DRN-3990471

Financial Ombudsman Service

The complaint

Mr H complains about the advice given by HMFC Wealth Partners LLP ('HMFC') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

HMFC says it provides services to Mr H's employer in relation to the company pension arrangements, but it also offers its services to employees on a one to one basis. In February 2018, HMFC had been discussing Mr H's current employer's pension with him, particularly the rate of contributions and the impact on his annual allowance. Following that meeting, in April 2018, Mr H asked HMFC for a meeting to discuss transferring his former employer's DB scheme.

Mr H met with HMFC in May 2018 and it gathered information about his circumstances and objectives. In the fact-find, HMFC noted Mr H was aged 51, employed as an investment trader, and was married with two children, one of whom was dependent. Mr H and his wife owned their own home, subject to a mortgage of around £310,000. They had two investment properties, one of which they received rental income from. It was noted Mr H had cash savings of £200,000 and Mrs H had around £50,000 in various investment accounts. Mr H held approximately £230,000 in an existing SIPP, which was where his current employer was paying contributions into, and he was also a deferred member of his former employer's DB scheme.

Mr H completed a 'Transfer of Safeguarded benefits – Attitude Questionnaire'. HMFC noted that Mr H considered his DB scheme to be an insignificant part of his overall pension at retirement, that death benefits were not a priority for him, that he wished to maximise his income during his lifetime and that a high tax-free lump sum at retirement wasn't a priority. HMFC also noted that Mr H was prepared to take investment risk with his pension in the hope of good returns and to retire early, that flexibility was quite important and that he would consider giving up the guaranteed final salary benefits following analysis of the scheme and the alternatives.

In the risk tolerance report completed for Mr H, it was recorded that his risk tolerance score placed him in the 'high' risk category, although in response to certain questions, Mr H described himself as an average risk taker and said he was currently prepared to take a medium risk. The notes in the report record that Mr H said he was comfortable taking a high risk whilst working but he would look to downgrade this in retirement.

A meeting note from 3 May 2018 contained further information about Mr H's circumstances and objectives. It stated that Mr and Mrs H were likely to downsize their main residence in retirement and would use part of the capital released to fund their retirement. And Mr H's main objective was to review his existing pension arrangements to ascertain if there was any action he should be taking to maximise their value. It was noted that Mr H had other periods of employment but he was unsure of what pension arrangements he had with those employers. It said Mr H was looking to reduce his hours at work in around three years' time

with a view to retiring completely around 18 months after. So, he was looking to retire fully around age 56/57.

An additional questionnaire was completed following a further meeting on 3 July 2018. This showed Mr H had significant investment experience given his line of work and it was noted that Mr H self-managed his existing SIPP.

The meeting note from 3 July 2018 gave further details about Mr H's needs in retirement. Mr H estimated he would require an income of £1,750 per month once he was fully retired, although he expected to spend a further £25,000 per year on holidays and luxuries. This equated to an annual income of around £46,000. Mr H said he received a regular bonus of around £300,000 per year and over the next three-to-five years he wanted to use the bonuses to start building another property on his land. Mr H envisaged splitting the current plot, keeping one plot and selling the other. He had already acquired planning permission. It was noted Mr H expected the build to cost around £400,000 and once the land had been split and the property sold, he would expect to release a sum of around £1,000,000, which he would use to fund his lifestyle in retirement.

In October 2018 HMFC advised Mr H to transfer his DB scheme and his existing SIPP to a new SIPP. HMFC produced a recommendation report and discussed this with him in a meeting on 29 October 2018. HMFC recommended Mr H transfer his DB scheme because its cashflow analysis determined he didn't need the guaranteed pension the scheme provided at all and as such, it could be inherited in its entirety by his children. HMFC said the DB scheme applied a penalty if benefits were drawn before age 60 and by transferring, he could access the benefits without penalty from age 55. It also thought the cash equivalent transfer value of the benefits ('CETV'), which was £493,290.70, was high and would most likely reduce over the coming years. HMFC said Mr H would benefit from flexibility and a larger tax-free lump sum. And by transferring his existing SIPP as well, he could consolidate the funds and benefit from lower fees. Mr H accepted the advice and the transfers went ahead.

In 2022 Mr H complained to HMFC about the advice to transfer his DB scheme and his existing SIPP to the new SIPP. Mr H thought HMFC's recommendation that he transfer out of the DB scheme was unsuitable because he had a low attitude to risk and low capacity for loss. He thought the transfers weren't in his best interest and had caused him a financial loss.

In its response to Mr H's complaint, HMFC maintained the advice was suitable as Mr H wasn't reliant on the funds in retirement and the transfer allowed him to meet his objectives.

Unhappy with HMFC's response, Mr H referred his complaint to the Financial Ombudsman Service to investigate.

One of our Investigators looked into the complaint and said it should be upheld. She thought the financial analysis showed Mr H was likely to be worse off in retirement as a result of the transfer of his DB scheme. And while she noted Mr H had a number of assets that made up his retirement provisions, she thought HMFC's analysis that Mr H didn't need his guaranteed pension was largely based on him building and selling property, which wasn't guaranteed. As such, she thought Mr H had a lower capacity for loss and she didn't think Mr H should've been advised to risk his guaranteed pension. She thought advice was unsuitable as there was no real benefit to be had by Mr H transferring out of the DB scheme and no need for him to do so. She also thought the transfer of the existing SIPP to the new SIPP wouldn't have come about if HMFC had advised Mr H to remain in his DB scheme. So, the Investigator recommended Mr H should be compensated based on him having remained in the DB scheme and his existing SIPP.

Mr H accepted this but HMFC didn't agree. It said Mr H had approached HMFC wanting to transfer his pension and had already requested a CETV. HMFC said Mr H was an experienced investor and understood he was replacing guaranteed benefits with an uncertain benefit linked to investment returns. By transferring, HMFC maintained Mr H could access his benefits from age 55 without penalty and the SIPP gave him flexibility to determine his level of income. HMFC acknowledged Mr H wasn't likely to be able to improve on his retirement income payable under the DB scheme, and said this was emphasised to Mr H, but Mr H's priority was to ensure his retirement resources were sufficient for his needs. And HMFC had demonstrated that Mr H could meet his objectives by transferring his DB scheme. HMFC later added that given Mr H's investment experience and understanding he may well have insisted on transferring his DB scheme even if it had advised against it.

The Investigator didn't change her opinion so the complaint was passed to me to decide.

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.

Having done so, I'm upholding it. I'll explain why.

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 HMFC'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.

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, HMFC should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr H's best interests.

So, I've considered all of the applicable regulations and guidance here. And having looked at all the evidence available, I'm not satisfied HMFC took reasonable steps to ensure the advice to transfer was suitable for Mr H or that it was in his best interests. I'll explain why.

Financial viability

HMFC carried out a transfer value analysis report ('TVAS'), showing how much Mr H's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). It also showed the cost of replacing those benefits at retirement.

According to the fact-find and recommendation report, Mr H expected he would retire early. At the time of the advice, his plan was to reduce his working hours in around three years and then retire completely 18 months later, by which time he would be 56 years old. Mr H's normal retirement age ('NRA') under the DB scheme was age 60.

It seems that Mr H agreed that he had a high attitude to risk towards these pension funds, based on the answers he gave in the risk tolerance report. However, I'm mindful that Mr H qualified this by saying that only applied whilst he was working, so in reality, Mr H could be described as having a high attitude to risk for around five years at most and a medium attitude to risk thereafter.

The TVAS dated 4 September 2018 set out the relevant critical yields at age 60. It was 9.8% per year if Mr H took a full pension or 9.2% if he took tax-free cash ('TFC') and a reduced pension. The cost of replacing those benefits was £854,619 and £815,533 respectively. HMFC didn't provide the applicable critical yield figures if Mr H was to take his benefits at age 56. But I think it should have, given that HMFC told Mr H he could take benefits from his SIPP 'without penalty' at age 55 if he transferred his DB scheme. And I think Mr H ought to have known how much growth he'd need to achieve to match the benefits at, for example, age 56, when he thought he would retire fully. In my experience, the critical yields applicable where taking benefits earlier than the NRA are usually higher because the funds have less time to grow and are required to be paid for longer. So, I don't think HMFC gave Mr H the complete picture here.

The advice was given after the Regulator gave instructions in Final Guidance 'FG 17/9' as to how businesses could calculate future 'discount rates' 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, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The closest discount rate to the time of this transfer which I'm able to refer to was published for the period before 1 October 2017, and was 3.5% per year for 8 years to retirement. 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% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's attitude to risk and also the term to retirement. The lowest critical yield was 9.2%, which was based on Mr H taking TFC and a reduced pension. Given the discount rate of 3.5% and the Regulator's projection rates, even if I accepted Mr H had a high attitude to risk, I think Mr H was most likely to receive benefits of a significantly lower overall value than those provided by the DB scheme as a result of him transferring out of it.

In HMFC's recommendation report, it acknowledged this to some extent, saying that the critical yields were very high and required an aggressive investment strategy and it didn't consider this investment profile was appropriate. But HMFC said the critical yield reflected the investment return required to purchase the same benefits as the DB scheme by way of annuity. And it said Mr H was unlikely to secure his income by way of an annuity because it

would be inconsistent with his objectives, so the 'hurdle rate' was a more appropriate guide. HMFC said its analysis showed the hurdle rate required to match the scheme benefits from age 60 to 100 (after matching the TFC) was 5.6% per year.

But based on what I've seen, I don't think HMFC could say with any certainty that Mr H didn't want to secure a guaranteed income from this pension. I say this because when Mr H was asked in the 'Transfer of Safeguarded benefits – Attitude Questionnaire' to what extent he was prepared to give up the final salary guarantee, he said he would consider giving it up based on the analysis. Mr H could've chosen the option which said the guarantee wasn't important to him, but he didn't. And I think that means that Mr H would've been prepared to keep his guaranteed pension if it made financial sense to do so. And I think HMFC's analysis showed it was in Mr H's best interest, from a financial perspective, to keep his DB pension.

While HMFC said the hurdle rate was a more appropriate guide, it acknowledged in the recommendation report that a consistent return of 5.6% over 40+ years was, *"somewhat challenging for a more balanced (medium risk) approach"*. So, I think it recognised that for the duration of Mr H's retirement he would be taking a medium-risk approach to investment and as such, achieving a consistent return of 5.6% wasn't necessarily achievable. So, if investment returns were lower than this, and Mr H withdrew the equivalent income he could've taken from his DB scheme, it's evident that there was a real risk of Mr H's funds running out much sooner than this and as such, leaving little or nothing of this pension to pass on to his family in the event of his death. Whereas, under the DB scheme, Mrs H would continue to benefit from the spouse's pension until her death.

HMFC concluded by saying:

"Therefore, given that the current benefits are guaranteed and based solely on which structure is likely to provide the greater income during your lifetime, my recommendation would be to retain the benefits in their current form (i.e. not transfer). However, this is somewhat academic since this relatively small element of your overall resources you anticipate having available for the provision of income in retirement is unlikely to be required, according to the cash flow modelling referred to earlier in this report."

I recognise that the cash flow modelling carried out by HMFC showed Mr H would be able to meet his needs in retirement whether he transferred out of the DB scheme or not – although I will address this in detail later on in this decision. But, I think HMFC recognised, overall, that remaining in the DB scheme would provide Mr H with the greatest retirement income. And given Mr H's key objective was to maximise the value of his pension (as per the meeting note of 3 May 2018), I think remaining in the DB scheme would've achieved this. This is because the financial analysis showed that Mr H wasn't likely to be able to improve on his annual pension income by transferring out of the DB scheme.

Given Mr H was likely to receive lower overall retirement benefits by transferring to a SIPP, for this reason alone I don't think a transfer out of the DB scheme was in his best interests. Of course, financial viability isn't the only consideration when giving transfer advice and I think it's clear from HMFC's advice that the recommendation to transfer was based on other objectives. So, I've taken into account that there might be other considerations which mean the transfer was suitable and in Mr H's best interests, despite providing overall lower retirement benefits. I've considered these below.

Flexibility and income needs

As an initial point, HMFC's recommendation report presented early retirement from the DB scheme as being something to be avoided; it said his DB scheme applied a 'penalty' where benefits are drawn earlier than the NRA. But if Mr H transferred his pension, it said he could

withdraw his benefits without ‘penalty’. But the ‘penalty’ that HMFC referred to was in fact actuarial adjustments. Those adjustments reflect that, by taking a pension earlier, it’s likely that the pot to pay for that pension will have to last longer. As such the scheme’s actuaries calculate a reduction in the yearly pension to allow for the fact that the pensioner will claim the pension – most likely – for a longer period. That is not a ‘penalty’ for taking the pension early, it’s simply a compromise for having the benefits of that pension paid over a longer period. And I think describing early retirement factors as a ‘penalty’ wasn’t providing Mr H with information that was clear, fair and not misleading.

In any event, I haven’t seen any evidence to demonstrate that Mr H had a need to access his DB pension earlier than his NRA of 60. As per the notes recorded by HMFC, Mr H expected to work full-time for another three years, work part-time for around 18 months and then retire fully at age 56/57. He had £200,000 in cash and an existing SIPP worth around £230,000 which he and his employer would continue to contribute to for the next five years. So, if Mr H needed to access any of his pension funds between the age of 56 and 60, it’s evident that he could meet his need of £46,000 per year by using his cash savings or drawing down on the pension fund held in his SIPP. As such, I don’t think it was fair or reasonable for HMFC to highlight the ‘penalty’ that applied if Mr H accessed his DB pension before age 60 in the recommendation to transfer because in either scenario – staying in the DB scheme or transferring out of it – Mr H had no need to access his DB pension funds before age 60. The ‘penalty’ was therefore irrelevant.

It seems one of the main reasons why HMFC recommended this transfer was for the flexibility it offered Mr H. It concluded, based on the cash flow analysis carried out, that Mr H didn’t need the pension available to him under the DB scheme. So, it said:

“I understand that your main priority in terms of income is simply to ensure that you have sufficient resources to fund your expected needs retirement needs (sic)*, rather than to maximise that income. This being so, and given that our cash flow analysis demonstrates you should have no reliance on the scheme income (assuming the assumptions therein remain true), we can begin to focus more on your secondary priorities of maximising the value of your estate which can pass to your family were you to die, along with your desire for more flexible retirement income and investment options.”*

But having considered the cashflow analysis, I think HMFC’s conclusion that Mr H had no reliance on the scheme income was largely based on Mr H’s belief that he would be able to release a capital sum of £1,000,000 through the build and sale of a property by age 56. And this would generate further investment growth. But this plan was based on Mr H receiving regular bonuses of £300,000 per year which he’d use to finance the build. And although Mr H had received such bonuses consistently, they were not guaranteed. Furthermore, there were other risks attached to this plan, such as the build costing more than expected and it taking longer to complete, as well as the risk of not being able to sell the completed property when needed. So, I think HMFC ought to have considered how Mr H would fund his retirement if he did not achieve the bonuses he was expecting, and wasn’t able to complete his plans with respect to the build and sale of property.

In response to the Investigator’s view on this point, HMFC carried out a further cash flow analysis based on either Mr H remaining in the DB scheme or transferring out of it, but removing the cash injection of £1,000,000. It said this showed Mr H still wasn’t relying on the DB scheme income, although it said he would experience a shortfall a few years earlier if he transferred. However, looking at the analysis undertaken, I think HMFC means Mr H would suffer a shortfall in his income needs a few years earlier if he remained in the DB scheme compared to if he transferred out of it. I say this because the analysis shows a potential shortfall at age 97 if Mr H remained in the DB scheme, but there isn’t a potential shortfall

until age 99 if he transferred out of it. Given this, HMFC says its ultimate conclusion would've still been that Mr H should transfer out of his DB scheme.

I've considered the analysis carefully but I don't agree that this necessarily supports a transfer. In my view, it suggests that Mr H could support his income needs in retirement either way whether he transferred out of the DB scheme or remained in it. But what is clear is that if Mr H transferred out of the DB scheme, to meet his anticipated retirement needs over his lifetime he would need to keep building his savings from any excess income and achieve consistent investment growth of 5% per year on his investments and pension plans for over 40 years. So, if investment returns were lower than this, or if Mr H's attitude to risk decreased further in retirement, I think there was a greater risk of his funds running out if he transferred out of the DB scheme than if he remained in it. Furthermore, in each scenario, the cash flow analysis still shows Mr H being reliant on selling his rental properties to continue to fund his retirement in the later years.

Overall, I don't think it was in Mr H's best interests to transfer his DB scheme benefits to a SIPP in order to have greater flexibility. Mr H's income needs were expected to remain level throughout his life, unless required to fund long-term care. So, I don't think he needed to vary his income throughout his retirement. And based on what I've seen, Mr H always had an income need (to meet basic living expenses) above the amount he was entitled to through the DB scheme – so he would never need less than this.

It's evident that Mr H had substantial cash savings, and the ability to add to this whilst he remained working as he had considerable disposable income. He also had an existing SIPP which he and his employer would be continuing to contribute to over the next five years. So, Mr H already had a degree of flexibility in how he would fund his retirement. He also had rental properties which he could sell at any time if he required a further cash injection. And by remaining in the DB scheme, Mr H would secure an income that would cover the majority of his basic annual expenditure without any risk. And once his state pension became payable, his basic living expenses were fully covered. Whereas if Mr H transferred out of the DB scheme, he would be reliant on achieving consistent investment returns of around 5% to fund his retirement. So, I don't think Mr H should've been advised to risk his only guaranteed source of retirement income (aside from his state pension entitlement) and instead place all of his retirement provision at risk, when he had very little to gain from this other than increased flexibility that he didn't really need.

I think Mr H had made it clear throughout his dealings with HMFC that he simply wanted to ensure he had sufficient resources to fund his retirement needs. And I think it ought to have been clear to HMFC that remaining in the DB scheme would ensure he had sufficient resources. The guaranteed, increasing DB scheme income, together with the state pension, would cover Mr H's basic living expenses throughout his lifetime, meaning that he could fund his lifestyle and other luxuries through the proceeds of his property sales, as and when they were needed, as well as his other remaining savings and investments.

So, I don't think it was suitable or in Mr H's best interests to advise him to transfer his DB pension, exposing him to the risks of the financial markets, just to have extra flexibility that he didn't need. That's particularly the case given Mr H already had other retirement provisions that provided him with a degree of flexibility at retirement and would already be exposed to investment risk and the risks of the property market.

Death benefits

As I've said above, after HMFC concluded that Mr H didn't need his DB scheme pension to fund his retirement, it said it could focus on Mr H's secondary priority of maximising the value of his estate to pass on to his family if he were to die. But in the 'Transfer of Safeguarded

benefits – Attitude Questionnaire', Mr H was asked if lump sum death benefits before retirement were important for him. He said that his dependents would receive significant sums upon his death so while an extra sum might be beneficial, it wasn't an absolute priority.

Mr H was also asked how important it would be to pass on his pension fund to any beneficiary of his choice. Mr H said it was not important to him as he didn't have any other beneficiaries other than his spouse. There is also no mention of death benefits being important to Mr H in any of the meeting notes prior to the advice being given. So, I don't think that increased death benefits or the ability to pass the pension fund on to his family on his death was a genuine objective for Mr H, I think it was simply highlighted as a consequence of the transfer.

I acknowledge that in the meeting note of 29 October 2018, which took place in order to review the advice that had been given by HMFC, it was noted:

"(Mr H) *concluded that he concurred with our advice on the basis that his entitlement to benefits within the* (DB) *scheme is unlikely to be required at all to provide the resources he requires to sustain his retirement and that therefore, the provision of superior death benefits upon transfer and the ability to control the investment of these funds are therefore preferential. On that basis, he agreed that a transfer would be appropriate."*

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 ability to pass on the pension as a lump sum death benefit was likely an attractive feature to Mr H. But whilst I appreciate death benefits are important to consumers, and Mr H might have thought it was a good idea to transfer his DB scheme to a SIPP because of this, the priority here was to advise Mr H about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement – not a lump sum to family after death.

Furthermore, I think this note has to be considered in the context in which it was given – by this point HMFC had advised Mr H he didn't need this pension to sustain him in retirement, so it could instead form part of his estate on his death. So, I don't think it's significant that Mr H agreed with HMFC's view on this point; ultimately I think he was led by the advice he'd been given.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr H was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr H predeceased her. The spouse's pension was guaranteed and it escalated; it was also not dependent on investment performance, whereas the sum remaining on death in the SIPP was. In any event, HMFC should not have encouraged Mr H to prioritise the potential for higher death benefits through a personal pension over his own security in retirement.

It's also evident that Mr H had other means of ensuring his spouse and children (if he so wished) were provided for on his death. Mr H had two rental properties, and he was expecting to be able to release capital from building and selling another property. So, I think Mr H could've made arrangements to ensure his family benefitted from these assets instead on his death, rather than sacrificing his guaranteed pension.

Overall, I don't think being able to pass on this pension in the event of his death was a priority for Mr H. Based on what I've seen, his main objective was to ensure his own retirement needs were met. And I don't think the different death benefits available if he transferred the DB pension to the SIPP justified the likely decrease of retirement benefits for Mr H.

Taking advantage of the CETV

In the recommendation report, HMFC posed the question of whether or not Mr H should transfer his DB scheme now. It said:

"The difficulty here is that, in my view, the current transfer value you are being offered is historically high and, if anything, is only likely to decrease as bond yields (being a key driver behind the value) are expected to rise. Whilst I must stress that this is only my opinion and cannot be guaranteed, it is the main reason, alongside the flexibility on offer and in the context of your overall circumstances, aims and objectives, why I think it would be appropriate for you to transfer now."

This was also reflected in the meeting note of 29 October 2018. The note said CETVs were far more likely to decrease than increase in the foreseeable future.

So, it seems to me that one of the main reasons why HMFC recommended Mr H should transfer out of the DB scheme was because, in its view, the CETV he was being offered was high and likely to decrease in future. But that doesn't mean the CETV was good value for money – indeed, the financial analysis carried out showed the investment return needed to produce a fund large enough to purchase the same benefits being given up was unachievable. The TVAS showed Mr H would need a fund of £854,619 to replace the scheme benefits at age 60, compared with the CETV of £493,290.70.

I appreciate the meeting note recorded that Mr H agreed there was more scope for transfer values to decrease rather than increase in the future. But ultimately, the CETV being high, or having the potential to reduce over time, should not have had any bearing on what suitable advice for Mr H was. Regardless of whether Mr H agreed with the likelihood of the CETV decreasing in the future, I don't think this should've been presented as a significant factor in determining whether or not Mr H should transfer out of his DB scheme. As I've explained above, Mr H was unlikely to match, let alone improve on, his DB scheme benefits if he transferred out of the DB scheme. And I don't think there were any other objectives or benefits to be had by transferring out that justified this decrease in his retirement income. Particularly as all of Mr H's other retirement provisions were subject to investment risk or were otherwise dependent on property plans materialising as expected.

Summary

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

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income within his DB scheme, which would go some way to covering his basic living needs in retirement. By transferring to a SIPP Mr H was, in my view, very likely to obtain lower overall retirement benefits. And I don't think there were any other particular reasons which would justify the transfer and outweigh this. Mr H had no need for extra flexibility given his other provisions and I don't think he needed to place this pension at risk when all of his other provisions were subject to risk. So, I don't think it was in Mr H's best interests overall for him to transfer his DB scheme to a SIPP.

HMFC says that regardless of the advice given, Mr H made an informed choice to proceed with the transfer and he would've transferred in any event. It says he was an experienced investor with an appreciation of risk and he understood what he was giving up by transferring out of the DB scheme.

I accept that HMFC disclosed the risks of transferring to Mr H, and provided him with a significant amount of information in the recommendation report. I also think Mr H understood he'd be giving up guaranteed income by transferring out of the DB scheme. But ultimately HMFC advised Mr H to transfer out of the DB scheme, and I think Mr H relied on that advice.

I'm also not persuaded that Mr H would've insisted on transferring out of the DB scheme, against HMFC's advice. I acknowledge that Mr H approached the adviser here, as opposed to him being 'cold-called' and offered a pension review. So, I accept he was interested in transferring out of the DB scheme from the outset. But I don't think Mr H had made up his mind before he approached HMFC. I think it's clear from the meeting notes and other documents completed at the time that Mr H was seeking HMFC's expertise on the matter – he said he would consider giving up the guarantees associated with the DB scheme based on the analysis of the scheme and the alternatives. So, I think HMFC's analysis and advice was an important factor in Mr H's decision-making. And if HMFC had provided Mr H with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice.

In light of the above, I think HMFC should compensate Mr H for the unsuitable advice, by undertaking a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice.

I understand that Mr H also transferred his existing SIPP to the new SIPP HMFC recommended he transfer his DB scheme to. But I don't think Mr H would've transferred his existing SIPP if he hadn't been advised to transfer out of his DB scheme. There's no evidence to suggest that Mr H was previously interested in making changes to his existing SIPP, which he was self-managing – he approached HMFC specifically to discuss his DB scheme. As I don't think Mr H would've transferred his existing SIPP, but for HMFC's advice to transfer out of his DB scheme, I think HMFC should also compensate Mr H for any loss he has experienced as a result of transferring his existing SIPP to the new SIPP.

Putting things right

My aim in awarding redress is to put Mr H as far as possible in the position he would be in now if HMFC had given him suitable advice. I think Mr H would have remained in the DB scheme. I also think he would have retained his existing SIPP arrangement.

<u>What should HMFC do?</u>

To compensate Mr H fairly, HMFC must determine the ***combined fair value*** of his transferred pension benefits as outlined in Step One and Step Two below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation.

fair value – step one

If Mr H had been given suitable advice, I think he would have remained in the DB scheme.

HMFC must therefore calculate the value of the benefits Mr H lost as a result of transferring out of his DB scheme 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.

The calculation should be based on the scheme's normal retirement age of 60, 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 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 H's acceptance of my final decision.

fair value – step two

If suitable advice had been given, I think Mr H would have kept his existing SIPP arrangement. HMFC must use the benchmark shown below to determine the fair value of Mr H's previous SIPP.

Investment name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
Value of the SIPP monies transferred	Still exists and liquid	Notional value of original SIPP to be obtained from Mr H's former SIPP provider	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 90 days of the business receiving the complainant's acceptance)

This is the value of Mr H's investment had it remained with the previous provider until the end date. HMFC should request that the previous provider calculate this value.

Any additional sums paid into the SIPP should be added to the fair value calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the SIPP should be deducted from the notional value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if HMFC totals all those payments and deducts that figure at the end to determine the notional value instead of deducting periodically.

If the previous SIPP provider is unable to calculate a notional value, HMFC will need to determine a fair value for Mr H's investment instead, using this benchmark: FTSE UK Private Investors Income Total Return Index. I'm satisfied that's a reasonable proxy for the type of return that could have been achieved over the period in question. The adjustments above also apply to the calculation of a fair value using the benchmark, which is then used instead of the notional value in the calculation of compensation.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

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

- calculate and offer Mr H redress as a cash lump sum payment,

- explain to Mr H before starting the redress calculation that:
    - his 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 Defined-Contribution pension
- offer to calculate how much of any redress Mr H receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr H accepts HMFC's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr H 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 H's end of year tax position.

Redress paid to Mr H 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, HMFC 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 H's likely income tax rate in retirement – presumed to be 40%. So making a notional deduction of 30% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'.

My final decision

Where I uphold a complaint, I can award fair compensation of up to £170,000, 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 £170,000, I may recommend that the business pays the balance.

Determination and money award: I uphold this complaint and require HFMC Wealth Partners LLP to pay Mr H the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I will also recommend that HFMC Wealth Partners LLP pays Mr H the balance.

If Mr H accepts my final decision, the money award becomes binding on HFMC Wealth Partners LLP.

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

HFMC Wealth Partners LLP should provide details of its calculations to Mr H in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 April 2024.

Hannah Wise
Ombudsman