

about the complaint

Mrs G has complained about advice she received from Gerard Associates Limited to transfer the deferred benefits she held in defined benefit occupational pension scheme (OPS).

background

Mrs G was advised to transfer her defined benefit pension by Gerard. Another business proposed a Qualified Recognised Overseas Pension Scheme (QROPS) as a suitable investment for the transferred funds. Gerard didn't advise on the investment, only the transfer.

At the time, Mrs G was in her mid-fifties her pension had a transfer value of just under £60,000. She didn't meet with a representative from either Gerard or the other business.

Mrs G then raised her complaint with Gerard saying the transfer was unsuitable. The business rejected the complaint saying the recommendation matched her objectives.

One of our adjudicator's upheld the complaint. In summary he said;

- The critical yield required was 7.5%. He did not think performance of 1–2% in excess of this was reasonably achievable to make the transfer worthwhile;
- With 6 years remaining until her retirement, the regulator's reasonable growth rate was 3.7%. This is notably lower than the likely critical yield of Mrs G's transfer;
- The recorded transfer objectives wouldn't have been more important to Mrs G than the benefits of the final salary scheme;
- There was no material benefit to Mrs G in transferring her final salary scheme and losing the valuable benefits therein.

Gerard disagreed with this. They said;

- Consideration should be given to Cash Flow Models highlighted from the TVAS reports. Mrs G would only require returns in the region of 3.1% – 3.2% to sustain a pension income until statistical life expectancy;
- She was also likely to significantly exceed the cumulative benefits from the existing scheme;
- Mrs G's pension now benefitted from greater flexibility. This was her '*number one priority*';
- Mrs G's estate would receive greater death benefits if she died prior to her retirement.

The adjudicator was not persuaded to change his mind. He wrote to Gerard with the following points;

- There was no reason to make this transfer decision in 2015. He thought it would've been more appropriate for Mrs G to wait until retirement at 60;
- Answers Mrs G gave to an Attitude to Risk Profiler Questionnaire indicated she was not comfortable with high risk investment;
- A moderate risk taker should not be advised to place their pension within an overseas pension scheme based in Malta;

- Mrs G's retirement was less than six years away. The TVAS report records there was a 98% chance she would survive to this age. Therefore the enhanced death benefits were of seemingly minimal benefit;
- The advice to transfer her pension was not in Mrs G's interest.

In their further reply Gerard stated;

- They did not state Mrs G would get better investment returns following the transfer;
- The key point of the transfer was for Mrs G to benefit from Pension Freedoms;
- The adjudicator's opinion has relied too much upon the critical yield.

As no agreement was reached, the matter was then forwarded to me for final decision

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have come to the same conclusion as the adjudicator.

The adjudicator has highlighted important regulator guidance (under COBS 19.1.16), in relation to occupational pension transfers:

'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.'

The advice given Gerard has resulted in the loss of the guarantees from the OPS and additional risks in the new scheme. I note Mrs G's risk profile was defined as 'Highest Medium' but I'm not convinced Mrs G was really someone who was a high risk investor. I say this because this is contradicted by her answers to the Attitude to Risk Profiler Questionnaire which include:

'19. How comfortable do you feel when you take a financial risk?

This is answered 'Moderately comfortable'.

'20. Overall, how would you place yourself on the following scale?' This is answered with 'Moderate risk taker'.

I have looked at the advice provided by Gerard to determine whether Mrs G's position was improved following the transfer. A number of objectives for the transfer were listed within the suitability letter from July 2015:

- Make pension work harder
- Ability to provide for loved ones
- Being able to choose when to take our pension
- Spreading risks

I am not persuaded by any of these reasons. I don't accept that the transfer would enable her pension to work harder. The total critical yield for retirement at age 60 was actually

14.1% rather than 7.5%. Even with cash flow modelling the new scheme would not improve on the benefits of the OPS. This is supported by Gerard's suitability letter to Mrs G which recorded *'you will almost certainly end up with lower pay-outs and it is likely to be a compelling reason to stay in your current scheme'*.

Death benefits may have been improved had Mrs G died prior to her retirement at 60. Yet this was only six years away. Mrs G had no dependents and there is no indication she had poor health. The transfer analysis suggested there was a 98% chance she would survive to retirement age. So I don't think this should have been a strong driver to warrant the transfer.

Whilst Gerard did not make the investment recommendation, they knew the transferred funds were bound for QROPS investment. I don't think this would spread the risk but rather only increase it. However, it was the result of the pension transfer that guarantees were lost and returns would be based on investment risk.

Gerard considers it unreasonable for us to focus on the critical yield since Mrs G's objective was to benefit more from Pension Freedoms. There was no compelling reason for Mrs G to transfer her pension when she did. Gerard has said it provided Mrs G access to the benefit of Pension Freedom. Yet I am not convinced this was truly in her interest particularly as the transferred fund was to be placed within an overseas pension scheme.

As her retirement wasn't imminent it would have been more appropriate to have waited until she reached 60 or 65 when she could have considered her options in line with her then circumstances. I agree with the adjudicator that Mrs G has lost the opportunity of making her retirement decisions when most appropriate. She also lost out on valuable guaranteed benefits which she had built up. Overall, the advice to transfer posed a higher degree of risk than Mrs G ought to have been advised to take. The advice to transfer was unsuitable for her.

fair compensation

My decision is that I uphold the complaint, and that a fair and reasonable outcome would be for the business to put Mrs G, as far as possible, into the position she would now be in but for the unsuitable advice.

Gerard must undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in October 2017.

This calculation should be carried out as at the date of this decision, and using 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 Mrs G's acceptance of the decision.

Gerard may wish to contact the Department for Work and Pensions (DWP) to obtain Mrs G'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 Mrs G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mrs G'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 isn't possible or has protection or allowance implications, it should be paid directly to Mrs G as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to her likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

The compensation resulting from the loss assessment must where possible be paid to Mrs G within 90 days of the date Gerard receives notification of her 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 it to pay her 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.

my final decision

I uphold the complaint and direct Gerard Associates Limited to compensate Mrs G as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs G to accept or reject my decision before 4 October 2018.

Keith Taylor
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