

The complaint

Mr F complains that he was given unsuitable advice by Cambrian Associates Limited trading as Cambrian Chartered Financial Planners (Cambrian), to transfer his deferred benefits in an occupational pension scheme (OPS) to a self-invested personal pension (SIPP). Causing him to lose valuable pension benefits.

What happened

Mr F and his wife – Mrs F - were referred to Cambrian in 2015 by their financial advisor, who wasn't authorised to provide advice on pension transfers. They met with Cambrian and their existing adviser. They both had deferred benefits in OPSs. Cambrian obtained a fact-find to understand their objectives.

The fact-find document that Cambrian completed in June 2015 shows that:

- Mrs F was 52 years of age and had deferred benefits in an OPS payable at age 60;
- Mr F was 50 years of age and had deferred benefits in an OPS payable at age 65;
- Mr and Mrs F had no surplus income after expenditure;
- Mr and Mrs F had no financial liabilities;
- Mr and Mrs F had £3,600 in joint savings and no investments.

Mr F's OPS had a cash equivalent transfer value (CETV) around £210,000. Cambrian obtained a transfer analysis report (TVAS) for Mr F. It calculated that at age 65 Mr F would receive a pension of around £18,825 a year and a lump sum of around £47,859.

The TVAS calculated that the critical yield (the level of investment return required to match the defined benefits being given up) was 10.55% a year to age 65.

Cambrian recommended that Mr F transfer his OPS to a SIPP with a recommended investment based on the attitude to risk it had calculated for him using its questionnaire. Mr F accepted Cambrian's recommendation and transferred his pension to the SIPP. Cambrian separately provided advice to Mrs F regarding her OPS. Although that advice arose from the same exercise, it's subject of a separate complaint and I have considered it separately.

Mr F complained to Cambrian via a claims management company. For simplicity, I'll simply refer to Mr F in this decision. The complaint was that the advice to transfer was unsuitable and that Mr F has lost valuable guaranteed benefits.

Our investigator looked into Mr F's complaint and thought that it should be upheld. Cambrian didn't agree with our investigator's view and the case was referred for an ombudsman's 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.

Where I haven't specifically commented on any individual argument raised it's not because I haven't considered it. But rather that I haven't considered it as pertinent to the outcome I've reached. Having considered everything in this case I'm upholding Mr F's complaint for similar reasons to our investigator.

In reaching my decision I've considered Cambrians obligations at the time they gave this advice. The Financial Conduct Authority (FCA) set out rules and principles in its conduct of business sourcebook (COBS) and principles of business (PRIN). Put simply, they placed a requirement on Cambrian to act with due care, skill and diligence and have due regard for the best interests of Mr F. And as our investigator pointed out, specific rules around pension transfers placed additional responsibilities on Cambrian. Including the regulators direction that the starting point for pension transfers should be that they are not in consumers best interests.

At the time that Cambrian were advising Mr F, he was not yet of an age to take his pension. He was eight years from the pension age of his OPS scheme and three years from being able to access flexible benefits from a personal pension. Cambrian had to obtain a TVAS in order to be able to compare Mr Fs existing benefits with those that he may get by transferring.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

The investment return (critical yield) required to match the occupational pension at retirement was quoted as 10.55% per year. This compares with the discount rate of 4.5% per year for around 14 years to retirement in this case. Against this measure of achievable growth it was highly unlikely that Mr F would be able to match the benefits he was giving up by transferring to a pension and taking on the investment risk.

Cambrian didn't use this discount rate as an indicator of achievable growth for Mr F. It provided projections based on the standard industry projections for lower middle and upper rate growth, of 2% 5% and 8% respectively. All of which should've served to illustrate that transferring would be unlikely to improve Mr F's pension.

Cambrian used a questionnaire to determine Mr F's attitude to risk. It says that based on that questionnaire he had an attitude to risk of seven out of ten on that scale. Our investigator explained why she didn't think that was likely to accurately reflect Mr Fs attitude to risk. Cambrian have strongly argued to the contrary. But for the purposes of this decision I don't believe it's relevant.

Even assuming that Cambrian's assessment of Mr F's attitude to risk was correct, it still wouldn't have been realistic to suppose that he could get investment returns equivalent to, or better than, the critical yield. And Cambrian identified this in its recommendation to him. In its summary of recommendations it said that it wouldn't normally recommend the transfer as the critical yield was 10.55%. But it went on to recommend the transfer in spite of the likelihood of reduced benefits in retirement. Given that it seems accepted that the transfer wasn't financially viable (it wasn't likely to match or improve on the existing benefits), I'll consider the reasons that Cambrian suggested the transfer was suitable advice for Mr F.

A key piece of evidence in understanding Cambrian's recommendation is the financial planning report for Mr F from July 2015. I understand that Mr F says that he hadn't seen the contents of this report in full at the time. But I think it's likely this formed the basis of Cambrian's recommendation at the time it was given. It reflects the information recorded in their fact-find and the TVAS.

It appears to support the transfer entirely on the basis that Mr F wanted to break any connexion with his previous employer or its pension fund. This is something that Mr F disputes. But it appears to be the only reason provided by Cambrian at the time of transferring his pension. So I've considered whether or not it was a reason that meant a financially unviable transfer could have been in Mr F's best interests.

The recommendation considers the solvency of Mr F's OPS. It indicates a potential funding shortfall in the scheme. But didn't conclude that Mr F's benefits were at high risk. And although the Pension Protection fund was explained Cambrian didn't provide a comparison of what Mr F's benefits would look like under that scheme. Which it ought to have done if it considered his OPS was likely to default.

In the case of Mr F's OPS the benefits that he already had were guaranteed and it was highly unlikely that he would be able to get close to matching them if he were to transfer his pension. Whilst I would agree that Cambrian highlighted the risks I don't think it did enough to explain how much worse off in retirement Mr F was likely to be. Even if his OPS defaulted and went into the Pension Protection fund. Ultimately, any emotional reason that Mr F had to want to break ties with his former employer, if such existed, shouldn't have influenced the advice that Cambrian gave. Based on its financial planning report, Cambrian's recommendation to Mr F wasn't suitable.

During the investigation of our complaint Cambrian have explained that the transfer to the SIPP was suitable because it allowed Mr F the option of investing in commercial property. Which I can see was listed on the fact-find under other notes. But I think it was unlikely this idea was very developed. Mr and Mrs F have no recollection of wanting to invest in commercial property. But if they had, I would have expected Cambrian to have considered that investment prior to recommending the transfer.

I say that because the regulator made it clear that financial advisors need to consider the intended or underlying investments to be able to determine whether a transfer is suitable. There is no evidence from the fact-find or the financial planning report that Cambrian gave any further consideration to the idea of a commercial property investment. The projections it gave for Mr F's pension were all based on its recommended investment into a portfolio held within the SIPP. I'm unconvinced that Cambrian's recommendation was based on Mr F's desire to invest in commercial property. So I don't think this supports the suitability of the transfer.

Cambrian have provided us with the cash flow analysis for Mr F's SIPP. It says that this is evidence that Mr F can meet his financial objective. It's dated June 2020 so not contemporary evidence of something that Cambrian considered prior to making its recommendation to Mr F.

It focuses on the fact that Mr F identified a target net income of £15,000 a year in retirement. And cash flow analysis shows that minimum requirement is met using his retirement fund and his state pension. Whilst that shows that Mr F's pension fund would likely provide his target income until age 92, it isn't a fair comparison with the benefits that he gave up in transferring.

Mr F was asked to provide a figure for the income he would need in retirement in the fact-find in June 2015. Which was prior to the TVAS being completed, which then showed the revalued pension benefit that Mr F would have from his existing scheme. The revalued benefits – around £18,825 – from age 65 meant that Mr F would already, comfortably, exceed the income he required when he reached state pension age. In fact the TVAS explained that taking the same level of income from a transferred pension fund would result in the fund being exhausted by age 77 assuming a mid-rate investment return of 5%. Cambrian's recommendation should have reassured Mr F that doing nothing guaranteed him a higher income than he estimated needing.

I understand that Mr F had been interested in the idea of transferring after speaking to his financial advisor. But it was Cambrian's role to consider the full implications of a transfer for Mr F. For the reasons I've given, I think that Cambrian should have recommended that Mr F left his deferred OPS benefits where they were.

I can see that its report gave the following warning to Mr F: *'this course of action carries a very real risk that your retirement fund will be lower than it would have been if you had not carried out the transfer'*. But highlighting the pitfalls of a recommendation doesn't make an unsuitable recommendation suitable. Mr F was likely to place weight on the actual recommendation that Cambrian gave. It should have more clearly pointed out that it wasn't in his best interests to transfer and why, rather than validate any concern that he might have had about remaining in his former employer's scheme by implying that warranted the transfer.

Based on the evidence that I've seen, I think that a clear unequivocal recommendation from Cambrian not to transfer would have meant Mr F remaining in his scheme. Neither he nor his wife intended to retire until 67. It's far from clear it was ever the intention to purchase commercial property and take that kind of investment risk. By clearly pointing out that Mr and Mrs F's target incomes in retirement could already be exceeded without transferring ought to have been a very persuasive reason to retain the OPS that he already had.

Putting things right

A fair and reasonable outcome would be for Cambrian to put Mr F, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have remained in the occupational scheme.

Cambrian must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers. Cambrian have asked that, if the complaint is upheld, redress should take the form of providing a deferred annuity. But there is clear guidance from our regulator on how cases such as this should be put right. And I've seen no persuasive argument to depart from the regulatory guidance.

This calculation should be carried out as at the date of my final decision, and using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr F's acceptance of the decision.

Cambrian may wish to contact the Department for Work and Pensions (DWP) to obtain Mr F'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 F's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr F'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 Mr F as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his 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 amount must where possible be paid to Mr F within 90 days of the date Cambrian 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 Cambrian to pay Mr F.

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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

Determination and money award: I require Cambrian to pay Mr F the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Cambrian to pay Mr F any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Cambrian to pay Mr F any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Cambrian pays Mr F the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr F.

If Mr F accepts my decision, the money award is binding on Cambrian. My recommendation is not binding on Cambrian. Further, it's unlikely that Mr F can accept my decision and go to court to ask for the balance. Mr F may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

For the reasons I've given, I uphold Mr F's complaint and direct Cambrian Associates Limited (trading as Cambrian Chartered Financial Planners) to compensate Mr F in the

manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 7 April 2022.

Gary Lane
Ombudsman