DRN-4559701

The complaint

Mr H complains that Pensionhelp Limited (Pensionhelp) gave him unsuitable advice to transfer three Occupational Pension Schemes (OPS) into a Small Self-administered Scheme (SSAS). And he subsequently made significant investment losses upon advice by a separate unregulated firm, and he believes Pensionhelp should be held responsible for this.

What happened

Prior to contacting Pensionhelp Mr H had seen an advert from another firm (I'll refer to as TLP) on social media who said they could help him to build his existing Buy-To-Let (BTL) property business through the use of his pension funds.

On instruction by TLP Mr H set up a SSAS which he was told he could then transfer his DB pensions into. And he could use his tax-free cash to purchase further properties to build his property business. Mr H intended to use this income to in part fund his retirement. However, TLP told Mr H he required advice from a firm that was regulated to provide Defined Benefit (DB) pension advice before all this could occur.

Mr H then contacted Pensionhelp through its website in June and he then had a phone call with an adviser on 9 July 2019 to discuss transferring his three DB pensions.

Pensionhelp issued a suitability report dated 23 September 2019 recommending Mr H transfer all three DB schemes to his SSAS and to invest his funds into two Vanguard funds on a specific investment provider's platform.

It was recorded that Mr H's objectives which the advice to transfer was formed upon were:

- He wished to be able to take the maximum tax-free cash (TFC) to build his buy-to-let portfolio.
- He wished to take control of his funds now due to having a degenerative illness which could stop him working at any point. He wanted to be able to do work on new properties while he still could.
- He wished to pass on all death benefits to his children.

Following Mr H's acceptance his three DB pensions were transferred into the SSAS, the first one reaching the SSAS in November 2019 and the final transfer completed in May 2020.

After the transfers had completed, Pensionhelp's authority to act for Mr H was removed. And shortly afterwards on the advice of TLP he then signed agreements to loan these funds to a number of what appear to be property based Unregulated Collective Investment Schemes (UCIS). Mr H also used some of the tax-free cash available to purchase a further property for his buy-to-let business.

I understand that the majority of Mr H's funds were then lost when the property ventures he'd invested in failed.

Subsequently Mr H complained via professional representatives about the advice

Pensionhelp had given him to transfer his pensions. It said the advice had been unsuitable and it alleged Pensionhelp knew of Mr H's investment plans through TLP. And that TLP had an introducer relationship with Pensionhelp. It says Pensionhelp should've taken TLP's investment strategy into consideration when it gave the advice to transfer.

Pensionhelp didn't uphold the complaint. It said Mr H came as a direct client, it wasn't through an introducer relationship and it didn't' have a relationship with TLP, it hadn't heard of it. It had recommended Mr H invest in specific investments, if Mr H had then changed his investment strategy afterwards, it couldn't be held responsible for this.

It felt its advice had been suitable and met Mr H's objectives at the time to allow his BTL business to grow to provide an income in retirement alongside the remaining funds in his pension.

Unhappy with this response, Mr H raised his complaint with this service.

Pensionhelp said this wasn't a complaint we could consider as Mr H didn't meet the definition of a customer under our jurisdiction. I issued a jurisdiction decision explaining why I felt that Mr H met our definition of a customer and that this was a complaint we could consider.

After this, Pensionhelp said in relation to the merits of the complaint:

- Mr H contacted Pensionhelp for advice. He was not coerced or referred to it under any quid-pro-quo or other dubious arrangement as is claimed.
- It accepted Mr H as a client as it was prepared to review his pension arrangements in light of the clear retirement plan he articulated and his desire to fund his buy-to-let business.
- Having completed a review, it determined that the transfer option was the best way to meet his objectives in light of the information that he provided. It accepted all of the information Mr H provided in good faith. However, in its conversations with him, it challenged and tested his assumptions, misunderstandings, competing objectives and requirements.
- It recommended an appropriate product and fund based on the information he provided.
- Its advice was provided to Mr H on the basis that he would also act in good faith and follow the course of action it advised on (and which he agreed to follow). Despite what is being claimed now.
- During the initial investigation and through listening to all of the recorded telephone calls, it noted that he made the briefest mention of TLP in his discussion with the adviser but this never featured in the advice nor any of the detailed discussions about how his objectives would be met.
- In fact, until this complaint was made to it, it had never heard of the TLP and would never recommended such a scheme. It has never recommended this scheme to any client before or for that matter, since.
- It understands the complexities of firm and consumer responsibility and have been very careful to close the 'responsibility gap' given the complexity of the financial advice it provides. It is a responsible firm but consumers also need act responsibly too.
- It therefore points out to consumers in its reports to them that its assessment of whether it is realistic for the client to meet their aims is dependent on them following its advice.
- Immediately following the transfer, Mr H transferred his funds away from the provider recommended.
- It is unclear whether Mr H sought advice from anyone else in respect of this transaction but having reviewed our records and recorded telephone calls we are absolutely certain that he did not receive any advice from Pensionhelp in respect of this transaction.

- Equally, there were no indications at all from Mr H that this was his intention. If there had been, it would not have recommended transfer. It believes that he transferred from the provider it recommended as they would not have allowed this type of investment.
- As it lost authority at the point of this transfer it had no idea nor control over what Mr H did with those funds but based on the detail of the complaint it appears that he moved to a product that allowed him to invest in TLP's recommended investments – i.e. the new provider was prepared to hold these type of investments whereas the one it recommended would not.
- It understands that the investment he made at his own choice may not have worked out for him but it is unfair of him and his representatives to make fraudulent claims about Pensionhelp.
- Under the conditions outlined, and in line with FCA's general expectations on Consumer Responsibility, only Mr H alone can be held responsible for the actions he has taken.
- Further to the above, it would also point out that Mr H also transferred away before its fees had been paid of around £5,600, which remain outstanding. It has not pursued this in view of Mr H's circumstances but that does not indicate any acceptance of liability on its part.

Our investigator looked into matters and didn't uphold the complaint. She said she felt the advice to transfer had been unsuitable but Mr H would've transferred even if Pensionhelp had given a suitable recommendation to Mr H. She said Mr H already had a clear strategy in place ahead of receiving the recommendation, and that the evidence suggested he'd already made up his mind to take this course of action before Pensionhelp was involved. And that Pensionhelp had talked about not transferring all of his three DB schemes but Mr H wished to transfer all three regardless.

Mr H disagreed and responded to the investigator's view to say in summary:

- He strongly disagreed with the findings. He was naïve and believed the sales pitch from TLP but surely the reason he had to get advice from an IFA was to protect him from situations such as this.
- Pensionhelp didn't give Mr H an alternative view to the dream TLP was selling.
- Pensionhelp didn't give him any indication that there would be pitfalls with his plan to use TLP's advice, if they had done he would've listened to their advice.
- He wouldn't have discounted advice from an expert. As it advised to transfer he thought his plan with TLP was ok.
- The investigator said Mr H already wished to transfer because he'd emailed Pensionhelp to say that the SSAS provider had told him all he needed was proof he'd received advice and not a recommendation to transfer. And that Mr H had asked for confirmation they would sign a form on this basis, so he could move things forward. Mr H says he was just confirming that this would be ok, so that he could employ Pensionhelp to give him advice. It didn't indicate he wouldn't listen to its advice.
- He hadn't realised the tax-free cash was higher on transfer so this didn't influence his decision. He did use the tax-free cash to purchase a property as was his recorded objective at the time of advice. But had he not transferred he would've just purchased a cheaper property. He would've used the tax-free cash to increase his property portfolio regardless of whether he transferred or not.
- He was relying on Pensionhelp's expert guidance on pensions, this was his first time reviewing his pension arrangements and so he needed the best advice on his options.
- He couldn't understand how we could conclude the advice was unsuitable and lacking in quality and yet the complaint hadn't been upheld. He had TLP pushing him a vision but Pensionhelp ought to have given a balanced view of this. If he'd heard the alternative side to this he could've taken that into account. Pensionhelp failed him in this regard.
- He disputes that Pensionhelp doesn't have any responsibility. He fell for the advice of a

scam company and Pensionhelp ought to have given suitable advice which would've avoided this from occurring.

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 agree with the investigator that the advice given by Pensionhelp was lacking and was ultimately unsuitable. The regulator's guidance begins with the position that firms ought to assume that transferring out of a guaranteed pension environment wouldn't be in a customer's best interests. There needed to be compelling reasons that meant doing so was clearly in a customer's best interests.

I appreciate Mr H came to Pensionhelp with an already formed plan of what he wanted to do but its job wasn't just to facilitate this. It ought to have challenged his objectives, it 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.

Whilst Pensionhelp argues it did do so, I've looked at what was said in its advice calls to Mr H and I don't think it went far enough. It did say Mr H might only want to transfer one or two of his DB pensions and leave at least one pension in place so that he had a guaranteed base. But there wasn't any substance to this suggestion, it didn't provide Mr H with any specific data or explanation of what this would achieve and why it might be in his best interests. And it recommended he transfer despite the high critical yields, with no analysis of how Mr H's alternative plan might perform in relation to his pensions. Cashflow models were produced about how Mr H could meet his income needs in retirement, but these were lacking in detail and reliant on optimistic growth rates.

As the investigator stated, In January 2017 the FCA also issued an alert which set out its expectations of firms advising on pension transfers, which said:

"A firm advising on a pension transfer should not undertake a comparison using generic assumptions for hypothetical receiving schemes. The firm must consider the likely expected returns of the assets in which the client's funds will be invested as well as the specific receiving scheme."

But looking at the analysis carried out by Pensionhelp for each scheme it seems Pensionhelp based the comparisons on Mr H taking a generic annuity. Pensionhelp ought to have carried out the comparison in line with what Mr H was intending to invest in. It didn't provide a like for like comparison, as Mr H wasn't intending to take an annuity, he wished to invest the tax-free cash in his BTL business and the rest of the funds would remain invested. Nowhere, in its analysis, conversations with Mr H or suitability report, did Pensionhelp provide a tangible comparison between the benefits Mr H was giving up compared with the strategy he intended to take on transfer. So I think the advice was clearly lacking here and as I've set out below the recommendation to transfer wasn't viable in terms of likely returns either.

I've looked at the likely growth Mr H would have needed to achieve in order to match the scheme benefits at his normal retirement age of 65.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website.

The investment returns (critical yields) required to match each DB scheme at age 65 were 9.16%, 8.39% and 11.25%. An assessment of Mr H's attitude to risk (ATR) determined his risk appetite as medium. The closest discount rate to the time of these transfers which I'm able to refer to was published for the period before 1 October 2017 and is 3.8% per year for 10 years to retirement. I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

I've taken the yields into account, along with the composition of assets in the discount rate, Mr H's attitude to risk and also the term to retirement. There would be little point in Mr H giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 8.39%, I think Mr H was likely to receive benefits of a substantially lower overall value than the DB schemes at retirement, as a result of investing in line with that attitude to risk.

Are there other reasons that justify the advice to transfer?

I appreciate Mr H's main objective, to build his income up to the level he was currently receiving from employment, wasn't achievable by keeping the DB benefits he transferred in place until retirement. His DB benefits even if left to his normal retirement age wouldn't produce the income he wished to replace. But it should've been pointed out to Mr H that this level of income was likely unachievable and whilst I don't expect the adviser to be an expert in the BTL area, more should've been done to discuss whether Mr H's BTL plans could meet his expectations. And how that stacked up compared with the guaranteed pensions, Mr H would be giving up.

Mr H was clearly in a hurry to start investing further in his BTL business. So the alternative of taking benefits from his DB schemes at age 55, would've meant a large reduction in the income he'd receive compared to leaving them in place until age 65. And his tax-free cash would be significantly reduced compared to transferring, if he was to take benefits from the scheme. He'd also be in receipt of income that at the time he didn't require and of course this would be heavily reduced for having taken benefits early. So taking early retirement from the scheme, likely wouldn't have been attractive to Mr H.

But the critical yields involved here and what the transfer comparator showed – was that transferring was very likely to reduce the value of the benefits Mr H would receive in retirement. Pensionhelp ought to have warned Mr H that it was highly unlikely he would be able to receive the sort of returns from his BTL properties to match the benefits he was giving up from his OPS schemes in retirement.

None of the risks of relying on his BTL business compared to the guaranteed benefits were set out. A property market crash, mortgage rate changes and legislative changes etc could all mean that Mr H's BTL business and the returns from it could be volatile and leave Mr H without sufficient income in retirement. I also note Mr H hadn't been running the BTL business for long, so his knowledge and expectation of returns was based on a small sample size at the time of advice. So I think Pensionhelp ought to have done more here to challenge Mr H's existing view of his retirement provision. And so I don't think the opportunity to build his BTL business meant that transferring was clearly in Mr H's best interests.

I appreciate the advice was based on only the tax-free cash being used initially to purchase properties and the remaining funds were to be invested. And that Mr H would use a combination of his BTL income and pension income in the future, so the advice wasn't to solely rely on his BTL business in retirement. But by advising Mr H to transfer, the majority of his remaining retirement provision was also put at the risk of market returns.

Ultimately, I don't think the advice given to Mr H was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr H was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr H shouldn't have been advised to transfer out of the scheme to attempt to outperform these valuable guaranteed returns through the much riskier route of his BTL business.

So, I think Pensionhelp should've advised Mr H to remain in his DB schemes.

Would Mr H have transferred even if Pensionhelp had advised him to retain the DB schemes?

The investigator believed on the balance of probabilities Mr H would've gone ahead anyway, if Pensionhelp hadn't recommended transferring.

I've thought very carefully about this, generally expert advice given to a lay person, with a clear recommendation against transferring out of a DB scheme would carry significant weight with the majority of customers. But after looking at the circumstances of this case, on the balance of probabilities I think Mr H would've wished to transfer in any event. I'll explain why.

It was Mr H who contacted Pensionhelp with a view to releasing money from his pension to invest in his already existing BTL business. I also note the fact-find that Mr H completed prior to the advice was all answered in such a way that indicated transferring was his goal going into the advice process with Pensionhelp. Mr H said he had to think about early retirement due to his health condition, he wanted to build his BTL company using the funds from transferring his pension into the SSAS. He said he hoped to build this company to a point where most if not all needs where met by it. And he could use his pension to top this up. He wanted flexible income and wanted to take control of his pension. He said on a scale of 1 being the most important and 4 the least, a guaranteed index linked pension was only a 3. Flexibility in how he took his benefits was a 1, as was having all his pensions/investments under one roof.

I think the tax-free cash he could unlock on transfer was a very enticing prospect to Mr H. The evidence suggests that Mr H believed strongly in the strength of his BTL business. And that he'd forecasted with the additional investment that the tax-free cash would bring, he could grow this business to receive a level of income that matched his current income from employment. This would allow him to retire early from a job that he'd said might become impossible to carry out in the future due to his health condition. And the tax-free cash available from the schemes was only around half of what he would receive on transfer if taken immediately. So I think any recommendation not to transfer, would've struggled to get traction with Mr H. Especially as he's told us he was already under the instruction of TLP and he'd believed its sales pitch.

Mr H had already prior to going to Pensionhelp taken instructions from TLP who helped him setup his SSAS and were offering to help him achieve his goal of building his BTL business using the SSAS. They had told him that he needed to get advice from a regulated firm about transferring his pension and Mr H was aware that this advice didn't need to be positive about transferring, he just needed proof he'd received advice. At the time of advice Mr H was in the process of purchasing another property. And he'd said waiting for the funds was 'killing him' as he was eager to research more properties to purchase. So I think Mr H's intentions were clear in his mind, he was very keen to grow his business as soon as possible.

During the advice process, Mr H had also explained the context around his health concerns and how not acting now could scupper his plans to replace his income from employment through his BTL business. Mr H said it could be one year it could be ten years but his condition was degenerative and he expected it would stop his ability to work in the future. Furthermore, Mr H was concerned this condition could also affect his ability to make profit on his properties, as to save money he would do the work needed to renovate the properties himself. So he was very keen to get the tax-free cash as early as possible and build up his BTL business now why his health allowed him to do so. Mr H was very positive about his plan, he said property in the area was cheap and he was receiving good returns.

When the adviser put forward the idea of leaving some of the pensions in place to provide more of a guarantee, Mr H said he'd thought about that but wanted to transfer all three. He also indicated a further pension he had with his current workplace (that it appears wasn't part of the advice process) was going to be used to invest in his BTL business as well. I think this gives further indication that Mr H was very set on growing his BTL business using any funds available. I think this is evidenced below in his conversations with the adviser:

'I did think about leaving one as it is. Yeah, but the main, one of the main things is that I'm 55 next month, yeah, I'd be looking to draw 25 percent with them, and the one I've got work at the moment, is gonna give me about 100,000 ish. Which I'm going to invest straightaway into more properties, which then leaves me in a position where hopefully, I'm pretty much assuming that I buy, similar to what I've got now, and the profit margins are roughly the same, it leaves me in a position where I'm pretty much replacing the wage. So within the next 12 months, two years at maximum…'

'Like I say the idea with the 25% is once a gone, could possibly buy me, four houses, that would then put me in a position where it's pretty much replacing the wage.'

'Yeah, I think my preference is still to go with all three, and that's pretty much what I was trying to go ahead with now. It's just that flexibility to be able to say the 25% at the moment and build the houses up. When that's the big deciding factor for me at the moment.'

Had Pensionhelp given suitable advice and set out all the downsides objectively to transferring, I still think Mr H would've wished to transfer. The underlying principle of retaining a DB pension is the guaranteed and escalating income it provides. But Mr H was aware that he was giving up guaranteed income in any event. And whilst the critical yields involved weren't likely achievable, Mr H felt very confident in his BTL business and the yields this would provide. So if Pensionhelp had attempted to discourage Mr H from transferring on the basis that his investments alongside his BTL business needed to produce yields in excess of 10% per year to match the benefits on transfer, I don't think this would've deterred

Mr H. And Pensionhelp was no expert in terms of the BTL business model – so I don't think its opinion on this matter would've held much weight with Mr H. Whereas Mr H appeared to believe that his plan was viable to the extent he was preparing to risk seemingly all his future realisable funds into growing it. And he'd put in place plans to do so prior to meeting with Pensionhelp.

I think Mr H believed in this plan and I'm not persuaded that any warnings Pensionhelp could've given would've changed his view. Especially as he'd already had success through his BTL business prior to the advice. Mr H also talked about buying commercial property within the SSAS as well. So I think it's clear, Mr H saw property as a way of matching his income from his employment in retirement and achieving income in excess of what his pension benefits would provide.

Furthermore, it seems this complaint has come about not due to the performance of his BTL business but the funds that he subsequently invested in. Unfortunately TLP advised Mr H to invest in high risk investments and these failed. However, I can't see that Pensionhelp was aware that Mr H was going to take this route.

Mr H has said he made Pensionhelp aware of TLP's involvement. The evidence shows Mr H did make Pensionhelp aware of TLP's part in setting up the SSAS. But the evidence doesn't support it knew of his subsequent investment plans through TLP that caused his loss.

In the advice calls with Pensionhelp, there is no mention of TLP being involved in arranging investments for him. We've shared the call transcripts with Mr H and he hasn't disputed the content of these. Nor has he given specific testimony about what he told Pensionhelp in terms of TLP's involvement.

So, I've seen no evidence to suggest Pensionhelp was aware of Mr H's plans to make the investments he did within the SSAS. Nor is it clear whether the plan to invest in them came before or after Pensionhelp's advice. Had Mr H known this was his plan all along, I would've expected him to mention this in the advice calls with Pensionhelp but he didn't. Instead, Mr H only spoke of his BTL plans for the tax-free cash. Mr H also agreed to the investment strategy set out by Pensionhelp, if he never intended to follow this, I would've expected him to say so then.

Pensionhelp advised Mr H to invest in specific investments and I don't think this was just to give the advice a veneer of respectability. I've seen correspondence with the SSAS provider where it asked how it could implement its recommended investment strategy. If Pensionhelp knew Mr H never intended to invest in this way, I don't think they would've taken these steps.

I appreciate Mr H believes Pensionhelp ought to have warned him against the dream that TLP were selling him. TLP I understand, advertise themselves as being experts in building property portfolios within a SSAS. But Mr H talked about his plans without mention of TLP's advice in the calls. And whilst Pensionhelp were made aware of their involvement in setting up the SSAS, I don't think Pensionhelp ought reasonably to have been aware that TLP would advise on matters beyond expanding his BTL business through the SSAS. Without prior knowledge of his plans to invest in high risk UCIS like arrangements, I don't think it is reasonable to say Pensionhelp could've done something to change this course of action.

I am sorry to hear about the situation Mr H has found himself in. But for the reasons explained, I do not think it is fair and reasonable to hold Pensionhelp responsible for this. Whilst its advice was unsuitable and lacking in detail, I think Mr H would've transferred even if the recommendation clearly explained why it was not in his best interests to transfer.

My final decision

For the reasons explained, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 23 February 2024.

Simon Hollingshead
Ombudsman