DRN-4204890

The complaint

Mr B complains about the advice given by Chase de Vere Independent Financial Advisers limited ('Chase de Vere') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension plan ('PPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr B approached Chase de Vere around August 2020 to discuss his pension and retirement needs.

Chase de Vere completed a fact-find to gather information about Mr B's circumstances and objectives. It ascertained the following circumstances for Mr B:

- He was aged 57, married with no other financial dependents
- He'd been made redundant in August 2020 and wanted to review his pensions as he didn't intend to return to work
- He had an outstanding mortgage balance of £1,824
- On 1 January 2021 he would receive benefits from another DB scheme paying a tax-free cash (TFC) lump sum around £49,000 and annual income around £12,000 (reducing to around £7,000 at age 65)
- After January 2021 he would have around a £5,000 deficit in his annual household budget
- He had around £100,000 in other savings and ISAs
- He had a group personal pension with a fund around £93,000

Mr B sought advice on a further DB scheme that he had no immediate intention to take benefits from. That DB scheme had a cash equivalent transfer value of £173,306. At age 65 it would provide an annual income around £6,374. But would pay reduced benefits of £4,205 a year immediately.

Chase se Vere also carried out an assessment of Mr B's attitude to risk, which it categorised as C – on a scale that had A as lowest and F as the highest attitudes to risk. It defined this risk level as Mr B understanding that he would have to take some investment risks to meet long term goals. It also meant that Chase de Vere considered Mr B to be someone who had limited experience of investments but that could potentially suffer some loss.

On 16 December 2020, Chase de Vere advised Mr B to transfer his DB pension benefits into a PPP. It then issued Mr B a further recommendation about how he should invest his personal pension fund on 29 December 2020. The suitability report said that a transfer of the DB pension was suitable for the following reasons:

- Flexibility – able to access benefits as and when required in the future in line with objectives.
- Higher Tax-Free Cash – although not planning on taking tax-free cash at the outset would have the option to access a larger amount.

- Death Benefits – existing scheme provided 50% spouse pension but would not allow Mr B to leave any of his pension to his son on his death.

Mr B complained to Chase de Vere about the suitability of the transfer advice because he thought he'd missed out on guaranteed benefits that were part of his DB scheme.

Chase de Vere didn't uphold Mr B's complaint. It said that it had carried out a full analysis and weighed up the advantages and disadvantages of a transfer. It thought Mr B was in a fully informed position prior to the transfer.

Mr B referred his complaint to our service. An investigator looked into what happened and thought that Mr B's complaint should be upheld. He explained why he thought that the transfer was likely to leave Mr B with lower overall benefits in retirement by transferring. He considered other reasons that might have made the transfer in Mr B's best interests in spite of that. But didn't agree that Mr B needed the increased flexibility or different death benefits enough to warrant a transfer that was otherwise financially unviable. He suggested what he thought Chase de Vere should do to put things right.

Chase de Vere disagreed, saying that Mr B's DB pension was, "*to all intents and purposes surplus, and could serve in meeting other specific needs, in particular flexibility, and death benefits for his wife and son".* It explained that Mr B had told them in its fact-find that he didn't want to take out life insurance at that time. It asked for the case to be decided by an ombudsman.

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

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 Chase de Vere's actions here.

- PRIN 6: *A firm must pay due regard to the interests of its customers and treat them fairly.*

- 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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Chase de Vere should have only recommended a transfer if it could clearly demonstrate that the transfer was in Mr B's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Chase de Vere obtained a transfer value analysis report (as required by the regulator) showing, amongst other things, how much Mr B's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). The transfer value comparator also showed that it would cost Mr B £91,236 more than his CETV in order to purchase benefits equivalent to those he was giving up. Indicating that the CETV didn't represent very good value.

Mr B was 57 at the time of the advice. He had recently been made redundant and Chase de Vere's report referred to him as already being retired. But also that he had no intention of taking the benefits available to him through this pension scheme ahead of its normal retirement age of 65. The critical yield required to match Mr B's benefits at age 65 was 8.2% if he took a full pension and 7.7% if he took TFC and a reduced pension.

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017 and was 3.4% per year for around seven years to normal retirement age. Whilst this is higher than the figure of 2.5% incorrectly quoted by the investigator I don't consider that it makes a material difference to the outcome. This is because a likely return of 3.4% a year would still have left Mr B well short of the fund size needed to be able to equal the benefits he'd have been giving up. I've also considered that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, 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 them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 7.7%, I think Mr B was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

For this reason a transfer out of the DB scheme wasn't likely to result in Mr B ending up with benefits as valuable as those he was giving up. Of course financial viability isn't the only consideration when giving transfer advice, as Chase de Vere has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility and income needs

I don't think Mr B required flexibility at the time of advice. This is because, based on the evidence I've seen, Mr B didn't express any indication of taking his TFC or flexible benefits from this pension earlier than the normal scheme retirement age. The fact-find recorded that he was already retired. But it also recorded that Mr B would have another DB pension scheme that would start to pay him from 1 January 2021. Including a tax free sum.

It's likely that Mr B needed to supplement the DB pension he'd be in receipt of from January 2001 until his state pension age of 66. But Mr B had other savings as well as a further TFC lump sum from the scheme he was taking benefits from in January 2021. The availability of other savings to make up for his shortfall in income are why I don't think he had an urgent need for flexible income from the DB scheme that Chase de Vere were considering. And even if it was, he also had over £90,000 in a defined contribution pension plan that he could take flexibly without giving up any guaranteed defined benefits.

So, I'm satisfied Mr B could have met his income needs and not needed to access the benefits in his remaining DB scheme until 65. By which time the combined benefits that Mr B was in receipt of would have been more than enough for him to meet his stated target retirement income.

Chase de Vere explained in its suitability report that part of the justification for recommending a transfer was the increased available TFC. That may have been a consequence of the transfer, but there was no identifiable reason that Mr B wanted or needed that increased TFC. He had no significant debts to clear and hadn't made Chase de Vere aware of any plans that would require increased TFC. So this didn't make this financially unviable transfer in Mr B's best interests. I don't think the potential for increased TFC was a persuasive reason to justify this transfer either.

Death benefits

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension was likely 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, 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 Chase de Vere explored to what extent Mr B was prepared to accept a lower retirement income in exchange for potentially higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr B was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr B predeceased her. I don't think Chase de Vere 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. So I don't think that Chase de Vere should have encouraged Mr B to prioritise the potential for higher death benefits through a personal pension over his financial security in retirement.

Furthermore, if Mr B genuinely wanted to leave a legacy for his spouse or children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Chase de Vere should've instead explored life insurance. I appreciate that Chase de Vere say that Mr B didn't want life insurance. But Chase de Vere ought to have explored all of Mr B's options, before discounting something based on Mr B's initial opinion.

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. Especially when considering that Mr B already had over £90,000 in a defined contribution pension scheme with no immediate need to take benefits from it. I think it would have been more suitable to have advised Mr B to use his DB scheme in its most valuable way and potentially leave the DC scheme as lump sum death benefits if that was important to him.

Summary

I don’t doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr B. But Chase de Vere wasn’t there to just transact what Mr B might have thought he wanted when he approached them. The adviser’s 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 was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr B was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this.

I understand that Chase de Vere has told us that this DB scheme was surplus to Mr B’s requirements. But I disagree. Chase de Vere knew that the DB pension that Mr B would be in receipt of from January 2021 would reduce the amount payable when he reached age 65. Meaning that the DB scheme it was advising on was not surplus to requirements. It was highly likely to be needed to make up for that drop in income at age 65. And the most valuable way for it to do that would have been to have advised Mr B not to transfer it.

So, I think Chase de Vere 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 Chase de Vere's 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 Chase de Vere’s advice. I say this because Mr B was an inexperienced investor with a medium attitude to risk and this pension accounted for an important part of Mr B’s retirement provision.

I’m not persuaded that Mr B’s concerns about his death benefits were so great that he would’ve insisted on the transfer knowing that a professional adviser, whose expertise he’d sought out and was paying for, didn’t think it was suitable for him or in his best interests. If Chase de Vere had explained that Mr B could meet all of his objectives 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.

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

Putting things right

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

Chase de Vere 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, compensation should be based on the scheme's 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, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr B's acceptance of the decision.

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

- calculate and offer Mr B redress as a cash lump sum payment,
- explain to Mr B before starting the redress calculation that:
    - his 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 his DC pension
- offer to calculate how much of any redress Mr B receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr B accepts Chase de Vere's offer to calculate how much of their 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 their redress augmented, and
- 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 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, Chase de Vere may make a notional deduction to allow for income tax that would otherwise be paid.. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr B's likely income tax rate in retirement – presumed to be 20%**.** So making a notional deduction of 15% overall from the loss adequately reflects this.

Where I uphold a complaint, I can award fair compensation of up to £375,000, 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 £375,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Chase de Vere Independent Financial Advisers limited to pay Mr B the compensation amount as set out in the steps above, up to a maximum of £375,000.

Recommendation: If the compensation amount exceeds £375,000, I also recommend that Chase de Vere Independent Financial Advisers limited pays Mr B the balance.

If Mr B accepts this decision, the money award becomes binding on Chase de Vere Independent Financial Advisers limited.

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.

If payment of compensation is not made within 90 days of Chase de Vere Independent Financial Advisers limited receiving Mr B's acceptance of my final decision, 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 payment.

Income tax may be payable on any interest paid. If Chase de Vere Independent Financial Advisers limited deducts income tax from the interest, it should tell Mr B how much has been taken off. Chase de Vere Independent Financial Advisers limited 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 HMRC if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 August 2023.

Gary Lane
Ombudsman