DRN-3617305

The complaint

Mr B complains that he was wrongly advised by Cambrian Associates Limited T/A Cambrian Chartered Financial Planners ("Cambrian") to transfer his defined benefit occupational pension scheme to a personal pension plan.

What happened

Mr B joined his employer's occupational defined benefit pension scheme ("the scheme") in 1979. The scheme had a normal retirement age of 65 but early retirement was possible. In November 2017, whilst still employed, Mr B opted out of the scheme becoming a deferred member. Mr B received advice from Cambrian in January 2018 to transfer the Cash Equivalent Transfer Value (CETV) of £495,427.26 of the scheme to a new personal pension arrangement with another provider. In the same month, Mr B joined his employer's defined contribution (DC) scheme.

Mr B's objectives for making the transfer were identified by Cambrian as the following:

- Control of his pension fund;
- Income flexibility in retirement through greater control over the way the benefits are paid;
- To prevent his pension dying with him. Mr B said he wanted his wife to benefit from any unused part of the pension fund and for her to be able to leave it to their children on her death. If his wife died before him then he would be able to leave any remaining fund to his children;
- To take a lump sum of £25,000 immediately to gift to his son for a house deposit and to take a further lump sum of £20,000 on retirement to clear his outstanding mortgage balance in order to become debt free;
- To retire at 60 which was 5 years before his scheme's normal retirement date;
- An annual pension of £24,000.

Cambrian identified Mr B had a balanced approach to risk and a cautious capacity for loss. His assets were identified as his home (owned jointly with his wife) valued at about £550,000 with an outstanding mortgage and £5,000 in shares with his employer. Mr B was cited as having no savings so Cambrian suggested he redirect £500 a month to a savings account for emergencies or, if left untouched, clearing the estimated outstanding mortgage at age 60.

The transfer took place in April 2018.

In February 2020, Mr B's representative complained to Cambrian on his behalf that he had not been made fully aware of the risks involved in opting out and transferring his pension scheme to a personal pension provider. Mr B said that the advice he received to transfer was inappropriate and that he should have been advised by Cambrian to remain as a deferred member of the scheme. Mr B said that Cambrian had assessed the critical yield at his selected retirement age of 60 to be 22.19% and at the scheme's retirement age of 65 as 11.2% both of which were unachievable given Mr B's attitude to risk and minimal capacity for loss.

Mr B also said that the features of paramount importance for making the transfer identified in the suitability report were generic objectives that could've been achieved through other financial means. But, he said, alternative solutions to his objectives hadn't been properly explored in any depth including considering whether Mrs B's pension could be used in any way to fund the lump sum.

Cambrian looked into Mr B's complaint but didn't think it had done anything wrong. It rejected Mr B's complaint that it had advised him to opt out of his scheme and said that, as a matter of company policy, it never recommended opt outs to any client regardless of the scheme they belonged to. Consequently Cambrian said there had been no need to discuss any risks associated with doing so. Cambrian said Mr B had first approached it in July 2017 and not, as alleged, the other way around. It also said Mr B had decided against using the first financial adviser he approached because he was too expensive but in the end, on the recommendation of a work colleague, he approached another Cambrian adviser in October or November 2017 whose charges were more acceptable to him.

Cambrian said the first meeting between the two took place in early January 2018 (the date recorded on the fact find) by which time Mr B had already opted out of his scheme.

Cambrian said Mr B was made fully aware of the risks of transferring his scheme. It said that whilst it had advised Mr B to transfer his deferred pension it had, during the advice process, made him aware that the guarantees he currently enjoyed as a scheme member would cease. Cambrian also said that the transferred fund was predicted to last until Mr B was 87 based on a life expectancy of 83. It said that there was no regulatory requirement in place at the time of the transfer to plan beyond a reasonable life expectancy. So, it said, its advice was compliant with the then current regulations.

Cambrian said that its recommendation allowed the pension to support Mr B's income requirements beyond his life expectancy whilst simultaneously meeting all his other objectives. So, it said, it considered the advice given to be appropriate.

Cambrian also said its Suitability Report had stipulated that the critical yields required to replicate the benefits being given up were unachievable. But, it said, the advice to transfer wasn't based on the achievability of the critical yields alone, rather it was based on Mr B's other objectives. And it said it disagreed that Mr B's objectives were of a generic nature. It said Mr B's objectives were specific and were supported in the fact find so it rejected the assertion that they could've been met through more effective planning solutions.

Cambrian also disagreed that Mr B had no capacity for loss. It said he had significant other assets (his home and the shares) and enough flexibility in his objectives (for example, the age he retired) and target income to weather a loss in the capital value of his fund. Cambrian said it had given no consideration to Mr B opting back into the scheme because it simply wasn't possible to do so. Cambrian accepted that it hadn't considered whether Mrs B's pension could be used to fund any of the objectives or that it had asked her what she'd done with the tax-free cash she had already taken out of her own pension.

It said the possibility of raising the £25,000 lump sum identified as one of Mr B's objectives via additional mortgage borrowing was discounted because it would have meant Mr B going to the lender direct and any further advance being subject to full underwriting. It said raising the money via a second charge over the remaining 8 years of the main mortgage would have cost £502 per month (based on an interest rate of 4.4%) and would've reduced Mr and Mrs B's disposable monthly income considerably. Cambrian said any wholesale re-mortgage was also discounted as doing so would've attracted an early repayment penalty.

Cambrian also rejected that Mr B required protection cover as he had confirmed throughout the fact find process that one of his main objectives was to ensure his pension didn't die with him and that he wanted his wife and children to benefit from any unused fund that remained. And it said he had a 3 x salary death benefit from his employer in any event. Cambrian said it had carried out a whole of life policy comparison merely to demonstrate the alternative options available but the comparison was declined by Mr B principally as he didn't want to incur the cost. Cambrian said that whilst more specific recommendations could have been made in this area it wasn't a regulatory requirement at the time that it do so.

Cambrian conceded that it hadn't considered Mr B's work-place pension/DC scheme as a receiving scheme for the proposed transfer but said it hadn't breached any regulatory rules in the process. It said that whilst the DC scheme could have accepted the DB CETV, Mr B required the immediate crystallisation of £100,000 of his funds so he could access £25,000 in tax-free cash. So, Cambrian said that transferring Mr B's CETV to his DC scheme would not have met his objectives.

Unhappy with the outcome of Cambrian's investigation into his complaint, Mr B complained to this service in October 2020. Our investigator looked into Mr B's complaint but didn't recommend that it was upheld. He found no evidence that Cambrian had recommended Mr B opt out of the scheme. He also thought that given the objectives and priorities Mr B had at the time he met with Cambrian in January 2018, the transfer to the personal pension plan was in his best interests. Our investigator thought that Mr B's objectives would not have been achieved by remaining in the scheme.

Mr B, through his representative, disagreed with our investigator's findings and asked for his complaint to be referred for ombudsman's decision. Mr B also sent us evidence to show that the £25,000 of tax-free cash he received was spent by repaying £13,200 to his mother in law for a loan she had advanced him to buy a car and that £7,500 had been gifted to his son to help him with wedding costs. Mr B said this showed there was absolutely no truth in saying that he was solely transferring his pension so he could help his son on to the property ladder. And he said the Cambrian adviser was well aware that he had used some of the money to purchase a car and that he needed to repay his mother in law.

Mr B also said that another Cambrian adviser had been advising his wife for years and that once Mr B passed the age of 55 it was his wife's adviser that explained that he could access his pension if he transferred it. Mr B said it was his wife's adviser that 'planted the seed' about transferring his pension but the reason he didn't proceed with him was because his charges were too high. Mr B also said that it was true that he approached the Cambrian adviser that did arrange the transfer but the first adviser's advice had also been detrimental.

Our investigator didn't change his mind about the outcome of Mr B's complaint so the complaint was passed to me for a decision.

I issued my provisional decision on this case in June 2022 in which I recommended that the complaint was upheld. I made the following provisional findings:

"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'm intending to uphold the complaint; I'll explain why.

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, Cambrian should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was.

It is worth just stating at the outset that I, like our investigator, have seen no evidence that Cambrian advised Mr B to opt out of his employer's DB scheme. So, my findings are limited to the advice given to Mr B to transfer his benefits to a personal pension.

Financial viability

Cambrian's advice was given after the FCA 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.

Mr B told Cambrian he wanted to retire at age 60. The critical yield required to match Mr B's benefits at age 60 was 28.05% if he took a full pension and 22.19% if he took the maximum tax-free cash (TFC) 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 2.8% per year for 3 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. All of these rates are considerably lower than the critical yield Mr B's pension would need to attain if it was to match his scheme benefits at age 60.

I've taken this into account, along with Mr B's balanced attitude to risk and also the term remaining until his chosen retirement date. There would be little point in Mr B 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 22.19%, I think Mr B was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk. But crucially, I don't think that was made at all clear to Mr B in the suitability report.

Cambrian has provided cashflow models which it says shows Mr B would've been able to meet his needs after the transfer despite the high critical yields identified. I've considered these which are based on a net annual return rate of 6.2% on the fund, an annual inflation rate of 2.5% and a fund charge of 0.79% per year, ongoing adviser charges of 0.5% per year and a pension charge of 0.35% per year.

Cambrian's models show that the fund runs out when Mr B reaches the age of 87, based on his required income of £24,000 a year. This was based on the fund achieving a net return of 6.2% - in line with its past performance. But as Cambrian will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be a more realistic indicator of expected fund growth in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. So, had returns been lower, I think its clear Mr B's funds were at risk of running out sooner.

Furthermore, I can't see that Cambrian fully explained to Mr B that his DB pension benefitted from being index linked and how it would increase annually as opposed to the personal *pension remaining at a flat £24,000 after the transfer. And I don't think it was fair for Cambrian to emphasise the importance of the cash flow models over the critical yield analysis as it wasn't a like-for-like comparison.*

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

Flexibility

Mr B told Cambrian that he wanted to retire early at age 60 and that he needed to take some of his TFC immediately (at age 57) to help his son with a deposit for a house. Mr B said he'd take an extra sum at age 60 to clear the balance of his mortgage which he anticipated would be around £20,000 by then. Mr B was clear that he wanted to retire at 60 by which time he wanted to be debt free. Whilst I've noted these objectives I'm satisfied he could have achieved these by staying in the DB scheme. This is because he was able to take early retirement from the scheme and was entitled to take £112,728 as TFC from it at 60 (or £148,897 at 65). Mr B was also overpaying on his mortgage by £300 per month in January 2018 and committed to saving £500 per month (for 'emergencies').

Mr B has since told us that he didn't need £25,000 to give to his son. He's shown us a bank statement which shows a credit of £25,000 from the pension plan and subsequent payments to his mother in law of just over £13,000 and to his son for a wedding reception of £7,500. But I can't see any evidence that Mr B told Cambrian that this was why he needed to access £25,000 immediately. The Fact Find and the Suitability Report both document that Mr B needed £25,000 at that point to gift to his son to help him on the housing ladder. I can't see any evidence either that Mr B made any attempt to correct Cambrian's understanding of this objective, if indeed it was wrong, so I think it was fair for Cambrian to include it as one of Mr B's objectives for the transfer.

Despite doing so, I think there were other ways, not fully explored, for Mr B to have raised the £25,000 he told Cambrian he wanted. I accept that a wholesale re-mortgage of his home would have attracted an un-necessary early repayment charge as Mr and Mrs B were on a fixed deal at that point through to 2020. But a further advance could have raised the money Mr B indicated he needed. Whilst Cambrian says this would have been subject to further underwriting I don't consider that to be a barrier to doing so. And as Mr B was already overpaying on his mortgage and was able to start saving £500 a month it seems reasonable to me to think that he could've afforded the repayments. I know that Cambrian says it calculated it would cost Mr B £502 per month to take out an additional mortgage but the interest rate it has based this on seems somewhat high to me. It also makes no mention of the term the repayments were due to be set over.

So I think Mr B's objective of needing £25,000 now could've been achieved by taking out a second mortgage or loan. I can see that the repayments would most likely have been affordable and that there would have been capacity within any TFC surplus from the DB scheme to clear any outstanding balance when Mr B took his benefits at age 60. However, I can't see that this option was explored by Cambrian with Mr B. And I think it ought to have been, given how important Mr B's DB scheme was to his retirement – transferring it simply to access a relatively small sum ought to have been a last resort.

According to the information gathered by Cambrian, Mr B said he needed £24,000 per year in retirement. If he took benefits from the DB scheme at 60, then he would be entitled to an annual income of £16,909. Whilst this would not have met Mr B's retirement needs as noted in the Fact Find, I still think he could have met his retirement income needs by remaining in *the DB scheme until his state pension became payable at 67 or until the scheme's normal retirement age of 65 (when his pension would have been £22,334 which was much closer to his stated income aim).*

If Mr B had stayed in the scheme and taken early retirement at 60 he could have used the £112,728 TFC he would have received at that point to make up the shortfall in income until he reached state retirement age. The same would be true if he waited until age 65 when his TFC at this point would've been £148,897. And both TFC amounts were more than sufficient to both make up any income shortfall and leave Mr B with a surplus (more than enough to clear his mortgage at 60). And it should not be forgotten that a pension of £16,909 at 60 would be indexed linked and increasing year on year whereas the income drawdown included no such increases.

So, overall, I think that Mr B could've met these objectives by remaining in the DB scheme and taking his benefits at age 60.

Death benefits

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 were likely an attractive feature to Mr B. But whilst I appreciate death benefits are important to consumers, and Mr B 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 B about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Cambrian explored to what extent Mr B was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr B predeceased her. I don't think Cambrian made the value of this benefit clear enough to Mr B. This benefit was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, there may not have been a large sum left as the fund may have been depleted particularly if Mr B lived a long life. In any event, Cambrian should not have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr B genuinely wanted to leave a legacy for his wife and children which didn't depend on investment returns or how much of his pension fund remained on his death, I think Cambrian should've instead explored life insurance options. I appreciate that the suitability report mentioned a whole of life policy with a sum assured equivalent to the CETV (£495,427) – this was discounted by Mr B because of the cost (£686.32 per month). But I don't think that this was a balanced way of presenting this option to Mr B.

Basing the quote on the transfer value of Mr B's pension benefits essentially assumed that he would pass away on day one following the transfer which I don't consider to be reasonably realistic. Ultimately, Mr B wanted to leave whatever remained of his pension fund to his wife/their children which would be a lot less than this amount if he lived a long life and/or if investment returns were poor. So, the starting point ought to have been to ask Mr B how much he would ideally like to leave to his wife and children, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

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 B. And I don't think that insurance was properly explored by Cambrian and put to Mr B as an alternative.

Control or concerns over financial stability of the DB scheme

I think Mr B's desire for control over his pension benefits was overstated. Mr B was not an experienced investor, as evidenced from the fact that his only investment was in his employer's company share scheme, and I cannot see that he had an interest in or the knowledge to be able to manage his pension fund on his own. Indeed the Suitability Report states that Mr B's pension is a complex product which will require regular reviews. So, I don't think that this was a genuine objective for Mr B, it was simply a consequence of transferring away from his DB scheme.

Nor was the funding of Mr B's DB scheme in a position such that he would have had any genuine concerns about the security of his pension. Furthermore, should the scheme ever end up moving to the Pension Protection Fund (PPF), I think Cambrian should have explained that this was no cause for concern. That's because Mr B was unlikely to match, let alone exceed, the benefits available to him through the PPF if he transferred out to a personal pension.

Summary

I don't doubt that the flexibility, control, immediate access to a lump sum and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr B. But Cambrian wasn't there just to transact what Mr B might have thought he wanted. The adviser's role was to really understand what Mr B needed and recommend what was in his best interests.

It follows that I don't think the advice given to Mr B was suitable. He gave up a guaranteed, risk-free and increasing income. By transferring, Mr B 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. Mr B shouldn't have been advised to transfer out of the scheme just to access a small lump sum that could have been acquired through other means. And the potential for higher death benefits doesn't justify giving up the guarantees associated with his DB scheme.

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

I also have to consider whether Mr B would've gone ahead anyway, against Cambrian's advice. I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, if Cambrian had advised him it wasn't in his best interests to do so. I say this because Mr B was an inexperienced investor with a balanced attitude to risk and, aside from his state pension at age 67, his DB pension accounted for all his retirement provision. So, if Cambrian had provided Mr B with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would've accepted that advice. It is also worth stating that I've seen no evidence that Mr B would've insisted on going against such advice had it been given.

Cambrian may argue that Mr B had already decided to transfer his DB scheme by the time he met with its adviser, as he'd already decided to opt out and had met with another adviser by the time he met with them. It says Mr B only didn't proceed with that adviser because he thought his fees were too high. But I'm not persuaded that Mr B's concerns about death benefits, control and flexibility in retirement were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was *paying for, didn't think it was suitable for him or in his best interests. If Cambrian had explained that Mr B could meet all of his objectives – the lump sum, early retirement, pension of £24,000 per year – without risking his guaranteed pension – it is reasonable to think that such advice would've carried significant weight with him. So, I don't think I'm able to reasonably conclude that Mr B would have insisted on transferring out of the DB scheme.*

In light of the above, I think Cambrian should compensate Mr B for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology."

Mr B replied to my provisional decision to say that he accepted it. Cambrian replied to my provisional decision to say it didn't accept it and asked for a final decision.

Cambrian sent a lengthy response to my provisional decision much of which contained points it previously made and which had already been considered by me provisionally. I don't intend to restate those points here. Insofar as Cambrian made any new submissions about this complaint these can be summarised as follows:

- It gave clear information to Mr B about what death benefits were available to him under the DB scheme and what he was giving up (as set out in the suitability report). It also disagrees that it encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his security in retirement;
- That the cashflow model included had an annual inflation rate of 2.5% built in so it was untrue to say that it had compared a flat income of £24,000 in the personal pension to Mr B's index linked DB benefits. It is also unfair to place such emphasis on the critical yield as no-one would ever transfer their DB scheme to a personal pension with the sole aim of matching the guaranteed benefits they had lost – people transfer because they want their retirement to take a different shape;
- The fact find and suitability report (but not the cashflow forecast) make reference to the fact that Mr B's intention was to reduce the amount of income he took from the fund in his mid-70s. Together with the reduction in income taken as a result of receiving his state pension, this would mean that Mr B's fund would last much longer than I had stated provisionally. And the discount rate of 2.8% is very low. The pension fund growth rate was 5.9% and is more realistic;
- It had explained to Mr B (in the suitability report) how his DB scheme would increase each year;
- Irrespective of what Mr B intended to use the tax-free cash he accessed for, he has already made good use of the pension flexibility he obtained – even before reaching age 60. Such flexibility wasn't open to Mr B in his DB scheme, at least not without severe penalty. And Mr B's further use of the flexibility offered by his personal pension (by taking two further amounts of tax-free cash) demonstrates that he fully understood the differences between a DB scheme and a personal pension.
- His objectives were targeted to those that a personal pension, rather than a DB scheme, could offer him and show that he understood what he was doing and that he was determined to transfer his pension, as demonstrated by him opting out of his DB scheme himself and seeking advice from and, meeting with, 3 different advisers. Mr B intended to transfer his DB scheme benefits and would have done so irrespective of any information he was given;
- That Mr B would have had to have taken an income from his DB scheme even when he was still employed which would have made him a higher rate taxpayer;
- Mr B has taken a total of £85,000 tax-free cash from his pension yet is only age 61. To access this amount of TFC he would have had to have taken the DB scheme benefits at age 57 which would've meant a 15% reduction in his annual pension (for life) and TFC which is something I have failed to bear in mind;

- Mr B misrepresented his debts to Cambrian the motive for which may have been to influence the adviser to give him the outcome he wanted;
- The only sensible way of looking at life assurance for Mr B was on a whole of life basis because it couldn't know what the optimum duration for any term assurance policy could be;
- At no point had Cambrian sought to raise any concern with Mr B about the future financial viability of the DB scheme;
- Mr B understood the process he was entering into because he had had to meet with his employer to confirm he understood the benefits he was giving up before it would let him opt out of the scheme. And Cambrian informed Mr B at several points during the advisory process that there were serious implications for him if he proceeded with the transfer. Mr B spoke with 3 advisers and went through a suitability report which mentioned throughout the benefits and guarantees he was giving up by transferring. Mr B also signed a form to confirm he understood what he was doing. So having gone through all of these stages it is hard to believe Mr B's claims that he didn't know what he was doing. Although the advice Cambrian gave was to transfer, Mr B wasn't forced into doing so;
- The words used by Mr B to articulate his complaint are suggestive of those given by claims management companies to their clients to enhance the prospects of a complaint succeeding;
- Throughout his complaint it has been shown that Mr B's recollection is incorrect (for example in relation to his use of the TFC and that he was advised by Cambrian to opt-out of his scheme when he wasn't);
- The compensation proposed if the complaint is upheld is unfair because paying a lump sum (minus a CMC fee) doesn't put Mr B back in the position he would've been in if he hadn't transferred – he would still have no guaranteed retirement income and his fund would still be at risk from investment performance yet he would retain all the benefits of transferring.

Cambrian said that its advice to Mr B was suitable to meet all of his needs and objectives so it wanted the complaint reviewed by a senior ombudsman.

The complaint was returned to me for 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.

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've thought about what Cambrian has said in response to my provisional decision but I haven't been persuaded to change my mind. I remain of the view that this is a complaint that should be upheld. I'll explain why.

I don't disagree that Cambrian gave Mr B clear information about what death benefits were available to him under the DB scheme and what benefits he was giving up. Despite doing so however, I still don't think that it explained to Mr B that, whilst one of his objectives was to leave his spouse/children an inheritable lump sum upon his death, the lump sum he envisaged he might leave could be seriously depleted as he drew down income (and other lump sums from time to time as was his stated intention) over the years. Consequently, the objective he sought was at significant risk of not being attainable and so, would not, in my view, have been worth exchanging guaranteed death benefits under the DB scheme for.
I also think the existing death benefits attached to the DB scheme were underplayed as the spouse's pension it provided would've been useful to his spouse if Mr B predeceased her –

and depending on when he died, have been of greater benefit than any remaining personal pension fund. The spouse's pension under the DB scheme was guaranteed and it escalated – it was not dependent on investment performance, whereas any sum remaining on death in a personal pension was. And, as the cashflow analysis shows, there may not have been a large sum left as the fund may have been depleted particularly if Mr B lived a long life.

I can also see from the DB scheme booklet that it included an additional death benefit for members that joined the scheme before 1991 which Mr B did. It stated that between retirement and the scheme's normal retirement date Mr B was entitled to a death benefit equivalent to three times his annual earnings in the last year before retirement. But I can't see this was referred to at all by Cambrian.

Furthermore, if Mr B genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns, or how much of his pension fund remained on his death, I think Cambrian should've instead fully explored the option of life insurance; but it didn't. I acknowledged provisionally that Cambrian had provided Mr B with a quote for a whole of life policy. And I set out there my findings on this point. Nothing Cambrian has said in response to my provisional decision about this point has caused me to change my mind. I don't agree with Cambrian that the only sensible way of looking at life assurance for Mr B was on a whole of life basis because it couldn't know what the optimum duration for any term assurance policy could be. That's because the quote Cambrian obtained was based on the assumption that Mr B would pass away the day after the transfer and that his spouse would need, for the remainder of Mr B's life (however that long might be) a sum insured that was equivalent to the CETV.

Cambrian should have asked Mr B how much he wanted to leave his wife/children and then this could have been explored on a whole of life/term assurance basis.

But the whole of life option was the only one put to Mr B by Cambrian. Other forms of life assurance (such as decreasing term assurance) weren't explored or presented as an alternative to Mr B. Of course the monthly premium for the whole of life policy must have appeared unreasonably high to Mr B. But I can't agree with Cambrian that this was the *only* sensible way of looking at life assurance for Mr B.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the surrender of guaranteed retirement benefits for Mr B. And I don't think that insurance was properly explored as an alternative means of leaving his family a lump sum.

Cambrian has said the cash flow models show Mr B's annual income of £24,000 expressed in today's terms, meaning that inflation of 2.5% per year has already been factored in. And I accept that this means it could be compared with Mr B's DB benefits, which also increase in payment. However, I note that the scheme pension Mr B built up before 2006 (which accounted for a significant part of his pension) benefitted from a higher increase in payment – it would increase by inflation but was capped at 4% and 5%, as opposed to 2.5%. And in any event, the point I sought to make here, and the point I maintain, is that the cash flow model demonstrates there was a real risk of Mr B's fund being depleted before he died if investment returns were poor or he lived a long life. Whereas Mr B's pension under the DB scheme was guaranteed for as long as he lived.

The critical yield required to match Mr B's scheme benefits at age 60 when he retired was significant at 22.19% if he took the maximum TFC available. I can't reasonably ignore this. And whilst there is no suggestion that Mr B transferred his pension with the sole aim of matching his guaranteed scheme benefits I don't think his stated objectives – for the reasons I gave provisionally – can justify the advice Cambrian gave to transfer when the critical yield is as high as in this case. And whilst Cambrian may think placing such emphasis on the critical yield is unfair, the regulator required Cambrian to set out the rate of return required to replace the benefits being given up. So, I don't think it is an unreasonable measure to look at when deciding whether transferring out of the scheme was in Mr B's best interests.

Whilst the fact-find and suitability report may refer to Mr B's intention to reduce the amount of income he was drawing from his mid-70's there is no cash flow model to show what that might look like. So I don't know how much less Mr B was thinking of taking or when. The cash flow model shows the fund will run out when Mr B reaches the age of 87 – even taking the state pension into account – and I don't think it's reasonable, in the absence of any specifics about when and how much a reduction in the income drawdown may occur, to ignore that.

Cambrian may well consider the discount rate of 2.8% to be low but that is what a reasonable rate of return looked like when the advice was given. And while it isn't a measure that the regulator required Cambrian to take into account, it is a useful consideration here, particularly when considered together with the regulator's projection rates.

I accept that the suitability report set out how Mr B's DB scheme benefits would increase each year. That it did still doesn't mean the advice Cambrian gave Mr B to transfer was in his best interests.

Mr B has availed himself of the pension flexibility he obtained by taking out two further TFC amounts before reaching retiring at age 60, something he could not have done but for the transfer. However, the fact Mr B went on to take further amounts of TFC doesn't retrospectively make unsuitable advice suitable.

I don't know what Mr B used the additional TFC he took out of his pension for (I assume at least £20,000 went on clearing down his outstanding mortgage) but it is possible that he took it out only because he could. I don't disagree with Cambrian that such flexibility wasn't open to him in his DB scheme. But if he hadn't transferred his DB scheme, he wouldn't have been able to make the withdrawals. Rather he would have to have waited until he received the £112,000 in TFC at retirement from the scheme at age 60.

I've seen no evidence that Mr B needed further TFC (in addition to his stated objective of £25,000 that he told Cambrian about at the time of the transfer) *before* he reached 60. And in any event, I'm looking at the suitability of the advice to transfer at the time it was given, not at what has happened since. I can't know whether Mr B took more TFC because he needed to or just because he could and, if it was the latter, he was able to do so only because he'd received unsuitable advice.

Mr B may well fully understand the differences between a DB scheme and a personal pension but that doesn't mean the advice he received from Cambrian was in his best interests.

I set out provisionally, in detail, why I didn't think Mr B's stated objectives didn't demonstrate that the transfer was in his best interests. I explained there how I thought Mr B's objectives could be met by other means. That Cambrian thinks that Mr B's objectives were targeted to what a personal pension could offer hasn't changed my mind about this. I explained provisionally how there were alternative ways that Mr B could've raised £25,000, how he could have achieved his aim to leave his family a lump sum, how he could retire at 60 etc. all without transferring. So I can't agree that his objectives were only aligned with having a personal pension rather than a DB scheme or show that he *fully* understood what he was doing. As I set out above, for example, Cambrian should have found out more about Mr B's objective of leaving a lump sum for his spouse and children and explained to him other, more affordable ways, he could achieve this. Only then could it be said that Mr B understood in full what he was doing.

I am sure that flexibility, control, immediate access to a lump sum and potentially higher death benefits would have sounded attractive to Mr B. But the fact he met with 3 different advisers doesn't mean that he intended to transfer his pension regardless of the information he received. I can't agree with Cambrian on this point. It had a duty to make sure that the transfer was in Mr B's best interests – that was regardless of what Mr B thought or how many advisers he'd met – and I'm not satisfied that the advice it gave him to transfer, taking all the circumstances into account, discharged this duty. It didn't have to advise Mr B that a transfer was in his best interests just because Mr B said that's what he wanted to do. If Cambrian had explained that Mr B could meet all of his objectives – the lump sum, early retirement, pension of £24,000 per year – without risking his guaranteed pension – it is reasonable to think that such advice would've carried significant weight with him. So, I don't think I'm able to reasonably conclude that Mr B would have insisted on transferring out of the DB scheme regardless of any information he received.

Mr B retired and started drawing his pension at 60. I've seen no evidence that he would have done anything different if he'd remained in his DB scheme. So I'm not sure why Cambrian has said Mr B would have become a higher rate taxpayer if he had stayed employed and had to draw his DB pension – not only did he not do so but I can't see that he ever indicated that he would remain employed to the point that this would have become an issue. It follows that I don't see the relevance of Cambrian's comment.

I may not have specifically provisionally referred to the fact Mr B has withdrawn £85,000 in total in TFC despite being only 61 or that if he'd have remained in his DB scheme he wouldn't have been able to do this unless he took his benefits at age 57. I refer to my comments above on this matter. I don't know why Mr B withdrew another £60,000 beyond the £25,000 he stated as one of his objectives in making the transfer. I've seen no evidence that Mr B needed access to this additional amount or that he would have taken his DB scheme benefits early just so he could obtain it. So I think that Cambrian's comment that Mr B would have needed to take his scheme benefits at 57 to facilitate obtaining £85,000 in TFC, and that doing so would have triggered a 15% reduction in his annual pension, is one that that is applied with hindsight and is speculative. We don't know what Mr B would have done had he remained in his scheme – but I think it is most likely that he would've waited until he retired at 60 and received his TFC as one lump sum at that point.

It appears that Mr B may well have misrepresented his debts to Cambrian as his stated need for £25,000 doesn't match with what he actually needed that amount for. But I can't know if Mr B's motive for doing so was to influence Cambrian's adviser into getting the outcome he wanted. Again, this is speculative and I've seen no evidence that this was indeed the case.

I don't doubt that Cambrian never raised any concern with Mr B about the future financial viability of his DB scheme nor did I say provisionally that it had.

Even if Mr B did fully understand what he was doing by transferring, it doesn't remove the requirement from Cambrian to show that the transfer was in best interests. I set out provisionally, and in further detail in this my final decision, why I didn't think it had done so and I'm afraid that nothing it has said in response has persuaded me to change my mind. Mr B is indeed represented by a CMC and it is responsible for articulating his complaint. I would like to reassure Cambrian however, that this service is very experienced in identifying the true nature of a complaint so it need not be concerned that the prospects of Mr B's complaint succeeding have in any way been unfairly enhanced.

I agree with Cambrian that, at times in this complaint, it has been shown that Mr B's recollection of events is incorrect. That I agree with Cambrian about this issue still doesn't override the fact Cambrian should not have recommended that Mr B transfer his DB scheme.

I note Cambrian's remarks about the compensation I am asking it to pay but, as it is aware, it is the regulator's pension review guidance on how to calculate redress for unsuitable DB transfers that has to be applied here.

Cambrian said that its advice to Mr B was suitable to meet all of his needs and objectives. Whilst the transfer can be said to have met Mr B's needs and objectives, the fact Mr B had to give up the guarantees and benefits associated with his DB scheme outweighs this fact. The starting assumption for a transfer from a DB scheme is that it was unsuitable - that means that Cambrian should only have considered it if it could clearly show it was in Mr B's best interests. For the reasons I've given, both provisionally and in this final decision, I don't think Cambrian has been able to meet this threshold.

Finally, this service doesn't offer reviews of provisional decisions by 'senior ombudsmen'. As Cambrian will no doubt be aware, any submissions it makes in response to a provisional decision are referred to the same ombudsman for consideration.

Putting things right

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and has set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.** The consultation closed on 27 September 2022 with any changes expected to be implemented in early 2023.

In this consultation, the FCA has said that it considers that the current redress methodology in Finalised Guidance (FG) 17/9 (Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers) remains appropriate and fundamental changes are not necessary. However, its review has identified some areas where the FCA considers it could improve or clarify the methodology to ensure it continues to provide appropriate redress.

The FCA has said that it expects firms to continue to calculate and offer compensation to their customers using the existing guidance in FG 17/9 whilst the consultation takes place. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with any new rules and guidance that may come into force after the consultation has concluded.

We've previously asked Mr B whether he preferred any redress to be calculated now in line with current guidance or wait for the any new guidance /rules to be published.

He has chosen not to wait for any new guidance to come into effect to settle his complaint.

I am satisfied that a calculation in line with FG17/9 remains appropriate and, if a loss is identified, will provide fair redress for Mr B.

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

Cambrian 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 B retired at 60 (in September 2020), so this should be the basis for the calculations. In addition to the £25,000 TFC he took in April 2018 he says he withdrew a further £45,000 in August 2020.

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 B's acceptance of the decision.

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

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

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.

If the complaint hasn't been settled in full and final settlement by the time any new guidance or rules come into effect, I'd expect Cambrian to carry out a calculation in line with the updated rules and/or guidance in any event.

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

My final decision is that I uphold this complaint. My provisional findings now form part of this, my final decision.

Determination and award:- I require Cambrian Associates Limited T/A Cambrian Chartered Financial Planners to pay Mr B the redress I've set out in the *'putting things right'* section above up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I intend to additionally require Cambrian to pay Mr B any interest on that amount in full, as set out above.

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

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

Should Mr B ultimately accept my final decision, any money award becomes binding on Cambrian, however, my recommendation would not be binding. Further, it's unlikely that Mr B would be able to accept my final decision and go to court to ask for the balance. Mr B 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 B to accept or reject my decision before 16 November 2022.

Claire Woollerson
Ombudsman