

## The complaint

Mr M complains about the advice given by Belmont Regency Limited ('BRL') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to self-invested personal pension plan ('SIPP'). He says the advice he received contained errors which he believes has caused him to suffer a financial loss.

## What happened

Mr M approached BRL in April 2020 to discuss the potential transfer of his DB pension scheme. Mr M told BRL that he was a former financial adviser and that he only wanted to be advised on the potential transfer of his DB scheme into his SIPP after which he planned to take over the ongoing investment management of his pension himself. BRL said that this was something that it could assist him with and a meeting was arranged.

BRL told Mr M that its fee for professional clients was £3,000 and that apart from requiring proof that he was a 'professional client' its process was the same as for any other of its clients. It said it would want to carry out a full assessment of Mr M's finances and personal circumstances so would be completing a fact-find with him.

A fact-find was duly completed in late April 2020 with BRL noting the following:

- Mr M was aged 54 and married; his wife was the same age. They had one non-dependent daughter.
- Both Mr and Mrs M were retired and had a joint monthly income of £3,000 derived from Mrs M's own DB pension (which paid her £1,400 per month) and their investment income. Mr M intended to draw his own pension benefits at age 60. Mr M had an existing SIPP.
- Mr and Mrs M had joint monthly outgoings of £2,500.
- Their home was valued at £320,000 with an outstanding mortgage of £140,000 which they were working to clear by 2025. They had no other liabilities or debts.
- Mr and Mrs M had other assets between them worth a total of £855,000 held in a mixture of cash, ISA's, unit trusts and shares.

The fact-find also included a section about attitude to risk ('ATR') which was supplemented by a separate risk profiling form. Mr M was noted as having an overall ATR profile of 9 on a scale of 1 to 10. It was also noted however that Mr M wanted to be slightly more conservative in his investment approach. The separate risk profiling form also noted that Mr M was happy to trade the certainty of his DB scheme benefits for potential higher investment returns, flexibility and better death benefits.

On 7 May 2020 BRL issued Mr M with an Appropriate Pension Transfer Analysis ('APTA') report (which included a transfer value comparator ('TVC')) along with a suitability report in which it set out its recommendation that he transfer his DB scheme benefits to his SIPP. The covering letter BRL sent with the suitability report said its recommendations were made following a full assessment of their suitability. The reasons for BRL's recommendation to Mr M were, in summary: -

- To improve the death benefits for Mrs M and his family.
- So that Mr M could have full control and flexibility over his pension assets so he could access his pension flexibly to suit his circumstances.

- Because Mr M was 'annuity averse' and found the DB scheme to be too restrictive for his needs. He didn't want to have his income dictated to him over the course of his retirement.
- That BRL believed that accessing his pension funds now was the most cost effective and suitable option for Mr M.

Mr M accepted BRL's recommendation and the cash equivalent transfer value ('CETV') of his DB scheme totalling £765,965.34 (this included an AVC with a value of £29,356.81) was transferred to his SIPP in July 2020.

In December 2020, Mr M received a letter from BRL to say that it had decided to become a member of a large national financial advice partnership (which I shall refer to here as 'S'). BRL said the new business would have another name (which I shall refer to here as 'W').

Around January 2022 Mr M was discussing his DB scheme transfer with a former colleague who expressed surprise that the critical yield calculated by BRL and cited in the suitability report and TVC was as low as 3.3%. On further consideration, Mr M thought that the critical yield had been incorrectly calculated because BRL had incorrectly valued his deferred DB scheme pension. Mr M thought the undervaluation had resulted in an underestimation of the value of his DB scheme by BRL and consequently led to a highly inaccurate critical yield. Mr M calculated that the fund required to provide him with an equivalent annuity to what his DB scheme would give him at his normal retirement date ('NRD') of age 60 would need to be 61% higher than the figure cited in the APTA. Mr M also calculated that the actual critical yield required in order to match his DB scheme benefits at NRD was, in fact, 13.5% and not 3.3% as cited by BRL.

Mr M complained to S in February 2022. He said that the correct critical yield was a completely unrealistic level of return and, had it been correctly cited at the time of the advice, he would never have proceeded with the transfer. Consequently Mr M said he'd suffered a financial loss.

S replied to say that the advice he was complaining about wasn't provided by one of its appointed representatives. It said W had not become an appointed representative of S until November 2020 which post-dated the advice he was given. S said that as it hadn't been responsible for providing the advice it was closing his complaint.

Mr M then complained to BRL. It replied to say that its financial services side had been closed down and its clients transferred to W in 2021. BRL also said it was no longer registered by the FCA and had applied to Companies House to have the company removed from the companies register. BRL said it understood the advice it gave to Mr M had been provided on an 'execution only' basis. Finally it said it couldn't provide any more assistance and directed Mr M in the direction of this service.

Our Investigator looked into Mr M's complaint having first satisfied herself that this was a complaint that had been correctly brought against BRL, it being responsible for providing Mr M with the advice to transfer. Our Investigator asked BRL for its file but it said it no longer had it. Both BRL and our investigator asked W for a copy of the file but a copy was never provided. BRL subsequently managed to locate a few documents from the time of the advice and forwarded them to our Investigator.

Whilst our Investigator was looking into his complaint, Mr M approached his former DB scheme provider for some further information, principally about what his deferred pension revalued at his NRD of age 60 would be (obtaining from it a 'revaluation statement'). Mr M forwarded this information to our Investigator and said it showed that BRL had revalued his deferred DB pension incorrectly. Mr M said his principal complaint was that BRL had

incorrectly calculated his revalued DB pension and that the information he had obtained from his former DB scheme provider proved it. He said that information showed by how much the revalued pension had been undervalued by BRL and that the correct critical yield at the time of the advice had actually been 12%.

Our Investigator issued her view on Mr M's complaint in March 2023 and recommended that it was upheld. She thought that Mr M had been advised by BRL to transfer his DB scheme pension based on incorrect information. Our Investigator recommended that BRL compensate Mr M by undertaking a redress calculation in line with the Financial Conduct Authority's ('FCA') guidance.

Mr M accepted our Investigator's findings. BRL replied to say that it had closed its business in 2021 and was a business in name only as it had no funds or even a bank account. It said that it had ensured that all rules and regulations had been followed when closing down and deregistering the business with the FCA and Companies House.

The complaint was passed to me for a decision.

### **What I've decided – and why**

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

I've taken into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('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*

What follows 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 BRL'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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator.

BRL has said that Mr M was an experienced professional client who wanted to take a high level of risk. It also said that there was no mention at the time of the advice that the transfer was being concluded based on the critical yield. Mr M has said that obtaining the critical yield was central to the advice process for him because it would enable him to evaluate if

transferring his DB scheme benefits was viable. In Mr M's mind, the threshold for the transfer was a critical yield no greater than 5%.

I've seen an exchange of emails between BRL and Mr M from the time of the advice. In one email in May 2020, Mr M refers to the critical yield of 3.3% cited on page 7 of the TVC and says; *"This looks like a reasonable yield objective to myself"*, to which BRL replied, *"This critical yield does not concern us at all and is absolutely realistic considering your attitude to [sic] risk...it is relatively low so that is positive"*. In a later email to BRL on 20 May 2020 Mr M said, *"I agree I think the 3.3% critical yield is a reasonable figure... if it had been above 5 or 6% I think it may have been a different outcome!"*.

I think this email exchange demonstrates that the critical yield figure was important to Mr M and that he made BRL aware ahead of the transfer that if that figure had been above 5% or 6% then he would have been unlikely to have wanted to proceed with the DB transfer.

BRL commented at one stage that Mr M's was an 'execution only' transfer but having reviewed the available evidence in this complaint I'm unable to agree. The transfer was clearly conducted after full advice as to its suitability was assessed and a recommendation was subsequently made. I accept that the advice was limited to the suitability of the DB transfer only, and that Mr M was classed as an 'Elective Professional Client', but neither of these facts makes the transfer 'execution only'.

And I've noted too the email from BRL to Mr M on 8 April 2020 in which it states: *"Apart from that [the requirement for Mr M to sign a 'professional client notice'] our process is the same as any other client. We would want to do a full an [sic] in depth assessment of your finances and personal circumstances meaning we would need a full fact find completing along with a raft of other documents."* So I think it's clear that BRL understood it was providing Mr M with full advice on his prospective DB transfer. And as BRL is no doubt aware, when transferring a DB scheme with a CETV in excess of £30,000 the FCA requires financial advice to be sought.

In any event, whether Mr M made it clear to BRL that he had a critical yield threshold, whether he had a higher than usual level of knowledge and experience and whether he wanted to take a high level of risk is all of little relevance. That's because the fact remains that BRL was foremost under a duty to have due regard to Mr M's information needs and to communicate information to him in a way which was clear, fair and not misleading. This meant that Mr M was entitled to be given correct information on which to base his decision. Based on the evidence I've seen however, I'm not persuaded that happened. I'll explain why.

As both BRL and Mr M will be aware, the critical yield is essentially the average annual investment return required on the CETV from the time of advice until retirement (*before the provider applies* its charges) to provide the same annuity income at retirement as the DB pension would have done. It tells the consumer how likely it is that a personal pension plan will be able to achieve the necessary investment growth for the pension transfer to result in a higher pension than the DB scheme would provide (on the assumption that the consumer buys an annuity at retirement). Put differently it is a useful measure of whether the transfer is a financially viable one and provides a reasonably close like-for-like comparison with the DB scheme.

If the wrong information or assumptions are used when calculating the critical yield however then it will likely produce an inaccurate answer. Having considered the APTA from May 2020 along with the revaluation statement recently provided by Mr M's former scheme I can see from the former that BRL said that Mr M's estimated (DB) annual pension at retirement on his 60<sup>th</sup> birthday was cited as being £17,376.68. However Mr M's former scheme recently

provided a revaluation statement for him showing that his annual DB pension on his 60<sup>th</sup> birthday would have been £24,848.

Clearly there is a substantial difference between these two figures. The annuity figure (£17,368.68) cited by BRL in the APTA impacted the other calculations contained in the report. Firstly the TVC contained in the APTA compared the CETV with the estimated cost of acquiring the same 'promised income' (i.e. the deferred DB scheme pension) from a defined contribution scheme. It concluded that it would cost Mr M £172,150.68 more than the value of his CETV (£736,608.53) to do so. But the 'promised income' was £17,368.68. If that promised income/deferred pension had been correctly calculated then it is reasonable to assume the TVC would have been substantially higher than the additional £172,150.68 BRL had calculated.

Secondly, the critical yield calculation would have been similarly affected. BRL calculated in the APTA the fund Mr M would need (£851,252.12) in order to purchase benefits of equal value to the estimated benefits provided by his existing DB scheme. From this figure the critical yield was then calculated. To attain this sum by NRD, BRL calculated that the annual investment return/critical yield that Mr M would need to achieve was 3.3%. Similarly, however, this fund was based on Mr M's annual DB scheme income being £17,368.68. Had this income being correctly calculated however then it is reasonable to assume that the cost of providing it would have been substantially higher than the £851,252.12 calculated by BRL.

I've reviewed the transfer value information on page 33 of the APTA and note the revaluation figures cited there by BRL. On comparing them with the transfer value details provided by the DB scheme provider on the Statement of Entitlement however I can see that the figure BRL has used for the revaluation of the 'pension in excess of GMP' is lower than the scheme's figure. And it's this error that has meant BRL based its calculations in the APTA on an incorrect revaluation figure which in turn led to a significantly lower TVC figure and a significantly lower critical yield. Consequently Mr M's CETV was significantly short of the amount needed to match his deferred DB scheme benefits.

I also think it's worth mentioning that BRL had access to a software package so that it could make the calculations required in the APTA. Consequently it was BRL's responsibility to correctly input the information that calculated the revalued deferred DB pension from which it then calculated the TVC and the critical yield. I note too that BRL could have produced a new APTA based on the correct revalued deferred pension figures and then have gone on to discuss this with Mr M to see if he had been disadvantaged by its error, however, it has chosen not to do so.

From the evidence I've seen therefore, I think that BRL made an error when running the necessary calculations to generate the information it needed to insert in the APTA. As a result, the information it gave to Mr M, and on which he based his decision to transfer, was misleading and therefore unfair.

It matters not that Mr M had a high ATR because foremost he was entitled to receive accurate information on which to base his decision. So there is no need for me to consider his ATR against the critical yield and decide if this was a financially viable transfer. I need only satisfy myself here that Mr M was first given clear, fair and not misleading information on which to base his decision. As he wasn't, it follows that I don't think BRL acted professionally and in accordance with Mr M's best interests. Mr M made an irrevocable decision to transfer his DB scheme pension based on incorrect information for which BRL was responsible. If the APTA had shown the correct critical yield which, after considering the evidence I'm satisfied would have been much higher than 3.3%, I don't think Mr M would have gone ahead with the transfer as it would not have represented good value for money.

## Putting things right

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

BRL must 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:  
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, although Mr M is retired, he has not taken any of his benefits and he has no plans to do so at present. So, compensation should be based on his normal retirement age of 60, 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 DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr M's acceptance of my decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, BRL should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
  - their 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 their redress prudently is to use it to augment their DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts BRL's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr M for the calculation, even if he ultimately decides not to have any of their redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr M's end of year tax position.

Redress paid to Mr M 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, Mr M may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr M's likely income tax rate in retirement – presumed to be 20%. So making a notional deduction of 15%/30% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £355,000, 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 £355,000, I may recommend that the business pays the balance.

## **My final decision**

Determination and money award: I uphold this complaint and require Belmont Regency Limited to pay Mr M the compensation amount as set out in the steps above, up to a maximum of £355,000.

Recommendation: If the compensation amount exceeds £355,000 I also recommend that Belmont Regency Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Belmont Regency Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 September 2023.

Claire Woollerson

**Ombudsman**