DRN-4038575

The complaint

Mr B complains about advice provided by Bloomfield Financial Limited (Bloomfield) to transfer his defined benefit occupational pension (DB) scheme to a self invested personal pension (SIPP).

What happened

Bloomfield had advised Mr B in early 2018 in connection with the transfer of preserved benefits in another DB scheme to a SIPP. Bloomfield had advised Mr B to transfer and he'd accepted that advice. Mr B contacted Bloomfield in March 2018 about taking tax free cash from the DB scheme which is the subject of this complaint. Mr B had obtained a cash equivalent transfer value (CETV) of £33,439.56 from the DB scheme, guaranteed until 19 June 2018.

At the time Mr B was 55, married and intended to retire at age 60. He was employed, earning £32,000 gross pa. He had savings of around £19,000 but no other investments. His home was worth £115,000, subject to an outstanding (repayment) mortgage of £36,000 with a remaining term of 11 years. He was a member of his current employer's Group Personal Pension (GPP). Bloomfield confirmed with Mr B that his attitude to risk (ATR) remained balanced.

Bloomfield issued a suitability report on 16 June 2018. Amongst other things it recorded that Mr B's GPP was valued at around £203,000. Mr B had found he had an additional DB scheme from which he wanted to access as much tax free cash as possible to complete some home improvements to help with the sale of his property, which was a key part of his retirement plan. He wanted to transfer to a drawdown scheme so he could take more tax free cash and leave the remainder invested. Access to capital was far more important than income and to his retirement plan – to sell his home and access his GPP flexibly to provide enough to buy a flat and small business abroad. The sale proceeds and Mr B's GPP was sufficient to fund that comfortably and the benefits from the DB scheme were a bonus which he could afford to lose although he wouldn't want to.

The critical yield needed to match the DB scheme benefits at the scheme's normal retirement age (65) was 8.46% if all benefits were taken as income and 7.79% if a lump sum and a reduced pension was paid. Bloomfield said that wasn't an achievable return and Mr B's eventual pension may be reduced. Bloomfield added that immediately accessing the fund was Mr B's actual aim and recommended that he transfer the value of his accrued benefits in the DB scheme. The report noted that the DB scheme offered tax free cash of £4,988 and an income of £748 pa increasing by the lower of 5% or RPI (Retail Price Index). The SIPP would provide tax free cash of £8,359 with the balance of £24,579.67 remaining invested. Mr B accepted the recommendation. The transfer took place on 13 July 2018.

In August 2022 Mr B, through his representative, complained to Bloomfield that the advice had been unsuitable. The benefits Mr B had given up in the DB scheme were unlikely to be matched post transfer. The regulator, the Financial Conduct Authority (FCA), says an adviser must start by assuming that a transfer by a DB scheme member isn't in the member's best interests. Mr B wanted an explanation as to why he was in the very small minority of people for whom a transfer was suitable.

Bloomfield didn't uphold the complaint. It said, having reviewed the file, the recommendation was suitable and appropriate, given Mr B's specific and personal objectives and his circumstances at the time. The recommendation hadn't been made on the basis of the receiving scheme matching the benefits offered by the DB scheme.

Mr B referred his complaint to us. One of our investigators considered it. He didn't think the advice had been suitable.

In summary the investigator said:

- The benefits Mr B had accrued in the DB scheme offered a guaranteed income for life. The level of income may have appeared low to Mr B but his retirement plans and his associated income needs were unclear. The suitability report noted Mr B had said he didn't need any further income but there'd been no attempt to quantify his needs and how his other assets may have met them.
- Mr B had said he required additional capital to complete home improvements. But no quantifiable capital expenditure had been discussed. The suitability report said Mr B wanted to maximise the tax free cash available to him. But it wasn't noted if the tax free cash from the DB scheme may have been sufficient. It's difficult to justify giving up valuable guarantees when it wasn't known, even broadly, how much capital was required. Although it was noted throughout the report that Mr B didn't want to go into debt to complete the work, whether that would be necessary wasn't assessed.
- Even if Mr B did require additional capital, the tax free cash available from the DB scheme was £4,190, compared to £8,440 following the transfer. But the DB scheme would've paid guaranteed income of £748 pa so the difference would've been made up in less than six years. Mr B was relatively young and healthy so it's reasonable to assume he'd have lived long enough to make up the shortfall.
- Mr B had almost £20,000 in cash at the time which he could've accessed and used the income to make it up. Mr B didn't want to trigger the Money Purchase Annual Allowance (MPAA). Accessing the DB scheme benefits wouldn't have done that but the suitability report doesn't discuss that. There was insufficient analysis of Mr B's capital requirements and alternative ways to meet his needs weren't fully explored.
- Mr B was carrying out home improvements and his broad plan was to sell the property and retire abroad and possibly run a business. It was difficult to ascertain what income, if any, Mr B would require in retirement. Bloomfield seems to have relied on what Mr B said about not needing any more income. Mr B's state pension hadn't been detailed, nor had any cashflow modelling been completed to ascertain Mr B's income requirements or the viability of his plans as a whole.
- The critical yield – the growth rate required to replicate the benefits in the DB scheme being given up – was 8.46% if Mr B didn't take any tax free cash and 7.79% if he did. Those rates were unlikely to be achieved.

Bloomfield didn't agree with the investigator's view. I've summarised Bloomfield's main observations:

- The suitability report said that transfers from DB schemes weren't generally considered to be in members' best interests.
- The improvement works to be carried out were detailed in the fact find and suitability report – renewal of the central heating system, replacing the kitchen and renewal of all boundary fencing. Mr B was in the process of negotiating prices but had come to

Bloomfield as he'd concluded his savings and the tax free cash from the DB scheme wouldn't be sufficient.

- The difference in the tax free cash wouldn't have been made up in less than six years. The income from the DB scheme would be taxable and it would've taken over seven years to make up the disparity. Mr B wanted to avoid or minimise the need to take on any debt. If he'd borrowed from a mainstream lender, the repayment period wouldn't have been longer than five years. Even if the payments were interest free, they'd be higher than the additional post tax income received from the DB scheme. The taxable pension income wouldn't have been sufficient to service that debt, let alone also build his emergency fund back up.
- There was no reason to point out to Mr B that accessing the DB scheme wouldn't trigger the MPAA as it had already been established doing that wouldn't meet Mr B's financial aims. The reference to the MPAA was to ensure Mr B understood, if he withdrew more funds from the SIPP (over and above his tax free cash), that might affect his ability to contribute to his GPP. Bloomfield was unlikely to be involved at that point. Mr B was confident in his own knowledge and explicitly required no ongoing support. Had the fund not gone just over the £30,000 advice threshold, he wouldn't have felt the need to engage with Bloomfield at all.
- It wasn't a requirement at the time to carry out cash flow modelling, although it was a useful tool. But it required a series of assumptions. If those are likely to be inaccurate then that tends to convey unwarranted confidence or pessimism, depending on which way the assumptions sway. Mr B was adamant he wanted to buy a hospitality business abroad. When quizzed about which type, his answers were always around finding a business where the 'numbers work' and needing as much capital as possible to increase the options. Any input to a cash flow modelling tool would require assumptions that could never be considered reasonable and so the output was unlikely to have been helpful.
- As the investigator had said, reference to published discount rates wasn't a requirement and wasn't used widely in the industry where the client's intention was flexible access. But the rates Bloomfield used did straddle the discount rate quite well. Bloomfield had never implied that the growth needed to replicate the DB scheme benefits would be achieved – the suitability report specifically pointed out it wasn't an achievable return and Mr B's eventual pension may be reduced. At no point did Bloomfield tell Mr B he'd be better off. But transferring was the only way to meet his stated objectives.

The investigator considered Bloomfield's comments but he wasn't persuaded to change his view. He said the complaint would be referred to an ombudsman 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.

Having done so, I agree with the view the investigator reached and the reasons he gave as to why he considered the complaint should be upheld.

In reaching my conclusions 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, including the Principles for Business (PRIN) and the Conduct of Business Sourcebook (COBS) rules. 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 central issue is whether Bloomfield's recommendation that Mr B transfer the value of his deferred benefits in the DB scheme was suitable for him. As well as the suitability requirements in COBS 9, there are specific provisions in COBS 19.1 about advising on DB pension transfers. COBS 19.1.6G (2) says, when making a personal recommendation for a retail client who is a member of a DB scheme who is considering whether to transfer, a firm should start by assuming that the transfer will not be suitable. COBS 19.1.6G (3) says a firm should only consider a transfer if it can clearly demonstrate, on contemporary evidence, that the transfer is in the client's best interests.

COBS 19.1.6G (4) sets out a list of factors that should be taken into account to demonstrate suitability. The first is the client's intentions for accessing pension benefits. Here Bloomfield's central argument is that Mr B wanted to take tax free cash to fund home improvements and the transfer generated higher immediate tax free cash - £8,359 as opposed to £4,988 available from the DB scheme.

Mr B had just turned 55 when he consulted Bloomfield about transferring. He didn't intend to retire until he reached 60, some five years away. Although Mr B had some plans for his retirement, I don't think they were particularly advanced. He hadn't identified exactly where he and his wife would be living or the business they'd have. Some areas and types of business were being contemplated and Mr B had some idea of the cost but what income he expected the business to generate wasn't clear.

In any event, those plans could've changed by the time Mr B reached age 60 and assuming he still wanted to give up his work in the UK then. Running a business abroad might depend on Mr B's and his wife's health remaining good. While there might have been nothing to indicate otherwise, I don't think assuming that would be the case was prudent. Any health issues could've impacted on their wish to live abroad. And there could've been post Brexit complications of living and working abroad. Whereas the decision to transfer and give up the guaranteed benefits the DB scheme offered would be irreversible.

Essentially I think the decision to transfer was premature and not something that Mr B needed to do at that time. If, when he was closer to retirement, his plans had crystallised, transferring could've been considered then. Any decision then would've been based on the current value of Mr B's property and up to date costings for the property and business he could purchase abroad as well as what income he'd likely need.

I note Bloomfield's comments about it not being right to dismiss a client's plans just because all the answers aren't yet known but enabling the client to move in the intended direction. But sometimes there may be too many unknowns and the better course is to advise against making any irreversible decisions until nearer the time and once any plans have been more fully formulated. Bloomfield had a duty to provide suitable advice, rather than simply agree with Mr B as to how he thought his objectives might be met.

Mr B wanted the tax free cash to fund some home improvements. He and his wife would get the use and benefit of any work done while they continued to live in the property and before they came to sell it. But there's nothing to suggest the works were needed urgently. It seems the driver was to improve the value and/or saleability of the property when Mr B retired and came to sell the property – the suitability report says Mr B had confirmed it was important that the works were done as selling the property was a key part of his retirement plan to move abroad. But, as I've said, Mr B wouldn't be selling for some years.

Nor is there any reference in the suitability report to any discussion as to whether, if Mr B wanted to go ahead with the improvements immediately, he could've funded them differently. It's unclear from the suitability report exactly how much the proposed works might cost. Bloomfield has said that Mr B had made enquiries and the costs would extinguish his savings and the tax free cash he could access from the DB scheme. But the costings aren't set out in the suitability letter and don't form part of the analysis and rationale for transferring.

Bloomfield says that none of the solutions suggested by the investigator would've worked. Mr B didn't want to go into debt to raise the money and, in any event, the after tax income from the DB scheme wouldn't have been enough to pay off the shortfall borrowing by the time Mr B got to 60. Mr B's initial inclination may have been that he didn't want to borrow. But the suitability letter records that he had a significant amount (£500) of disposable income each month (and not taking into account his wife's income which was also disposable). So it seems he'd have been in a position to have taken on some borrowing, some of which might have been on an interest only basis. I'd expect to see that, and any other possible solutions, explored even if then ruled out.

I note what Bloomfield has said about cash flow modelling – that it wasn't appropriate as there were too many variables to produce a meaningful output. I think that underlines what I'm saying – given the uncertainties and the fact that Mr B was still some years off when he intended to retire – he should've been steered away from making an irrevocable decision until his plans were more fully developed and the costings better known.

As to the value of the benefits Mr B was giving up, I've referred above to the critical yield – that's how much Mr B's pension fund would need to grow by each year to provide the same benefits as the DB scheme would've paid. The suitability report acknowledged the required return wasn't likely achievable and it was possible Mr B's eventual pension may be reduced. So Mr B would likely receive benefits of a substantially lower overall value than the DB scheme at retirement. On that basis, a transfer wasn't in Mr B's best interests – in financial terms he'd likely be worse off as a result of transferring.

Financial viability isn't the only consideration. In some cases there will be other factors which mean a transfer is suitable, despite likely providing overall lower retirement benefits. I've already considered the rationale on which Bloomfield's advice was based – the availability of higher tax free cash. But for the reasons I've explained, I don't think that meant the advice to transfer was suitable.

COBS 19.1.6G says it's for the firm to demonstrate, on contemporary evidence, that the transfer is in the retail client's best interests, starting from the assumption that transferring won't be suitable. I don't think Bloomfield has done that. Instead, from what I've seen, Bloomfield seems to have gone along with Mr B's view that the benefits that the DB scheme would provide, particularly in terms of income, were insignificant and such that he could afford to give them up in return for a higher tax free cash amount. Mr B had a few months earlier, on advice from Bloomfield, transferred the (much higher) accrued value of the benefits he'd accrued in another DB scheme to a SIPP. Introducing further funds to the SIPP by transferring the DB pension that is the subject of this complaint seems, to some extent at least, to have followed on from the previous advice.

I've also considered if Mr B would've transferred anyway, even if Bloomfield had advised him against. That seems to be the inference from Bloomfield's comments in response to the investigator's view. Mr B may have thought he knew what he wanted to do. It's possible that he only engaged with Bloomfield because he was required to do so as the value of his DB scheme benefits exceeded £30,000. But, howsoever Bloomfield came to be instructed, it was up to Bloomfield to give suitable advice.

Mr B was an ordinary retail client with no real investment experience. I note the comments in the suitability report about the reading and online research Mr B had done about investments. But transferring a DB scheme involves specialist financial advice. I think Mr B would've been dependent on Bloomfield's advice and for which he was paying. I don't think, if Bloomfield had said he shouldn't transfer and explained why transferring wasn't in his best interests, Mr B would've gone ahead anyway.

Putting things right

A fair and reasonable outcome would be for Bloomfield Financial Limited to put Mr B, as far as possible, into the position he'd now be in but for the unsuitable advice. I consider Mr B would've likely remained in the DB scheme.

The redress I've set out follows what the investigator suggested but taking into account that, since the investigator issued his view, the new rules and guidance set out in Policy Statement PS22/13 published on 28 November 2022 have come into force (with effect from 1 April 2023) and are set out in DISP Appendix 4. I note, as recorded in the investigator's view, Mr B's representative had told us that Mr B wanted redress to be calculated on the basis of the new rules in any event.

Bloomfield Financial Limited should therefore undertake a redress calculation in line with the rules for calculating redress for non compliant pension transfer advice, as detailed in Policy Statement PS22/13 and set out in the regulator's handbook in DISP App 4.

For clarity, Mr B hasn't yet retired, and he has no set 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 using the most recent financial assumptions in line with PS22/13 and DISP App 4. In accordance with the regulator's expectations, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and DISP App 4, Bloomfield Financial Limited should:

- Calculate and offer Mr B redress as a cash lump sum payment.
- Explain to Mr B before starting the redress calculation that: redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation); and a straightforward way to invest the redress prudently is to use it to augment the current defined contribution pension.
- Offer to calculate how much of any redress Mr B receives could be used to augment the pension rather than receiving it all as a cash lump sum.
- If Mr B accepts Bloomfield Financial Limited's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr B for the calculation even if he ultimately decides not to have any of the redress augmented.
- Take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr B's end of year tax position.

Redress paid directly to Mr B as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Bloomfield Financial Limited may make a notional deduction to allow for income tax that would otherwise have been paid.

Mr B's likely income tax rate in retirement is presumed to be 20%. However, if Mr B would've been able to take 25% tax free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

My final decision

I uphold the complaint. Bloomfield Financial Limited must redress Mr B as 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 25 October 2023.

Lesley Stead
Ombudsman