

The complaint

Mr K is unhappy with advice given by Pensionlite Ltd that he shouldn't transfer the value of benefits held in a former employer's defined benefit (DB) pension scheme to a personal pension arrangement.

Pensionlite Ltd is an appointed representative of Quilter Financial Services Limited (Quilter). As principal Quilter is responsible for the advice Pensionlite Ltd gave and the service provided.

What happened

Mr K approached Pensionlite Ltd in about February 2023 with a view to transferring the value of his DB pension scheme to a personal pension. His main concern was that, in the event of his death, his daughter (who was aged 18 at the time) wouldn't benefit. Mr K was aged 56, self employed (although he wasn't working as he was developing a new business venture and he was drawing down from two personal pension arrangements), single and his attitude to risk was high. Pensionlite Ltd wrote to Mr K on 11 May 2023 to confirm the advice given – that Mr K shouldn't transfer. A Pension Transfer Report, including a Transfer Value Comparator (TVC) had been prepared. Mr K was unhappy and complained to Quilter. He disagreed with the analysis and recommendation. He said his priorities had been ignored. The focus had been on an irrelevant equivalent annuity and there were significant errors and omissions in the equivalent drawdown analysis.

Quilter didn't uphold the complaint. In its final response letter Quilter said the adviser, a Pension Transfer Specialist (PTS), had to offer the advice she deemed most suitable, based on a client's circumstances. In some cases the recommendation wouldn't fully accord with the client's wishes. In Mr K's case, the adviser (and Quilter's Compliance Department) took the view that it wasn't in Mr K's best interests to transfer and declined to make any arrangements to do that. Quilter isn't under any obligation to process a transaction it doesn't consider suitable. But another PTS at a different firm may have come to an opposite view and been prepared to process the transfer.

Mr K sent a detailed response asking for the report to be reissued. Quilter referred Mr K's comments to the adviser but her view didn't change. She said Mr K didn't have the capacity for loss to give up his DB pension. He believed he'd be financially comfortable in retirement as a result of his next business venture but, as that wasn't yet proven, it couldn't be taken into account. He didn't have a conclusive health diagnosis although he assumed he had a life limiting condition.

Mr K referred his complaint to us. It was considered by one of our investigators. He wrote to Mr K, explaining why he was unable to uphold the complaint. Mr K didn't accept the investigator's view. He said there were two fundamental issues: the need to take a balanced view and what he termed serious errors and omissions in the quantitative analysis. He made detailed comments about the issues as he saw them. The investigator considered what Mr K had said but his view remained that the advice had been reasonable. The investigator said the complaint would be referred to an ombudsman to decide.

In response, Mr K pointed to the fact that no death benefits would be paid from the DB scheme, whether now or in the future; the trustees' control and opaque discretion over his money rather than having it under his own control; the lack of investment growth rather than the possibility of investment growth in a wider range of assets and in accordance with his assessed attitude to risk; and PPF (Pension Protection Fund) protection of 90% versus FSCS (Financial Services Compensation Scheme) protection of 100%.

Mr K said he had life limiting conditions which meant he was very unlikely to live to age 106. His desire to trade income for death benefits hadn't been considered. Anything which didn't support Pensionlite Ltd's view had been ignored. The approach wasn't the personalised advice the Financial Conduct Authority (FCA) had told him he should expect and was demonstrably against his best interests. He pointed in particular to what he saw as a 24 year error in the Defined Contribution (DC)/drawdown analysis which undermined the advice and Quilter's – and this service's – credibility.

Mr K wanted the matter referred to an ombudsman. But he said he refused permission to have the decision published unless it included a link to a website he was setting up to share his experience and warn others. The investigator explained that we have a statutory obligation to publish final decisions on our website and it was up to the ombudsman what information was included in their 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 can see Mr K feels very strongly about this matter. He's very disappointed Pensionlite Ltd advised against transferring and we've agreed that recommendation was suitable. I've read and considered all of Mr K's comments but I'm not going to deal with every point he's made. Instead I'm going to concentrate on the main issues he's raised. But, given that I've agreed with the investigator that Pensionlite Ltd's advice wasn't unsuitable, I expect Mr K will remain unhappy.

As Mr K is aware the starting point, under COBS (Conduct of Business Sourcebook) 19.1.6 is an assumption that transferring won't be suitable. A transfer should only be considered suitable if the firm can clearly demonstrate, on contemporary evidence, that the transfer is in the client's best interests.

I'd point out, in particular, the reference to contemporary evidence. Mr K was 56 at the time of the advice and he planned to work in some capacity at least until he was 70. He viewed the income from the DB scheme as almost irrelevant, especially if the cost of life assurance to mitigate the lack of death benefits was factored in. And it had been assumed he'd earn and invest nothing more until his retirement, so ignoring his business (or self employed) income and property investment plans. But his likely future earnings weren't certain. His ability to work would depend on, amongst other things, his health. And, although he had plans to relocate and buy an investment property, he didn't have the funding for that in place. I don't think it would be safe to take into account what his position in the future might be.

I don't think it's wrong to describe the benefits offered by the DB scheme as valuable. The DB scheme offered an income for life which was largely guaranteed and with inflation protection. There's an inflationary risk for DC benefits – the purchasing power of the fund will decrease if growth is less than inflation. Although it's possible that the DB scheme could fail (and which might mean the PPF would only meet 90% of Mr K's benefits), there's nothing to suggest that was identified as a particular risk here. In fact it seems the DB scheme was in a healthy funding position. As to the DB scheme trustees' discretion, that's typically in relation

to matters such as early retirement, entitlement to death benefits or increases to pensions over and above those set out in the scheme rules. A deferred member's claim to payment of benefits at the scheme's normal retirement age isn't subject to trustees' discretion.

I agree an adviser needs to take a balanced view. But, in not recommending a transfer, it's clear the adviser was fully aware of Mr K's health issues and that he wanted to ensure his daughter would benefit on his death. The adviser also knew Mr K was somewhat unhappy about having to take advice. Mr K's position is that the adviser attached insufficient weight to his priorities and what his circumstances, needs and objectives meant he was in a position to trade off. I think Mr K is referring here primarily to the death benefits available if he transferred. I can see those would've been attractive compared to the limited death benefits offered by the DB scheme, given Mr K was single and his daughter would only remain financially dependent on him for a limited time – although the death benefits payable if Mr K transferred would depend on how much, if any, of the fund remained or if it had been depleted by withdrawals. But the adviser did take the death benefits into account and considered if Mr K was in a position to give up, or trade off, the guaranteed income offered by the DB scheme. She recognised the death benefits were a reason in favour of a transfer. But she concluded that Mr K's income needs in retirement wouldn't be met and that overrode his main objective for his daughter to benefit on his death.

I don't agree with Mr K's comments about the information gathering process being a 'charade' which could've been confined to information about his expected retirement spend and any other sources of income. I note here Mr K has made a complaint to the ICO (Information Commissioner's Office) about a possible breach of GDPR (General Data Protection Regulation) so I'm not going to comment further about that. But what I would say is that all of the information which was obtained from Mr K and other sources – such as the DB scheme – was taken into account.

Nor do I think it would be helpful to try to place specific weightings on each of the various factors. As far as I'm aware, there's no requirement for Pensionlite Ltd to tabulate their decision making criteria and attach a weight or score to each consideration. In any event, I don't see it would change anything – a dispute would remain as to what weight should be attached to particular factors. As Mr K recognises, the advice is holistic which is consistent with an overall approach. At the end of the day it's down to the adviser's professional judgment, taking everything into account and acting in line with the relevant regulatory provisions. I don't agree the adviser's approach was generic. The advice was clearly personalised and directly referable to Mr K's personal and financial circumstances and his objectives, even if he disagreed with the outcome.

Mr K says the quantitative analysis was flawed. He's pointed to the cost of life assurance being ignored, the wrong retirement age and initial drawdown figure being used and he's queried the growth rates. Some of the comparison information is governed by regulations. For example, a TVC is a mandatory matrix and must be prepared on the prescribed basis as set out in the relevant regulations (COBS 19.1.3AR, COBS 19 Annex 4B, COBS 19 Annex 4C and COBS 19 Annex 5R). The TVC compares the transfer value offered by the DB scheme with the cost of purchasing the same income via an annuity on the open market at the DB scheme's normal retirement age which here is age 62. That's so that a like for like comparison can be made. And the assumptions include investment growth based on gilt yields. Again that's to keep the comparison consistent and reflects the fact that in a DB scheme the member won't take on any investment risk.

Here the TVC showed the transfer value offered wasn't high enough to replicate the DB benefits. But that isn't the end of the matter. Other aspects of the research and analysis (which go towards providing an Appropriate Pension Transfer Analysis (APTA) of which the TVC will be part) will be based more on the individual's specific circumstances and

objectives. Cash flow modelling looks at different scenarios to see if personal goals can be met and what the client's future financial position would be. I know Mr K feels very strongly that focusing on the correct analysis showed that his priorities could be achieved. But the fact remains that he had insufficient capacity for loss to give up the DB scheme benefits. I don't think any reconsideration of the analysis is going to make any difference.

I note Mr K's comments about Pensionlite Ltd's interpretation of the regulations not being in his best interests, but their own. I think, to some extent, Mr K accepts that Pensionlite Ltd was acting in accordance with the prevailing regulations and guidance which Mr K considers unfairly puts barriers in the way of people in his situation being able to access their own money. To that end, Mr K's concerns might be better directed at the regulator – I think he has raised matters with the FCA. Mr K may view the regulations surrounding DB pension transfers as restrictive. Particularly given the introduction of the Pension Freedoms in 2015 to allow more flexible access to DC pension schemes. But the legislation and regulation surrounding DB schemes is aimed at protecting consumers and reflects the regulator's concerns, despite previous interventions and actions, that some consumers are still being advised to transfer out of their DB schemes when it isn't in their best interests to do so.

Section 48 of the Pension Schemes Act 2015 requires anyone with benefits in a DB pension (and other types of what are termed safeguarded benefits) worth more than £30,000 to seek regulated advice before transferring out. A consumer doesn't need to be given positive advice to transfer. Although, as it seems Mr K has found out, if the advice isn't in favour of transferring, a receiving scheme may not be prepared to take the transfer value. I think Mr K has made or is considering making a complaint to the Pensions Ombudsman about that.

As well as being highly regulated, DB transfer advice is complex. The fact that Pensionlite Ltd advised Mr K not to transfer doesn't translate into a failure to act in his best interests. Rather it simply reflects the prevailing regulatory environment and the complexity of the subject matter and which involves balancing factors, some of which may be competing. Pensionlite Ltd's advice had to be in Mr K's best interests rather than just aimed at facilitating what he'd decided he wanted to do. An adviser may need to challenge a client's perspective and/or objectives.

Mr K refers to abridged advice as another block on a transfer, as well as a waste of money. I don't agree. The outcome of abridged advice will either be a personal recommendation not to transfer or a statement that it's unclear whether the client would benefit from transferring. The adviser will then check if the client wants to proceed to full advice, which may or may not result in a recommendation to transfer. Abridged advice is primarily a mechanism to help filter out clients for whom a transfer is unlikely to be suitable. The benefit is that it doesn't commit the client to paying the full costs of the advice. Mr K says he had no choice but to get full advice, because he couldn't otherwise get a recommendation to transfer. But, here, where Pensionlite Ltd's advice was that he shouldn't transfer, Mr K might've known that sooner and at a lower cost if he'd opted for abridged advice.

Mr K remains free to seek advice from a different firm. That will take more time and he'll have to pay further fees – to the new adviser and getting a new transfer value – which may be more or less than the previous one – will cost him £250. But Mr K knew that Pensionlite Ltd's advice might be that he shouldn't transfer in which case he'd still have to pay for the advice. It's clear he's unhappy that he had to take advice and he considers the advice was wrong. But, in my view, Pensionlite Ltd gave suitable advice. I can't say Pensionlite Ltd did anything wrong and so I'm not upholding the complaint.

I've noted Mr K's comments about publishing my final decision but as the investigator has explained we have a statutory obligation in this respect. I don't consider it necessary to include the details Mr K has referred to.

My final decision

I don't uphold the complaint and I'm not making any award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 27 February 2024.

Lesley Stead
Ombudsman