

The complaint

Mr C complains that Broom Consultants Ltd (BCL) didn't provide him with sufficient information when they advised him on transferring out of his defined benefit (DB) pension.

What happened

In 2012, Mr C was referred by another financial adviser firm (Firm A) to BCL for advice on his options regarding his DB scheme. BCL requested a transfer value from Mr C's DB scheme and carried out a transfer value analysis.

They wrote to Mr C in May 2012 explaining that any alternative pension arrangements would have to achieve a performance of 9.15% per year in order to match his DB benefits (critical yield). As a result of the scheme trustees offering the minimum transfer value and the current effect of charges, BCL suggested his pension was best left in the DB scheme. However, they did say markets conditions could change and it was worthwhile reconsidering the situation occasionally to see whether a more generous transfer value could be obtained. BCL said even though they suggested that Mr C shouldn't currently move his pension, this didn't take into account Mr C's views on death benefits, early retirement, tax-free cash entitlement etc.

BCL received a letter from Mr C in May 2012 thanking BCL for their transfer analysis and their recommendations, but said he wanted to proceed with a transfer to a Self-Invested Personal Pension (SIPP) with James Hay. BCL responded a month later saying they had received Mr C's unsigned letter. They clarified that their recommendation was not to transfer the DB pension. They reiterated that the critical yield was 9.15% and explained that the absolute maximum for which they would recommend a transfer was 7.5%. They also explained that the DB scheme gave Mr C valuable guarantees that he was giving up on transfer. They repeated that their advice was for Mr C not to transfer.

BCL said they could deal with Mr C on an insistent client basis, but he would need to confirm in his own handwriting that he understood this second warning and still wished to go ahead with a transfer. As his wife was also effectively losing the spouse's guarantees in the DB scheme, BCL asked for her signature as well. And also returned Mr C's May letter and requested him to return it with his signature.

Mr C returned a handwritten letter a few days later saying he understood the recommendations but wished to go ahead with the transfer. BCL acknowledged receipt in early July and re-requested Mr C to return a signed copy of his May letter. They said based on his handwritten letter they had requested a fresh guaranteed transfer value from his DB scheme.

BCL then informed Mr C a couple of weeks later that the DB scheme would only calculate a new transfer value if the receiving pension scheme (James Hay) confirmed that Mr C wanted to proceed with the transfer. BCL said as soon as Mr C returned the signed letter from May, Firm A could arrange all the necessary forms with James Hay.

BCL says a couple of months later, in September 2012, they received Mr C's completed

application form for a pension with Prudential. They spoke to Firm A over the phone and in a letter dated 28 September, BCL told Firm A:

'The transfer is proceeding on an "insistent client basis". We need Mr C to write a letter to confirm that he wishes to go to the Prudential plan as the letter we have refers to James Hay. After that you can submit the application through your agency noting on your research that Brooms have dealt with the transfer advice'.

BCL also forwarded some forms from the DB trustees and explained to Firm A which sections needed to be completed for a new transfer value.

A Prudential application was forwarded by Firm A to Prudential in October and the transfer was requested. The application form named an individual working at BCL in the adviser section as well as Firm A's details. Firm A was registered as Mr C's financial adviser and the Prudential illustrations showed Firm A would receive commission of £3,870.65. BCL have confirmed they later received a fee of £2,071.35 from Firm A.

In response to Mr C's complaint BCL said they had given him clear advice not to transfer. They also said it was Firm A who facilitated the transfer and it wasn't their responsibility that Mr C had decided to go against their advice. They said they had told him twice a transfer wasn't suitable and twice did Mr C tell them he wanted to go against this advice. Therefore the only way he could proceed was on an insistent client basis. However, BCL says they would not and did not proceed on this basis as their requirements weren't fulfilled. Firm A asked for assistance with the Prudential application form and this support was provided. However, BCL's adviser relationship with Mr C stopped after they said he could proceed as an insistent client but not through BCL.

BCL says the Prudential application form raised concerns as Mr C originally wanted to transfer to James Hay, so they asked for written confirmation from Mr C that he wanted to transfer to Prudential. They say they never received a response and so considered the case closed. They said they found out the transfer had proceeded around eight months later when they received the fees from Firm A.

BCL said they answered Firm A's technical questions on how to complete the Prudential forms, however they didn't authorise an insistent client process nor did they agree to facilitate the transfer through their agency. They say they also didn't choose the new pension provider or where Mr C would invest. Mr C ended up dealing directly with Firm A.

One of our investigators considered the complaint and decided to uphold it. She didn't think BCL had provided Mr C with sufficient information to make an informed choice. She didn't think that based on BCL's recommendation letter Mr C would have properly understood what benefits he was giving up and the risks involved in transferring.

BCL disagreed and so the complaint was referred 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.

When considering this complaint I took into account the relevant rules and regulations at the time of the advice including:

PRIN 6 :A firm must pay due regard to the interests of its customers and treat them fairly.

PRIN 7: A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.

COBS 2.1.1R: A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule)

The provisions in COBS 9 and 19 which deal with the obligations when giving a personal recommendation in general and specifically in relation to a DB pension transfer.

I appreciate BCL did tell Mr C he shouldn't transfer which was suitable advice, however I agree with the investigator that their advice process was flawed. BCL confirmed that they had no copy of a fact find or attitude to risk questionnaire. Based on the evidence provided they simply did a transfer analysis and focused on the critical yield which they said was too high. After Mr C said he wanted to proceed, BCL told him that he would be giving up valuable guarantees and a spouse's pension. However, overall, I think the very short letters didn't provide Mr C with sufficient information to properly understand the risks of a transfer, including the possibility of running out of funds in retirement or receiving significantly lower benefits. BCL didn't know Mr C's objectives in retirement or possible reasons why he might have considered a transfer, so they weren't able to address any potential misconceptions. They didn't hold sufficient information about him to properly advise him on his DB pension. Overall, by not explaining the full advantages and disadvantages of a transfer, they didn't put Mr C in a reasonable position to make a fully informed choice.

I don't think quoting critical yields and generically mentioning the loss of guarantees, which both can be fairly abstract for a lay person, was enough to meet their obligations of acting in Mr C's best interest and providing him with the information he required. The first advice letter BCL provided also made it sound as if a transfer wasn't advisable now, but that a higher transfer value or other factors in Mr C's circumstances might mean a transfer could be considered. So Mr C was left to fill in the gaps in BCL's advice which I don't think was fair.

The full implications of proceeding on an insistent client basis and the risks involved in the transfer weren't made clear. On balance, I think if BCL had given clear advice providing Mr C with full and detailed reasons of why a transfer wasn't in his best interest and that he likely would be worse off in retirement, he wouldn't have proceeded.

I also considered what happened after the advice was given. BCL say it was Firm A who facilitated the transfer and that BCL's involvement ended before the transfer proceeded. Based on the evidence I've seen I agree that it was Firm A who completed and forwarded the application form to Prudential and who eventually arranged the transfer. However, I don't agree that BCL entirely stepped away from the process after they gave their advice.

BCL informed Mr C that despite their negative recommendation they could deal with his transaction and told him what they required (signed letter from May and a handwritten letter signed by him and his wife). BCL say they were concerned when Mr C suddenly wanted to transfer to Prudential when the original plan was to transfer to a James Hay SIPP. However, the transfer analysis BCL carried out compared Mr C's DB benefits to a pension with AXA which suggests this was the original intended plan. And I can't see BCL was concerned or took any additional steps when this changed to James Hay. So I don't think the fact the receiving plan changed again influenced BCL's actions here.

BCL gave Firm A advice on how to complete the necessary paperwork with Prudential and the DB trustees and confirmed the transfer was proceeding on an insistent client basis. And even when BCL still considered Mr C would transfer to James Hay, it was always the intention that Firm A would complete the paperwork. BCL told Mr C in their letter dated 16 July that as soon as BCL had received the signed May letter from him, Firm A could arrange

to complete the necessary James Hay forms. In my view BCL and Firm A were facilitating the transfer together. If BCL didn't want to be involved they didn't need Mr C to send any signed letters to them.

I appreciate BCL told Firm A they needed a letter from Mr C confirming he wanted to transfer to Prudential and they say this wasn't forthcoming. However, based on what I've seen it's clear BCL helped facilitate this transfer and guided Firm A through the process. They told Firm A they could submit the application and note that the transfer advice had been given by BCL. BCL said they would have analysed a new transfer value if it had been provided to them and would've given their recommendation on the revised information. However, based on their letter to Firm A where they said once Mr C had provided his confirmation he wanted to transfer to Prudential they could go ahead with the application, I don't think BCL had any intention to do any further analysis.

I don't think it's particularly relevant whether Firm A or BCL actively submitted the application to Prudential nor whether Mr C provided another letter confirming his acceptance of the Prudential plan. The issue here is not whether Mr C transferred to AXA, James Hay or Prudential. It's that he transferred out of his DB scheme. BCL clearly helped Firm A facilitate a transaction that wasn't in Mr C's best interest and they received over half of the commission payment for their involvement.

I considered Firm A's involvement here too and whether they are at least in part responsible for Mr C's transfer losses. However, I think it's fair and reasonable in the circumstances that BCL compensates Mr C in full. I think if they had advised him properly he wouldn't have proceeded with the transfer, so it was their actions who ultimately in my view led to Mr C transferring his pension. I don't think that if fair and clear advice had been given and BCL had stepped away from the process entirely as they now claim they did, Mr C would have ended up transferring his DB pension.

Putting things right

My aim is to put Mr C, as closely as possible, into the position he'd be in now but for BCL's flawed advice. I consider he would have likely remained in his DB scheme.

BCL should undertake a redress calculation in line with the 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.

The calculation should be carried out using the most recent financial assumptions at the date of the actual calculation.

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

If the redress calculation demonstrates a loss, the compensation in respect of any future loss should if possible be paid into Mr C'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 C as a lump sum after making a notional deduction to allow for future 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 Mr C's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15% overall from the future loss adequately reflects this.

In addition BCL should pay Mr C £400 for the distress and worry this matter has caused him.

The compensation amount must where possible be paid to Mr C within 90 days of the date BCL receives notification of his acceptance of any final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of any final decision to the date of settlement for any time, in excess of that 90 day period, that it takes BCL to pay Mr C.

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.

My final decision

Determination and money award: I uphold this complaint and require Broom Consultants Ltd to pay Mr C 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 Broom Consultants Ltd to pay Mr C any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only require Broom Consultants Ltd to pay Mr C any interest as set out above on the sum of £160,000.

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

If Mr C accepts this decision, the money award becomes binding on Broom Consultants Ltd. My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 26 April 2022.

Nina Walter
Ombudsman