DRN-4927350

Financial Ombudsman Service

The complaint

Mr H complained that he was given unsuitable advice to transfer a defined benefit (DB) pension scheme, to a type of personal pension, in 2019.

Tavistock Partners (UK) Limited trading at the time as Abacus Associates Financial Services is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "AAFS".

What happened

The pension in question here related to a DB scheme from a previous employment but which had grown in value over the years. At the time of the advice this DB scheme was in deferment. In 2019, Mr H was given a cash equivalent transfer value (CETV) of around £289,572. The normal retirement age (NRA) of the DB scheme was 60.

Information gathered about Mr H's circumstances was broadly as follows:

- He was 56 years old and married to Mrs H who was 54.
- They owned their home outright with no mortgage outstanding. Mr and Mrs H had no other outstanding debts. Mr H earned £45,500 (gross) per year and Mrs H earned a part-time salary of £6,200.
- Mr and Mrs H had joint cash ISA savings of around £83,500 and premium bonds worth £35,000.
- In terms of other pensions, Mr H had a self-invested personal pension (SIPP) with funds invested of around £173,000 as of 2019. Mrs H also had a SIPP (£40,500) and personal pension (£29,000). She also had a small defined benefit pension with her current employer. None of these other pensions are the subject of any complaint here.
- It was Mr H's outline plan, as of 2019, to retire at around the age of 60, still around 4 years away.

The only pension being complained about here is Mr H's deferred DB scheme. AAFS set out its advice in a suitability report in November 2019. In this, it advised Mr H to transfer out of the DB scheme, move the funds to a personal pension with a large and well-known pension platform provider, and invest the money in a selection of market funds.

In 2024, Mr H complained to AAFS about its advice, saying he shouldn't have been advised to transfer out to a SIPP. In response, AAFS said it hadn't done anything wrong and was acting on the financial objectives Mr H had at the time.

Disagreeing with this, Mr H referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a 'view' saying it should be upheld in Mr H's favour. But AAFS didn't agree. It therefore falls 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 also 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 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 AAFS'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, AAFS should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr H's best interests.

I don't think the advice to transfer was in Mr H's interests, so I'm upholding his complaint.

Financial viability

To demonstrate the financial comparisons between his current DB scheme and transferring out to a personal pension arrangement, AAFS referred in its transfer analysis to a 'transfer value comparator' (TVC).

The TVC is essentially a measure of what sum of money a consumer would need to buy an annuity providing equivalent benefits to the DB scheme at retirement. The idea is to give consumers a lump-sum figure which can be compared directly with their CETV.

AAFS said the TVC was £392,416. This figure is clearly substantially above the CETV which was only £289,572 at the time – or put another way – over £102,000 more. So, in my view, the TVC provides a revealing window into just how much Mr H could be giving up by leaving his DB scheme.

I also considered the 'critical yield' rate. The critical yield is the average annual investment return that would be required on the transfer value - from the time of advice until retirement -

to provide the same benefits as the DB scheme. It too, is therefore part of a range of different things which help show how likely it is that a personal pension arrangement could achieve the necessary investment growth for a transfer-out to become financially viable. In its transfer analysis AAFS said the critical yield required to match Mr H's DB scheme benefits at the NRA of 60, was 10.43% if taking all the benefits in an annual pension form. If taking a reduced pension and tax-free lump-sum, the critical yield was 8.5%

The advice was also 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. 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.

In Mr H's case, the relevant discount rate closest to when the advice was given was only 2.8% (for a retirement at age 60). This is substantially below the critical yield figures I've set out above and so it implies that exceeding the critical yield was not reasonably achievable. I've also kept in mind that the regulator's upper forward growth projection rate was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. The Bank of England base rate was 0.75%.

All this implies that exceeding a critical yield rate of up to 10% was almost certainly not achievable. I've considered that AAFS had applied a 'high-medium' attitude to risk (ATR) profile to Mr H. However, it's important to point out that, in my view, this ATR category was set too high. I say this because Mr H told the adviser he effectively was considering retiring in around 4 years and so I don't think he'd have wanted to expose himself to the potential losses at this ATR level, given retirement could be a relatively short period away in investment terms. But there's evidence in the transfer documents from the time showing the adviser was considering a much longer investment horizon when discussing Mr H's ATR. And so, I don't think the ATR categorisation was correctly applied.

However, in any event, I've noted that the even adviser himself considered the required growth rates necessary to exceed the critical yield(s), to be wholly unachievable. I say this because he said in the suitability letter, *"… it would be unlikely, even with a High Medium attitude to risk, that the funds would grow sufficiently over the remaining timescale"*. If AAFS considered such growth to be unlikely then, it would clearly be very difficult for it to argue now that achieving these rates *was* achievable.

So to be clear, I think all these things strongly show that transferring simply wasn't viable from a financial comparison perspective. However, AAFS still recommended that Mr H should transfer away. In my view, this was wrong.

Nevertheless, I accept that AAFS's recommendation that he should transfer out to a personal plan was not entirely predicated on the financial comparisons with his current scheme alone. Rather, AAFS augmented its recommendation with some additional and different reasons to transfer away. I've therefore thought about all the other considerations which might have meant a transfer *was* suitable for him, despite quite clearly providing the overall lower financial benefits mentioned above, over the longer term.

I've considered these below.

<u>*Other reasons to transfer*</u>

In my view, AAFS's suitability letter didn't give Mr H clear enough information about the importance of remaining in the DB scheme. I accept Mr H was provided with some warnings and other related information, but the recommendation was to transfer away with additional recommendations made about what should happen with the subsequent personal pension investments.

I've summarised Mr H's financial objectives and the recommendations, discussed between him and the adviser as follows:

- Mr H apparently wanted flexibility in his pension affairs. Transferring the DB scheme and moving into a personal pension type of arrangement was put forward by AAFS as producing much more pension flexibility for Mr H.

- Mr H thought the CETV represented a very good sum of money which he ought to consider taking there and then, as it were.

- Transferring and moving the CETV into a personal pension produced much better death benefits for Mrs H and their two adult children, in the event of Mr H's death.

So, it seems the supporting reasons that AAFS recommended the transfer out to a personal pension were largely for issues connected to the flexibility and control it offered to Mr H. I have therefore considered all these issues in turn.

- *Flexibility*

'Flexibility' generally sounds like a good thing and I think Mr H was influenced by this. In my view, the adviser strongly promoted this feature by saying that Mr H could retire relatively early (aged 60) and then take an enhanced flexible income from his transferred funds until he reached his state pensionable age of 67. At that point he could then reduce the personal pension income he'd need to draw down. When Mrs H reached state pension age, the income could be adjusted again to reflect this. Mr H and the adviser agreed Mr and Mrs H's retirement income needs from the age of 60 were around £2,500 per month which I've assume to be a net figure.

However, I don't think Mr H required the financial flexibility which was implied in the suitability report. In fact, Mr H (and indeed Mrs H too) already had considerable financial flexibility in their other pensions and these weren't inconsiderable amounts. We know, for example, that Mr H had an existing SIPP with £173,000 invested. He was also still working and he had told the adviser that he and Mrs H were continuing to save regularly. Therefore, even by the time of a comparatively early retirement at 60, Mr and Mrs H would have amassed more cash. Of course, at the time of the advice, they additionally already had around £118,500 in accessible savings on which they had no tax liabilities to pay; Mrs H also had £69,000 currently available in her own two personal pensions. She had a small DB scheme of her own in addition.

But the adviser went on to show how Mr H could achieve his £2,500 per month income in retirement by transferring. In my view, this was an unduly complicated exercise, and probably difficult to understand. This was particularly so when it seems obvious to me that achieving that £2,500 monthly retirement income from the age of 60, was already comfortably within reach given the resources and savings Mr and Mrs H currently enjoyed. If remaining in the DB scheme, Mr H could have accessed a yearly pension of £8,336 (or £6,650 and a tax-free lump-sum of £44,336). The latter, for instance, would have alone meant Mr and Mrs H were entering his retirement period with around £163,000 in non-taxable savings, without adding the reasonable assumption that by the age of 60 this would

have been added to (as described above). Alternatively, there was currently over £240,000 in personal pension assets which contained the flexibility AAFS said was required.

In this context, it's my view that the use of 'flexibility' as a rationale for transferring was no more than a 'stock' objective with little or no real meaning to Mr and Mrs H's situation. There was simply no need to transfer away in order to achieve retirement at 60 as by the standards of most people, Mr H already had substantial flexibility housed within his own pension assets and his and Mrs H's savings.

So, all this means that I've seen nothing explaining why Mr H wouldn't want to continue membership of the DB scheme and to use that scheme in exactly the way it was originally intended. Indeed, I think that by retirement, whenever it eventually came, Mr H could have been in an agreeable position. On one hand he'd have an existing deferred DB scheme of a very reasonable value. This would contain all the guarantees and benefits that such schemes normally bring which tend to include a promise to pay a known pension for life. Significant indexation guarantees also existed, the scheme was fully funded and in any event it was also still underpinned by the Pension Protection Fund. On the other hand, he and Mrs H had also built up a number of other personal pensions which they could use to provide a flexible drawdown facility.

I therefore think Mr H's circumstances here were much more aligned to him remaining in the DB scheme and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to retire at 60 if he felt he really needed to. Because he and Mrs H also had other personal pensions and savings, these things supported that strategy.

- *The CETV*

In my view, the value of the CETV was not a justified reason to recommend transferring.

At £289,572 the CETV may well have seemed an attractive figure to Mr H. I also accept that he probably viewed this sum, for only a few years' service, as a very agreeable amount and perhaps one he ought to liquidate as soon as he possibly could. But the job of the AAFS adviser wasn't to just transact what Mr H thought was a good idea. AAFS was the regulated party here, and indeed, it was being paid a considerable sum of money for its advice. The adviser's job was therefore to use their experience and expertise and recommend what was in Mr H's best interests.

As I've said, Mr H already had flexible pension assets, a considerable savings base, and a reasonable expectation of wealth moderately increasing until his preferred retirement age. But what Mr H was being advised to give up by transferring was a guaranteed and index-linked pension for the rest of his life. He was also being advised to give this up when he was still several years from retiring. I don't think this was in his best interests because even though the CETV was a considerable sum in its own right, we know there were no compelling financial reasons to transfer his deferred DB scheme away to a personal pension plan. Mr H could have easily met his retirement income needs by remaining in the DB scheme until the state pension became payable.

By transferring, Mr H was committing to exposing his CETV to the risks of the markets. And by doing so he was incurring ongoing fund management and platform charges which didn't exist within his current deferred DB scheme. Mr H was still only 56 years old and in good health. His NRA was still around 4 years away and I think 60 as a retirement date was still aspirational on Mr H's part, rather than being part of any concrete plan.

But even if I do accept that a retirement at the age of 60 was somewhat fixed, I don't think there were any ways of really telling whether the CETV of £289,572 would have materially

changed when viewed through the lens of that time. As of 2019, we were still in a sustained period of low interest and bond rates which were largely the cause of enhanced CETV's such as the one Mr H had been quoted. This financial landscape had persisted for some years and there was no indication at the point of the advice that this would change. In short, the amount of the CETV was not a reason on its own to leave such a valuable pension scheme.

- *Death Benefits*

I can see that the adviser and Mr H discussed the death benefits in his deferred DB scheme. I think from the evidence I've seen, a personal pension arrangement was portrayed as being better owing to the retention of the full value of Mr H's funds if he died. Also, because the DB annual pension was relatively small, Mr H clearly wasn't impressed about the limited amount Mrs H might get upon his death.

Most people would like their loved ones to be taken care of when they die and the lump sum death benefits on offer here through a personal pension were probably made to look like an attractive feature to Mr H as Mrs H might have inherited the value of his transferred funds tax-free in such circumstances. However, Mr H was only 56 years old and still in good health, and so an obvious drawback with a personal pension's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. In this case, the adviser was clearly intending Mr H to use his transferred funds for his retirement and therefore to drawdown most or all of the funds if he lived a long life. There was therefore every chance that the amount left to pass on would realistically be depleted.

I also see life insurance was discussed in this case although I think Mr H was given some whole life insurance quotes on a 'day one' basis and these were very expensive. But at just 56 years old, a much more reasonable and modest 'term' life insurance policy may have still been an affordable product if Mr H really did want to leave a reasonable lump sum legacy for his wife and two adult children in the event of his sudden death. I can't see this was ever properly discussed. But more so, it doesn't appear that the AAFS adviser took into account the fact that Mr H could have nominated a beneficiary of any funds remaining in his other pension scheme, valued at £173,000. So, to this end, Mr H already had plenty of options ensuring part of his pension wouldn't just 'die with him'.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr H. I think this objective, listed as it was in the suitability report, was no more than a generic comment and not meaningful to Mr and Mrs H's situation.

<u>*Suitability of investments*</u>

AAFS recommended that Mr H invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for him and I don't think he would have insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

<u>*Summary*</u>

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 existing DB scheme, a scheme that was fully funded. By transferring to a personal pension, the evidence very clearly shows that Mr H was likely to obtain lower retirement benefits. I don't think there were any other particular reasons which would justify the transfer and outweigh this. On the basis of what I've comprehensively explained above, I think AAFS ought to have advised him against transferring out of his DB scheme.

I accept that AAFS disclosed some of the risks of transferring to Mr H, and provided him with a certain amount of information. But ultimately it advised Mr H to transfer out, and I think he relied on that advice. If the adviser had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think Mr H would have accepted that advice.

In light of the above, I think Mr H should be compensated for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

Putting things right

A fair and reasonable outcome would be to put Mr H, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr H would have most likely remained in the deferred DB pension scheme if suitable advice had been given.

Tavistock Partners (UK) Limited trading at the time as Abacus Associates Financial Services must therefore now undertake a redress calculation 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.

Compensation 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 PS22/13 and 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 the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Tavistock Partners (UK) Limited should:

- calculate and offer Mr H redress as a cash lump sum payment,
- explain to Mr H before starting the redress calculation that:
    - the 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 DC 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 Tavistock Partners (UK) Limited's offer to calculate how much of the 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, Tavistock Partners (UK) Limited 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 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £430,000, 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 £430,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and I require Tavistock Partners (UK) Limited to calculate and if appropriate pay Mr H the compensation amount as set out in the steps above, up to *a maximum* of £430,000.

If Mr H accepts this decision, the money award becomes binding on Tavistock Partners (UK) Limited.

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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 12 January 2025.

Michael Campbell
Ombudsman