DRN-3219524

The complaint

Mr N complains about the advice Mike Norris Financial Services Limited ('MNFSL') gave to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

Professional representatives have helped Mr N to bring this complaint. But, for ease of reading, I'll refer to the representatives' comments as being Mr N's.

What happened

Mr N approached MNFSL in 2019 to discuss his pension and retirement needs.

MNFSL gathered information about Mr N's circumstances and objectives. It obtained a pension value transfer report and carried out an assessment of Mr N's attitude to risk. On 8 October 2019 MNFSL sent Mr N a *"transfer advice letter*". Amongst other things it said that:

- Mr N was 55 years old, married with one adult son.
- He was working as was his wife. MNFSL didn't record his salary.
- Mr and Mr N owned their home with a small outstanding mortgage, although the figure wasn't given.
- Mr N had "*nominal*" savings.
- He held a self-invested personal pension but its value wasn't known.
- His attitude to risk was *"moderately adventurous*".
- He had some investment experience.
- He was a deferred member of his former employer's DB scheme. The scheme had a cash equivalent transfer value ('CETV') of £77,126.31. The DB scheme would pay Mr N a yearly pension of £726 at age 65.
- The investment required in order to provide equivalent, risk free, benefits to his DB scheme (known as a transfer value comparator or 'TVC') could cost Mr N around £28,611, which was £48,514 less than the CETV.
- The growth rates required in order to match the DB benefits from the DB scheme (known as the critical yield) were in minus figures.

MNFSL recorded that Mr N's "*needs and objectives*" were:

- The ability to access pension benefits in a flexible manner.
- The ability to drawdown funds from his pension as and when he required. And, if he needed to do so before he reached the DB scheme retirement age of 65, to be able to do so without his pension reducing.
- Owing to the state of the market at that time pension transfer values were high and Mr N wished to take advantage of that.
- To enter into an "investment environment" to secure his objectives.
- For higher death benefits.

MNFSL advised Mr N to transfer his pension benefits from the DB scheme into a named personal pension plan. It said the reasons for this recommendation were because:

- MNFSL deemed the critical yield and TVC figures as acceptable.
- It would meet his needs to access his pension benefits flexibly.
- His fund would benefit from "*tax advantaged*" growth
- He could take his benefits from age 55.
- He could take 25% of the fund as tax free cash (TFC).
- "*A broad range of investment opportunities offering greater choice and enhanced flexibility compared to other schemes*."
- Greater freedom and flexibility to access his pension benefits including the "*phasing*" in of benefits in line with his objectives
- Greater entitlement to death benefits which would not be taxed and he could nominate the beneficiary.
- The invested fund would be in addition to his other pension provision.
- He would avoid any future underfunding of the DB scheme.
- If required it would allow his financial adviser to provide ongoing investment advice.

MNFSL said it would charge Mr N £3,000 for its transfer advice and service, with an ongoing annual fee of £500 for investment advice should he choose that.

Mr N went ahead with the transfer which was completed in December 2019.

Mr N complained in 2021 to MNFSL about the suitability of the transfer advice because, amongst other things, he said:

- MNFSL led him to believe that transferring out of the DB scheme would offer greater flexibility but in doing so he would lose guaranteed benefits and so transferring wasn't in his best interests.
- The advice was "*unsuitable, inappropriate and negligent*" and was not in line with the regulator's rules to act honestly, fairly and professionally in accordance with the best interests of its client.
- Mr N was an inexperienced investor and didn't understand the "*differences and losses*" by moving from the DB scheme to a personal pension and MNFSL didn't explain this to him.

MNFSL acknowledged receipt of the complaint but said that it didn't consider it to be valid and refused to respond further.

Mr N referred his complaint to our service. We asked MNFSL to provide its file but it didn't do so. It told us it had provided everything it had to Mr N (via his representatives). It also said that its former adviser, who had provided the advice to Mr N, had taken some documents with him when he left MNFSL's employment, so MNFSL no longer had access to those. Our investigator asked Mr N to provide what information he had. Having considered that he upheld the complaint and required MNFSL to pay compensation. In short our investigator said that Mr N was likely to receive lower pension benefits by transferring out of his DB scheme and as such the recommendation to transfer wasn't suitable. The investigator also noted that the figure MNFSL had used for Mr N's pension entitlement from his DB scheme at 65 wasn't accurate.

MNFSL disagreed. It said it had discussed the figures with Mr N and the advantage to him was that the transfer allowed him the flexibility to access his pension rather than the level of the pension. It said that the transfer also provided substantially better death benefits.

The investigator wasn't persuaded to change his opinion, so the complaint was 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 not 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, MNFSL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr N's best interests (COBS 19.1.6).

Financial viability and MNFSL's figures

MNFSL's pension transfer report and its transfer advice letter set out the figures on which it had based its advice. Those figures showed that Mr N's DB scheme entitled him to a yearly pension of £726 at age 65. They also showed that the critical yield required to meet the DB scheme benefits were in negative figures and the TVC was over £48,000 less than the CETV. Those figures indicated that Mr N could transfer his funds away from the DB scheme and, even if his investments suffered a loss, he should have still been easily able to meet or significantly exceed the benefits offered by his DB scheme. In other words the figures paint a picture of Mr N almost certainly being better off by transferring away from the DB scheme. So I can understand why the figures as presented by MNFSL would make a transfer from his scheme seem particularly attractive.

But, it seems to me that MNFSL has misinterpreted the figures provided to it by the DB scheme administrators. On first glance those do appear to show that Mr N would be entitled to a yearly pension of £726 if he remained in the DB scheme. But a closer look shows that this wasn't Mr N's full DB scheme pension entitlement.

It might help if I explain that pensions rules (for example changes to calculation of cost of living increases) have changed over the years. And those changes have affected DB scheme members' pension entitlements. So it's quite common for pension scheme administrators to set out what entitlement a scheme member has gained between specific dates (sometimes referred to as slices) when the rule changes were made. One such significant change affecting DB pensions involves the calculation of the Guaranteed Minimum Pension (GMP). GMP is the minimum amount a pension scheme must pay where, as is the case with DB schemes, the members have opted out of paying into State Earnings Related Pension Scheme (SERPS or S2P). GMP is generally only payable when a scheme member reaches a certain age, which for Mr N was 65. So pensions administrators, when giving entitlement to pensions will usually revalue what the GMP figure is likely to be when the scheme member reaches retirement age and then use that to provide an overall pension entitlement at normal retirement age. But that didn't happen in this instance.

In this case the DB scheme administrators quoted Mr N's GMP entitlement at the date he left the scheme, in 1989, and which came to £208 a year. It said the figure hadn't been revalued to Mr N's normal retirement age and it wouldn't calculate that revaluation until Mr N reached

GMP age - 65. But it said it had included an estimated GMP entitlement figure. That estimated GMP for Mr N at age 65 was around £3,500 a year.

So the £726 a year pension entitlement that MNFSL had said Mr N would be entitled to at 65 wasn't a fair representation of what Mr N was likely to receive. Instead, if Mr N received the estimated GMP amount of £3,500 (instead of the £208 used in MNFSL's figures) then his yearly pension entitlement would have increased to around £4,018. But I can't see that MNFSL ever identified this anomaly in its figures or explained that to Mr N. I've also identified that other figures contained within MNFSL's pension transfer report don't match the figures which were provided by Mr N's DB scheme, for example the quoted pensions amounts should Mr N have chosen to take early retirement at age 56 aren't the same. But it doesn't appear that MNFSL ever identified this.

So, without identifying and correcting its mistakes, MNFSL's advice and illustrations to Mr N were all based on inaccurate information. And while I don't have the available tools to recalculate the critical yield or TVC myself using the correct figures, I can be certain that the critical yield wouldn't have had a negative value, as the investments would have required significant growth in order to match the DB scheme benefits.

Similarly, I can also be sure that the TVC sum would have been a great deal more than the CETV, it certainly wouldn't have been £48,000 less. That's because the actual value of Mr N's pension entitlement was around 18 times higher than MNFSL's models were based on, which is an increase of some 553%.

But MNFSL said, in part, that its recommendation for Mr N to transfer out of his DB scheme was suitable because the critical yield was acceptable and also because of the ability to fund the pension within the TVC figure. But as both the critical yield and TVC calculations were wrong, it follows that MNFSL's advice and recommendation were also not factually correct. So it's figures are likely to have misled Mr N. It follows that I don't think MNFSL communicated with Mr N in a way that was clear, fair and not misleading. And I don't believe it gave him all the facts with which to make an informed decision about whether or not he wanted to proceed with the transfer.

I've noted that MNFSL recorded that Mr N wanted to take advantage of the higher transfer values DB schemes were attracting because of the state of the market, specifically low "gilt yields". There's no doubt that the state of the market will have an influence on the CETV on offer. But MNFSL has produced no reliable evidence that Mr N could have matched the benefits from his DB scheme by transferring out of it, regardless that the CETV might have been higher than at other times.

For the reasons given above, I don't think MNFSL painted an accurate picture of Mr N's potential financial landscape if he chose to remain in his DB scheme until 65. So its advice to transfer out of the DB scheme on the grounds that the TVC and critical yield were achievable was unsuitable.

Of course financial viability isn't the only consideration when giving transfer advice, as MNFSL has argued in this case. There might be other considerations which mean a transfer was suitable, despite providing inaccurate advice. I've considered these below.

Flexibility

MNFSL's said, in response to our investigator's assessment of the complaint, that Mr N said he wanted flexible access to his pension benefits rather than increased sums. But while that might have been a potential benefit of transferring from the scheme, I've seen no evidence in the available papers that flexible access to his DB pension fund was something that Mr N had any actual need for at the time of the advice. That's because MNFSL hasn't recorded any reason why Mr N might need access to his DB funds before the scheme's retirement age, or why accessing those funds flexibly would be worth giving up the guaranteed benefits that his DB scheme offered him.

I also can't see evidence that Mr N had a strong need for variable income throughout his retirement or before. At the time Mr N and his wife were both still working and MNFSL hasn't shown any evidence that they had significant debt or were struggling to manage on their employment income. So there doesn't appear to have been any pressing need for Mr N to access the funds in his DB schemes early or more flexibly. And while I can understand that the ability to do that and to access pension funds immediately might have been a desirable prospect for Mr N, it doesn't mean that meeting those desires was in his best interests. That's because in order to have access to those funds before retirement or to do so on a more flexible basis meant giving up guaranteed income at retirement age.

MNFSL's role was to find out what Mr N's wants and needs were and why. Its role wasn't simply to arrange what Mr N might find attractive without appropriate analysis and challenge of his motives for doing so with the implications of taking those actions with him. But I've seen no evidence of such a challenge. Indeed I've seen no evidence that MNFSL explored with Mr N exactly what he wanted funds for and what that was likely to cost. Instead, its transfer advice letter says that Mr N's objective was to have more flexible access to his benefits without exploring why that flexibility was worth giving up the valuable risk free and guaranteed assets from his DB scheme. So, I don't think MNFSL fully explored what Mr N's wants and needs were. And I don't think it met its obligations to challenge Mr N's objectives in light of what he would be giving up.

Further Mr N was already investing in a SIPP. So that should have given him the vehicle both for a broader range of investment opportunities, which MNFSL listed as one of Mr N's objectives, and to access those funds on a flexible basis if that was important to Mr N. But, as I've said above, MNFSL didn't record any reason why Mr N would want to give up the guaranteed benefits of his DB scheme in order to obtain flexible access to those funds. And, if MNFSL believed Mr N needed ready access to cash at that time, it didn't explore with him the option of taking those funds from his SIPP, which didn't have guaranteed benefits, rather than from his DB scheme which did.

Also, I can't see any detail within MNFSL's transfer advice letter showing how it analysed the likely income Mr N would need at retirement and how he intended to meet that need. So it seems that MNFSL gave its advice without a full picture of Mr N's likely income needs in his retirement and whether it was in his best interest to access his DB pension funds flexibly.

What I can say for certain is Mr N had the prospect of a guaranteed return from his DB scheme which would increase each year. A return he stood to lose some or all of by moving it into a personal pension which had no guarantees of any return whatsoever. Also, in going ahead with that transfer the funds would instantly be subject to a £3,000 transfer fee. The personal pension fund provider would also charge an administration fee of 0.45% each year and MNFSL would add a further charge of £500 each year for financial advice. Those are charges that would potentially continue to reduce the size of Mr N's investment but are charges that wouldn't have been deducted from his DB scheme benefits had he remained in that. It seems to me that these benefits outweigh the possible advantages of having more flexible access to his pension funds.

Death benefits

MNFSL made a similar mistake when presenting the death benefits available from Mr N's DB scheme as it did when setting out his entitlement to a yearly pension at 65. Mr N's DB scheme would pay 50% of his pension entitlement to his wife in the event of his death. But as MNFSL made a mistake as to the level of 100% of Mr N's pension entitlement it also misrepresented the level of benefits payable when it calculated 50% of that. So it quoted a death benefit figure of £363 a year, when in reality it was likely to be over £2,000 a year. So it's perhaps not surprising that MNFSL recorded in its pension transfer letter that Mr N had said that the DB scheme benefits, of £363 a year, wasn't enough for his wife.

That said, even without its mistakes with the figures I think it's likely that MNFSL would argue that the death benefits from the personal pension were superior to those from the DB scheme. 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. And if Mr N had died shortly after making the transfer then Mrs N would have been entitled to take the remaining sums from the pension in a lump sum if she so wished. And that may have appeared an attractive feature to Mr N. But whilst I appreciate death benefits are important to Mr N, 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 for MNFSL was to advise Mr N about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think MNFSL explored to what extent Mr N was prepared to accept a lower retirement income in exchange for higher death benefits.

Mr N's DB scheme would have paid Mrs N 50% of Mr N's pension entitlement from the date of Mr N's death until the end of her life. I don't think MNFSL made the value of this benefit clear enough to Mr N. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. It's worth noting that the death benefits available from the personal pension would decrease over time. And if Mr N chose to take TFC then it's likely the sum available would decrease by around 25% overnight. And the funds available for Mr N's beneficiaries on his death would have continued to reduce as Mr N drew down sums for his income needs or to pay the charges for the personal pension. And that amount would likely be further reduced the longer Mr N lived for. So, depending on his lifespan and the funds he'd taken from his personal pension, the fund might not have a large – if indeed any – sum left at the time of Mr N's death. In any event, MNFSL should not have encouraged Mr N to prioritise the potential for higher sums being available at his death 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 N.

Control of pension investments

I think MNFSL overstated Mr N's desire for control over his pension investments. Mr N was already a member of a SIPP scheme, which would allow him to control those investments. But MNFSL's recorded in its pension transfer advice letter that Mr N didn't wish to transfer his DB scheme funds into his SIPP because he had "*no desire to undertake further self-directed investment decisions*". That comment would seem to suggest that Mr N didn't require the level of control that MNFSL believed he did. Further, while it recorded that Mr N had some investment experience and had a moderately adventurous attitude to risk, it also recorded that owing to current "*market volatility*" Mr N preferred to invest his funds in "*a more capital protected investment*". In other words Mr N had no immediate need to enter into the investment arena. And I don't think that this was a genuine objective for Mr N – it was simply a consequence of transferring away from his DB scheme.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr N. But MNFSL wasn't there to just transact what Mr N might have thought he wanted. The adviser's role was to really understand what Mr N needed and recommend what was in his best interests. But MNFSL made some critical errors with its figures which meant that it painted a distorted picture of the benefits that were available for Mr N's DB scheme.

Ultimately, I don't think the advice MNFSL gave to Mr N was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr N was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. MNFSL should in the first instance, have double checked its figures to make sure its advice was accurate. It didn't do that. But even if it had, it shouldn't have advised Mr N to transfer out of the scheme in order to have more flexible access and control of his pension funds or for the potential for higher death benefits. Those simply weren't worth giving up the guarantees associated with his DB scheme for.

So, I think MNFSL should've advised Mr N to remain in his DB scheme.

Of course, I have to consider whether Mr N would've gone ahead anyway, against MNFSL's advice. I've considered this carefully, but I'm not persuaded that Mr N would've insisted on transferring out of the DB scheme, against MNFSL's advice if that advice had bene accurate. I say this because while Mr N had some investment experience and a moderately adventurous attitude to risk he was cautious enough not to wish to transfer his funds into a volatile market. And the DB scheme funds were a valuable asset in his retirement provision. So, if MNFSL had provided him with accurate figures and clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

Putting things right

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

MNFSL 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.

For clarity, Mr N has not yet retired, and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's 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 this 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 N's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr N'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 N 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 N within 90 days of the date MNFSL 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 MNFSL to pay Mr N.

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 £350,000, 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 £350,000, I may recommend that MNFSL pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Mike Norris Financial Services Limited to pay Mr N the compensation amount as set out in the steps above, up to a maximum of £350,000.

Where the compensation amount does not exceed £350,000, I would additionally require Mike Norris Financial Services Limited to pay Mr N any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £350,000, I would only require Mike Norris Financial Services Limited to pay Mr N any interest as set out above on the sum of £350,000.

Recommendation: If the compensation amount exceeds £350,000, I also recommend that Mike Norris Financial Services Limited pays Mr N the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr N.

If Mr N accepts this decision, the money award becomes binding on Mike Norris Financial Services Limited.

My recommendation would not be binding. Further, it's unlikely that Mr N can accept my decision and go to court to ask for the balance. Mr N 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 N to accept or reject my decision before 22 August 2022.

Joe Scott
Ombudsman