complaint

Mr A's complaint is about the advice he received from JP Financial Management Ltd (referred to from now on as JP Financial) to transfer the value of his deferred pension benefits from his former employer's occupational pension scheme into a Self Invested Personal Pension (SIPP) with Standard Life.

background

One of our adjudicators investigated this complaint. She wrote to JP Financial in December 2012 concluding that the complaint should be upheld. The adjudicator considered that in view of the significance of the benefits being transferred and the critical yield figure of 6.7%, the transfer represented a high-risk transaction that was not in line with Mr A's cautious to medium risk profile.

The adjudicator considered that for it to be worthwhile to give up the guarantees associated with the final salary scheme there should be a strong likelihood that the benefits on retirement would be greater under the SIPP than under the former arrangement. However, in light of the level of the critical yield required just to match the benefits that had been given up she considered that the prospect of Mr A improving his retirement benefits was limited.

The adjudicator also noted that the transfer was initially invested in a cash fund that provided returns below the critical yield required. In addition there was a probability that he would invest into funds that had a higher charge than the critical yield figure was based on.

The adjudicator noted that the transfer value represented benefits accrued over 20 years service and other than a stakeholder pension plan represented all Mr A's private pension provision. She considered that the deferred pension would represent a significant portion of Mr A's retirement benefit provision.

JP Financial did not agree with the adjudicators findings. In summary, it said:

- Mr A was well aware of his options when deciding whether to remain in the scheme or to transfer out and the decision was ultimately his. The advice was based on a suitable alternative for members who had decided to leave and take the cash incentive to boost their pension fund.

- The critical yield quoted was provided by the occupational scheme in conjunction with the advisers appointed by the scheme administrators. This document was provided to each member on which to base their decision to stay or leave.

- After the funds were moved from the occupational scheme in October 2010, the FTSE 100 fell by approximately 12% but Mr A was invested in a deposit account paying 6.1%. In addition the return on the FTSE 100 since March 2009 has been considerable achieving 70% growth or 18% compounded annually.

- The critical yield is given as guidance as to whether the client will be better off. However, it is not purely about income but also tax free cash, control and death benefits.

- It is known that final salary schemes are underfunded. Whilst accepting that there will be an annuity rate risk, there is also the risk of the final salary scheme not being fully funded and within the 12 year time frame, the guaranteed level of pension may not be available.

- Mr A has a 23% salary contribution being invested into his stakeholder plan, which is not inconsiderable for a man in a senior management position with 12 years until retirement.

- At the time of the meetings, Mr A was invested in the 'Global Equity Index Tracker' fund of Zurich. This decision he made himself and demonstrates that Mr A is an intelligent man and completely aware of his pension situation.

- Mr A appointed a local IFA as his advisers as he wanted to purchase commercial property. This option was not available through the final salary scheme.

- Mr A's target income was £25,000, which was easily achievable based on his existing pension fund of approximately £300k at the time. This is borne out assuming State Pension of £10,000 plus his pension fund of £300k buying an annuity at age 65 at 6%.

- It has been advised recently that Mr A went into drawdown in March 2010, taking a tax free cash sum of £10,000 and a one off charge of £130 was made for this transaction. This proves beyond doubt that Mr A is a sophisticated investor and that Mr A has fully embraced the contract he is in by using both the flexibility and the complexity it holds.

- If he had remained in the final salary scheme, he would not have had this flexibility and is further evidence that he would have transferred his benefits out of the scheme in any event. In doing so at that time, he took advantage of the significant enhancements offered and ability to reinvest over a longer term.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusions as the adjudicator for broadly the same reasons.

I am satisfied that at the time of the advice Mr A was aware of the available options open to him. These included leaving his pension with the occupational scheme, transferring his pension to a new provider after taking a lump sum or transferring an enhanced pension to a new provider. The options were set out in a letter to Mr A dated 5 June 2008 from the business that had bought the pension scheme from the previous employer.

This letter set out that based on the enhanced transfer value the critical yield required to match the benefits that were being given up was 6.7%. Without the enhancement to the transfer that was being offered at the time the critical yield was shown as 8.5%.

It was later confirmed in a subsequent letter to Mr A sent in late August 2008 that the critical yields quoted earlier assumed that it would be invested in a fund with a 0.35% annual management charge.

This meant that if the funds were transferred and then invested in 1% per annum charge fund the critical yields would have to be increased by 0.65% to 7.35% and then also to 9.15% if the non-enhanced transfer was taken.

It is important to then consider whether at the time of advice what future investment returns were expected. It is not appropriate now to consider what has happened after the transfer took place with the benefit of hindsight.

At the time of advice in 2008 illustrations of future pension benefits were being made on assumed growth rates of 5%, 7% and 9%. Therefore on the assumption that the transfer was invested in a fund with a one percent annual management charge the required yield to match the benefits being given up was 7.35% and to provide higher benefits on retirement a yield of say 1% more would be require. This would then give a required rate of return of 8.35%. In my opinion this would have been a high risk transaction.

I note that the business recommended that the transfer be invested in a Self Invested Personal pension (SIPP) invested with a leading provider. The charges under the plan recommended varied but would have been around 1.25%. These could be higher if non standard specialised funds were selected. This would make the decision to transfer even less attractive as there would be a higher risk that the benefits on retirement would be lower than they would otherwise have been before transfer.

Whilst I note that the business has recorded that Mr A was seeking to take a larger tax free lump sum from his personal pension plan than was allowed from the pension scheme I consider that if it had been pointed out to Mr A, that the benefits after transfer were likely to be lower than the benefits before transfer that he would not have transferred.

There is no evidence that the new owner of the pension scheme was going to default or that it was unable to pay the pension benefits that were payable. Even if this had been a concern of Mr A there is no evidence that the business discussed the benefits that would have been payable under the Pension Protection Fund.

There is no evidence that at the time of advice that Mr A was an experienced investor and I note the file states that he held no equity investments but around £10,000 in cash deposits at the time.

By transferring to the SIPP Mr A was also opened up to the risk of annuity rate fluctuations at a later date and the loss of other valuable benefits. These risks and forfeit of benefits in my view ought to have been brought to Mr A’s attention in order for him to have been fully aware of the risk of transferring.

JP Financial has highlighted the potential risk that the final salary scheme may have been underfunded and led to the guaranteed level of benefits not being available at Mr A’s retirement date. Whilst this risk may exist, I have not been provided any evidence to show that this risk was probable or to what degree. I therefore cannot consider that this risk was any more likely than the risk that existed by transferring his benefits to the SIPP.

Mr A has since changed his advisers. JP Financial says it was because Mr A wished to invest in commercial property. In my view, the reasons as to why he removed JP Financial as his adviser is not material to my consideration of the suitability of the advice given at the time of transfer. Mr A has the right to change his adviser at any time and any decision made in this respect following the transfer does not confirm the suitability of the advice.

I have also taken into consideration that following the transfer to the SIPP, Mr A has taken the policy into drawdown and therefore utilised the benefit and flexibility the transfer provided. Whilst Mr A would not have been able to utilise the final salary scheme in the same way had he not transferred, the fact that Mr A went into drawdown does not change my conclusion that the advice to transfer was unsuitable. It would not have been possible for Mr A to reinstate his benefits into the final salary scheme and therefore whilst I am not considering the suitability of his decision to drawdown, it was an option for him to take. The decision of Mr A doing so does not in my opinion, confirm the suitability of the advice to transfer but rather, I believe it simply shows that Mr A considered his retirement options available to him at that time and followed the advice of his pension advisers.

my final decision

I uphold Mr A's complaint against JP Financial Management Ltd.

I direct the business to carry out a loss calculation using the methodology determined by the regulator for the industry-wide Pension Review, but using the latest assumptions published for cases that fall outside the review. The assumptions and the relevant calculation date can be found on the Financial Ombudsman Service's website.

If a loss is found then redress should be paid in accordance with the methodology set down for the Pension Review into a suitable pension arrangement.

In the event that it is not possible to pay any redress due into Mr A's pension then the compensation should be paid as a lump sum less a deduction of 15% to reflect the income tax that would be payable from benefits arising from a SIPP.

Any dispute which cannot be settled between the parties as to the implementation of my directions can be referred back to me.

Adrian Hudson
Ombudsman