

complaint

Mr M complains about advice he received from Independent Benefit Consultancy Limited (who I've referred to as IBC Limited below) in 2016 to transfer the value of his deferred occupational pension scheme (OPS) benefits with a former employer to a personal pension policy.

background

Mr M was referred to IBC Limited by another firm of financial advisers for advice about transferring his deferred benefits in a former employer's OPS.

IBC Limited's pension planning report recorded that Mr M was aged 61, married and employed, earning £35,000 a year. He owned his own home with an estimated value of £110,000, subject to a mortgage of £38,000. His main objective was recorded as not wanting to wait until the OPS retirement age of 65 to take his benefits. He wanted to access £20,000 of his tax free cash entitlement immediately as he had some worries about debt. He was also concerned about his long-term mortality and was on medication for a health condition. His wife also had a medical condition for which she was taking medication. She'd reduced her working hours and was considering taking her benefits from a large statutory OPS. An attitude to risk assessment was completed which showed Mr M had a balanced attitude to investment risk.

Mr M's OPS had offered a CETV (cash equivalent transfer value) of £148,274.44 which was guaranteed until 26 November 2016. The OPS benefits at age 65 were estimated to be an annual pension of £9,961 or a pension commencement lump sum (PCLS) of £45,435 and a reduced pension of £6,815 a year.

IBC Limited recommended that Mr M transferred his OPS benefits to a personal pension and invested in one of the provider's cautious funds. The transfer went ahead and Mr M received a partial payment of his PCLS.

Mr M complained to IBC Limited in 2018. It didn't uphold the complaint. Mr M referred it to us. It was investigated by one of our adjudicators. She issued her view on 15 May 2019. She upheld the complaint and set out how IBC Limited should redress Mr M.

IBC Limited didn't accept the adjudicator's assessment. I've summarised IBC Limited's main points:

- Mr M's objective was to gain a '*breathing space*' to remove worry, emotional and financial trauma experienced by previous poor debt positions. Mr M was still employed. There might have been other ways to reduce his debt. But that would have exacerbated his overall situation.
- Early retirement from the OPS may have provided access to capital but would have resulted in additional taxed income and eradicated access to future lump sums.
- Health and longevity were major issues for both Mr M and his wife. The ability to enjoy capital and income levels in the early years of retirement was important to them.
- Face to face contact with Mr M meant IBC Limited knew its client and fully understood his circumstances, goals, objectives, worries and concerns. The recommendations were based on the information it had gathered and with full consideration of Mr M's overall position.

- The advantages and disadvantages were fully highlighted, discussed, explained, and understood by Mr M before any action was taken.
- IBC Limited maintained that transferring to a drawdown arrangement and accessing £20,000 of the PCLS to provide for liabilities, give a breathing space and remove worry was the most suitable advice for Mr M.
- His complaint wasn't about the transfer advice but about what another business had done later.

As no agreement has been reached the complaint has been referred to me to decide.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'd refer first to what the regulator's guidance says and in particular to COBS 19.1.6G. At the time the advice was given that provision said:

'Suitability

When advising a retail client who is, or is eligible to be, a member of a defined benefits occupational pension scheme or other scheme with safeguarded benefits whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests.'

So the starting point is that transferring won't be suitable. I've considered whether the transfer could have been in Mr M's best interests.

As the adjudicator pointed out, IBC Limited carried out calculations to determine the critical yield. That's the rate of investment return that Mr M's pension fund would have to achieve after the transfer in order that the personal pension policy when Mr M retired would provide the same level of benefits as those provided by the OPS (and which Mr M would be giving up if he transferred out of the OPS).

Here the critical yield was 18.17% if Mr M was to take all his benefits as a pension or 13.29% if he took a reduced pension plus tax free cash. With effect from 1 January 2016 (and up until 6 April 2017) the regulator's assumed future growth rates for personal pensions illustrations were 2% (lower); 5% (intermediate); and 8% (higher). So the critical yield required just to match the benefits being given up would have been considered to be high.

IBC Limited recognised the importance of the critical yield, at least if Mr M intended to purchase an annuity. IBC Limited's report went on to say that he should only proceed (with a transfer) if he understood a number of points: that he'd be giving up the guaranteed income the OPS would provide; there was a risk the personal pension benefits wouldn't be as high as those of the OPS; the OPS was likely to provide a higher level of benefits if Mr M lived beyond his normal life expectancy; his deferred OPS benefits weren't subject to investment risk and were guaranteed whereas the pension income from a personal pension wasn't guaranteed and depended on investment returns and was subject to investment risk.

Like the adjudicator, I don't think simply setting out the risk factors was enough. Despite what IBC Limited has said about its face to face discussions with Mr M, I'm not convinced he fully understood the value of his OPS benefits and the long term consequences of giving up those virtually guaranteed benefits in favour of a personal pension which was subject to investment risk. I also note what was said about the relevance of the critical yield if Mr M was contemplating annuity purchase. Mr M may have understood that it wasn't a significant factor in his decision. I recognise the critical yield isn't the only consideration. But a high critical yield would suggest the transfer value on offer is low and doesn't represent good value in return for the benefits being given up.

Mr M was assessed as having a medium attitude to invest risk. So he was apparently willing to accept some degree of risk with his pension benefits. But I'm not sure he had any real capacity for loss. He didn't have any other pension provision aside from his state pension entitlement. He'd have been dependent in retirement on the benefits the OPS would provide which, as I've said, were virtually guaranteed. Those benefits represented a significant part of his overall wealth. His only other asset was his house. Mr M's overall financial position would indicate that a transfer wouldn't be in his best interests.

IBC Limited's report records that Mr M would like to access £20,000 of his PCLS immediately *'to provide breathing space as [he was] worried about debt having been in a previous debt position. This would also allow for expenditure on [his] kitchen and garden without taking on additional borrowing.'*

I can understand Mr M's thinking and his wish to be debt free and have extra cash for home improvements. I can see he'd be keen not to repeat any previous poor experience. But it doesn't seem at the time he had any debts which needed to be repaid urgently. Even if debt repayment was a priority, Mr M and his wife were still working (although she had reduced her hours). Consideration doesn't appear to have been given as to whether any debts could be managed differently and avoiding the need to transfer to access the PCLS and give up the security of the benefits the OPS would provide in a few years' time. I think Mr M's options should have been explored in more detail and those discussions recorded.

I note Mr M did have some health issues. As did his wife. Health and mortality considerations may feature in a decision to transfer. But here I don't think Mr M's (and his wife's) concerns were such as would make transferring an obvious choice.

All in all I think the rationale for transferring was weak. I don't think a transfer was in Mr M's best interests. The likelihood was that he'd be worse off in retirement in consequence of transferring. I don't think that was outweighed by any need or wish Mr M had to access capital immediately. I think he should have been advised to retain his OPS benefits.

I've no reason to think, if Mr M had been advised against transferring, he'd have ignored that advice and transferred anyway. I think he'd have heeded advice to retain his OPS benefits.

So my aim in awarding redress is to put Mr M, as far as possible, in the position he'd be in now, but for the unsuitable advice to transfer out of his OPS.

I note what happened after the transfer had been undertaken. Mr M was referred back to his usual advisers. That was the firm that had introduced Mr M to IBC Limited as it didn't have the necessary permissions to advise on OPS transfers. That firm made an error in processing Mr M's request for payment of his remaining PCLS. Too much money was

requested and paid. That firm settled with Mr M and has redressed him for the losses he incurred in direct consequence of that firm's error.

IBC Limited has suggested that Mr M's complaint only arose because of what the other firm did. I don't agree. It's clear, whatever happened about payment of the balance of the PCLS, Mr M was also unhappy with the advice to transfer, which advice IBC Limited gave.

The redress I've set out below will allow for the sums Mr M has received and IBC Limited can also take into account the offer made by the other firm and accepted by Mr M.

fair compensation

IBC Limited must undertake a redress calculation in line with the regulator's pension review guidance as updated in October 2017. The calculation should be carried out as at the date of this decision and should use the most recent financial assumptions published. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of my final decision.

IBC Limited may wish to contact the Department for Work and Pensions (DWP) for Mr M's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr M's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr M's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance. If a payment into the pension plan isn't possible or has protection or allowance implications, it should be paid directly to Mr M as a lump sum after making a notional deduction to allow for future income tax that would otherwise have been paid.

A tax-free cash sum from the OPS has already been taken into account in the payment for past loss above; the remaining future loss is in respect of taxable income only. So it would be appropriate to reduce the loss by 20% to reflect the net of tax loss Mr M has suffered.

The compensation resulting from the loss assessment must where possible be paid to Mr M within 90 days of the date IBC Limited receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes IBC Limited to pay Mr M this compensation.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

IBC Limited should also pay Mr M £300 as compensation for the distress and inconvenience its unsuitable advice has caused Mr M.

my final decision

I uphold Mr M's complaint. Independent Benefit Consultancy Limited must redress Mr M as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 1 July 2020.

Lesley Stead
ombudsman