DRN-4679503

The complaint

Mr S complained about the advice given by R&Quiem Financial Services Limited ("R&Q") to transfer the benefits from his defined-benefit ("DB") occupational pension scheme to a group personal pension plan ("GPP"). He said the advice was unsuitable for him and that it caused a financial loss.

What happened

Mr S's DB pension was offering an enhanced transfer value for members who transferred away from the scheme. In Mr S's case, the transfer value was £269,015.94 but the scheme would enhance this to £346,420.17 if he transferred.

Mr S completed a fact-find so that R&Q could gather information about his circumstances and objectives. This said Mr S:

- planned to retire at 60
- had an ISA with a balance of £50,000 and a self-invested personal pension ("SIPP") with a value of £600,000
- wanted flexibility and control to decide
    - his pension income based on his circumstances at retirement
    - the level of death benefits paid to his wife based on his circumstances at retirement
- wanted to take the maximum tax-free lump sum cash available at retirement
- wanted to be involved in how his pension fund was invested
- would prefer his beneficiaries to have the flexibility to choose how death benefits are paid if he died before retiring.

It also it included details on Mr S's attitude to risk, which he deemed to be 'Moderate/Balanced'.

On 4 April 2012 R&Q advised Mr S to transfer his DB pension to the GPP and to invest the proceeds in a Balanced Managed Fund. It said some of Mr S's goals could be achieved by delaying the transfer until he retired but it felt it was appropriate to transfer now due to the enhanced transfer value. The letter accompanying the suitability report said the reasons for the recommendation were so that Mr S could achieve the above objectives as well as him having the flexibility at retirement to decide whether to take an income that increased every year.

Mr S followed the advice and transferred his pension to the GPP. Shortly after he switched the GPP to the existing SIPP he held. He said he did this to consolidate his pensions.

Mr S complained to R&Q in 2023 about the suitability of the transfer advice. In summary, he said the advice was unsuitable and that he wasn't told in detail of the benefits he would lose by transferring the DB pension. He also felt R&Q's advice was biased towards transferring eg an emphasis on the advantages of transferring and on what he might achieve by transferring, but not so much detail on the risks of transferring. R&Q didn't uphold Mr S's complaint as it felt the advice was suitable and that Mr S had been given sufficient information.

Mr S referred his complaint to our service. Our investigator didn't uphold the complaint. She thought the advice to transfer was suitable as there was potential for the new pension to provide increased benefits in retirement. Mr S disagreed. He said:

- he was unaware of the nature of the DB pension and that R&Q failed to properly explain this to him – and had he been made aware of the nature of the pension and the benefits held within it there was no real reason for him to transfer
- the DB pension was his main source of retirement income given the volatility of market performance and the returns on the investments in the SIPP not being guaranteed.

Our investigator wasn't persuaded to change her opinion, so the complaint was referred to me to make 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.

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"). 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 isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of R&Q'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 deals with the obligations when giving a personal recommendation and assessing suitability.

The provisions in COBS 19: which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided not to uphold the complaint for largely the same reasons given by our investigator.

The regulator, the Financial Conduct Authority, states in COBS 19.1.6G that the starting assumption for a transfer from a DB pension is that it is unsuitable. So, R&Q should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr S's best interests. Having looked at all the evidence available, I'm satisfied it was in his best interests.

Financial viability

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. While 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 critical yield (growth) required to match Mr S's benefits at age 60 was 4.4% if he took tax-free cash and a reduced pension – which I think he most likely would do given that he wanted to take the maximum tax-free lump sum cash available at retirement. The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 5.4% per year for eight years to retirement at 60. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr S's 'moderate/balanced' attitude to risk and the term to retirement. There would be little point in Mr S giving up the guarantees available to him through his DB pension only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yield was 4.4%, I think Mr S was likely to receive benefits of a higher overall value than the DB pension at retirement as a result of investing in line with that attitude to risk.

A key difference between Mr S's DB pension and the pension he transferred to is that the retirement income provided by the DB pension was guaranteed for life whereas it's not with the GPP (because the income Mr S receives will be dependent on the growth of his funds). So even though the above figures suggest Mr S might be better off by transferring, I also need to consider whether he had sufficient capacity to absorb any losses should his pension fund reduce or run out altogether.

In this case Mr S said in the Fact Find that he wasn't relying on the DB pension as the cornerstone of his retirement planning. He also referred to the SIPP having a value of £600,000. Mr S has argued that the DB pension was his main source of retirement income as it wasn't subject to market performance and fluctuations and was therefore his most stable source of income should the investments within the SIPP fail.

I don't think what Mr S argues now in support of is complaint is consistent with what he said at the time of the advice. But I'm not persuaded anyway that purely on a "security v volatility" point a DB pension automatically becomes a consumer's main source of retirement income. That's because applying that logic strictly would mean that a very small DB pension (say providing an income of £500 a month) would be a consumer's main source of retirement income even though they had a SIPP containing assets valued at say £1,000,000.

Obviously no-one wants to lose any or all of their pension funds. But some consumers are able to absorb or withstand losses better than others. In this case, given the size of the SIPP I'm not persuaded that the DB pension was going to be Mr S's main source of retirement income. This is in line with what Mr S said himself in the Fact Find. And I think Mr S was able to absorb any losses to this pension by being able to fall back on the SIPP. Accordingly, I conclude that Mr S had reasonable capacity to absorb losses to his DB pension once it was transferred.

For the reasons outlined above, I conclude that on a financial viability standpoint the advice to transfer was suitable.

Other reasons for transferring

I think there were issues in the advice process in respect of Mr S's other objectives eg:

- Mr S said he wanted to take the maximum tax-free cash at retirement and R&Q said he could achieve this by transferring. However, I can't see that R&Q did any analysis to determine whether Mr S actually *needed* the maximum tax-free cash as opposed to simply *wanting* it, or to determine whether the tax-free cash available from the DB pension would have been sufficient.
- Mr S said he wanted the flexibility to decide his pension income based on his circumstances at retirement and R&Q said he could achieve this by transferring. However, I can't see that that R&Q did any analysis to determine what Mr S's circumstances at retirement might be and how the GPP could offer something more suitable than the DB pension.
- Mr S said he wanted the flexibility to decide the level of death benefits paid to his wife based on his circumstances at retirement and R&Q said he could achieve this by transferring. However, I can't see that R&Q did any analysis to determine what level of income Mr S's wife would need if he passed away or whether this need could have been met in an alternative way eg life insurance.
- R&Q said that by transferring Mr S could have the flexibility to decide whether to take an income that increased every year. But the income from the DB pension would have increased every year anyway.

These might have been detrimental to R&Q's position if transferring the pension hadn't been financially viable. This is because while having flexibility, the maximum tax-free cash etc might have been Mr S's objectives there wasn't any analysis on whether those objectives were actually in his best interests. So the objectives might not have been enough to support a transfer that wasn't financially viable.

However, the transfer was financially viable at the time and by transferring Mr S was likely to be better off in retirement. Accordingly, I'm not persuaded that the issues I've outlined were significant enough to outweigh the fact that, at the time, the advice would likely put Mr S in a better position at retirement.

Mr S has said that R&Q didn't explain the nature of his DB pension to him eg that it was fully funded, was guaranteed and index linked, and the fees were paid for by the scheme.

The guaranteed nature of the DB pension income was valuable – hence the regulator saying the starting point is that transferring the benefits won't be suitable. The advice report explained at various points that the income from the DB pension was guaranteed and that it would automatically increase each year both prior to and after retirement. It also said the DB pension would provide a spouse or dependent's pension if Mr S died. There was also an appendix to the report titled "Details of your [DB] Pension Scheme" which provided further information. The letter accompanying the report also referred to the pension increasing. Both the report and the letter pointed out the risks of transferring ie that Mr S would be giving up a fixed pension and he might receive a lower pension than from the DB pension.

Mr S said he transferred the DB pension as he thought it was in financial difficulty. There was general reference to the Pension Protection Fund in the advice report and an appendix titled "The Pension Protection Fund" which outlined how it worked. But I haven't seen any specific reference from the time to Mr S being concerned about the DB pension failing. I'm not therefore persuaded that this was a significant concern for Mr S or that R&Q needed to specifically address it.

With the above in mind, I'm satisfied that R&Q gave Mr S sufficient information as to how the DB pension worked and of the risk involved in transferring. If Mr S didn't understand certain things, he could have checked them with R&Q. In any event, as it looked likely that he would be better off in retirement, I think it's most likely he would have transferred the DB pension to the GPP.

In closing, Mr S said that if his objective was to create flexibility and control R&Q should have given him advice on his SIPP and recommended adjustments to the investments held within it. I'm not persuaded by this argument as it ignores the fact that Mr S wasn't seeking advice from R&Q on his SIPP; nor was R&Q being paid to give advice on it.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 June 2024.

Paul Daniel
Ombudsman