

## The complaint

Mr G complains about advice he was given, by King & Company Accounting and Financial Services Limited, to transfer the deferred benefits from his defined-benefit (DB) occupational pension scheme (OPS) to a personal pension plan. He says the advice was unsuitable for him and believes this will cause him a financial loss.

King & Company Accounting and Financial Services Limited is responsible for answering this complaint. So, to keep things simple, I'll refer to "King & Company".

## What happened

Mr and Mrs G first approached King & Company in 2017 for financial advice. King & Company initially completed a fact-find to gather information about their circumstances and Mr G's pension and retirement objectives. Mr and Mrs G took some time to think about their situation and a suitability report was produced by King & Company in April 2018 concerning Mr G's pension. A broad summary of their situation and objectives around that time was as follows:

- Mr and Mrs G were aged 54 and said to be in good health as of 2018. They had no dependents.
- Mr G had taken redundancy in 2012 after a career in banking and had since worked part-time in an unrelated sector, earning around £6,000 per year. Mrs G was self-employed earning around £8,000 per year. They received around £6,000 per year from joint-investment income.
- Mr and Mrs G had sizable investments which included individual and joint accounts. Examples included cash individual savings accounts (ISA), stocks and shares ISAs, income bonds, premium bonds, shares and cash accounts. The total value of these was around £381,000.
- Mr and Mrs G also owned their home outright, valued at around £525,000. They intended at some point to downsize to a smaller / cheaper property which could release a further six-figure sum.
- The Cash Equivalent Transfer Value of Mr G's OPS as of 20 April 2018 was £588,053. It had a normal retirement age (NRA) of 65, but Mr G previously had made a contribution towards buying an 'unreduced retirement benefit' at age 60. The practical effect of this was that Mr G could retire from the OPS with full benefits at 60.
- Mr G's desire was to access his pension at around the age of 55 by transferring out of the OPS to a more flexible scheme. One important aspect of this to Mr G was that it could avoid him suffering a further actuarial reduction due to accessing the OPS earlier than the age of 60.

- Mr G's objective was to be able to access capital from his pension transfer and enable capital growth in a personal pension until his state retirement age of 67. He also found the ability to pass on death benefits to Mrs G an attractive feature.

In April 2018, King & Company went on to recommend to Mr G that he should transfer out of his DB OPS and into a personal pension plan. It said he should invest the proceeds in funds commensurate with his attitude to risk (ATR) which it said was 'moderately cautious'. King & Company recommended the transfer saying it would enable Mr G to access a cash lump-sum of 25% of his pension which was larger than the OPS equivalent lump-sum and thus would allow him to fulfil his main preference which was to access his pension early.

Mr G acted on the advice by transferring out. However, in 2020 he complained to King & Company that the advice was unsuitable and had caused him losses and he later referred the complaint to our Service. King & Company offered compensation to settle the dispute with Mr G, which he declined.

One of our investigator's looked into the complaint and said we should uphold it. They thought Mr G would not have transferred out if King & Company had given him suitable advice. King & Company didn't agree with our investigator and made a number of detailed submissions which I've carefully considered. As the complaint couldn't be resolved informally, it's come to me for a 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.

Having done so, I have decided to uphold the complaint.

### **Overview**

While this complaint specifically relates to Mr G, the issues here involve both Mr and Mrs G's financial affairs. I've noted they had been married for some time and clearly consider their finances jointly as a couple. I'd therefore like to make it clear that whilst I might periodically refer only to Mr G, I have kept their jointly held finances in mind.

I should also point out that all the parties in this case have submitted a substantial amount of information and arguments in support of their respective cases. I have considered these with great care and noted all the points being made. However, I've focussed on what I consider to have been the main issues and summarised the positions of both parties to make my decision as clear and understandable as possible.

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, King & Company should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr G's best interests (COBS 19.1.6).

### **Financial comparisons and 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.

The critical yield required to match the benefits of Mr G's OPS at age 65 was 7.15% if he took a full pension, and 6.77 % if he took a tax-free lump sum and a reduced 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 3.8% per year for 10 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. At NRA, Mr G would have been entitled to a pension with his OPS of £28,670 per year (which included £2,010 of pension due to be clawed back in later years) without any tax-free cash - or £21,837 per year, with a tax-free sum of £132,178.

I've taken all these things into account, along with the composition of assets in the discount rate, Mr G's moderately cautious ATR and also the term to retirement. However, I have also kept in mind that Mr G's retirement aspirations were to access his pension savings at around the age of 55, rather than 65. Nevertheless, the above figures demonstrate in my view, just how much Mr G's transferred funds would need to grow by, even to match those in his OPS. There would be little point in Mr G giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 6.77%, I think he was more likely to receive benefits of a lower overall value than Mr G's OPS at retirement as a result of investing in line with that ATR.

King & Company also quoted a 'hurdle rate' in its suitability report which was quite a bit lower than the critical yield mentioned above. However, this comparison was based on Mr G buying a pension with no increases, no spouse benefits and no guarantees so it was comparing against something quite different.

King & Company also provided a number of different 'retirement models'. It says these show Mr G would have been able to meet his financial needs well into his retirement by transferring out of his OPS. I've noted Mr G was provided with a number of different scenarios in these models, each showing how his transferred funds could last for many years into the future. However, whilst I acknowledge that King & Company was trying to demonstrate here how his transferred funds might be efficiently used over several years, these were not like-for-like comparisons with the pension benefits Mr G would be giving up. Mr G's pension was fairly large, so demonstrating the funds could last into the future does not necessarily mean that transferring out of it was the best option for him.

I also considered King & Company's detailed and many responses on the use of critical yield when assessing financial viability; it says Mr G was never interested in buying an annuity, a product which the critical yield is used to compare against. However overall, I do not agree that transferring out was better for Mr G's from a financial viability perspective. I have considered the critical yield relevance and also King & Company's detailed response to our investigator's view, including its comprehensive growth projections. However, past performance is no guarantee for future performance and overall, I consider the discount rates and the regulator's standard projections to be more realistic comparisons in the long term rather than projecting historic returns forward, particularly over such a long period of time.

For these reasons a transfer out of the DB scheme wasn't in Mr G's best interests. Of course financial viability isn't the only consideration when giving transfer advice. And King & Company argue that its advice was designed to help Mr G meet his objective of accessing his pension benefits immediately without the OPS reductions. I've considered these below.

### Flexibility and income needs

Whilst I think it's fair to say Mr G's plans about retiring weren't completely fixed, he told King & Company he'd like to access his pension savings at around the age of 55. Mr G was clear about this and I think this formed the main basis of the advice he was given to transfer out. It was also a key theme in King & Company's suitability report that access to a greater amount of tax-free cash formed a major part of the recommendation to transfer out. Enabling the pension funds to grow outside the scheme, more control over the pension, and avoiding the financial penalties of accessing his OPS early (at 55) were other prominent factors.

However, it's important to remember here that King & Company's job wasn't to simply transact what Mr G thought he wanted. Its job was to advise him on what was in his best interests.

Whilst Mr G may have wanted to access his pension early when he sought advice, I don't think he really required the flexibility in retirement referred to by King & Company. Based on the evidence I've seen, Mr and Mrs G already had access to substantial financial resources at the time. They also seemed to have had a well-defined idea of how much they needed on a month by month basis. It's certainly true that to meet their monthly outgoings and desire for an enjoyable and comfortable lifestyle, there was a modest shortfall in their monthly *investment* income, but not in their *overall* income as shown in the suitability report. Mr G was still working at the time and had an income, as did Mrs G. So, to be clear they had both employment income and investment income to call upon in addition to their salaries.

So, in my view, the main issue here is that Mr and Mrs G also already had access to liquid savings and investments to such an extent that they didn't need to transfer Mr G's OPS just to access more cash. There was also the real prospect of them freeing up more cash from the sale of their house in the medium term. I therefore don't think there's any evidence that Mr G had a genuine need to access tax-free cash from his pension earlier than the normal scheme retirement age. In his circumstances, the much more valuable option was for Mr G to use his OPS in the way that it was intended and to use his other resources to complement the income he was receiving, from his substantial savings and investments. Mr and Mrs G knew exactly how much they needed and they had the ability to 'plug the gap' until Mr G reached the age of 60.

I've also considered the issue about the tax-free cash element being considerably higher if Mr G transferred out of the DB scheme to a private pension. This can often be the case with these types of schemes. But accessing more tax-free cash didn't come without any consequences, as it simply left less for investment purposes later on and so this option would only have added to the significant amounts of 'cash' Mr and Mrs G already had. In a low interest rate environment I don't think this would have been a priority for Mr and Mrs G, given the large sums they held elsewhere.

So, I'm satisfied Mr G could have met his and Mrs G's income needs by staying inside his OPS until the age of 60. I think they could have easily met their needs by drawing from their savings and investments between the ages of 55 and 60. And at 60 the DB scheme provided an annual income. Taking this route would have easily met their needs and also protected the valuable guarantees and benefits his OPS came with.

Mr G was only nearing 55 at the time of the advice and based on what I've seen I can think of no reason to make any kind of decision about transferring out of the OPS. Even if Mr G's circumstances changed measurably and he later had reason to transfer out of his DB scheme, he could have done so closer to the scheme retirement age.

### Death benefits

This area was cited by King & Company as being of importance to Mr and Mrs G. I note a number of life insurance quotes were discussed when the parties met and discounted largely on the basis of cost.

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension in this case was likely an attractive feature to Mr G. But whilst I appreciate death benefits are important, and he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr G about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think the existing death benefits attached to the DB scheme were underplayed. As we know, Mr G was married and so the spouse's pension provided by the DB scheme would have been useful to Mrs G if Mr G predeceased her. In my view, the death benefits in the OPS did appear to be valuable. I don't think King & Company promoted the value of this benefit clear enough. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, King & Company should not have encouraged Mr G to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr G.

#### Control of pension and other matters

I think Mr G's desire for control over his pension benefits was overstated. I accept Mr G took an interest in his financial affairs and from what I've seen was most probably a sensible and competent investor. However, Mr G's OPS was already managed and I think the evidence is weak that Mr G exiting the scheme for the purpose of greater personal control was a genuine objective – I think it was simply a consequence of transferring away from his DB scheme.

#### Suitability of investments

As I'm upholding this complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr G, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr G should have been advised to remain in the DB scheme and so the subsequent investments wouldn't have arisen if suitable advice had been given.

## Summary

As I said at the outset of this decision, I've been presented with a substantial amount of information from both parties in this complaint. I've considered everything thoroughly but have rightly summarised the main issues.

I began my decision by pointing out that the regulator makes it clear that the starting point for these types of pensions is that transfers out should only be considered if clearly demonstrated to be in the best interests of clients like Mr G. And I pointed out why, in terms of financial viability, I didn't think this was the case here.

I then went on to describe why I didn't think there was evidence that Mr G required the flexibility, control and the potential for higher death benefits on offer through a personal pension. Whilst these things may have sounded like attractive features to Mr G, King & Company's role wasn't to just transact what Mr G might have thought he wanted; its role was to really understand what Mr G needed and recommend what was in his best interests. I also set out the other substantial resources available to Mr G and why transferring out wasn't right for him because of these.

I acknowledge King & Company spent a great deal of time with Mr and Mrs G over many months and also that it provided them with a lot of information both in-person and in writing. Ultimately however, I don't think the advice given to Mr G was suitable. He was giving up a guaranteed, risk-free and increasing income. I think King & Company should have advised Mr G to remain in the DB scheme.

Finally, I've gone on to think about whether, if Mr G had been given clear and persuasive reasons why transferring wasn't in his best interests, he would have followed advice to remain inside the DB scheme. My view is that I think he would. Mr G went to King & Company seeking advice, which he paid for. I think it's more likely that he would have followed that advice had it been shown to be in his interests.

In light of the above, I think King & Company should compensate Mr G for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology.

### **Putting things right**

A fair and reasonable outcome would be for King & Company to put Mr G, as far as possible, into the position he would now be in but for King & Company's unsuitable advice. I consider Mr G would have most likely remained in his DB scheme if suitable advice had been given.

King & Company 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.

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 G's acceptance of the decision.

King & Company may wish to contact the Department for Work and Pensions (DWP) to obtain Mr 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 Mr G's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr 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 Mr G 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 payment resulting from all the steps above is the 'compensation amount'. This amount must where possible be paid to Mr G within 90 days of the date King & Company receives notification of the 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 King & Company to pay Mr G.

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 King & Company pays the balance.

In acknowledgement of the importance of Mr G's pension and the knock-on effect and emotional impact of the unsuitable advice, King & Company should pay £250 for distress and inconvenience.

### **My final decision**

Determination and money award: I am upholding this complaint and require King & Company Accounting and Financial Services Limited to pay Mr G 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 would additionally require King & Company Accounting and Financial Services Limited to pay Mr G any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require King & Company Accounting and Financial Services Limited to pay Mr G any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that King & Company Accounting and Financial Services Limited pays Mr G the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr G.

If Mr G accepts this decision, the money award becomes binding on King & Company Accounting and Financial Services Limited.

My recommendation would not be binding if he doesn't accept. Further, it's unlikely that Mr G can accept my decision and go to court to ask for the balance. Mr G may want to consider getting independent legal advice before deciding whether to accept any final decision. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 August 2022.

Michael Campbell  
**Ombudsman**