DRN-4626167

The complaint

Mrs R is unhappy with the advice process in relation to one of her occupational defined benefits ('DB') pensions.

Mrs R wanted to transfer a DB pension to access benefits flexibly. Whilst Pension Works Limited trading as Pension Works ('Pension Works') originally provided advice in support of a transfer, this advice was then withdrawn and replaced with alternative advice recommending the DB pension be retained.

Mrs R has stated that this advice did not meet her requirements and the service standards provided during the advice process (especially during the period where the advice was withdrawn and changed) were unsatisfactory.

What happened

Mrs R received a transfer value from her occupational DB scheme on 18 January 2022. This gave a value of around £237,000 which was guaranteed until 18 April 2022 – a period of three months.

Having decided to seek advice on potentially transferring this DB scheme Mrs R was referred by her financial adviser to Pension Works.

Pension Works acknowledged Mrs R's initial enquiry on 11 March 2022 and provided copies of documents that Mrs R would need to complete to begin the advice process. Mrs R competed these the following day.

Pension Work's Terms of Business document clarified what services they offer and the fees payable by their clients. Some of the detail in the document included:

"We will only recommend you transfer your existing DB pension scheme where we can demonstrate it is in your best interests to do so. Should we recommend you remain in your existing scheme we will set out the reasons why we have determined this is the best outcome for you. If you do not accept our outcome and request to transfer your benefits regardless, we would not be prepared to proceed on that basis."

And

"For most people it will be in their best interests to remain in their existing DB scheme due to the safeguarded benefits (a secure pension income in retirement and other features) these offer."

The document also explained that there was a two-stage process. Firstly, the abridged or initial advice which carried no cost and results in either an unsuitable or unclear outcome.

Secondly, if the abridged advice outcome is unclear, a full advice process can be carried out to fully establish the suitability of a proposed transfer. This stage is chargeable based on the value of the transfer (3% of the first £50,000 transferred, 2.5% of the remainder) with the fee payable whether the advice is to retain or transfer the DB scheme being assessed.

Early in April 2022 Pension Works explained that some information was outstanding and asked Mrs R to assist in chasing the pension providers in question. On 26 April 2022 Pension Works emailed Mrs R with confirmation of a fact-finding appointment which was to be held on 6 May 2022. This email confirmed:

“We will do everything possible to meet the Scheme’s Cash Equivalent Transfer Value (CETV) guarantee date, but we cannot commit to how long it takes to issue our advice or control how long it takes third parties to act upon our requests or instructions, so we do not accept any responsibility if this is missed.”

Following the fact-finding meeting the initial advice report (dated 16 May 2022) was emailed on 18 May 2022. This documented an unclear outcome and was based on a transfer value for the DB scheme of around £237,000.

On 27 May 2022 Mrs R signed to confirm her acceptance of the ‘unclear’ outcome. This document confirmed that the expected charge for a full advice process would be £3,237.

On 6 June 2022 Mrs R received an updated transfer value from her DB scheme. This gave a value of around £178,000 which was guaranteed for three months until 6 September 2022

Emails were exchanged between Mrs R and Pension Works throughout June 2022, as further information about household expenditure was required, with Mrs R also asking for clarification on whether the reduced transfer value would impact on the advice. Pension Works replied stating that the cash flow modelling still worked.

Further emails were exchanged throughout July and August 2022, with Mrs R chasing Pension Works for updates as the 6 September 2022 deadline approached. In response Pension Works confirmed that the report had been delayed due to further questions being asked by their external compliance partner.

Pension Works sent Mrs R the paperwork necessary to enact the transfer of the DB scheme on 23 August 2022. This was completed and returned by Mrs R the same day.

An advice report was provided to Mrs R on 6 September 2022, this recommended the transfer of the DB scheme with a new Aegon pension being set up to receive the transfer proceeds.

This report was retracted later the same day, as the advice to transfer was not being supported by external compliance.

Additional work was undertaken over the following weeks to establish if a transfer could proceed however a final advice report, recommending the retention of the DB scheme, was produced on 22 September 2022, and provided to Mrs R on 30 September 2022.

Following this, emails were exchanged between the DB scheme administrators, Aegon, Mrs R, and Pension Wise where it was established that the paperwork completed in August 2022 had been sent in error to Aegon and the DB scheme. As such, the Aegon pension had been set up, and a transfer requested, prior to the advice being completed. To rectify this, Pension Wise cancelled the Aegon policy and the incorrect transfer request.

Mrs R registered a complaint with Pension Works on 31 March 2023.

Pension Works provided their response on 1 June 2023. This explained that the advice could not have been provided before the first transfer value expired on 18 April 2022 and explained that the time taken to provide the ultimate advice to retain the DB pension was a result of the significant amount of work required.

The complaint response noted that as a gesture of goodwill the advice fee of around £3,237 had been waived. Pension Works additionally accepted that they should not have forwarded the August 2022 documentation to Aegon before the advice had been finalised, however they considered the waiving of the advice fee to be sufficient compensation for this.

Unhappy with Pension Works response Mrs R referred her complaint to this service in September 2023.

Our investigator looked into things and concluded that Pension Works did not need to take any further action, stating that the advice to retain the DB scheme was reasonable and concluding that the waiving of the advice fee was sufficient redress for any distress Mrs R may have suffered during the advice process.

Mrs R did not agree and as such the case has been passed to me for a 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.

There are two main areas which need to be considered in this case. Firstly, was the advice to retain the DB scheme suitable, and secondly, whether Pension Works acted unreasonably during the chain of events detailed above.

In consideration of the actual advice given by Pension Wise, I have reached the same outcome as our investigator, and concluded that the advice to retain the DB scheme was not unreasonable.

The guidance and regulatory rules around the transfer of a DB pension are strict to ensure that valuable lifelong guarantees are only given up when an advisor can be confident that to do so is in the client's best interests.

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, with the introductory documentation issued by Pension Wise confirming that retaining a DB scheme is in most people's best interests.

I can see that Mrs R did have several reasons for wanting to transfer. These included being able to access the funds flexibly with the monies being used to fund Mr R's early retirement until such time as other pensions became payable at age 67, and the ability to leave the transferred funds as an inheritance to Mrs R's children should both Mr and Mrs R pass away.

In assessing the advice, I have considered all the advice documentation, including but not limited to the content of both suitability reports (the first stating a transfer was suitable and the second recommending the DB scheme be retained) and the detail provided by Mrs R in relation to the cash flow modelling and why this is considered incorrect.

The bar for establishing a transfer of a DB pension is suitable is high, this is because lifelong guarantees are lost upon transfer.

Both suitability reports looked at the income that the DB scheme would provide and explained that the transfer value offered was not sufficient to buy a comparable level of income on the open market, with the same retirement income costing around £78,000 more than the transfer value.

Both suitability letters also include details of the cash flow modelling undertaken to establish the sustainability of planned expenditure if the DB scheme was (or was not) transferred. Cash flow modelling relies on assumptions in a number of areas including interest rates, investment growth, inflation, and future changes in circumstances. In both suitability letters the cash flow modelling indicated that Mrs R could meet her objectives whether the transfer proceeded or not. If the DB scheme was retained, Mrs R would be reliant on her cash savings prior to accessing pensions, with reliance on savings reduced if a transfer was completed.

I have noted Mrs R's concerns that the cash flow modelling may not be correct, and the incorrect figures and assumptions have been made. However, as above, a number of assumptions have to be made in this process and given both sets of cash flow modelling in both sets of advice state that it is likely Mrs R could meet her objectives with or without a transfer, I can find no material areas of concern with the modelling undertaken.

I accept that it was Mrs R's preference not to rely on existing cash savings, with these being almost entirely exhausted in Pension Works' recommended course of action however this does not make their advice unsuitable, with the adviser's role being to ensure suitable advice is given, rather than simply allowing a customer to do what they want.

Additionally, accepting Mrs R's point that unexpected changes in circumstances may mean existing cash was depleted more quickly than expected, a transfer of the DB scheme could still be undertaken in future, at the point funds were actually needed, rather than giving up such valuable guaranteed benefits before any access was required.

Lastly, I accept that the advice to leave the DB scheme in situ does mean that in the event of both Mr and Mrs R's death benefits would not be payable to their children. The primary role of a pension is to provide an income to the policy holder in retirement and as such providing an inheritance should be considered a secondary concern for most people. Had the transfer been recommended, any fund value remaining in the event of Mr and Mrs R's death would have been payable to their chosen beneficiaries, however, the fund would also have been used to support income each year since transfer. Whilst Mr and Mrs R were both noted as suffering from ill health, there is no evidence of a materially shortened life expectancy and as such it is unclear how much of the fund would be left. I also note that both Mr and Mrs R's sons were confirmed as not being financially dependent on them.

Overall, I do not believe the advice to retain the DB scheme was unreasonable. At the time of advice Mrs R's objectives could have been met by either retaining or transferring the DB pension and as such Pension Works could not prove a transfer was in Mrs R's best interests. Whilst benefits payable on both Mr and Mrs R's deaths may have been considered more favourable, Pension Works stance that this was not sufficient to justify a transfer is considered reasonable.

Having reached this conclusion, I have gone on to consider the advice process, the chain of events detailed above, and whether Pension Works acted fairly during this time.

I would firstly note that the issue around the forwarding of the application paperwork (completed in August 2022 before any actual advice had been given) to Aegon and subsequently the DB scheme administrators, has been forwarded by Mrs R to the information commissioners office (ICO) and as such I have not commented on this further here. The issue around the subsequent cancellation of the Aegon pension (and transfer) by

Pension Works without consultation or agreement from Mrs R is linked to this original error and as such I have not commented on this further either.

The Pension Works advice process was explained at the outset, with the two-stage advice process and the fees payable all outlined in the initial documentation issued to Mrs R.

This process was followed, with the initial advice resulting in an unclear outcome and the final advice being to retain the DB pension. The documentation issued by Pension Works does make it clear that this outcome was possible.

There were delays in the process however I do not believe these are responsible for the first transfer value expiring. The initial enquiry was made on 11 March 2022 with this value only guaranteed until 18 April 2022 and I do not think it is reasonable to expect Pension Works to have completed their two-stage process in this timeframe.

Following the unclear outcome from the initial advice phase the evidence on file shows Mrs R making consistent contact with Pension Works to move the final advice process forward. The delays here were caused by further information requests being made by Pension Works external compliance partner with the ultimate result being the second transfer value expiring before final advice (to retain the scheme) was provided.

Mrs R has stated that a subsequent transfer value was provided by the DB scheme trustees with this falling further from the £178,000 June 2022 quote. I have considered carefully whether Pension Works should be held accountable for this further fall, however have reached the same outcome as our investigator.

Whilst the transfer value has fallen, the DB scheme itself continues to provide the benefits it always would have, and given the final advice provided was to retain the DB scheme, no actual loss has occurred, with the DB pension remaining in situ at the current time.

Additionally, I would note that even if the ultimate 'retain' advice had been given sooner, before the 6 September 2022 deadline, Mrs R did not have the option to reject this advice and transfer on an insistent customer basis. The only way the transfer could have proceeded would be for Mrs R to engage with another adviser and start the process again from the beginning. Here again there could be no guarantee a new adviser would recommend the transfer, nor be able to complete the process before 6 September 2022.

Whilst I have concluded no actual financial loss has occurred, I have lastly considered the chain of events and the non-financial impact on Mrs R.

Mrs R's personal circumstances were undoubtedly incredibly difficult at the time, with her husband, father-in-law, and close family friends all in serious ill health at the time.

It is also clear that Mrs R's face to face adviser from Pension Works mis-managed her expectations, with the possibility of the end advice outcome being downplayed. This is clearly evidenced by the early completion of the Aegon application forms before any final advice had been signed off by the external compliance team.
The provision of the advice report supporting the transfer and then the almost immediate withdrawal of that report, following many weeks of Mrs R chasing Pension Works for progress reports would certainly have caused significant distress, and I have given careful thought to what redress would be appropriate in such circumstances.

Pension Works were entitled to charge Mrs R £3,237 for the advice they provided. Whilst the advice was delayed, and the 'retain' advice was not the outcome Mrs R wanted, the agreement between Mrs R and Pension Works makes it clear that this fee would be payable whether the advice supported a transfer or not.

As part of their response to Mrs R's complaint Pension Works agreed to waive this fee, and in line with what our investigator has already said, I consider this to be a reasonable offer in such circumstances.

I would like to make clear to Mrs R that this outcome is not intended to downplay the seriousness of her personal circumstances throughout the timeframe in question, however I do not have the ability to fine or punish a business for any errors, with redress instructions I give limited only to returning a consumer to the position they would otherwise have been in.

Whilst I have sympathy for the chain of events which occurred here, I do not believe Pension Works needs to take any further action in this case.

My final decision

As per the rationale above I am not upholding this complaint and require no further action from Pension Works Limited trading as Pension Works.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 17 May 2024.

John Rogowski
Ombudsman