DRN-3693332

The complaint

Mr H complains that he was given unsuitable advice by True Bearing Ltd (True Bearing), trading as True Bearing Chartered Financial Planners, to transfer the benefits from his defined-benefit (DB) occupational pension scheme to a personal pension (PP) and withdraw the full amount.

What happened

Mr H contacted True Bearing for pension advice in 2016, after first approaching it in early 2015. A fact find was completed to gather information about Mr H's circumstances and objectives at the time, including an assessment of his attitude to risk. While this was deemed to be 'high' True Bearing noted Mr H didn't plan to invest his funds due to his circumstances and that he had a 'very limited' capacity for loss, so it said no investment risk was tolerable.

At the time it was noted that Mr H was aged 54, with one dependent child who lived abroad with his ex-wife. It said Mr H's mother lived with him and he'd been her full-time carer since 2009. And, while he was considering part-time self-employment, he received income support and carer's allowance, as well as £68 per month after tax from a pension with a previous employer. The total monthly household income, including his mother's, was £1,788 with monthly expenditure of around £3,317, when including mortgage payments and £1,000 per month in minimum credit card payments.

The fact find said Mr H lived in a property he owned, worth around £150,000 with three outstanding mortgages totalling £96,000. Under what was termed 'hard debt' it said Mr H's first mortgage, which cost £870 per month, was in £8,700 arrears with a court order for him to clear this by June 2016. And that his second and third mortgages were £4,000 in arrears, with a court order to clear the full balance of £38,000 by same date. It also said Mr H owed around £33,000 on credit cards but, following advice from two debt charities, he'd negotiated to settle these for around £25,000. And that Mr H owed £45,000 to his sons for loans they'd taken out for him. In relation to what was noted as 'soft debts', it said Mr H had council tax arrears that he'd recently been to court about, he was up to his and his mother's overdraft limits totalling £2,000 and that he owed family members a further £100,000.

Mr H had a preserved final salary pension projected to pay a yearly pension of £28,068 from age 65. If Mr H wanted to retire from this at age 55 he'd receive a reduced pension of £9,870 a year with tax-free cash (TFC) of £65,804. Prior to the transfer, Mr H's DB scheme had a transfer value of £431,789.84.

In February 2016, True Bearing advised Mr H to transfer his DB pension benefits into a PP. The suitability report said this was because the TFC from his DB scheme wouldn't clear his mortgages, which he can't service even with the additional income from this. Nor would it cover his credit cards, repay his sons or his mother's overdraft and it would only be a short time before Mr H couldn't service his debts again. True Bearing said transferring to a PP would allow Mr H to access his entire fund within a year. And that while some of this would be taxed at the highest rate, it would allow him to repay his debt, leave a small emergency fund and begin some self-employment. It said Mr H would rather pay this tax to allow him to repay his eldest son in particular. And he felt he had no choice but to access all the money.

Mr H accepted True Bearing's advice, so his DB scheme benefits were transferred to his new PP shortly after and Mr H says that within a year he'd accessed and spent the maximum TFC of £105,994 and his remaining fund.

In 2021, Mr H complained to True Bearing about its transfer advice saying, in summary, that he was vulnerable at the time as he'd had a heart attack, gotten divorced from his first wife, separated from his second and had a large amount of debt that caused him to panic. He said True Bearing didn't sufficiently consider alternatives, such as early ill-health retirement or bankruptcy. He said he could have rented a house and repaid family debts still by working or with the TFC when later accessing his DB scheme. Mr H said True Bearing discounted early ill-health retirement as his heart attack occurred years ago, but then still assumed he had a shortened life expectancy such that a lump sum would be more beneficial than an income. And that it didn't include a plan for repairing his retirement provision – while it said he'd add to his pot through future earnings it contradicted this by saying he'd continue to care for his mother. Mr H also said True Bearing failed to explore withdrawing funds from the PP over a few years rather than just one, when the TFC would have covered the debt he immediately needed to repay, which meant he paid significantly more tax.

True Bearing didn't uphold Mr H's complaint. It said, in summary, that it discussed bankruptcy with Mr H but he discounted it. It said the transfer would have allowed Mr H to clear all his debts. And it advised he seek debt counselling so that he didn't fall back into a debt cycle. But that Mr H has still gone on to re-mortgage his property again in 2017 and became subject to a county-court judgment in 2018. It also said Mr H understood he would be subject to more tax by drawing down his entire fund. And that he'd still have done this even if it had advised him to do so over a longer period.

Mr H referred his complaint to our Service adding, in summary, that he wasn't able to work until recently after his mother sadly passed away. She had a stroke in August 2016 and couldn't walk, so the house needed modifications and within around a year of the transfer he'd spent his fund on this, living expenses and some debt repayments. Mr H said he might have been able to negotiate payments on his credit cards rather than settling these. And that if his son defaulted on his loan it might have impacted his career, but there was no reason to think he might and Mr H can now see he didn't need to repay this from his pension. Mr H said his family would have shown forbearance. And that, while he previously worked in taxation, this wasn't in pensions and ended in 2009.

One of our Investigator's didn't uphold the complaint. She said that while taking benefits from Mr H's DB scheme would have allowed him to pay off his court orders, he'd still have had outstanding debt and his income wouldn't have met his outgoings, which meant his position wouldn't have been sustainable and he didn't have a fixed income from employment at the time. She said Mr H ought to have been advised to withdraw his PP funds over more than one tax year, but felt the modifications needed to his home meant he'd have used his pension to do this anyway.

Mr H disagreed saying, in summary, that the TFC from his DB scheme would have covered the arrears on his first mortgage, along with his council tax arrears and some credit card balances. He said he could have applied to the court to change his proposal to clear his other mortgages and his remaining debts could have been repaid over a longer time. He said this alongside the income from his DB scheme would have meant he would have only had a monthly shortfall of around £200, which he could have covered with part time work. And that his state pension would have later supplemented this.

Mr H also said True Bearing didn't tell him to seek professional bankruptcy advice. He said that being bankrupt wouldn't have prevented him from later making gifts to his family if he felt obliged to. And he understands his pension could be ring-fenced in bankruptcy. He also said that due to his vulnerability he reacted to his circumstances and struggled to identify the best course of action, which True Bearing ought to have taken into account. And that at no point did it ask for a family member to attend any of their meetings in the way it has said it did.

As no agreement could be reached, the complaint's been referred to me for a decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of True Bearing's actions here.

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

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

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

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB transfer.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, True Bearing should have only considered a transfer if it could clearly demonstrate this was in Mr H's best interests.

Having carefully considered all of this and the evidence in this case, I'm not asking True Bearing to do anything for largely the same reasons as the Investigator. I'll explain why.

True Bearing hasn't suggested the transfer was likely to result in higher retirement benefits for Mr H, rather that it was suitable for him to do so to meet his other objectives. The suitability report said the results of the Transfer Value Analysis that True Bearing carried out to see what Mr H's PP would need to achieve to match the DB scheme benefits he was giving up were largely academic. And that if Mr H wasn't in his current position then maintaining the DB scheme in its current format would be in his best interest. In which case, as True Bearing seems to accept Mr H was likely to be worse off in retirement as a result of transferring from his DB scheme, due to the guaranteed benefits he was giving up, I haven't considered this any further. Instead I've focused on whether it was right for True Bearing to recommend the transfer in spite of this for other reasons.

It isn't in dispute that Mr H couldn't maintain the position he was in at the time without taking some action due to his outstanding debts and because his household expenses were significantly higher than the income. And, having considered all the information and thought very carefully about this, I don't think True Bearing's advice for Mr H to transfer his DB scheme benefits to a PP was unsuitable in the circumstances. I'll explain why.

If Mr H took his DB scheme benefits early I think he could have repaid the arrears on his first mortgage, along with the full balance on his second and third mortgages. Mr H says he could have applied to just repay the arrears on these instead, but I can see the court order was for the full balance. Mr H has said he would also have been able to settle his council tax arrears, although it's unclear to me how much these were. And it seems he could also have repaid around half of what he'd negotiated to pay his credit card providers, easing some of the financial pressure caused by the minimum payments, interest and late payment charges.

This would have reduced Mr H's household expenses and he'd have had an additional income of around £800 per month after tax from his DB scheme to help towards these. And Mr H says this would have meant that, after accounting for the impact on his benefits, he'd only have had a shortfall of around £200 per month to meet his expenses, which I appreciate he's said he could have met with part time work.

But the suitability report from the time says Mr H was concerned that he'd continue to get into further debt. And neither the TFC nor the additional income from his DB scheme would have allowed Mr H to repay his son either in full, in part or gradually. I've taken into account that Mr H says he was vulnerable and his debts were causing him to panic when he didn't really need to repay his son. But it appears the forbearance his family has since shown is due to his funds being needed elsewhere due to a drastic change in his mother's health following the transfer. And, in any case, I have to consider the circumstances Mr H was in at the time of the advice. And it's clear to me Mr H felt it was pressing to repay his son, even if he now feels otherwise, and that he was motivated to access his pension fund as he had no other means to do so.

Mr H actively approached True Bearing again in early 2016, seemingly after receipt of a new transfer value from his DB scheme which explained pensions freedoms had been introduced and which he'd written '*Action*' on. And, when doing so, Mr H told True Bearing he wanted to transfer his DB scheme due to extreme financial difficulties, that he was aware of the significant disadvantages but his difficulties were such that he had no sensible options and urgent action was needed. The suitability report and notes from the time say Mr H needed to repay his son, as he desperately needed to buy a house and because his career depended on being financially solvent. It said Mr H's goal was to clear his most pressing debts, including those to his eldest son in particular to secure his job role. And that Mr H's son only lent him money on the basis he could vest his DB scheme at 55 to repay this or, in more recent times, access his entire pot under new pension freedoms. So I think Mr H felt that it was pressing to repay his son at the time and that he'd always planned to access his pension to do so.

While transferring to a PP and taking TFC from this in the way Mr H did wouldn't have covered all that he owed to his family, it would have given him just under £106,000 which was significantly more than he could access from his DB scheme. This would have met his objective of covering all of his personal debts, as well as most of the more pressing debt he owed to his son. And Mr H could have then drawdown from his PP in a tax efficient way over the following years to repay the rest. I think that would've been a suitable recommendation in the circumstances – although I recognise True Bearing actually recommended Mr H take the full pension in cash, despite the large tax bill that created. However, I don't think that makes a difference to the outcome here, and I'll return to this point later.

Mr H has said True Bearing didn't consider bankruptcy or taking early ill-health retirement. Even if True Bearing could have considered the latter in more depth, early ill-health retirement doesn't appear to have been an option as Mr H's since told us he's in very good health, so I don't intend to comment on this any further. In relation to bankruptcy, the suitability report says Mr H was starting to begin part-time work but couldn't do so in the midst of his financial problems. And that if he couldn't solve these by the deadline in the court orders then he'd go bankrupt, but he felt that losing his house, uprooting his mother and having to default on his debts to his sons by doing so (as they'd be low on the list of creditors) would be too mentally damaging for him. So I think True Bearing considered bankruptcy as an alternative option for Mr H, but discounted this in light of his circumstances and because Mr H had already sought debt advice from two different organisations. And, in any case, it seems Mr H has since told us that while he might have been better declaring bankruptcy, he can't say he would have done that at the time.

In summary, for the above reasons, I think True Bearing's advice for Mr H to transfer from his DB to a PP was suitable in light of his objectives and circumstances at the time.

However, as I've said above, this doesn't mean there weren't flaws in True Bearings advice. I think its recommendation for Mr H to take his entire pension would've meant he'd be subject to a lot more tax. While I can see True Bearing told Mr H this would be the case and set out how much tax he'd likely be charged, I think it ought to have clearly advised him to access his pension more gradually in a tax efficient way. Not least because while Mr H had worked in taxation, this was several years before and in a different area of expertise, so I'm not persuaded he fully understood the tax implications of taking his entire fund in one year.

That being said, even if True Bearing had given Mr H what I think would have been suitable advice to drawdown his remaining pension fund in a tax efficient way, I don't think he'd be in a different position now. I say this because Mr H's mother's health deteriorated shortly after the advice, which led to increased living expenses. Mr H also carried out home renovations which he said were necessary due to her health. So even if True Bearing had advised Mr H not to take his pension in one go, it's evident that he did because it was the only source of capital available to him with which he could carry out the renovations. I'm not persuaded he had any other means of securing the capital to do so given his debts and court orders.

So, I don't think a suitable recommendation from True Bearing would've stopped Mr H from withdrawing all of his pension. That's because I think it was the only option Mr H had and True Bearing couldn't have prevented him from doing this, having recommended the transfer (which I think was suitable advice). And I have to have regard to what actually happened here when determining whether True Bearing's advice has caused Mr H a loss.

For these reasons, while I recognise Mr H will be very disappointed, I'm not asking True Bearing to do anything to put things right here.

My final decision

For the reasons I've given, I'm not asking True Bearing Ltd to do anything.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 March 2023.

Holly Jackson
Ombudsman