DRN-3742155

The complaint

Mr B complains that Evelyn Partners Financial Planning Limited (formerly known as Tilney Financial Planning Limited) gave him unsuitable advice when recommending he didn't transfer his defined benefit (DB) pension into a self-invested pension (SIPP). He also says it took too long for it to give its recommendation.

As the firm was known as Tilney at the point of the advice, I've referred to that name throughout my decision.

What happened

Mr B was a member of his employer's DB pension scheme. He'd been a member of that scheme for a significant number of years.

In January 2019, the administrator of Mr B's DB scheme wrote to him following his request for a quotation (he was due to leave the employment in March 2019). The administrator enclosed a transfer value quotation and explained that as the value was more than £30,000, Mr B needed to seek independent financial advice before making any decisions about his pension.

In a letter sent to Mr B in February 2019, the DB scheme trustees said they'd arranged, for a limited time, for Mr B to receive advice about his options from a specific advisory firm. The trustees later agreed to Mr B accessing his pension.

Having apparently already contacted the firm mentioned by the trustees, Mr B got in touch with Tilney around February 2019 for advice about potentially transferring his DB pension. According to what Mr B's said, he explained to Tilney that he wanted to transfer his pension into a SIPP, primarily because he wanted to ensure he could leave the bulk of his estate to his wife should he predecease her.

Mr B met an adviser from Tilney's Guilford office in early March 2019. Noting the expiry date of the transfer value (CETV) from Mr B's DB scheme, the adviser apparently told Mr B that he didn't think the advice process could be completed in the time available. Mr B left his employment at the end of March 2019. Another CETV was required, so the adviser requested this and it was received around early July 2019 (the value had increased by that point). The updated CETV had an expiry date around 26 September 2019.

Mr B got in touch with Tilney in early July 2019 as he was shortly to go on holiday, so he wouldn't be immediately available to sign any paperwork if needed. He didn't receive a reply. He then got in touch with Tilney again around 21 August 2019 as he hadn't heard anything more. It looked like Tilney was still working towards the deadline previously discussed. Despite that, and Mr B quickly providing further information in the meantime, Tilney couldn't meet its deadline of providing advice by late September 2019.

Following further contact from Mr B (and given the delays already experienced) Tilney suggested that the work should be passed to its Cardiff office as it thought that might expedite things. It also suggested that another CETV should be obtained.

Mr B met an adviser from the Cardiff office during November 2019. The adviser noted that Mr B *"very strongly"* wished to transfer his DB pension. His main reasons for wanting to do so were that various family members had died young, so Mr B thought it unlikely he'd live beyond the age of 70 and wanted to "*live for now"* and enjoy his retirement. He also wanted control of his pension and to make sure that it went to his wife in the event that he died early - even if that meant risking some of the guaranteed income expected from the DB pension.

The adviser also noted the following about Mr B:

- He was age 59.
- He was no longer working but expected to return to work in the not too distant future.
- He had high blood pressure; type 2 diabetes and high cholesterol. He took regular medication. He'd been subject to a health assessment in the last 12 months and undergone surgery; investigations or been prescribed medication in the last 5 years.
- The question on the fact-find about whether there was any reason normal life expectancy might be compromised was answered *"no" (*Mr B has since questioned why a family history of chronic heart disease didn't count). However, elsewhere the adviser noted that Mr B had recently been subject to life changing events, as his brother died suddenly at age 65. Both parents also died young. So, Mr B thought it unlikely he'd live beyond the age of 70.
- Mr B was about to receive an inheritance of about £400,000 from his brother.
- The total current expenditure was around £62,100 a year, of which £6,000 (in relation to Mr B's late brother's house) was short-term. Mr B was looking for an income of about £2,000 a month (£24,000 a year).
- He owned his own home, which had an outstanding mortgage. Mr B's home was up for sale, so the mortgage was expected to be paid off imminently, along with a car loan of £4,500.
- He had £17,000 in a bank account and £20,000 in a cash ISA (from other information provided, it seems that the ISA might have been in place when Mr B first met Tilney, but wasn't by the time Tilney produced its suitability report). According to what Mr B later said, this amount was used as additional financial support for him and his wife).
- He was a keen investor, who enjoyed reading the financial press and business pages. He'd held investments in the past. However, if the transfer proceeded, Mr B was looking to have his pension managed on his behalf.
- The DB pension was his main source of pension provision.
- His wife had a pension in her own right.
- Following the sale of property, Mr B expected to have surplus funds of about £250K, to put towards his retirement.
- Mr B said that he was prepared to take some risk, albeit in a cautious way. He also wanted to have control of and benefit from the pension. His final risk category was assessed as 'B'.

Tilney produced a suitability report dated 13 March 2020.

Noting many of the same details captured in its earlier fact-find, Tilney also noted the following:

- According to the latest calculations, the pension was expected to provide an annual income of over £16,000 at age 60 and over £23,000 at age 65 (with a lump sum available whether the pension was taken at age 60 or 65).
- Once settled following a house move, Mr B and his wife expected to work again giving them an annual income each of about £18,000 a year net. This level of income wasn't expected to cover their total expenditure, so Mr B needed to bridge the gap using his pension assets; inheritance, or house sale (or a combination of all three). Mr B expected to retire after a further two years' work and his wife at age 60.
- Even with an immediate and irrecoverable loss of 10%, Mr B would have enough resources to meet his needs. But in the short term especially as he was in the process of moving house, looking for work and selling an existing property, Mr B's

capacity for loss was limited.

- In the event that Mr B became too ill or couldn't find work, he'd need to draw on more assets at an earlier age, putting further strain on his resources.
- Tilney expected that an investor with a level B risk profile could reasonably expect an annual investment return of 2% after charges (0% in real terms assuming inflation is 2%.)
- The critical yield needed to match the pension being given up at age 65 was 14.23%. It was estimated to cost over £1 million to obtain a comparable level of income from an insurer. A critical yield wasn't available for age 60, but it was thought to be in excess of 50%.
- Tilney had also considered the potential to replicate benefits with an annuity. And after taking account of charges and a tax-free cash lump sum, the annual pension amount would be less than that expected from the DB scheme (although with more time Mr B might be able to get an enhanced rate annuity if he were to provide full medical details). But as Mr B's main focus was providing the greatest death benefits to his wife, Tilney hadn't looked into it further at that time.
- If Mr B were to transfer his DB pension he'd be subject to charges that would need to be met from his pension fund, which wasn't currently the case. So, it was cheaper to stay in the existing scheme.
- Tilney accepted that if it were to recommend a transfer it would offer Mr B a greater amount of tax-free cash. In addition, he'd be able to crystalise smaller amounts from his pension to access varied tax-free lump sums to meet his needs, rather than taking it in one go initially. It also offered greater flexibility when it came to death benefits and (subject to market conditions) the opportunity to pass on a residual fund to wider family members.

However, in summary, based on Mr B's circumstances (which were going through a period of change), Tilney felt staying in the scheme was in Mr B's best interests overall. And in terms of his desire to provide for his wife in the event of his death, it pointed out a DB pension was intended to provide an income in retirement - it wasn't a life assurance policy. It also suggested it could reassess the situation when Mr B's circumstances were more certain and when he was looking to retire.

Mr B disagreed with Tilney's advice (not to transfer) not least because he'd been planning for his retirement for many years. He asked Tilney to review its decision as he felt it had consistently ignored his particular circumstances.

Mr B formally complained to Tilney about its advice and the time it had taken to receive it.

In its response sent in June 2020 Tilney said:

- it should have been able to meet the September 2019 deadline. But it hadn't been able to due to reduced capacity from staff shortages.
- However, it was satisfied that once transferred to a different office, things were handled in a timely manner.
- Its advice not to transfer was suitable based on Mr B's circumstances and needs. And it again cited the reasons why Mr B's needs would be better served by staying in the DB scheme.
- Tilney appreciated that Mr B's main requirement was to have control over his pension and to use it as he saw fit. It also noted that he didn't agree with the mortality rates used (given his health and family history). However, it didn't share Mr B's view about that. It thought Mr B's wife's needs could be met by the DB scheme and there was no benefit in him transferring his pension to provide greater lump sum benefits.

Tilney partially upheld the complaint and accepted that it should have had sufficient resources in place to enable its work to be carried out in a timely manner. On that basis it agreed to reduce its fee to £4,000 including VAT (from £5,000 plus VAT).

Mr B wasn't happy with Tilney's response, so he complained to our service. One of our investigators looked into things and didn't think Tilney needed to take further action. Amongst other things he said that:

- There needed to be a good chance of improving on the benefits available if Tilney were to demonstrate a transfer was in Mr B's best interests. According to a transfer value comparator (TVC) it would cost about £1 million in a personal pension to match the DB benefits available.
- The critical yield needed just to match the benefits being given up was around 14%. The investigator felt that the opportunity to improve on the benefits was limited because the critical yield was too high. He also thought it unlikely it could be achieved bearing in mind Mr B's low attitude to risk.
- The investigator thought it was reasonable for Tilney to conclude that with medication and lifestyle choices, Mr B's life expectancy may be greater than he expected. Especially as the fact find didn't record anything that was likely to specifically shorten his life expectancy.
- The administrator of Mr B's DB scheme had arranged for a third party to give him free advice about his DB benefits. Although our investigator hadn't seen a copy of that report (and Mr B later pointed out that he'd had some difficulty getting hold of it) the investigator thought it reasonable to assume its advice was similar to Tilney's.
- Noting that pension rules enable people diagnosed with a terminal illness (which wasn't a position Mr B was in) to have their pension benefits paid in a lump sum, the investigator thought Tilney's advice not to transfer was reasonable. And whilst he appreciated why it was frustrating for Mr B not to have received the advice he was hoping for, the investigator said he couldn't fault Tilney for fulfilling its professional duty and giving Mr B unbiased advice.
- However, he agreed that Tilney should have met the September 2019 deadline. And, even though he felt Tilney was entitled to charge for the work it did, he also felt that it could have made it clearer how much it would charge if it advised against the transfer, or if it didn't occur for any other reason. That said, the investigator said he wasn't in a position to tell Tilney not to charge a fee, or to refund more of it.

Mr B didn't agree with the investigator's assessment and made a number of detailed points in response. Although the investigator considered those points, they didn't change his opinion overall. As an agreement couldn't be reached, the complaint's been passed to me to make 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 fully appreciate Mr B's strength of feeling about this matter. And I can see why he might think Tilney hasn't been responsive to his needs given its advice not to transfer. But, when considering what is fair and reasonable, I am required to take into account relevant law and regulations; the regulator's rules, guidance and standards; codes of practice; and, where appropriate, 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').

The applicable rules, regulations and requirements

What I've set out below is not a comprehensive list of the rules and regulations which applied at the time of the advice. But it provides useful context for my assessment of Tilney'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 pension transfer.

The regulator, the Financial Conduct Authority ('FCA') states in COBS 19.1.6 (2) that the starting assumption for a transfer from a DB scheme is that it is unsuitable (although I note Mr B's point that this wasn't made clear to him at the time). Given that position, if it were to recommend a transfer, Tilney needed to clearly demonstrate that there were compelling reasons to do so and that it was in Mr B's best interests *overall.*

So, that's the backdrop against which I considered whether Tilney's advice not to transfer seemed reasonable. And having considered Mr B's complaint very carefully, taking account of his circumstances and objectives overall, I think it was. I'll explain why.

Financial viability

A key factor when giving advice about a potential DB transfer is how likely it is that the investment returns from the new pension are capable of exceeding the benefits being given up. If there was little prospect of that happening, then there would be little point giving up valuable and guaranteed benefits only for things to stand still.

This had to be a key consideration for Tilney when giving Mr B advice. Tilney thought that a cautious investor like Mr B could probably expect to achieve an annual investment return of up to about 2% in the medium to long term after charges were factored in. That compares to a critical yield (the investment growth needed just to *match* the equivalent benefits being given up and cover charges) of 14.23% at the normal scheme retirement age of 65. The critical yield needed to match the benefits being given up at age 60 was thought to be much higher - in excess of 50% (Tilney wasn't actually able to calculate a critical yield), presumably because of the proximity of the advice to Mr B's 60th birthday).

Mr B had indicated he was willing to allow his investment to grow *"safely"* for about 5 years until the age of 65. And whilst that might be the case, unless Tilney could demonstrate that Mr B's pension was likely to exceed the benefits available within the DB scheme, it was reasonable for it to conclude that it wasn't financially viable for Mr B to transfer his pension.

I think there's also a world of difference between a fund growing *"safely"* and a transfer being likely to result in an overall loss in real terms. And from everything I've seen, I think there was a real prospect of that happening in Mr B's case. I say this because of the effects of fees and inflation on Mr B's funds. Further, according to another comparison that Tilney made, in order to buy another pension that would provide an equivalent level of benefits as the DB scheme, it would cost over £1milion.

Taking these factors together, I think it was reasonable for Tilney to conclude that it wasn't financially viable for Mr B to transfer his DB pension. And I think it was right to also mention the other financial benefits of Mr B remaining in the scheme too. Those included that all costs were previously being met by Mr B's DB scheme as opposed to Mr B having to meet the costs through his own fund, and the DB scheme not being subject to market fluctuations.

For these reasons 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. There might be other considerations which might make a transfer suitable, despite providing overall lower benefits.

I thought about Mr B's other objectives to decide whether any were compelling enough to make a transfer suitable. But for reasons that I'll go on to explain, I'm not persuaded they were.

Flexibility and control

I think it's worth making clear here that Tilney's role was to discern what Mr B's wants and needs were and establish why he wanted to transfer his pension. It wasn't simply there to facilitate what Mr B wanted.

Mr B made it clear that he wanted to take control of his pension away from the trustees to enable him to "*live for now"*. In itself that's not an unusual objective. But Tilney also needed to understand what that meant in Mr B's particular case. So, for instance, if Mr B's intention was to simply withdraw from his funds as and when he wished, Tilney needed to make sure it fully understood Mr B's wider financial position and income needs in retirement. That's to ensure that Mr B didn't run the risk of his funds depleting too early into his retirement, or at least that he had other means of topping up his retirement fund if they did.

I'm satisfied that Tilney explored these things through its fact find and highlighted the potential risks. But, I'm not persuaded that Mr B was actually looking for a flexible income in retirement. I say that because the fact find shows he had a fairly clear idea of how much income he'd need to maintain a certain lifestyle. According to what's been noted, Mr B was looking for an income of about £2,000 a month. That being the case, one of the first things Tilney needed to consider was whether that need could be met by staying in the DB scheme.

The illustrations that Tilney obtained indicated that Mr B's DB pension would probably pay him over £16,000 a year at age 60 (with tax-free cash on top) and in the region of £23,000 a year at age 65 (with a figure somewhere between the two depending on his age at retirement). Therefore, it seems to me that Mr B could have met part of his income needs in retirement through the DB scheme at age 60 and an even bigger proportion once he got to age 65. In those circumstances I think Tilney was right to question whether Mr B needed to do anything with his DB pension. Especially as it looked like he'd be able to top up any shortfalls from other funds quite easily.

Bearing in mind that there needs to be compelling reasons to support a DB transfer, I think Tilney was right to tell Mr B that, unlike his DB pension, if he were to transfer, the only guaranteed income he'd have would be his state pension. And that alone wouldn't meet his future income needs. So that would seem to be another factor in favour of staying in the DB scheme.

But I think there were other factors that supported that position too. Mr B was about to receive the residual fund from an inheritance. And he expected to have ready access to funds if he needed them. So, it's not entirely clear, why Mr B also needed to access his DB fund at that time too. But in any event, Mr B's circumstances were in a state of flux at that time. He was in the process of selling property and relocating. And, he expected to secure employment for another two years at least. Any changes to those plans may well have impacted Mr B's decision and needs. So, again, I'm of the view that he'd have been better leaving things as they were, at least until his circumstances were more settled – especially as he had other fairly substantial means to fall back on if needed.

As far as regaining control was concerned, I think Tilney was right to say that with control came additional costs. Previously, any costs of running the pension scheme were met by the scheme itself. That was something that Mr B would have to meet if he transferred. But Tilney also needed to understand Mr B's experience relevant to managing his investments, otherwise it seems unlikely he'd be able to take the control he was perhaps seeking. From what I can gather, Mr B had some previous investment experience and appears to have been well read in investment matters. Whether that's enough to say he was sufficiently experienced to manage the investments himself is less clear. In any event, Mr B had already indicated that if he transferred, he'd be looking for a firm to manage the investment on his behalf. So, whilst I agree that Mr B would have more control about investment choices, meaning his objective could certainly be met in part by transferring, I'm not necessarily persuaded Mr B would have overall control of his investment in those circumstances.

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. And that is certainly the case with Mr B. He's been clear that he wanted to transfer out of the DB scheme in order to provide a legacy to his wife and, in turn, her family.

But, as I've said above, the regulator's starting position was for Tilney to assume that a transfer was not in Mr B's best interests. So, it could only reasonably make a recommendation to transfer if it could *clearly* demonstrate that it was in Mr B's best interest overall.

I can see that Tilney did acknowledge that, if considered in isolation, an alternative plan probably would offer a greater level of death benefits than the DB Scheme. However, it had to consider that in the context of what Mr B would have to give up to achieve higher death benefits.

Importantly though, Tilney's priority was to make a recommendation concerning Mr B's retirement provision. That's because a pension is primarily designed to provide income in retirement. So, I don't think it was unreasonable for Tilney to prioritise Mr B's income in retirement over potentially higher death benefits for his loved ones. And I can see that Tilney also told Mr B his DB pension wasn't intended to act as a life assurance policy.

In addition, Mr B's annual pension was not based on investment performance, whereas the sum remaining on death in a personal pension was. If investment returns were poor, or Mr B lived a long life, there may not have been much left to pass on. Whereas in the event of Mr B's premature death, his wife would've been entitled to a guaranteed, escalating 50% spouse's pension, which I think would've been of use to her. And, as Mr B's intention was to slowly grow his pension upon transferring it as opposed to drawing from it, another option was possibly for him to ringfence some of the other funds that he was expecting to receive and use that as a legacy for his wife and her family. That wouldn't require him to give up the guaranteed index-linked and increasing benefits from the DB scheme.

I'm satisfied that Tilney also thought about other ways that Mr B could meet this objective without having to transfer his DB pension. It suggested he could potentially take out a separate life assurance contract that would provide a specific legacy for his loved ones.

It seems that Mr B discounted that option. Even if he was able to take out such a policy, due to his health issues, I think it's likely the costs might have been prohibitive. So, I can understand why that wasn't pursued further.

All of that said, overall, I think it was reasonable for Tilney to have considered the DB scheme income to be more beneficial to Mr B for his retirement provision, and to his wife on his early death, compared to the possibility of higher death benefits by transferring.

Health and family medical history

I acknowledge that Mr B had various health conditions and a family history of early death. In that context, I can see why he might have had concerns about his life expectancy. And I can also appreciate why he perhaps thought Tilney's advice should have been to transfer.

And whilst Tilney didn't delve into things to the extent that Mr B was perhaps expecting (he'd indicated it should have obtained his medical records), I'm satisfied that it didn't just overlook these factors either. Neither am I persuaded that it would have changed the position overall. I say that for a few different reasons.

Mr B clearly listed his medical conditions and mentioned the ages of close family members when they'd died. He'd also indicated he'd been subject to some health assessments fairly recently and was taking regular medication. So, if anything, that probably indicated that his conditions were more under control or were certainly being monitored. Statistically, given the ages of other family members who'd died, I can see why Mr B might have thought it unlikely he'd live much beyond the age of 70. But I don't think that's automatically the case, especially taking account of advancements in medicine and science. Nor have I seen anything to suggest that Mr B told Tilney at the time that he'd received a different prognosis.

So, in those circumstances, whilst it was right for Tilney to think about life expectancy (I can see that it thought about the impact of his diabetes in particular), I haven't seen anything sufficiently persuasive to suggest that Mr B not reaching his normal life expectancy was more than just a possibility. Or, as Mr B seems to think, it should have based its advice and recommendation on a different set of mortality rates. Neither do I agree that it was essential Mr B's wishes were carried out. I think it was equally possible that Mr B's life expectancy could exceed the level suggested, in which case he'd need his pension to last longer, especially as he was only 59 at the time of the advice.

If Mr B transferred out of the DB scheme, he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide death benefits. Whereas a spouse's pension was guaranteed and escalated. Overall, I don't think the different death benefits available through a transfer to an alternative pension justified the potential decrease in retirement benefits for Mr B.

Delays in giving transfer advice

To some extent, this issue is no longer in dispute. Tilney accepts that it didn't get things right as far as its early handling of things is concerned and it's since agreed to reduce the fee it proposed charging. So, I think the question I need to consider is whether its offer goes far enough.

Tilney told Mr B that its fee would be £5,000 +VAT (although I note the March 2020 suitability report suggests a higher figure it seems Tilney agreed to honour the initial quote given). So, presumably that's the fee that it typically charges when giving transfer advice of this kind. I fully agree that Tilney took far too long to tell Mr B that it wouldn't support a DB transfer. And whilst Mr B may feel that Tilney wasted his time, realistically, I can't see how it could have given meaningful advice and a personal recommendation without first going through a detailed process.

Mr B also thinks that Tilney's charging structure is weighted too heavily in its favour irrespective of whether it makes a recommendation to transfer or not. I can see that when it first engaged with Mr B Tilney said "*To do this work the cost is £5,000 + vat. That is for everything - the initial transfer advice, administration, portfolio recommendation and sign off (assuming a transfer is the correct course of action)".*

I think Tilney should have made it clearer in its early communication that the fee was fixed, irrespective of whether its advice was to transfer or not. Otherwise I think it might have given the impression that a different fee was payable even if a transfer wasn't recommended. Although I note that things were clarified in the March 2020 suitability report.

I thought about whether Tilney needs to do anything more here. And, on balance, I don't think it does. I note Mr B's position that Tilney should either have agreed to a transfer or declined his business before any fees were discussed. That's not a position I share for many of the reasons I've already set out. Whilst noting Mr B's position now, I'm not persuaded that he would have walked away had the fees been clearer from the outset. He was clearly intent on transferring and had already received advice from another firm beforehand. So, it seems more likely than not that Mr B would want to see the advice process through to a conclusion. But Tilney couldn't say whether it would recommend a transfer until it had completed that process and it still had to do a fair amount of work to get to the point where it could give a recommendation one way or another. I think it's entitled to charge a fee for that.

All of those things said, I agree that had Tilney not delayed things Mr B would have known the outcome much sooner. And he could have made an earlier decision about what to do next. That may even have involved approaching a different firm for advice. So, I think Mr B was inconvenienced by Tilney's delay. And I imagine the news that it didn't support a transfer (bearing in mind Mr B said he'd wanted to open a SIPP for years) was all the more disappointing following a period of delay.

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr B. But as I said earlier, Tilney 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 overall.

Ultimately, I think the advice given to Mr B was suitable. If Mr B had transferred, he'd have been giving up a guaranteed, risk-free and increasing income in exchange for lower retirement benefits. And, in my view, there were no reasons which would have justified a transfer in Mr B's particular circumstances.

Putting things right

Taking account of the factors I've highlighted above, I think Tilney's offer to reduce the fee to £4,000 including VAT is reasonable. And I think it fairly recognises the impact of the delay on Mr B. So, I'm going to direct Tilney to reduce its fee accordingly.

My final decision

I partially uphold this complaint. Evelyn Partners Financial Planning Limited now needs to take the action I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 November 2022.

Amanda Scott
Ombudsman