DRN-2957523

The complaint

Mr P complains about the advice given by Better Retirement Group Ltd (BRG) to transfer the funds from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr P was in contact with BRG in early 2017 following discussions with a third-party financial advisor (F). It was agreed that BRG would provide Mr P with advice about transferring his pension.

F completed a fact-find to gather information about Mr P's circumstances and objectives. BRG also assessed Mr P's attitude to risk, which it deemed to be 'medium'.

Based on Mr P's circumstances at the time BRG advised him to transfer his pension benefits into a SIPP recommended by F. The suitability report stated the reasons for this recommendation were, in summary that the benefit of being able to access funds from his pension immediately, outweighed the benefits of staying within the DB scheme.

Mr P complained in 2020 to BRG about the suitability of the transfer advice. He said that following a valuation of his SIPP being sent to him, he realised he would have been financially better off if he had not made the decision to transfer his pension.

BRG didn't uphold Mr P's complaint. It said in summary, that it had provided suitable advice at the time considering Mr P's financial position and plan to pay off existing debt. He also planned to increase his contributions towards a separate workplace pension that he held when his debt had been paid, and this would increase his provisions at retirement.

Mr P referred his complaint to our service. Our investigator thought BRG had acted reasonably in advising Mr P to transfer out of the DB scheme considering his need to pay off existing debt. But the investigator also thought the scheme Mr P was transferring to wasn't suitable for him, and therefore that the complaint should be partially upheld.

BRG provided some additional information including literature that explained its processes and relationships with other businesses, but this did not persuade the investigator to change their opinion, so this complaint has been referred 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, BRG should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests (COBS 19.1.6).

Financial viability

The advice was 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.

BRG explained that the critical yield required to match Mr P's benefits at age 65 was 14.9% if he took a full pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 3.3% per year for 8 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr P's attitude to risk and also the term to retirement. There would be little point in Mr P giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. I think Mr P was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement

For this reason alone, a transfer out of the DB scheme wasn't in Mr P's best interests. Of course, financial viability isn't the only consideration when giving transfer advice. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Access to tax-free cash (TFC)

Mr P had significant debts, which were causing him financial difficulty, he had already exhausted other potential possibilities of raising funds and as he had previously been declared bankrupt his lending options were limited. As Mr P planned on paying off his debt with the TFC that would become available to him, I think he had a genuine need to access his TFC earlier than the normal scheme retirement age and leave his remaining funds invested until a later date. By accessing his TFC, Mr P would've been able to clear some, or even all his debts and live more comfortably.

Although this meant Mr P's overall retirement benefits would most likely be lower in the long term compared to if he had stayed in the DB scheme, I'm satisfied that it was reasonable to advise him to transfer his pension to alleviate his immediate financial concerns.

Mr P was planning to use TFC from his pension to reduce his debt as a last resort having considered the alternatives that were available to him. So, I think the advice BRG gave him to transfer out of the DB scheme was reasonable.

Suitability of the receiving pension

The FCA has made numerous comments over the years, including in guidance issued in March 2011 about assessing suitability, about how firms shouldn't rely solely on risk profiling tools to establish their client's attitude to risk (ATR). The FCA said that firms should have a robust process for assessing the risk a customer is willing and able to take, which includes assessing their capacity for loss; appropriately interpreting customer responses to questions and not attributing inappropriate weight to certain answers; and ensuring that tools are fit for purpose with any limitations recognised and mitigated.

BRG assessed Mr P's attitude to risk as medium stating he had some knowledge and experience of savings and investments and how they work in practice.

I've reviewed the information gathered by BRG at the time. But it seems to me that BRG's assessment of Mr P's ATR was mostly based on the outcome of the fact find carried out by F. This gave him a score of 6 out of 10, which equates to 'medium-high'.

I don't think that was reasonable or in line with the FCA's guidance. The information gathered contained contradictions including that he had experience in making investments and pension decisions, and had an understanding about how these worked, when other information collected stated Mr P had no savings, or opportunity to make pension related investment decisions in the scheme he was a member of. Overall, the information collected doesn't indicate Mr P wanted to take a more than average risk.

As there was conflicting information BRG should have checked to gain a better knowledge of what Mr P's ATR really was. Mr P also had limited other pension provisions and therefore a low capacity for the loss of the pension funds. With this in mind, I think Mr P's attitude to risk should have been assessed as low – medium.

The scheme BRG advised Mr P to transfer his pension to was appropriate for someone with a medium ATR. But as I've stated above, I think Mr P's attitude to risk was incorrectly assessed and considering his circumstances at the time I think he should have been assessed as having a low – medium ATR.

The information available suggests Mr P didn't have any significant investment experience. He also had a low capacity for loss and there was already a risk the funds wouldn't last through retirement, so keeping costs low would have been important. The overall charges in this arrangement were between 2-3% which would have heavily reduced returns. And I'm not persuaded Mr P had the need for such a complex and expensive arrangement. Which warranted these additional costs.

With this in mind while I think the advice to leave the DB scheme was suitable. I don't think the advice to transfer to the chosen scheme was appropriate, there were lower risk funds that attracted lower associated management costs available at the time that would have been more suitable.

I appreciate F was advising Mr P on the investments and both F and the DFM were also regulated firms who had their own regulatory obligations. I acknowledge that they might be separately responsible for Mr P's losses. However, both firms are in liquidation and I'm deciding the complaint against BRG. I think BRG could have avoided Mr P's losses. As I explained above, I don't think a DFM arrangement was suitable for Mr P and BRG should have advised him accordingly. So, with suitable advice I think Mr P wouldn't have ended up in the DFM and in the position he is in now. So, in the circumstances of this case I consider it fair and reasonable that BRG compensates Mr P for all his losses. If BRG feel other firms also at fault here, they are free to pursue them directly after they have compensated Mr P in full.

Fair compensation

My aim is that Mr P should be put as closely as possible into the position he would probably now be in if he had been given suitable advice.

I take the view that Mr P would have invested differently. It's not possible to say *precisely* what he would have done differently. But I'm satisfied that what I've set out below is fair and reasonable given Mr P's circumstances and objectives when he invested.

What must BRG do?

To compensate Mr P fairly, BRG must:

- Compare the performance of Mr P's investment with that of the benchmark shown below. If the actual value is greater than the fair value, no compensation is payable.

  If the fair value is greater than the actual value there is a loss and compensation is payable.

- BRG should add interest as set out below:

- BRG should pay into Mr P's pension plan to increase its value by the total amount of the compensation and any interest. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

- If BRG is unable to pay the total amount into Mr P's pension plan, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to *notionally* allow for any income tax that would otherwise have been paid. This is an adjustment to ensure the compensation is a fair amount – it isn't a payment of tax to HMRC, so Mr P won't be able to reclaim any of the reduction after compensation is paid.

- The *notional* allowance should be calculated using Mr P's actual or expected marginal rate of tax at his selected retirement age.

- It's reasonable to assume that Mr P is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, if Mr P would have been able to take a tax free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

- Pay to Mr P £350 for the distress and inconvenience the inappropriate advice has caused him.

Income tax may be payable on any interest paid. If BRG deducts income tax from the interest it should tell Mr P how much has been taken off. BRG should give Mr P a tax deduction certificate in respect of interest if Mr P asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

Portfolio name	Status	Benchmark	From ("start date")	To ("end date")	Additional interest
SVS Securities Growth Portfolio	I understand another firm has taken over the remaining funds	For half the investment: FTSE UK Private Investors Income Total Return Index; for the other half: average rate from fixed rate bonds	Date of investment	Date of my final decision	8% simple per year from final decision to settlement (if not settled within 28 days of the business receiving the complainant's acceptance)

Actual value

This means the actual amount payable from the investment at the end date.

Fair value

This is what the investment would have been worth at the end date had it produced a return using the benchmark.

To arrive at the *fair value* when using the fixed rate bonds as the benchmark, BRG should use the monthly average rate for one-year fixed-rate bonds as published by the Bank of England. The rate for each month is that shown as at the end of the previous month. Those rates should be applied to the investment on an annually compounded basis.

Any additional sum paid into the investment should be added to the *fair value* calculation from the point in time when it was actually paid in.

Any withdrawal should be deducted from the fair value calculation at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there is a large number of regular payments, to keep calculations simpler, I'll accept if BRG totals all those payments and deducts that figure at the end to determine the fair value instead of deducting periodically.

Why is this remedy suitable?

I've decided on this method of compensation because:

- Mr P wanted capital growth with a small risk to his capital.
- The average rate for the fixed rate bonds would be a fair measure for someone who wanted to achieve a reasonable return without risk to his capital.
- The FTSE UK Private Investors Income total return index (prior to 1 March 2017, the FTSE WMA Stock Market Income total return index) is made up of a range of indices with different asset classes, mainly UK equities and government bonds. It's a fair measure for someone who was prepared to take some risk to get a higher return.
- I consider that Mr P's risk profile was in between, in the sense that he was prepared to take a small level of risk to attain his investment objectives. So, the 50/50

combination would reasonably put Mr P into that position. It does not mean that Mr P would have invested 50% of his money in a fixed rate bond and 50% in some kind of index tracker investment. Rather, I consider this a reasonable compromise that broadly reflects the sort of return Mr P could have obtained from investments suited to his objective and risk attitude.

My final decision

I uphold the complaint. My decision is that Better Retirement Group Ltd should pay the amount calculated as set out above.

Better Retirement Group Ltd should provide details of its calculation to Mr P in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 22 June 2022.

Terry Woodham
Ombudsman