DRN-3992442

The complaint

Mr B complains Triple A Financial Services ('TAFS') gave him unsuitable advice to transfer the benefits from three pensions he held into one new personal pension plan. He says this may have caused him a financial loss.

Mr B is represented in this complaint by a claims management company ('CMC'), but for ease I'll refer only to Mr B.

What happened

I understand that in 2010, Mr B was receiving advice about a mortgage. It seems Mr B was also interested in getting advice about maximizing the tax-free cash ('TFC') he could access at age 55 from three of his pensions – a defined-benefit ('DB') occupational pension with a transfer value of about £23,300, an occupational money purchase (or defined contribution, 'DC') pension worth about £22,547, and a personal DC pension worth about £33,500. The mortgage adviser referred Mr B to TAFS for that pension advice.

In March 2010, the TAFS' adviser (who I'll call 'Mr T') gathered information about Mr B's circumstances. Its 'fact find' recorded Mr B was age 48, in good health, and married with three children (though their ages weren't recorded). That Mr B was self-employed and kept his annual income to about £10,000 or £12,000 for tax reasons, and had £5,000 worth of personal effects and £3,000 in savings. That his home was worth £140,000, with an outstanding balance of £40,000 on a repayment mortgage, for which Mr B made monthly repayments of £445. The fact find recorded that Mr B's only other monthly expenses were for utilities (£50) and council tax (£50). TAFS also assessed Mr B's attitude to risk, which it deemed to be 'moderately adventurous', or, medium to high.

In March 2010, TAFS's 'suitability letter' advised Mr B to transfer these three pensions and combine them into one personal pension plan. The reasons given for this recommendation were to meet Mr B's objectives of greater flexibility and control of his pension funds, particularly to access maximum TFC at age 55, and to allow him to combine these pensions and take greater risk with them in the hope of greater return. And Mr B would also pay less in charges. The suitability letter warned Mr B that *"If your aim were to secure the highest guaranteed retirement income possible I would recommend you do not transfer the [DB] pension, but we could still look at the [other two DC pensions] as these do not have guarantees."*, but also said Mr B understood the risk and still wanted to transfer. Mr B followed TAFS' advice, and transferred a total of approximately £80,000 from these three pensions into one personal pension plan.

TAFS said it stopped trading soon after giving this advice, and its adviser Mr T moved to a second firm. And that Mr B was advised by Mr T on behalf of this second firm, until Mr B changed to a new adviser at a third firm in 2015.

Mr B said in 2020 he saw an online advert that said his specific type of pension might have been mis-sold, so he contacted the CMC that placed the advert. Through that CMC, Mr B complained to TAFS in March 2021. The crux of Mr B's complaint was that TAFS' transfer advice hadn't been suitable and might have caused him a financial loss.

On behalf of TAFS, Mr T responded to Mr B's complaint, and focused on the DB transfer since this was what had guarantees attached. TAFS thought its 2010 advice was suitable, given Mr B wanted to bring these three pensions together to take more risk and more TFC at age 55 instead of a small retirement income, and wanted to improve the death benefits available to his family. TAFS said Mr B's new personal pension plan had performed well, better than the critical yield calculated in the 2010 advice, so Mr B hadn't suffered a financial loss. And the guaranteed income Mr B had given up by transferring was only a small part of his total benefit.

Unhappy with this, Mr B came to our Service. One of our Investigators looked into whether Mr B had brought this complaint in time for our Service to be able to consider it. TAFS didn't consent to us considering it, if it hadn't been brought in time, because it thought Mr B had many years to raise any concerns if he'd wanted to but hadn't done so.

Our Investigator thought Mr B had brought this complaint in time. He said Mr B had been able to able to withdraw TFC at age 55 and saw his new personal pension plan grow in value, so he wouldn't have had cause for concern about the 2010 advice until seeing the advert in 2020 about pension mis-selling. TAFS and Mr B accepted this.

Therefore, our Investigator went on to consider the merits of Mr B's complaint. Mr B told us that in 2015 he'd followed the advice of his new financial adviser and transferred the benefits from the personal pension plan he took out in 2010 to another pension provider. And that when he reached age 55, he accessed between £35,000 and £36,000 of TFC to buy a caravan. For its part, TAFS told us it had clearly warned Mr B about giving up guaranteed value, but a transfer met his objectives of control and taking TFC at age 55.

Our Investigator upheld Mr B's complaint. He thought TAFS's 2010 advice to transfer the DB pension was unsuitable, as TAFS hadn't properly understood Mr B's circumstances and retirement needs, or properly challenged his reasons for wanting TFC at age 55. And that Mr B wouldn't have transferred his two DC pensions if he wasn't also transferring his DB pension, because accessing TFC was his key objective which he could have met through his existing two DC pensions, and he wouldn't have paid TAFS' 4% transfer commission fee simply to potentially improve his returns. Our Investigator said TAFS should put Mr B into the position he'd have been in but for its unsuitable advice in 2010, and carry out a redress calculation on that basis.

On behalf of TAFS, Mr T disagreed. Mr T said TAFS stopped trading in 2010, so had no assets with which to pay redress. And that he was simply a private individual who had access to information held by TAFS. Our Investigator suggested Mr T contact the Financial Services Compensation Scheme ('FSCS') about this.

Later, our Investigator explained to both Mr B and TAFS that Mr B could choose to have any redress calculated now in line with the regulator's current guidance in FG 17/9, or could instead choose to wait for any new guidance/rules to be published by the regulator, as expected in early 2023.

Mr B confirmed he wanted any redress calculated now in line with the regulator's current guidance, but had nothing else to add.

On behalf of TAFS, Mr T made further comments. In summary, the new points were that:

- Mr T had tried to honestly address this complaint and our Investigator hadn't helped him or treated him fairly him, given he was a private individual.

- Mr T clarified some details he thought our Investigator got wrong. Mr T said Mr B was in fact referred to TAFS. That TAFS' suitability report made clear Mr B would lose DB guarantees if he transferred. That Mr B had outlined his retirement income needs at the time of the advice - his income needs would simply continue into retirement less any debt repaid before that. And that TAFS itself hadn't advised Mr B after the 2010 advice, as it had stopped trading.
- Mr B's complaint hadn't been brought in time. Three years was an arbitrary date, and there was no proof about when this period started other than the CMC's suggestion, who stood to benefit from the complaint being upheld.
- The transfer analysis ('TVAS') assumed higher charges than were the case, so the critical yield was below the regulator's middle rate of return. Mr B wanted TFC at age 55, but didn't want a retirement income until his mid-60s. So, the critical yield was achievable, though TAFS had made clear that performance wasn't guaranteed.
- TAFS carried out a thorough financial advice process with Mr B, considered how best to meet his objectives, explained the risks and benefits to him, and followed the regulators guidance. Mr B couldn't meet his objectives of flexibility and TFC without transferring, and TAFS warned him not to transfer if he wanted the same value as his DB scheme - it was Mr B who didn't value the DB scheme's guaranteed income. And the 2010 advice to transfer was in Mr B's best interests and he'd made a fully informed decision to accept that advice.
- Mr B had always wanted to transfer his DB scheme, as he went looking for this advice. And he would still have transferred the other two DC pensions, as he wanted to take greater risk for the possibility of greater returns. And the DC pension worth £22,547 didn't allow drawdown so Mr B had to transfer it at some point to access TFC, and doing so earlier allowed a few years of additional growth. Combining these three pensions also reduced Mr B's ongoing charges.
- TAFS made clear it would charge for advice, and Mr B was happy to take its advice.

As agreement couldn't be reached, this complaint came to me for a decision. On 6 January 2030 I issued my provisional decision. In summary, I said I appreciated the flexibility, potential for higher growth and death benefits on offer by transferring the DB pension would have sounded attractive to Mr B. But TAFS wasn't there to simply arrange what Mr B might've thought he wanted – it was instead obliged to give him an objective picture and to recommend what was in his best interests.

I said TAFS' advice to transfer Mr B's DB scheme benefits was unsuitable. Because it meant Mr B was giving up a guaranteed, risk-free and increasing income, and he was likely to obtain lower retirement benefits. And there were no reasons which would justify a transfer and outweigh this. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, TAFS should've advised Mr B to remain in his DB scheme. I thought TAFS should compensate Mr B for this unsuitable advice, using the regulator's defined benefits pension transfer redress methodology, and using the benefits available to Mr B at his normal retirement age of 65. However, I said TAFS' advice to switch Mr B's two DC pensions was not unsuitable, because it allowed him to meet his main objectives without risking guaranteed, risk-free and increasing income in the way that transferring his DB pension did.

Mr B accepted my provisional decision and had nothing further to add.

TAFS provided further comments in response to my provisional decision. In summary, the further relevant points it made were that:

- Mr B had complained too late. Mr B knew he had cause for complaint long before this complaint to TAFS, because in June 2018 he instructed a solicitor to complain on his behalf about this matter. TAFS provided a copy of that complaint letter.
- It wasn't appropriate to calculate the TVAS or discount rate to age 55, as Mr B didn't want to take pension income at age 55.
- Mr B had thought the gain or loss from transferring his DB scheme benefits was likely so small that it didn't outweigh his other objectives. Any change in the amount of pension was secondary for Mr B, as TAFS' advice had noted.
- Mr B wasn't a professional investor but saw he could have higher returns if he took more risk. And TAFS's risk assessment showed Mr B had an above average attitude to risk.
- The critical yield of 6.9% was broadly the same as the discount rate of 6.5%, given that the charges were lower than those assumed in the critical yield calculation, and that adding Mr B's other DC funds to this personal pension would lower them further.

After asking TAFS and Mr B for any more comments or evidence they might have about Mr B's 2018 complaint, I told them both that I'd considered everything they'd provided about that matter, and I still thought Mr B's complaint had been brought in time.

Mr B had nothing further to add.

TAFS provided a copy of its 2018 reply to the 2018 complaint letter – this reply said TAFS was no longer trading and couldn't help Mr B further. TAFS thought Mr B's recollections of the 2018 complaint were inconsistent so I shouldn't place any weight on his testimony, and it reiterated that the 2010 transfer had achieved what Mr B had wanted. So TAFS thought this complaint shouldn't go any further.

I'm now in a position to make my 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.

Having done so, I'm satisfied this complaint has been brought within the time limits, and that it's a complaint that should be upheld. I'll explain why.

But I firstly need to acknowledge that Mr T says TAFS stopped trading in 2010 and doesn't have any assets to pay redress from. And that he's simply a private individual and we've not helped him. I must make clear that the role of our Service isn't to act for either consumers or businesses – instead, our role is to impartially investigate individual complaints made against financial businesses.

While investigating this complaint, we contacted the FSCS about TAFS. The FSCS helps consumers when a financial business is unable – or likely to be unable – to pay compensation due from a claim against the business. But as a scheme of last resort, the FSCS may not pay out if a third party could also be held liable. In this particular case, the FSCS said it had told Mr T he was personally liable for claims against TAFS because it wasn't a limited company and he was the sole proprietor of TAFS, so the FSCS wouldn't deal with this claim. I appreciate this is a difficult situation for Mr T personally. But what he's told us doesn't prevent me from making a decision about Mr B's complaint against TAFS. For ease, I'll refer only to TAFS from now on.

I'd also like to acknowledge that both parties have provided me with a great deal of detailed comments and evidence, and I've carefully considered all of this. But while I mean no discourtesy, I won't mention everything I've been provided with. Instead, I'll only address the comments and evidence I see to be relevant in reaching a fair and reasonable outcome to this complaint.

Has this complaint been brought in time?

I understand TAFS believes three years to a be an arbitrary date. It's helpful to explain that our Service must follow the Dispute Resolution (DISP): Complaints rules set out by the regulator, the Financial Conduct Authority. DISP 2.8 sets out the time limits that apply, including the three year rule. DISP 2.8 says that, unless a business consents, our Service cannot consider a complaint if it's been referred to us,

"more than:

(a) six years after the event complained of; or (if later)

(b) three years from the date on which the complainant became aware (or ought reasonably to have become aware) that he had cause for complaint;"

"unless:

(3) in the view of the Ombudsman, the failure to comply with the time limits in DISP 2.8.2 R was as a result of exceptional circumstances"

Mr B's complaint is that TAFS gave him unsuitable advice in 2010. Mr B brought this complaint to our Service in 2021. This is clearly more than six years later, so his complaint is out of time under the six-year part of the rule. Therefore, I need to consider the three-year part of the rule.

Mr B initially told our Service that he first became aware he might have cause for complaint about the advice to transfer his DB benefits when he saw an advert in 2020. But TAFS has provided me with a copy of a complaint letter it received, dated 8 June 2018, from a firm of solicitors acting on Mr B's behalf. The letter says Mr B is complaining that the advice he received in '2000' to transfer benefits from his DB scheme into a personal pension was unsuitable, because he wasn't told he'd risk lower retirement income and lose guaranteed benefits, amongst other things, and wasn't given all the information he needed to make a fully informed decision about whether to accept the advice. The letter also says *"Our client's date of knowledge that he had cause to bring a complaint was when he/she was advised to by [firm of solicitors]. Until then, they had no knowledge of the legal and regulatory duties of professional financial advisors at the time the policy in question was recommended."*

Mr B says he doesn't know when his contact with this firm of solicitors began, doesn't have any copies of its documents or correspondence, and doesn't remember dealing with it for long. And he says he didn't receive any follow up about it.

Clearly Mr B would have had discussions with the solicitors before the 2018 complaint letter was sent. But as I explained in my provisional decision, Mr B could only complain about the 2010 advice if there was something that ought reasonably to have made him aware he had cause for complaint.

It's not disputed Mr B accessed a significant amount of TFC at age 55, and TAFS itself argues the new personal pension plan it advised Mr B to transfer to has performed well. So the new pension seems to have met the wishes Mr B went to TAFS with in 2010. Therefore, there's nothing there that ought reasonably to have made Mr B aware that the 2010 advice might have been unsuitable for him.

And while Mr B changed from the second firm of advisers (where Mr T, previously of TAFS, was his adviser) to a third firm of advisers in 2015, he's explained this was because the second firm wasn't interacting with him as much as he would have expected - I've not seen anything to suggest Mr B changed firms in 2015 because he was unhappy about TAFS' 2010 advice.

Based on the evidence I've been provided with, there's nothing to suggest Mr B was an experienced investor or that he had more than a general level of knowledge relating to pensions. Or to suggest that Mr B was provided with any other information, between the advice in 2010 and the complaint he raised in 2018, that ought reasonably to have made him aware he had cause for complaint about the 2010 advice. Given this, I don't think Mr B would have had cause to think there was an issue with it unless this was suggested to him. So I think that sometime in 2018, a firm of solicitors suggested to Mr B that there might be an issue with the 2010 advice. So, I think Mr B complained within the three year time limit.

For completeness, the six and three year time limits are not the only time limits that DISP sets out. DISP also says our Service can't look at a complaint if it was made *"more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication",* unless the business consents to our Service considering it, or unless our Service thinks the failure to comply with the time limits was as a result of exceptional circumstances.

It's clear the 2018 letter was a complaint about the advice to transfer Mr B's DB pension scheme benefits into a personal pension. And I'm satisfied TAFS received this complaint letter, because TAFS provided a copy of it, along with a copy of the response it sent to that letter in 2018. Even though the complaint letter got the advice date and responsible firm wrong, TAFS could've seen that the specific advice the letter complained of was advice that TAFS had in fact given to Mr B in 2010. In 2018, TAFS responded to that complaint to say TAFS was no longer trading and it couldn't help Mr B further. So in my view, TAFS didn't send Mr B a final response letter that would have set the six month time limit running. For this reason, I think Mr B's complaint has also been brought within the six month time limit.

Taking everything into account, I remain of the view that Mr B has referred this complaint to us within the time limits set out in the DISP rules. So I'm satisfied our Service has the power to consider Mr B's complaint about TAFS' 2010 advice. Therefore, I'll now consider the merits of this complaint.

Did TAFS provide Mr B with suitable advice in 2010?

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 TAFS'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 advice to transfer the DB scheme pension

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

I appreciate TAFS says it complied with the rules and guidance. But having considered all of this and all the evidence in this case, I'm not satisfied the DB transfer was in Mr B's best interests. I'll explain why.

Financial viability

TAFS argues the critical yields (the investment return on the pension required each year to provide a fund large enough to purchase an annuity providing the same benefits as the DB scheme) were achievable, as demonstrated by the growth Mr B has achieved since the advice was given. I've considered this carefully, but I still don't think at the time of the advice TAFS could reasonably say Mr B was likely to be better off by transferring his DB scheme benefits into a new personal pension plan.

Mr B was age 48 at the time of the advice and TAFS recorded that he wanted to maximise the amount of TFC he could access at age 55, but that he didn't plan to retire at that point – instead, Mr B intended to retire in his mid-60s. The TVAS recorded that the critical yield required to match Mr B's existing DB scheme benefits at age 65 was 6.9% if he took a full pension - TAFS argues the TVAS assumed higher charges than were in fact the case, but from what I can see, the difference was less than 0.1% so I don't think this would have significantly impacted the critical yield figure. The TVAS didn't record what critical yield was required if Mr B took TFC at age 55 and a reduced pension, but I think it would likely have been higher than 6.9% given the shorter time invested. I know TAFS argues it wouldn't have been appropriate to calculate the TVAS to age 55, as Mr B didn't want to take his pension income at age 55. But I don't agree, because TAFS' advice was predicated on Mr B accessing TFC at age 55, and taking TFC early reduces the sum available to provide retirement income.

TAFS recorded that Mr B wanted to take a greater risk with these three pensions in the hope of greater returns, and assessed Mr B's attitude to risk as medium to high. TAFS says that assessment was correct, because while Mr B wasn't a professional investor, he saw he could have higher returns if he took more risk.

But I'm still of the view that this wasn't an accurate reflection of Mr B's true attitude to risk. TAFS recorded that Mr B's two DC pensions were invested in lower risk and low to medium risk funds, so I accept they had an element of risk. And Mr B had about 16 years until retirement, so he had time to take some risk and still grow his pension before retirement. But regardless of whatever Mr B himself thought his attitude to risk and capacity for loss was, he was a retail client and I've seen nothing to suggest he was an experienced or knowledgeable investor. I don't think that simply having pension contracts meant he had a level of understanding and experience such that he was able to take a higher risk. And given what

TAFS recorded of Mr B's pension provision at the time of its advice, I don't think Mr B was in a position to take too much risk with his retirement funds, which constituted these three plans. So I think TAFS assessed Mr B's attitude to risk too highly here. Instead, I think 'medium' would have been a more reasonable categorisation of Mr B's attitude to risk, particularly when considering his capacity for loss.

The advice was given during the period when the Financial Ombudsman Service was publishing 'discount rates' on our website for use in loss assessments where a complaint about a past pension transfer was being upheld. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given in this case.

As I've said above, the critical yield required to match the DB scheme at retirement age 65 was recorded as 6.9% per year. This compares with the discount rate of 6.5% per year for 16 years to retirement at age 65 in this case. TAFS argues that Mr B didn't want to take pension income at age 55, so the discount rate shouldn't be calculated to age 55. But I don't agree because, as I say, TAFS' advice was predicated on Mr B accessing TFC at age 55, and taking TFC early reduces the sum available to provide retirement income. The discount rate was 5.5% per year for age 55. For further comparison, the regulator's upper projection rate at the time was 9%, the middle projection rate 7%, and the lower projection rate 5%.

I've taken this into account, along with the composition of assets in the discount rate, what I see to be Mr B's 'medium' attitude to risk and also the term to retirement. 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. And here, given the lowest critical yield was 6.9% (based on Mr B taking a full pension at age 65), I think Mr B was unlikely to be able to improve on the benefits available to him under the DB scheme at retirement, as a result of investing in line with that attitude to risk. TAFS says the critical yield of 6.9% was broadly the same as the discount rate of 6.5% given the lower actual charges, and that adding Mr B's other DC funds to this personal pension would lower them further - I'll return to this point. But given Mr B's apparent desire to obtain higher retirement benefits, I think TAFS should've clearly explained that he wasn't likely to meet this objective by transferring out of his DB scheme.

TAFS argues Mr B's new personal pension plan has performed well so he's not suffered a financial loss. That may be the case, but this wasn't something TAFS or Mr B could have known in 2010, and I need to base my decision on whether the advice was suitable at the time. In any case, that's a matter for the redress calculation – it's possible that because of the performance achieved this may not show a loss. But this doesn't mean TAFS' advice was suitable or that this complaint shouldn't be upheld.

Also, as TAFS 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 more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time. And the growth Mr B could likely achieve given his medium attitude to risk would have been more realistically reflected in the regulator's middle (7%) projection rate.

The documents provided by TAFS include various financial analyses. I've considered these but, as I say, they base the critical yield on Mr B taking a full pension at age 65, whereas TAFS' advice was predicated on Mr B accessing maximum TFC at age 55. And they don't seem to show a direct comparison between the escalating income Mr B was entitled to take through his existing DB scheme, and the same income being instead taken through a personal pension to his estimated death.

Given that I think Mr B was, at best, only likely to be able to match his income in retirement if he transferred out, 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 TAFS has argued here. So, there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Flexibility and income needs

The key reason TAFS recommended Mr B transfer these three pensions into a new personal pension plan was to meet his objective of accessing maximum TFC at age 55. And TAFS argues Mr B had thought the gain or loss from transferring his DB scheme benefits was likely so small that it didn't outweigh his other objectives - any change in the amount of pension was secondary for Mr B, as TAFS advice had noted.

But I don't think Mr B needed to transfer his DB pension to take TFC. And I don't think TAFS properly discussed or challenged this with Mr B, or made clear to Mr B that while he might wish to maximise the TFC he could take at age 55, this was not a pressing need such that he needed to take risks with his DB pension benefits. Because based on the evidence I've seen, I don't think Mr B had any concrete need at the time of the advice to take TFC at age 55.

I say this because while the suitability letter makes clear that Mr B wanted to access maximum TFC at age 55, it doesn't say anything about why he wanted to do that or how much TFC he wanted. I think if asked, most people might think accessing as much TFC as they can before retirement is desirable. But that doesn't mean it was a genuine objective for Mr B at the time of the advice or one that he should've been encouraged to pursue without good reason. Taking maximum TFC reduces the sum available to provide retirement income. Mr B was 48 and had more than six years before he thought he wanted access to TFC, so I think transferring his DB pension in 2010 was premature. Therefore at the time of the 2010 advice, I'm not satisfied that taking TFC at age 55 was a concrete plan Mr B was working towards, but rather was simply an idea he had.

I know Mr B has confirmed he took about £35,000 to £36,000 of TFC at age 55, and used it to buy a caravan. But as I say, TAFS didn't properly discuss or challenge Mr B's wish for maximum TFC at age 55, or record anything about why he wanted it or how much TFC he wanted. And even if I accepted that at the time of the 2010 advice, Mr B had a concrete need to buy a caravan six years later at age 55, which I don't, then I think there were other ways of achieving this without transferring his DB pension and losing guaranteed benefits.

It's evident that Mr B had two other pensions he could take TFC from at age 55. At the time of the advice, Mr B could have accessed about £14,000 of TFC through his other DC pensions - I'll return to this when I consider whether TAFS gave Mr B suitable advice to switch his two DC pensions.

And TAFS recorded Mr B had £3,000 of savings. If taken at face value – which I'll also return to – the information TAFS recorded also showed Mr B had disposable income each month. So I think Mr B could have built these savings up further if he'd wanted to. Therefore, I think that the information TAFS gathered shows that at the time of the advice, Mr B had about £17,000 available, which would've achieved further investment growth over the next six years.

But as I say, TAFS didn't challenge or record why Mr B wanted TFC at age 55, or how much he wanted. If Mr B thought he'd need more than the £17,000 (plus growth) available to him through his DC pensions and his savings, then TAFS could have introduced the idea of a loan. But in any event this discussion would've been premature. And I think TAFS should've advised Mr B to revisit the objective of taking TFC nearer to him reaching age 55, at which point he'd know how much he wanted and for what reason. He could then assess whether the TFC available to him through the DC schemes was sufficient.

In summary, at the time of the advice, Mr B was just over six years away from possibly wanting to access TFC, which wasn't a concrete plan. And he was about 18 years from retiring. So, I don't think Mr B should've been advised to make an irreversible decision to transfer out of his DB scheme to have flexibility that he already had by virtue of his other pensions. In my view, Mr B's desire to access TFC at age 55 didn't outweigh TAFS' responsibility to provide him with suitable advice and act in his best interest.

Death benefits

TAFS' response to Mr B's complaint said Mr B had wanted to improve the death benefits available to his family from his pensions. But it's not clear what TAFS is basing that on, because the documents it's provided from the time of the 2010 advice make no mention of improved death benefits being one of Mr B's objectives. But for completeness, I'll address TAFS' argument.

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 might have been 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 even if TAFS didn't record it, 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 TAFS 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 had children (though their ages weren't recorded by TAFS) and so the spouse's and dependent's pension provided by the DB scheme would've been useful to his wife and children if Mr B predeceased them. I don't think TAFS made the value of this benefit clear enough to Mr B. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. In any event, TAFS 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 or anyone else, which didn't depend on investment returns or how much of his pension fund remained on his death, I think TAFS should've instead recommended life insurance. The information recorded in the fact find showed Mr B was in good health and had disposable income. But the suitability letter doesn't record any discussion about life insurance. And I've not seen that TAFS obtained any quotes for life insurance for Mr B, so I don't think it gave him enough information on which to base a decision about whether or not this was something he wanted or could afford. The starting point here should have been for TAFS to ask Mr B how much he would ideally like to leave to his wife or other beneficiaries, and how much he could afford to contribute. Insurance on this basis was likely to be available to Mr B and would have enabled him to leave a legacy without risking his retirement income.

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 as an alternative.

Control

I think Mr B's desire for control over his pension benefits was overstated. Mr B was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. 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.

<u>Advice to switch the DC pensions</u>

I'm satisfied TAFS' advice to switch the two DC pensions into a personal pension was not unsuitable for Mr B, because it allowed him to meet his main objectives without risking guaranteed, risk-free and increasing income in the way that transferring his DB pension did.

TAFS recorded that Mr B's two main objectives were to access maximum TFC at age 55 and to take greater risk in the hope of a greater return on his pension investment.

Although TAFS could have thought about whether Mr B could have combined his DC by switching one into the other, I'm not persuaded this would have allowed Mr B to have accessed his funds flexibly as he wanted to, because it's likely neither of Mr B's existing DC pensions would have allowed him to simply take TFC at age 55.

TAFS says Mr B's DC pension worth £22,547 didn't allow drawdown, so he would have had to switch it at some point to access TFC and doing so earlier allowed a few years of additional growth. Based on the information publicly available from that pension provider, I see Mr B couldn't simply have just taken TFC from it at age 55 without also taking an income. So I accept Mr B would have needed to switch this pension at some point in order to access TFC from it at age 55.

I also think it's unlikely Mr B's other DC pension worth £33,500 would have allowed drawdown either. Our Service has asked the provider for further information about this DC pension, but wasn't able to obtain it. However, I don't think I need this information in any case. That's because this DC pension was established prior to 2010 and prior to the legislation commonly referred to as 'pension freedoms'. So given when this DC pension was established and when TAFS gave this advice, it's likely Mr B would also have needed to switch this pension at some point in order to access TFC from it at age 55.

So I don't think it's likely Mr B could have accessed TFC from these two existing DC pensions at age 55 without taking an income. In addition, Mr B also wanted to take a greater risk for the possibility of greater growth. As I say, I think Mr B had a 'medium' attitude to risk. But his two existing DC pensions were invested in low and low to medium risk funds. So switching and consolidating his two DC pensions into one personal pension allowed Mr B to meet his objective of investing more in line with his 'medium' attitude to risk and gave him simplified management of the two pensions.

However, switching these two DC pensions was not without cost. And I've thought about whether or not that cost was prohibitive in the circumstances.

Based on the evidence I've seen, the provider would have applied the same level of discount to its ongoing charge for fund values between £50,000 and £150,000 - so not transferring the DB benefits as well didn't make any difference to this. From what I can see, Mr B would have been charged ongoing charges totalling 0.95% per annum (0.50% by TAFS plus 0.45% by the provider) to manage the two DC investments worth about £56,047. And TAFS would have also charged Mr B an initial adviser charge of 4% (about £2,241) of the total transfer value.

I don't know the costs of Mr B's existing DC pensions as this information isn't contained within the file TAFS provided. As above, our Service has asked the providers for further information about the charges but they weren't forthcoming. However, I think it's unlikely the charges for either plan were likely to be substantially lower than the 0.45% applicable to the new pension. So, I think it's reasonable to conclude that the cost of switching wasn't prohibitive even without transferring the DB scheme funds. There was the possibility of improved fund performance - they would have been invested in line with Mr B's 'medium' attitude to risk, so invested in slightly higher risk funds than they were currently invested in. And I'm mindful they'd be invested for the medium to long term, given Mr B wanted to access TFC in about six years' time and then draw an income when he retired in about 18 years' time. So I think Mr B was likely to be able to recoup the cost of switching these two DC pensions through improved fund performance. And in any event, switching allowed Mr B to meet his objective of accessing his pension flexibly. So, overall, I don't think the advice to switch these plans was unsuitable.

Summary

I don't doubt that the flexibility, and potential for higher growth and death benefits on offer by transferring the DB pension would have sounded attractive to Mr B. But TAFS wasn't there to just transact what Mr B might have thought he wanted. TAFS role was to really understand what Mr B needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr B to transfer his DB scheme was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was unlikely to be able to significantly improve on the retirement benefits his DB scheme provided 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 his DB scheme just to maximise TFC he didn't have a genuine need for at the time, and he could still have accessed a significant amount of TFC at age 55 by switching his other two pensions to another plan. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme. So, I think TAFS should've advised Mr B to remain in his DB scheme.

Of course, I have to consider whether Mr B would've gone ahead anyway, against TAFS' advice. TAFS argues its suitability letter warned Mr B not to transfer if he wanted the same value as his DB scheme, and made clear he'd lose DB guarantees if he transferred. That the 2010 advice to transfer was in Mr B's best interests, and he'd made a fully informed decision to accept that advice. And that Mr B had always wanted to transfer his DB scheme, as he went looking for this advice.

I've considered this carefully, but I'm not persuaded that Mr B would've insisted on transferring out of the DB scheme, against TAFS' advice. I say this because I'm satisfied Mr B was an inexperienced investor with a medium attitude to risk. And at the time of advice, TAFS recorded that Mr B's only pension provision was these three paid-up pensions, which then had a combined value of about £80,000. So, while TAFS argues that the guaranteed income Mr B gave up by transferring his DB pension was only a small part of his total benefit, the information TAFS had showed that Mr B didn't have significant retirement savings. So, I think any guaranteed retirement income was valuable and shouldn't have been underplayed as it was in TAFS advice to Mr B.

Therefore, if TAFS 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. TAFS argues it was in fact Mr B who did not value the guaranteed income attached to his DB scheme. But while I note TAFS' suitability letter did include warnings about transferring, it nonetheless went on to clearly advise Mr B to transfer his DB benefits to a personal pension. And I don't think the weight of that recommendation to transfer out can be ignored.

I'm not persuaded that Mr B's desire to maximise the amount of TFC he could access at age 55 or his concerns about his death benefits were so great that he would've insisted on transferring his DB pension 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 TAFS had clearly and simply explained that Mr B could still access a significant amount of TFC and improve death benefits for his family without risking his guaranteed pension, I think that would've carried significant weight. So, I don't think Mr B would have insisted on transferring out of the DB scheme.

However, I don't think TAFS' advice to switch Mr B's two DC pensions was unsuitable, because it allowed him to meet his main objectives, and without risking guaranteed, risk-free and increasing income in the way that transferring his DB pension did.

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

Putting things right

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

On 2 August 2022, the FCA launched a consultation on new DB transfer redress guidance and set out its proposals in a consultation document - CP22/15-calculating redress for non-compliant pension transfer advice**.**

In this consultation, the FCA 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.

A policy statement was published on 28 November 2022 which set out the new rules and guidance-https://www.fca.org.uk/publication/policy/ps22-13.pdf. The new rules will come into effect on 1 April 2023.

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 for the time being. But until changes take effect firms should give customers the option of waiting for their compensation to be calculated in line with the new rules and guidance.

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

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.

TAFS 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, I understand that Mr B has not yet retired and has no plans to do so at present. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 my final decision.

TAFS 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 his 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 TAFS 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 TAFS to pay Mr B.

Income tax may be payable on any interest paid. If TAFS deducts income tax from the interest, it should tell Mr B how much has been taken off. TAFS should give Mr B a tax deduction certificate in respect of interest if Mr B asks for one, so he can reclaim the tax on interest from HM Revenue & Customs if appropriate.

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 TAFS 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

Determination and money award: I uphold this complaint and require Triple A Financial Services to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £160,000.

Where the compensation amount does not exceed £160,000, I additionally require Triple A Financial Services 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 require Triple A Financial Services Ltd 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 recommend that Triple A Financial Services 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.

If Mr B accepts my final decision, the money award becomes binding on Triple A Financial Services.

My recommendation would not be binding. Further, it's unlikely that Mr B can accept my 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.

Triple A Financial Services should provide details of its calculations to Mr B in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 28 March 2023.

Ailsa Wiltshire
Ombudsman