

The complaint

Mr R complains Creative Benefit Wealth Management Limited ('Creative') misled him into paying for full advice about transferring his defined benefit ('DB') occupational pension and gave him poor customer service.

What happened

Mr R was introduced to Creative by a separate independent financial adviser. Mr R wanted to transfer his DB pension to a personal pension, mainly because he didn't think it provided enough death benefits for his children. Creative explained it would provide advice in two stages. The first was abridged advice, which would cost £750 plus VAT and result in two outcomes; either advice not to transfer or that more information was needed. If more information was needed, it would proceed to provide full advice, at a cost of £11,428.80 (including the cost of the abridged advice and the introducer's fee of £2,762).

In April 2021, Creative provided its abridged advice to Mr R. It said the information collected at this stage meant it was unclear if a transfer was suitable, and full advice would be needed to determine this. Mr R was concerned about the cost so, through the introducer, he asked about the likely outcome. The introducer said Creative had told it the outcome wasn't certain but advice to transfer was likely. Mr R agreed to proceed to full advice.

Creative provided its full advice to Mr R in September 2021. It recommended he stay in his DB scheme, as it thought he'd be better off and could still meet all his stated objectives, and could provide better death benefits more cheaply for his children by buying life assurance than by transferring his DB pension.

Mr R complained Creative could've told him not to transfer in its abridged advice, especially since it knew about his medical investigations which meant life assurance wasn't currently an option for him. He thought Creative misled him into paying for full advice by saying it would likely advise him to transfer. That it took too long to provide its full advice and only did so days before his cash equivalent transfer value ('CETV') was due to expire. He'd pointed out some expenditure errors in its fact-find and full advice report, but Creative didn't take any action. Creative had promised that even if its full advice was not to transfer, it would sign paperwork so he could still transfer, but later changed its mind. And Creative wrongly asked him to confirm he'd come to it directly rather than through the introducer. Mr R thought Creative was wrong to ask for its full fee and that a fee of £2,000 plus VAT was fairer instead.

Creative said it hadn't misled Mr R. The regulations meant it couldn't have done any further analysis in its abridged advice, including about life assurance. It had provided Mr R with a declaration to say it had given him advice, but it couldn't declare it had advised him to transfer since that wasn't the case. Creative agreed it took too long to provide its full advice and offered to reduce its fee by £700 in total as compensation for this. And the introducer had waived its fee. So, Mr R now owed a reduced fee of £6,062 plus VAT.

Unhappy, Mr R came to our Service. Our Investigator thought Creative hadn't misled Mr R and said he'd agreed to its full advice fee beforehand. That it had given him suitable advice

in the circumstances. And correctly declared it had given Mr R advice, and told him how he could use the declaration and could extend the CETV deadline for two weeks at no cost. But Creative had taken too long and not kept Mr R updated, and should pay Mr R a further £150 as fairer compensation for that.

Mr R disagreed. He said the fee was largely reduced by the introducer waiving its fee, not by Creative. That Creative should have explored life assurance at the abridged advice stage given what it knew of his medical investigations. And its full advice was based on life assurance cover that was only a possibility and which was later declined anyway - and Creative couldn't know life assurance was cheaper than transferring. Mr R said Creative repeatedly said a transfer recommendation was likely, but suggested its change of mind was linked to Creative asking him to say he'd come to it directly, and involving a pension transfer specialist in its full advice process. Mr R thought the additional £150 compensation our Investigator recommended wasn't enough of a penalty for Creative, and suggested it should also be penalised for taking too long to respond to his complaint. Mr R said this matter had caused him distress and a loss of faith in independent financial advisers.

Our Investigator didn't change his mind, and explained it wasn't our role to punish businesses. As no agreement could be reached, the complaint was passed to me to decide.

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 applicable rules, regulations and requirements

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 Creative'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.

Creative provided Mr R with abridged advice; so in accordance with COBS 19.1A, Creative's advice could only result in two outcomes. Either it would recommend Mr R remained in his DB scheme or tell him that it needed more information to determine whether a transfer was in his best interests. And crucially, in providing abridged advice it was not permitted to carry

out appropriate pension transfer analysis, which would include comparing the death benefits payable from the DB scheme with an alternative arrangement, such as life assurance cover.

So Creative's role at the abridged advice stage was limited to considering Mr R's circumstances and objectives to determine whether he should remain in his DB scheme or whether it needed more information to make that decision – Creative's abridged advice report explained, "*My recommendation is based on information provided by you about your circumstances, objectives and priorities.*" And when making its recommendation, Creative had to be mindful that 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.

I know Mr R says Creative should have sought more information about life assurance cover at the abridged advice stage. The fact-find Creative carried out for Mr R prior to providing its abridged advice noted that while Mr R was in 'excellent' health, he'd also been referred to a specialist to see if he needed surgery for a hernia. And that due to his father's illness and early death, Mr R was very conscious of his health and wanted to arrange his financial affairs as soon as possible. I'm very sorry to hear of this. But as I say, Creative was not permitted to carry out appropriate pension transfer analysis as part of providing abridged advice, it was instead limited to considering Mr R's circumstances and objectives at this stage. So, I think it was fair and reasonable for Creative not to have explored life assurance further at that point.

Overall, I don't think Creative could've reasonably advised Mr R to remain in his DB scheme at the abridged advice stage. That's because Mr R had raised health concerns that may have meant life assurance wasn't a viable option for him. So, I think Creative needed to proceed with the full advice to determine whether the transfer was financially viable and whether it was worth giving up the guarantees associated with it in order to provide the extra death benefits Mr R thought he needed.

Turning to the full advice provided, it's important to stress that Creative's role here wasn't simply to transact what Mr R wanted it to do. It's role was to advise Mr R and recommend what it believed was in his best interests. And it's clear that it believed transferring this DB pension wasn't in his best interests. Based on the report and financial analysis Creative produced as part of its full advice process, and the starting assumption the FCA said Creative needed to make, I'm satisfied Creative's advice not to transfer was suitable for Mr R overall. Because at the time, the CETV of Mr R's DB scheme benefits was £238,080, and Creative's financial analysis said providing the same retirement income available under Mr R's DB scheme through a personal pension would cost him £204,902.88 more. So transferring would have meant Mr R would have given up a guaranteed, risk-free and increasing income and he was very likely to obtain lower retirement benefits as a result. And in my view, there were no other particular reasons which would justify a transfer and outweigh this.

Mr R questioned how Creative's full advice could conclude life assurance was cheaper than transferring, given medical investigations meant life assurance wasn't an option for him. But Creative needed to base its full advice on what could reasonably be known of Mr R's circumstances at that time. And once Mr R had proceeded to full advice, Creative obtained life assurance quotes which showed whole of life cover of £238,080 could cost Mr R between £225.72 and £502.84 a month, before underwriting. Creative also asked one of the life assurance providers whether it would offer Mr R cover given his medical specialist referral. The provider didn't rule out offering Mr R cover - it instead said it wouldn't offer cover "*for the time being*" and needed to wait for the outcome of his specialist referral. I note Creative offered to provide Mr R with further advice about life assurance, free of charge, once the outcome of his specialist referral was known. I think that offer was reasonable in the circumstances.

Generally speaking, 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 potentially on offer through a personal pension was likely an attractive feature to Mr R and he might have thought it was a good idea to transfer his DB scheme to a personal pension because of this. But the priority here was to advise Mr R about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. So, even though Mr R wanted to transfer his pension to obtain higher death benefits, I think it was reasonable for Creative to conclude that remaining in the scheme was in his best interests, particularly as it seemed he would be able to apply for life assurance once his medical investigations had concluded.

Furthermore, Creative's full advice report said Mr R could already pass on whatever remained of his other assets and personal pension funds on his death to any beneficiary of his choosing, and these would be larger because he would be using less of them by taking guaranteed income from his DB pension. Given all this, I think it was reasonable for Creative to conclude that buying life assurance - which had not been ruled out at that time - was a cheaper way of providing Mr R's children with better death benefits than transferring his DB pension.

I know Mr R feels Creative misled him into paying for full advice by repeatedly saying a recommendation to transfer was likely, albeit not guaranteed. Mr R says this was discussed many times with Creative, however neither Mr R nor Creative have any record of these conversations, so I can't be sure what was discussed. Mr R says Creative was saying similar things to the introducer, and provided a copy of an email from just after Creative gave its abridged advice. In this email, the introducer says Creative had told it that though it wasn't certain, a recommendation to transfer was very likely. But as this has come from the introducer, I don't think I can fairly attribute those comments to Creative. And overall I think it's clear Mr R understood that a recommendation to transfer was not a guaranteed outcome. So, taking everything into consideration, I've not seen enough evidence to say Creative misled Mr R into proceeding to full advice. In any event, I think it's clear that Mr R wanted to be able to transfer his DB pension. And taking full advice was the only way he could achieve this, even if the recommendation was to not transfer out of the scheme.

In addition, Mr R says Creative didn't sign paperwork that would let him transfer his DB pension even if it advised him not to transfer it. I've not seen any evidence that Creative told Mr R it would sign a declaration to say it had given him positive advice to transfer. Instead, Creative signed a declaration to say it had provided Mr R with advice, which it was obliged to do under the relevant regulations, and it explained he could use this to proceed with a transfer with other firms. Creative wasn't obliged to treat Mr R as an 'insistent client' and carry out the transfer anyway against its advice. So, I don't think Creative treated Mr R unfairly here.

Mr R is concerned Creative asked him to confirm he came to it directly and not through an introducer. There's nothing in the evidence I've been given to make me think this was for underhand or unfair reasons, as Mr R suggests, and I don't think it made any difference to the outcome of Creative's full advice or to the outcome of this complaint in any case. Mr R also says Creative didn't take any action when he pointed out some incorrect expenditure in its fact-find and full advice report. But Mr R doesn't seem to be suggesting that this made any difference to the outcome of the full advice he received, and I've not seen anything in the evidence provided to me to suggest that's the case.

However, Creative accepts it gave Mr R poor customer service by taking too long to provide its full advice report. From communication between Mr R and Creative, I see that Creative initially said it would provide its full advice by the end of July 2021. But it missed this date

and later dates it set, before finally providing its full advice on 9 September 2021. So it caused an unnecessary delay of about six weeks. I know Mr R is concerned that Creative involved a pension transfer specialist without telling him. But from what I've seen, this was expertise from within Creative and I've not seen anything to make me think this caused Creative to change its full advice recommendation to Mr R. And it should be noted that it was necessary for a pension transfer specialist to be involved in providing the advice under the relevant regulations.

I understand Mr R feels that the increase in compensation should be larger than that suggested by our Investigator, in order to punish Creative for its errors and not responding to his complaint sooner. But our Service doesn't punish businesses. Instead, our Service impartially investigates individual complaints, and if we think a business has made errors, we tell the business what it should do to put the consumer back into the position they should have been in if not for that error.

Mr R says Creative took two weeks longer than it should have to respond to his complaint, but Mr R has ultimately still been able to bring his complaint to our Service. And as I say, Creative itself accepts there was an unnecessary six-week delay in providing its full advice report. I accept this caused Mr R frustration, uncertainty, and worry about his CETV expiring at a time when his personal experiences meant he wanted to arrange his financial affairs as soon as possible. And it caused him inconvenience by having to chase Creative several times. That said, while Creative did provide Mr R with the full advice report only a few days prior to the CETV expiry date, I don't think that caused Mr R any detriment. Because Creative explained how he could get the expiry date extended by two weeks without cost. And Creative had advised Mr R not to transfer and I've not seen anything to make me think he went on to pay for a new CETV or to transfer his DB pension on an 'insistent client' basis.

Creative has itself already offered Mr R compensation in the form of a £700 reduction in the fee it's asking him to pay. Our Investigator suggested a further £150 was fair here, and Creative hasn't disputed this. Therefore, taking everything into account, I think fair and reasonable compensation for the distress and inconvenience Creative's error caused Mr R is for Creative to deduct a further £150 from the fee it's asking Mr R to pay, in addition to the total of £700 it has itself already chosen to deduct from that fee.

Putting things right

Creative should deduct a further £150 from the fee it's asking Mr R to pay, in addition to the total of £700 it has itself already chosen to deduct from that fee.

My final decision

For the reasons set out above, I'm upholding the complaint.

Creative Benefit Wealth Management Limited should deduct a further £150 from the fee it's asking Mr R to pay, in addition to the total of £700 it has itself already chosen to deduct from that fee.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 13 April 2023.

Ailsa Wiltshire
Ombudsman