined benefit) occupational pension scheme (OPS).

A recommendation was made by the business to transfer his final salary benefits to a new PPP, and Mr A accepted this recommendation, and completed application forms to proceed.

In August 2017 Mr A asked to meet with a new adviser from WWM, and chased up this request in October 2017. Shortly thereafter he complained to the business.

In his complaint, Mr A said that he felt he had been forcibly persuaded to transfer his final salary pension benefits to a new PPP. He also complained that his former adviser had used his online login details to access his other pension accounts, and that the business had taken too long to assign a new adviser to him.

WWM rejected his complaint. They said that the recommendation to transfer his pension was suitable and they did not believe he had been coerced into doing so.

Mr A then brought his complaint to this service.

An adjudicator considered the complaint and recommended it be upheld. She said that in her opinion the recommendation to transfer Mr A's final salary benefits to a PPP was unsuitable. She also believed that WWM had not brought sufficient attention to the Pension Protection Fund (PPF), which would likely pay pension benefits if the scheme were to wind up.

WWM did not agree with the adjudicator. It maintained that the advice to transfer was suitable. In summary it said:

- Mr A's knowledge was relevant and he was aware of the risks of transferring out of a defined benefit scheme. He acted as a trustee of a defined benefit scheme and so would be aware of the relevant factors and risks. This would include the protection if the pension scheme were wound up.

- The advice was suitable. It appreciated that Mr A had another money purchase pension schemes which he could access at 55. However Mr A had assets ofaround £1.3 million and a salary of £75,000. As the OPS pension was such a small part of his assets, it was not unreasonable for Mr A to look to better the amount he would receive from the scheme.

- Mr A was only to receive (a pension) of about £3,000 a year from the defined benefit scheme.

- Mr A preferred the freedom of being able to draw funds when he liked rather than receive a small amount each year.

- As Mr A was 44 his pension had plenty of time to grow and exceed the benefits provided under the previous scheme.

- It did not make comments about the OPS being wound up or any lack of security. The reasons for the transfer were as set out in the suability report – lack of flexibility of the OPS, lack of control and low growth rate.

- It disputes the use of the critical yield for judging pension performance. The point to consider is whether the advice was suitable based on the individual's attitude torisk.

- The Pension Protection Fund was brought to Mr A's attention.

- The OPS benefits were not 'guaranteed' and were affected by the deficit in the scheme, the fortunes of the company in a competitive market and the actions of the owner towards previous pension schemes.

The complaint has now been passed to me for review.

my provisional findings

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

As outlined in the adjudicator's decision, the Financial Conduct Authority (FCA) places the emphasis on the business to demonstrate why a transfer away from a final salary scheme is suitable. This is because the starting point for any advice in this area is that a transfer is likely to be *unsuitable.*

It's noted that the projected benefits for Mr A from the scheme were a pension of about £2,900 a year, paid from age 60 and payable for the remainder of his life. In lieu of this, the scheme offered a Cash Equivalent Transfer Value (CETV) of about £95,000, including an enhancement that was being offered by the scheme of about £24,000.

It's further noted that the scheme was significantly in deficit at the time, although the CETV paperwork states that it was not in wind up.

WWM issued a suitability report dated 19 January 2015 in which the adviser set out his recommendations. This recorded that Mr A was soon to be made redundant.

It was recorded that his main priority was:

"To review your pension provision and look at the opportunity presented by the retained benefits of your previous employer (OPS) *who are offering an enhanced transfer value. This*

has increased from £70,838 to £94,782, which is part of the (OPS) *recovery plan to reduce on going liabilities in the future."*

It was recorded that Mr A had about £250,000 in other pensions, £80,000 in various bank accounts and a buy-to-let property portfolio, worth £1.2 million (with mortgages of about £770,000). He was recorded as having a balanced attitude to risk (6 on a scale of 1 to 10). The

adviser's recommendation was:

"*We discussed the various ways you could achieve your present objectives as outlined above and the fact that transfers from defined benefits schemes are generally not considered to be in the best interests of members. I recommend that you consider a transfer of benefits from the* (OPS) *to a Personal Pension with Aviva Wrap."*

Options were then discussed:

- *"Leave the plan where it is with* (OPS) *- I would dismiss due to the lack of flexibility and control of your investments and the anticipated growth rate.*
- *Transfer the scheme to a section 32 buyout bond, this is similar to a Personal Pension Policy. However, it differs slightly as it is designed to have the same Inland Revenue rules as a company pension although still have the individual control like a personal plan. The main reason for using one of these policies is for protection of a tax free cash allocation that is greater than 25% - I would dismiss due to the lack of flexibility and control of your investments. Your tax free cash allocation is much smaller and remains under the company pension regime.*
- *Transfer the scheme into a Stakeholder plan - A stakeholder plan is a personal pension plan with a cap placed on charges but usually a limited fund range. I would dismiss due to the lack of fund selection, flexibility and control of yourinvestments.*
- *Transfer the plan into the personal pension/self-invested personal pension plan (SIPP) arena - I believe this option would be most appropriate, allowing you to take control of your pension investments and access to a huge variety of investments. You already hold investments with Aviva Wrap and you are eager to have all of your pensions and investments under one roof for ease of management."*

The adviser also said:

"I would recommend that you transfer your benefits to a Personal Pension Plan based on your current circumstances, and the results of the Transfer Value Analysis System (TVAS) report."

It is noted that Mr A did not have any dependants – so death benefits were not of primary importance.

It is then set out that:

"Security of Pension Funds
You have a major concern over the security of your pension as although you believe (employer) *to be financially secure the pension fund is only 63% funded and has a recovery plan in place. However, assuming the recovery plan is successful the pension is not*

scheduled to be self-sustaining until 2026. You feel uncomfortable about the future security of your pension fund.

Part of the recovery plan is to reduce on going liabilities on the fund for the future hence the enhanced cash equivalent transfer value from £70,838 to £94,782 now available."

And:

"Pension Protection Fund
Whilst you are a member of your final salary pension scheme, if your employer becomes insolvent and there are not enough assets in the pension scheme to cover the level of compensation that the Pension Protection Fund would provide, the Pension Protection Fund may compensate you in the following ways (provided the pension scheme is accepted by the Pension Protection Fund):

1. *If you have reached the normal pension age set by your pension scheme or, irrespective of age, are either already in receipt of a survivors' pension or a pension on the grounds of ill health, the Pension Protection Fund will generally pay a level of 100% compensation. This normally means a starting level of compensation equal to 100% of the pension in payment immediately before the assessment date. The part of this compensation that comes from pensionable service on or after 6 April 1997 will be increased each year in line with inflation capped at 2.5%. This could, potentially, result in a lower rate of increase than the scheme would have provided.*

2. *For the majority of people below their scheme's normal pension age the Pension Protection Fund will generally pay a 90% level of compensation. This generally means 90% of the pension accrued (including revaluation) immediately before the assessment date and revaluation in line with the increase in the inflation rate between the assessment date and the start of the compensation payments (revaluation is capped at 5% compound per annum for compensation relating to pensionable service prior to 6 April 2009, and capped at 2.5% compound per annum for compensation relating to pensionable service on or after 6 April 2009. This compensation is subject to an overall annual cap, which, for the year commencing 6 April 2012, equates to £30,644.86 at age 65 after the 90% has been applied (the cap is adjusted according to the age at which compensation comes into payment). Once compensation is in payment, the part that relates to pensionable service on or after 6 April 1997 will be increased each year in line with inflation, capped at 2.5%. Again, this could result in a lower rate of increase than the scheme would have provided."*

And:

"You should fully understand that on transferring your benefits from the (OPS) *the guarantees that you currently enjoy will cease to apply. Your benefits will instead become dependent upon the future investment returns achieved by the underlying investments selected within your Personal Pension Plan, and annuity rates at the time of retirement and could be less than under your employers former scheme. It may also not be possible to fully replicate the shape/type of benefits your former scheme promised due to lack of availability in the market place. This is acceptable to you given your attitude in relation to your pension."*

A note of certain risks is included:

"Risks

The Key Features Document also provides you with details of any risks and potential disadvantages associated with the contract recommended. We have previously discussed these, and I would like to highlight the following points:

- *Past performance is no guarantee of future returns.*
- *The price of units and the income from them can fall as well as rise.*
- *The value of a unit-linked investment is not guaranteed and on encashment you may not get back the full amount invested.*
- *This investment is intended as a long-term investment and under current HM Revenue & Customs' practice it is not normally possible to access the fund(s) prior to the age of 55.*
- *Your eventual income in retirement may be less than that which would have been available under your previous employer's arrangement.*
- *Following the transfer, unless you direct that the death benefits be paid to your own estate, it is possible that, should you die in the 2 years after the transfer, an Inheritance Tax liability could arise.*
- *In the event that your employment status changes, we would recommend that your retirement planning is reviewed."*

I note that there were email exchanges between WWM and Mr A. In one such email Mr A says that he might like the option of taking some pension benefits at age 55. In an email of 4 February 2015 the WWM adviser emailed Mr A and said:

"…Therefore, I am writing now to reiterate the most pertinent point of all: that should your transfer be effected on February 21, that you will be moving away from a scheme which provides a guaranteed level of income at retirement with no personal investment risk to a more flexible arrangement where you personally take on the investment risk."

And:

"Once the transfer is effected it may not be reversed (although you may move from the Aviva pension to another as confirmed above).

(Another WWM adviser) *and I are confident that what we are proposing is well suited to the circumstances and objectives you have described, particularly that you would like to retire at age 55; but I would recommend that if we have failed to fully satisfy you in respect of the pros and cons so that you feel you are making an informed decision to follow our advice that you should not proceed with this transfer.*

I am very happy to answer any questions that remain outstanding to allow you to make that informed decision."

Mr A does also refer in emails to feeling rushed and having to complete a lot of paperwork at a meeting. He asks for clarity on a few points including whether he can do his own 'trading'.

the suitability of the pension transfer

The FCA provides guidelines as to the considerations they expect when recommending transfers from final salary schemes, and one of these is the Critical Yield. As such, I do not agree with WWM's submissions that this is not an important factor to take into account when considering a transfer. The regulator requires that critical yield is taken into account and I agree that the rate at which a personal pension fund would have to increase to match the benefits given up, is an important factor. There would be little point in completing a critical yield calculation otherwise. This matter *is* relevant to the suitability of the advice.

The critical yield calculated in this case, which is the annual amount required by the new scheme to provide *equal* benefits to the transferring scheme, was calculated as 5.6%, assuming Mr A retired at age 56 and 7.1% if he was to take benefits at 60.

This matter was commented upon by WWM:

"The critical yield needed to match your existing benefits normal retirement at age 60 is 7.1 % pa, should you take full pension and 6.1 % pa should you take maximum tax free cash with a lower pension, which is the rate of annual growth which would need to be achieved by the Insurance Company to mirror the benefits being offered by your occupational scheme. This, in my opinion, is an achievable return, based on the term to retirement. You should be aware that there is no guarantee of future growth and it is possible that your eventual pension may be reduced under this route."

Whilst these are significant rates of annual positive performance to assume, at the time the FCA set reasonable assumed rates for future growth for pensions of 2% (low), 5% (mid) and 8% (high). So the rates of future growth to be achieved were not materially out of line with what could be reasonably expected.

But this is not the only consideration and the situation has to be looked at bearing in mind all the circumstances.

Mr A has said he approached WWM because he wanted to review the situation with his pensions – which included the OPS. I can see why this would be – Mr A was leaving his employer and his, then, OPS. That OPS was in a significant deficit situation. My understanding is that there was also wider comment about the employer's relationship with its pension scheme and its overall security (notwithstanding the protection provided by the PPF). So I can see why Mr A might have been concerned with the situation and why he might wish to consider transferring. As discussed, this is a concern that the advisers suitability report refers to. A transfer was also more attractive at that time because of the significant enhancement being offered by the pension scheme.

I believe the adviser's report did set out the material factors and that, broadly speaking, a given investment performance would be required by the new plan to match the benefits given up. It explained that guaranteed benefits were being given up. In terms of those benefits it was indicated that the dependant's benefits provide by the OPS were not an important factor as Mr A did not have any dependants and his partner did not need providing for. Flexibility was noted as being an advantage – allowing Mr A to take benefits at 55 and in the manner which he wanted.

Whilst I appreciate that Mr A has said that there was a lot of technical detail he did not understand and I agree that there is a lot of information to take on board, I believe that it is likely that he could appreciate the material factors. That is that he was giving up on a guaranteed level of benefit for an as yet unknown level of benefit – but with associated advantages in terms of control, ownership and flexibility. This was not only included in the report but highlighted in emails sent specifically to Mr A. I also should take into account that for a period (including the period when the advice was given), Mr A was a pension trustee of a pension scheme. Whilst I have taken into account what he has said about his technical knowledge of investments and the period for which he was a trustee, I do believe that such a role is likely to have made Mr A more aware of the general factors affecting pensions and given him greater knowledge about the factors applying to the OPS. I do not assume that he had a high level of technical knowledge but that he would be more likely able to appreciate the nature of the benefits he was giving up and what could be gained by transferring.

I also appreciate that Mr A says he felt rushed and 'bullied' into transferring and that he was told this was the only option. There will be some element of haste because the CETV is only guaranteed for three months – including the enhancement. But, in any event, the nature of the emails I have seen is that the WWM advisers were offering to explain any relevant factors or matters Mr A did not understand – I have not seen any evidence that they were placing undue pressure on Mr A to transfer. The nature of the communications and what is included in the adviser's report does not indicate that Mr A's only option was to transfer or that he had to do so. So whilst I appreciate what Mr A has said – that is not supported by the evidence.

Overall I do not believe WWM's advice was likely unsuitable. The transfer was not, on the face of it, inappropriate given all the circumstances. In arriving at this finding I have noted that these pension benefits made up less than a third of accumulated pension funds and Mr A also had considerable holdings in property which he let. So he was not materially reliant on this pension. I also believe Mr A could appreciate the material factors affecting the choice between retaining guaranteed benefits of the defined benefit scheme and transferring to a money purchase arrangement in the form of his personal pension. I believe this was a transfer he was likely willing to accept based on the overall merits.

I have also considered Mr A's points of complaint about the adviser's access to his pension details and the provision of an adviser in 2017. However I agree with the adjudicator as to these issues. I agree with the adjudicator that there is no evidence that the adviser's access has disadvantaged Mr A or that the provision of a designated adviser for what was a short period of time has materially disadvantaged him.

my provisional decision

I do not intend to uphold the complaint or make any award.

David Bird
ombudsman