DRN-3428505

The complaint

Mr K says the advice given by Better Retirement Group Ltd (BRG) to transfer his occupational pension scheme (OPS) benefits, into a Self-invested Personal Pension (SIPP) with Momentum Pension Ltd (MP) and invest in the SVS Securities (SVS) Growth portfolio overseen by SVS's discretionary fund management (DFM), was unsuitable.

Mr K is represented by Anthony Philip James & Co Ltd (APJ).

What happened

Mr K says he was contacted by Fiducia Wealth Solutions Limited (FWS) in February 2017. Its adviser wanted to discuss his retirement planning. His dealings with FWS appear to have happened largely over the phone and in writing.

Mr K was a member of an OPS with deferred benefits. He'd accrued over 5 years of qualifying service with a former employer between 1999 and 2005. This had a transfer value of around £99,000. He also had a small pension plan with London & Colonial worth about £6,700.

FWS wasn't authorised by the Financial Conduct Authority (FCA) to provide advice about the transfer of OPS benefits. So, it contracted with BRG to deliver that expertise, this included the production by it of a Personalised Pension Report (suitability report).

I should note at this point that FWS went into liquidation in June 2020. I understand the Financial Services Compensation Scheme (FSCS) are accepting certain claims against it. And prior to this, in August 2019, SVS – an investment firm it recommended - was placed into special administration following intervention by the Financial Conduct Authority (FCA).

My decision here only concerns the acts and omissions of BRG in relation to the transfer of Mr K's OPS benefits. I appreciate he may have concerns about the other firms involved. But those matters will need to be pursued separately, recognising the status of the entities involved.

BRG says it gathered information from FWS about Mr K's circumstances, objectives and matters such as his attitude to risk. It's confirmed it never met him.

BRG produced a suitability report dated 28 March 2017, which recommended Mr K proceed with the transfer of his OPS benefits. Ultimately he was persuaded by the advice. He signed the necessary paperwork and the transaction was completed in June 2017. The funds were placed in a MP SIPP and invested in a SVS Growth portfolio overseen by the SVS DFM arrangement.

APJ, on behalf of Mr K, complained to BRG in March 2019 about what had happened in 2017. It says BRG failed to meet the regulatory obligations placed on it when advising someone about transferring their OPS benefits.

BRG responded in June 2019. It set out what it considered to be the limited scope of its involvement. It concluded in the following terms:

"As confirmed in our email to you of 28 March 2019, Better Retirement Group provided only the transfer analysis advice and not the investment advice. It is our understanding that the regulated adviser providing that investment advice is Fiducia Wealth Solutions."

The Investigator recommended that Mr K's complaint should be upheld. He wasn't persuaded that BRG had demonstrated the transfer of his OPS benefits was demonstrably in his best interests as it was required to do. He also concluded that it should've been aware that the investments he was planning to make with his funds weren't suitable.

BRG disagreed. It set out its's relationship with FWS, the process it followed and the expertise of its advisers. It explained why it maintained that the transfer was suitable for Mr K in his circumstances. And it noted that both FWS and SVS had misled it and the regulator concerning how underlying investments would be managed.

As both parties couldn't agree with the Investigator's findings, Mr K's complaint has been passed to me for review. I issued my provisional decision in February. Neither party has provided any new evidence or argument, so I see no reason to depart from my initial findings and conclusions.

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 there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm upholding Mr K's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr K's case?

The first thing I've considered is the extensive regulation around transactions like those performed by BRG for Mr K. The FCA Handbook contains eleven Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2, which requires a firm to conduct its business with due skill, care and diligence.
- Principle 3, which requires a firm to take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems.
- Principle 6, which requires a firm to pay due regard to the interests of its customers.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like BRG. As such, I need to have regard to them in deciding Mr K's complaint.

At the time of the advice BRG gave Mr K, COBS 19.1.6 made the following specific point about advising on a transfer from OPS schemes (bolding is my emphasis):

*"When advising a retail client who is…a member of a defined benefits occupational pension scheme…with safeguarded benefits whether to transfer…**a firm should start by assuming that a transfer…will not be suitable.** A firm **should only then consider** a transfer…to be suitable **if it can clearly demonstrate**, on contemporary evidence, **that the transfer…is in the client's best interests**."*

Under COBS 19.1.2, BRG was required to:

- Compare the benefits likely to be paid under the ceding arrangement with the benefits afforded by the proposed arrangement.
- Ensure that the comparison included enough information for Mr K to be able to make an informed decision.
- Give Mr K a copy of the comparison, drawing his attention to the factors that do and don't support its personal recommendation, in good time.
- Take reasonable steps to ensure that Mr K understood its comparison and how it contributed towards the personal recommendation.

In simple terms, BRG had to assess the benefits likely to be paid and options available under the OPS and compare this with those available under the new arrangements proposed before it advised Mr K on what to do.

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

In July 2010 the FCA issued guidance about unregulated investments in a 'Good and Poor Practice report'.

The report contained examples of good practice in relation to unregulated investments, for example where a firm had robust controls in place and limited client exposure to 3% to 5% of their portfolios, where those clients had been assessed as being suitable for unregulated investments. An example of bad practice given by the FCA was where up to 100% of a client's holdings were invested in a single unregulated collective investment scheme (UCIS).

Even if some of the specialist funds Mr K was invested in weren't technically a UCIS, they share similar characteristics including the high-risk nature of the investment, being illiquid, subject to counter-party risk and uncertain valuation. And I think these matters are relevant to my consideration.

It's also important to review the FCA's specific stance on advice provided about SIPP's. For example, in January 2017 it issued an industry alert which said:

"We are aware that some firms have been advising on pension transfers or switches without considering the assets in which their client's funds will be invested. We are concerned that consumers receiving this advice are at risk of transferring into unsuitable investments…"

"Transferring pension benefits is usually irreversible. The merits or otherwise of the transfer may only become apparent years into the future. So it is particularly important that for advising on pension transfers ensure that their clients understand fully the implications of a proposed transfer before deciding whether or not to proceed."

"We expect a firm advising on a pension transfer from a defined benefit (DB) scheme or other scheme with safeguarded benefits to consider the assets in which the client's funds will be invested as well as the specific receiving scheme. It is the responsibility of the firm advising on the transfer to take into account the characteristics of these assets."

"Our rules set out what a firm must do in preparing and providing a transfer analysis. In particular, our rules (COBS 19.1.2R(1)) require a comparison between the benefits likely (on reasonable assumptions) to be paid under a DB scheme or other scheme with safeguarded benefits and the benefits afforded by a personal pension scheme, stakeholder scheme or other pension scheme with flexible benefits."

"The comparison should explain the rates of return that would have to be achieved to replicate the benefits being given up and should be illustrated on rates of return which take into account the likely expected returns of the assets in which the client's funds will be invested. Unless the advice has taken into account the likely expected returns of the assets, as well as the associated risks and all costs and charges that will be borne by the client, it is unlikely that the advice will meet our expectations…"

Did BRG adhere to the regulatory requirements placed on it when advising Mr K?

In short, I don't think BRG met the regulatory requirements placed on it. I'll explain why.

There are several documents relating to BRG's transaction with Mr K that are important to my consideration, these include the fact-find, the pension transfer report and the suitability report. I've thought carefully about the testimony of both parties and other communications such as the email exchanges between the various parties involved.

The regulatory position sets a high bar, which BRG must be able to *clearly* demonstrate was met, on contemporaneous evidence, that the transfer was in Mr K's best interests. I'm not satisfied it's managed to do this in the circumstances of this case.

At the time of the advice Mr K was 60. He has been a carer for his mother for several years. He received support for this of around £4,700 a year. He also received around £500 annually from an investment bond. Mr K was said to have a small monthly surplus each month – although the only expenses captured were his council tax, water rates and utilities.

Mr K lived with his mother. The house had passed to him and his brother. It was worth around £70,000 and there was no outstanding mortgage. His investment bond was worth around £7,000. Leaving aside his pensions, Mr K had no other disclosed assets or savings. He had no liabilities.

Mr K had a small personal pension valued at around £6,700. He also had deferred OPS benefits worth around £99,000 (which had a normal retirement date of 65). He was said to be potentially looking to take a capital sum from his pension when he was 61. He was planning to retire fully at the state pension age of 67. He was said to require an annual income in retirement of around £6,000, which BRG noted he'd be able to make up from his transferred pension and from the state pension.

BRG recorded Mr K's objectives in the following terms:

- *To transfer your [OPS benefits] to a personal pension arrangement which will provide you the flexibility to take an enhanced level of income from this scheme from the age of 67 which will allow you to fund the early years of retirement.*
- *You have advised that you will have sufficient retirement income from your normal retirement date which will be derived from the State Pension and your investments.*

- *You have also advised your IFA that you would like, as far as possible, to leave any remaining funds to your family in the form of a lump sum benefit or beneficiaries' drawdown in the event of your death.*
- *…you may wish to release the maximum amount of tax-free cash available from your pension at some point in the future, along with improving the capital death benefits available to your loved ones.*
- *You plan to retire at age 67 and will use this pension to provide you with an income in retirement. …you do not feel the need to draw an income from these funds yet and that you have adequate income for the time being from other sources but you need the tax-free cash lump sum.*
- *You would like to leave any remaining funds to your family in the event of your death.*

Mr K's objectives are not compelling and some appear in conflict. They are not specific, measurable or time-related. For example, it was said he *may* want to release *some* tax-free cash (TFC) from his pension *at some point in the future.* No rationale, scale or time horizon is provided. If he was to have taken TFC, this would've undermined another of his recorded objectives, which was said to be to take an enhanced income at 67.

There's a significant focus on passing benefits to his family in the event of his death. While he had an elderly mother and a brother, he didn't have a partner or dependents. Focussing on the inheritance of any residual benefits after Mr K's passing was a second order consideration. It's most likely he would've used up his modest pot himself. As BRG knows retirement funds are primarily to provide an income in retirement.

I've concerns about what BRG says was Mr K's target income for retirement. It thought the £6,000 a year he seems to have settled on as the total amount he needed, would be covered by his state pension and transferred OPS benefits. I've seen no evidence that it properly assessed what his entitlement to a state pension was- he'd been out of the workforce for a decade.

BRG said Mr K would receive a state pension of £9,000 per annum. Assuming this was the case, or a sum not far short of this, it then begs the question why he needed to transfer his OPS benefits. If he truly had all the funds he'd need in retirement to maintain his modest living standards, why would he take on risk by transferring his OPS benefits – there would've been no need.

Mr K was living frugally in 2017. While his needs may've been modest, this is likely to have been driven by his circumstances at the time of the advice, being a long-term carer for his elderly mother. This was a situation that was highly likely to change within the horizon that his pension planning should've been considering.

The expenditure analysis FWS performed was weak. Not only did it exclude provision for any leisure and holiday spending by Mr K, it didn't allow for food and clothing (which it was recorded were paid for by his mother), mobile phone or TV subscriptions, insurance or savings. In responding to the Investigator's view, BRG constructed another expenditure breakdown to show Mr K would have sufficient resources in retirement. It assumed £400 extra as a "generous" provision for household expenses.

A total income of just £6,000 a year is very low and I would disagree with any description of living on £400 a month as being generous when expenditure on holidays and leisure was £0. However, it's reasonable to say that if Mr K was surviving on this level of income at the time of the review, then whatever level of state pension he received was likely to cover these costs and his OPS would only improve his standard of living.

I’ve seen no evidence of an attempt by BRG to get to the bottom of these important questions. I think this would’ve been important to Mr K being able to take an informed view about the transfer of his OPS benefits. BRG hasn’t’ done enough to satisfy me the process it followed was thorough, and therefore fair.

I’ve concluded Mr K’s stated objectives provide a weak rationale for the transfer of his OPS benefits. Rather than exploring matters further, BRG appears to have simply reflected what it was told via FWS. By its own admission, its interaction with him was limited.

BRG was in a good position to have analysed, tested, challenged and advised Mr K about what was in his best interest for retirement planning. It knew pension pots built up over many years are to provide for retirement. And certainly when early access to benefits are recommended there need to be compelling reasons. That’s not the case here based on the available evidence.

It was BRG’s role to discern what Mr K’s wants and needs were and why. Its role wasn’t simply to facilitate what it thought he wanted without any critical thinking. And it wasn’t providing a basic transactional service to FWS. It had to use due care and skill. It had to do these things because it had to act in his best interests. It hasn’t demonstrated that it met these obligations.

Turning to the financial case for this transaction. The critical yield is the level of returns Mr K’s new SIPP would need to have achieved in order for the transfer to match his OPS pension benefits at retirement (aged 65). The pension transfer report indicated that an annual return of not less than 21.73% would be required (assuming that all his benefits were taken as a pension).

BRG’s advice was given during the period when this Service published '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, I consider they provide a useful indication of what growth rates would’ve been considered reasonably achievable when the advice was given in Mr K’s case.

The critical yield required to match Mr K’s OPS benefits was 21.73%. When the advice was given, the relevant discount rate was 3.0% per year for 4 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.

The comparable growth rates this Service used were based on a typical investment spread across shares and bonds. So, it’s arguable that if Mr K had a high appetite for risk, the investment portfolio selected in that case might’ve had an outside chance of big returns. But even then this would’ve been too big a bridge to gap.

BRG says it did not use the critical yield analysis in its advice. Instead it produced a cash flow analysis to show how long Mr K’s funds would last, based on certain assumptions such as his life expectancy and at different growth rates. The modelling suggested that with a 5% return, if he were to drawdown benefits equivalent to those it projected from his OPS, his pot could last until he was 89 – five years more than his life expectancy.

There’s merit in using these cash flow models. But clearly much depends on the data input and assumptions. Having considered the results produced by BRG’s report I don’t find the results for Mr K’s case showed it was demonstrably in his best interests to transfer.

The life expectancy calculations used by BRG indicated Mr K had a life expectancy of 83. In its suitability report it suggested that based on medium returns on his investments his fund would last until he was 89. This is somewhat at odds with what the income drawdown report it commissioned reported. Based on medium returns, it said his funds would run out when he reached 84. And the pension transfer report concluded they'd be exhausted by the time he reached 83.

I note that BRG says Mr K's life expectancy can be reduced by a couple of years because he was a smoker. But in its most recent submission, where it set out its approach to cash flow assessment for OPS pension transfers, it told us:

"We require that the [OPS] income will be payable for the client's life expectancy plus 5 years (no account of ill health is taken in this assumption)."

Mr K's OPS transfer doesn't appear to have met BRG's own measure of financial viability.

Further, data from the Office for National Statistics indicates that someone of his age had a one in four chance of reaching 94 and a one in ten chance of reaching 99. So, I think BRG needed to be clearer with Mr K that there was a significant possibility that if he went into drawdown this element of his pension pot could be exhausted before he passed.

BRG's modelling of returns from a generic medium risk portfolio was based on an assumption for annual management charges of 1%, ongoing adviser fees of 0.5 % and initial fees of around £5,300. It indicates no SIPP fees because Mr K was said to be transferring his OPS benefits to an existing SIPP – this didn't happen, so extra fees would've been incurred.

I note some of these fees and charges were assumptions, for example Mr K wasn't told how much the DFM arrangement with SVS, including the various fund management overheads would cost. I think BRG needed to have been more transparent about the fees and charges he would be incurring and the impact of these on the illustrations he was provided. After all, he was being advised to move from an OPS which didn't have the same scale of overheads.

I find the pension arrangements recommended by BRG to have been unnecessarily expensive and over-engineered for Mr K's relatively modest requirements.

There's no evidence Mr K was an investment professional or a sophisticated investor. This is important context when I consider what happened to him. Firstly, I have some concerns about how FWS assessed his appetite for risk.
In its suitability report BRG said:

"Your attitude to risk has been independently assessed by [FWS] and I can confirm that on a scale of 1 to 10 your attitude to risk has been rated as a number 7 but then scaled back slightly following a discussion with your financial adviser to a number 6 classifying you as a High Medium Risk investor."

High Medium Risk was defined as follows:

"Whilst you are likely to be concerned with not getting as much back from your Investments as you put in; you also want to make a higher return on your investments. Our preferred Investment portfolio is likely to include low risk investments such as cash and bonds as well as higher risk investments such as shares."

BRG noted Mr K's assessed risk appetite and in its suitability report it said:

"All future advice regarding your investments and product selection will be dealt with by [FWS]. Our advice is therefore restricted to advice on the actual pension transfer only. That said we have assessed the appropriateness of the underlying investment strategy being proposed for you and detailed below. Provided this investment strategy is followed we have concluded that this strategy is appropriate for your circumstances."

It also noted:

"[FWS] has confirmed that, as your fund is actively managed by both him and a dedicated stockbroker, that a target return of 5% could be considered as achievable over the longer term considering your attitude to risk and the resultant exposure of a percentage of your funds to global equity, property, and bond markets."

So, BRG knew a lot hinged on getting the assessment of Mr K's appetite for risk right. Looking at the responses he gave to FWS's questionnaires, I have concerns about this.

For example, he indicated to the adviser in one response that he had a fair degree of understanding and knowledge of investing (the third highest of four categories of experience). Yet, he also confirmed he'd never invested in a pension plan where he could control the selection of funds; he'd never invested in collective investments; he'd never bought or sold shares; and he'd never invested in alternatives such as structured products, enterprise investment schemes or unregulated products.

Mr K's responses to some questions he was asked did indicate that he was agreeable to risk a percentage (undefined) of his capital to get a good return. He wasn't worried about fixed rates of return. He didn't think he was more risk averse than the average person. He wouldn't rather put his money in a bank account than invest in shares. He would accept potential losses in order to secure long-term investment growth.

But Mr K also disagreed that to achieve high returns he would need to choose high-risk investments. When faced with an investment decision, he appears to have been equally focussed on possible losses as much as probable gains. He also had no strong opinion about feeling comfortable with financial uncertainty; the importance to him of taking financial risk; or investing a large proportion of his capital in high risk investments.

FWS also assessed Mr K's capacity for loss. It noted his investment horizon was 6-10 years. That he could tolerate small losses and that he had savings and investments which he could use for most needs.

In its suitability report BRG noted Mr K had said:

"A total loss would have a large impact on my future living standards. I would have to rely on state pension, which would be sufficient, as I do not have a lavish lifestyle and believe I could manage on what the state pension would provide."

Both firms seem to have ignored what was staring them in the face. Aside from Mr K's small pension plan with London & Colonial, his deferred OPS benefits were his only pension provision, aside from his state pension. Taken together these presented the potential to improve his standard of living in retirement significantly, without the need to take on any risk. In taking on substantial risks by transferring his OPS, Mr K had no significant assets, savings or investments to fall back on.

I think Mr K's capacity for loss was low.

In its last submission to this Service BRG told us about its approach to reviewing the investment strategy Mr K would be taking on:

"We…reviewed the portfolios, their risk profile and the asset allocation but did not examine the detail of any specific holdings within those asset allocations as we were not advising the client on the appropriateness of the investments but ensuring that the investment company was appropriate for the client's risk profile and supported the transfer analysis we were undertaking."

"In looking at the asset allocation, we did see the prospectus for the bonds listed on the Irish Stock Exchange and were told that full UCITS were in application. There is no indication in the prospectus of anything irregular."

I don't think BRG's approach went far enough in terms of understanding the characteristics, balance or appropriateness of the holdings that were proposed for Mr K's portfolio. For example, he appears to have been placed in UCIS's, and certainly highly specialised and unregulated funds. And the value of these investments accounted for over 45% of his pot.

I've seen some of the notes on suitability and risk flagged in the literature associated with some of the specialist investments being made with Mr K's funds. The following extracts are typical.

In respect of his holdings with Corporate Finance Bonds Limited:

"Suitability

Prospective purchasers of the Notes of any Class should ensure that they understand the nature of such Notes and the extent of their exposure to risk, that they have sufficient knowledge, experience and access to professional advisers to make their own legal, tax, accounting and financial evaluation of the merits and risks of investment in such Notes and that they consider the suitability of such Notes as an investment in the light of their own circumstances and financial condition."

"Unlike a bank deposit, the Notes are not protected by the Financial Services Compensation Scheme (the "FSCS") or any other government savings or deposit protection scheme. As a result, the FSCS will not pay compensation to an investor in the Notes upon the failure of the Issuer. If the Issuer goes out of business or becomes insolvent. Noteholders may lose all or part of their investment in the Notes."

In respect of Mr K's holding with Angelfish Investments PLC:

"The Preference Shares are complex financial instruments. Sophisticated institutional investors generally do not purchase complex financial instruments as stand-alone investments. They purchase complex financial instruments as a way to reduce risk or enhance yield with an understood, measured, appropriate addition of risk to their overall portfolios. A potential investor should only invest in the Preference Shares if they have the expertise (either alone or with a financial adviser) to evaluate how the Preference Shares will perform under changing conditions, the resulting effects on the value of the Preference Shares and the impact this investment will have on the potential investor's overall investment portfolio.

As well as creating a serious lack of diversification in how Mr K's funds were being invested, BRG hasn't done enough to satisfy me that he was a sufficiently experienced investor to appreciate the risks he was taking on. As the regulator said as far back as 2013:

"If a firm does not fully understand the underlying investment proposition intended to be held within a SIPP, then it should not offer advice on the pension transfer or switch at all as it will not be able to assess suitability of the transaction as a whole."

I don't know how closely BRG consulted FWS. It's not clear to me it had any direct dealings with Mr K at all. The business model it adopts is of course a matter for it. But clearly there are risks when the clients for an important piece of work are at arms-length.

More generally, I'm not satisfied that Mr K was properly informed that by moving away from his OPS scheme and using the funds to invest, he was moving from a situation where his former employer was bearing the risks related to the provision of his retirement income to one where he was taking on that risk.

It's arguable BRG seemed more concerned with fulfilling a contract with FWS for pension transfer expertise than providing effective advice about what was in Mr K's best interests concerning his valuable OPS benefits. It hasn't done enough to satisfy me that the transaction was demonstrably in his best interest.

In its response to the Investigator, BRG said:

"…[Mr K's] mother's house is valued at £70,000, so half his share would be £35,000. The transfer fund being circa £100,000 would have provided tax-free cash of £25,000 and, using tax allowances a further £10,000 could be taken from his fund tax free. This would have been sufficient to 'buy out' his brothers share in the house. This degree of 'flexibility' was invaluable to Mr K and would have enable him to use his transferred pension to own his own property outright."

There's no record of this objective within the fact-find or suitability report. As BRG were solely relying on information from FWS and hadn't spoken to Mr K, the lack of any written record of this intent suggests it is an argument that has been developed after the event.

BRG has also argued that Mr K could've been disadvantaged by staying in his OPS, as the level of income it provided could've resulted in him becoming a taxpayer and possibly losing benefits. I don't accept the argument that earning enough income to be eligible to pay tax is proof of any disadvantage.

If Mr K does end up paying tax, it will be because he has started to receive a level of income to be able to sustain such. At the point of advice BRG hadn't provided Mr K with any insights into the tax and benefit implications of his various pension arrangement options. This appears to be another argument raised to justify the transfer, developed after the event. And even now it hasn't provided a detailed financial analysis to support its argument.

By transferring out of his OPS and delaying taking income until age 67, Mr K was depriving himself of two years of income (over £11,000), as his OPS benefits would've become payable from 65. This money wouldn't have been returned to him in the form of higher payments later if he was only going to match his OPS pension in retirement.

The projected level of TFC his OPS would pay has not been recorded anywhere, which suggests that Mr K was not aware of how much he could get. The Pension Transfer Report of 8 March 2017 does show that, if his pension entered the Pension Protection Fund (PPF), he could get an annual pension of £4,981, which reduced to £3,935 with TFC of £26,028. This suggested a commutation rate of around 25:1.

This suggests his projected pension of £5,737 could've provided a lump sum of approximately £30,194, with a reduced pension of £4,529. If Mr K did want as much TFC as possible, then it seems he may've received more by staying inside his OPS.

Generally, I find BRG failed to provide Mr K with sufficient information about the benefits and flexibilities available from his OPS. And to make a clear comparison between these and the proposed new arrangements.

BRG mentioned Mr K wanted to leave his OPS as he was concerned about the financial security of the pension and his former employer. I can understand why this may've been a concern for him, especially as the same employer/pension had a previous well publicised pension scandal. But this isn't reason alone to justify recommending the transfer and as this wasn't covered in the report, the strength of Mr K's feelings about this issue isn't known.

It's not clear BRG told him how much pension he would receive in the PPF. While covered in the pension transfer report, there was no reference to this in his suitability report. Had it been covered, it would've informed Mr K that for the scheme to enter the PPF, both the parent company and the pension scheme would have to fail.

Although the scheme had a shortfall, neither BRG nor Mr K were in a position to assess the ongoing viability of his former employer. It would've been speculative to recommend transferring based on how well it thought the company might perform. Further, Mr K only had five years until retirement, so it was only the short term success or otherwise of the business which would've been an issue. Once in payment his pension would've been secure.

Overall, I think BRG should've provided Mr K with an explicit recommendation not to proceed with the transfer of his OPS benefits into the SIPP, to invest in funds that were beyond his risk appetite. I think that if BRG had given Mr K appropriate advice, he wouldn't have gone ahead with the transfer.

To conclude I don't think the transfer of Mr K's pension funds could sensibly be regarded as fair to him. As such I think BRG failed to meet the regulatory requirements when providing his with advice and making the arrangements. So, taking all the circumstances of the case into account, it's reasonable to uphold this complaint against BRG and for it to put things right.

Putting things right

I'm upholding Mr K's case. So, he needs to be returned to the position he would've been in now - or as close to that as reasonably possible – had it not been for the failures which I hold Better Retirement Group Ltd responsible for.

If BRG had done everything it should've, I don't think Mr K would've transferred his OPS benefits, into a SIPP with MP and invest in the SVS Securities (SVS) Growth portfolio overseen by a DFM. And he wouldn't have suffered the financial loss he's facing. I think it's most likely he would've left his pension where it had been.

I consider Mr K would've remained in his former OPS. Better Retirement Group Ltd should therefore undertake a redress calculation in line with the pension review methodology, 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 K's acceptance of the decision.

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

If the redress calculation demonstrates a loss, the compensation amount should if possible be paid into Mr K’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 K as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. 25% of the loss would be tax-free and 75% would have been taxed according to his likely income tax rate in retirement – I’ve assumed Mr K will be a non-taxpayer.

My aim is to return Mr K to the position he would’ve been in but for the actions of Better Retirement Group Ltd. The records show Mr K was moved from the MP SIPP to Nucleus, apparently following proposed increases in the fees of the former. This happened around April 2019. It seems his investments were sold rather than transferred in specie.

I don’t know what investments were made subsequently on Mr K’s behalf. But I’ve assumed these wouldn’t have been at variance with the appetite for risk that BRG had endorsed. But I’ve no reason to consider that there was a break in causation of any losses he’s incurred at this point.

I also don’t know whether Mr K took any funds from his pension pot.

These matters will need to be understood and appropriate adjustments made for the purposes of calculating any redress. Mr K and his representatives will need to cooperate with BRG to enable it to establish the detailed position.

Redress is further complicated where an investment is illiquid (meaning it can’t be readily sold on the open market), as its value can’t be determined. This may not now be the case given the events of 2019. However, if there are illiquid holdings, and this is due to Mr K continuing to follow the advice he was provided in 2017, then BRG should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs, and take ownership of the investment.

If BRG is unable to buy the investment, it should give it a nil value for the purposes of calculating compensation. The value of the SIPP used in the calculations should include anything BRG has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted.

In return for this. BRG may ask Mr K to provide an undertaking to account to it for the net amount of any payment he may receive from the investment. That undertaking should allow for the effect of any tax and charges on what he receives. BRG will need to meet any costs in drawing up the undertaking. If it asks Mr K to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

The compensation amount must where possible be paid to Mr K within 90 days of the date BRG 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 BRG to pay Mr K.

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.

Finally, it is my understanding Mr K engaged with the Financial Services Compensation Scheme (FSCS) about the actions of Fiducia Wealth Solutions Limited. To be clear, if the FSCS were to make an award to him in respect of the issues covered by this decision, it would usually seek to reclaim any compensation he’d received from third parties. Mr K can’t benefit from double recovery.

And if Mr K were to receive compensation from the FSCS, separately to any compensation now payable by BRG but in relation to the matters covered by my decision, and the FSCS didn’t seek to recover this, he should provide an undertaking to repay BRG that amount which represents a double payment.

Further information

Some examples of how calculations should be carried out are available on our website under 'Publications' / 'Online Technical Resource' / 'Investment' / 'Calculating compensation in investment complaints'

Distress and inconvenience

In addition, I consider that Better Retirement Group Ltd should pay Mr K compensation for distress and inconvenience of £350. This is in recognition of the failings I’ve identified and the impact these have had on his retirement planning.

My final decision

For the reasons I’ve already set out, I’m upholding Mr K’s complaint. As such, I require Better Retirement Group Ltd to put things right in the way I’ve outlined.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr K to accept or reject my decision before 10 May 2022.
Kevin Williamson
Ombudsman