DRN-4234133

The complaint

Mr C has complained that Goddard Perry Consulting Ltd ('GPC) unreasonably delayed giving him advice about whether to transfer the benefits from his former employer's occupational pension defined benefit ('DB') scheme to an alternative pension arrangement. Mr C believes he has lost out as a result.

What happened

Mr C had been a deferred member of two of his former employers' DB schemes. In 2019 GPC had given him advice about transferring funds from one of those DB scheme into a self-invested personal pension ('SIPP'). GPC had continued to give him regular financial advice since then.

In September 2021 Mr C told GPC he was interested in transferring the funds from his remaining deferred membership DB scheme into his SIPP. He had already requested a cash equivalent transfer value ('CETV') from the scheme administrators. They had sent him a quote for a CETV of around £169,000. The quote was guaranteed until 30 November 2021.

GPC gathered some fact-find information from Mr C. It also spoke with him on 1 October 2021. Mr C said that while, at that time, he was still working he intended on retiring the next year, when he turned 55. His plan was to sell his house and for himself and his wife, who was largely financially dependent on him, to buy a boat and use it to travel abroad. They expected to be resident in Europe but said they may travel further afield over the next five years. Mr C had savings. He also had investments in a SIPP worth over £500,000, as well as a workplace personal pension worth around £50,000. His preference was to take his DB funds and use those to bolster his savings and live off those for the next five years, until he turned 60. At that point his plan was to draw down an income from his SIPP.

GPC told Mr C that there had been changes in the regulatory landscape since his last DB transfer in 2019. It said the regulator was now far stricter with advising firms about recommending transfers. GPC told him it would pass his transfer request to one of its pension transfer specialist to look into.

GPC contacted Mr C about a fortnight later. It asked him to go through its DB transfer triage process included watching a video online, which incorporated explaining the DB transfer stages. GPC said it would need to request some information from the DB scheme administrators. It told him it could take the administrators some weeks to respond to its questions and as such it couldn't guarantee that it could complete its work before the CETV guarantee date expired.

On 15 October 2021, after completing the triage process, Mr C told GPC he'd been through the DB transfer process relatively recently and felt GPC could omit the abridged advice stage of its process and go straight to full advice. GPC replied on 20 October 2021. It said it had little prospect of receiving all the information it needed to give full advice before the CETV expired. It recommended doing abridged advice first as that could save time and money. It explained its fee structure. It added that the DB scheme administrators would also charge £250 for any subsequent CETV requests. It explained that the regulatory environment had changed since Mr C last went through the DB transfer process and so it had to "*tread more carefully*". Subsequently, on 31 October 2021 Mr C signed GPC's fee agreement to go ahead with the abridged advice at a cost of £1,250 (£1,500 inclusive of VAT).

Over the ensuing months, up until February 2022, GPC continued to gather information from Mr C about his plans and his residency status and the country in which he would be liable for tax in retirement. It also made enquiries for further details of his entitlements under the DB scheme. Additionally it looked into, via a third party firm, how Mr C's plans to live abroad affected its regulatory requirements and whether it could continue to give Mr C advice.

In May 2022 Mr C chased GPC for progress. GPC's adviser replied. She said she'd been off work with illness. Later that month Mr C asked GPC if he should transfer his workplace personal pension into his SIPP. GPC asked him for a letter of authority so it could make enquiries of the personal pension provider. Mr C returned that letter of authority in June 2022.

In September 2022 the provider of Mr C's workplace personal pension gave GPC information about its pension scheme. GPC then made further enquiries both of Mr C, who by that time had retired from work, sold his house, bought a boat and was living on it abroad. GPC also made further enquiries of the DB scheme, including asking for an up-to-date CETV.

In the meantime GPC prepared its abridged advice report which was dated 20 October 2022. It didn't actually issue that to Mr C until 25 October 2022. A day earlier Mr C complained to GPC about its lack of progress.

GPC's abridged advice said it was unclear as to whether or not a transfer from his DB scheme would be suitable for him. It asked him if he wanted to proceed to full advice. It said he would need to sign its fee agreement if he did so.

Two days later the DB scheme administrators prepared an updated CETV quote, which had reduced to around £107,500.

On 2 November 2022 Mr C signed a fee agreement, based upon the recent CETV quote. He agreed to pay £3,250 for full advice, inclusive of the abridged advice fee.

GPC then obtained an appropriate pension transfer analysis report ('APTA'), which incorporated a transfer value comparator ('TVC') and ran some cash-flow models. It appended those to its full advice, which it set out in a suitability report. It sent that to Mr C on 9 December 2022. In summary GPC's advice was that it was not in Mr C's best interests to transfer out of his DB scheme. It said he could meet his income needs in retirement while remaining in the scheme.

Mr C then put a number of points to GPC concerning the content of its report. It replied on 15 December 2022

On 20 December 2022, GPC replied to Mr C's complaint. It said it was sorry about the length of time it had taken to complete its advice and for not always updating him during the process. But it said it couldn't have completed its advice process before the expiry of the initial CETV. In recognition of the impact of its delays it offered to waive its abridged advice fee of £1,500 (including VAT).

Mr C remained unhappy and brought his complaint to us. One of our Investigators looked into it. He thought GPC's offer to put things right was reasonable and didn't think it needed to take any further action.

Mr C didn't agree with our Investigator's assessment of the complaint so it's been passed to me to determine.

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.

In arriving at my determination 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 regulator's Principles for Business ('PRIN') and the Conduct of Business Sourcebook ('COBS'). 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.

And, while I've considered everything on file, I don't intend to address each and every point or issue raised. Instead I will focus my decision on what I see as being the key issues at the heart of Mr C's complaint and the reasons for my decision.

The applicable rules, regulations and requirements

What I've set out below isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but it provides useful context for my assessment of GPC'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 not to uphold the complaint for broadly similar reasons to those given by the Investigator.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that, when considering a transfer from a DB scheme:

"*a firm should start by assuming that a transfer, conversion or opt-out will not be suitable. A firm should only then consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the client's best interests*."

So, the starting assumption is that a DB transfer is unsuitable. This is known as the "presumption of unsuitability". It follows that GPC should only have considered recommending a transfer if it could clearly demonstrate on the evidence available at the time that it was in Mr C's best interests.

Should GPC have completed the advice process within the initial CETV guarantee date?

GPC had previously given Mr C advice about transferring out of a DB scheme. So he was familiar with how the process worked on that occasion. And it appears that, from Mr C's perspective little had changed. His plan was to retire, sell his home, buy a boat and move abroad. He felt the best way to help achieve that comfortably was to transfer his remaining DB scheme funds to an alternative arrangement. Indeed Mr C was sufficiently confident in that plan that he was happy for GPC to miss out the abridged advice stage and go straight to full advice.

It might help if I explain that giving advice on a DB transfer is, generally, a complex and heavily regulated process. It will usually involve gathering and analysing a considerable amount of evidence. And even in the most straightforward of cases that can take many weeks or months to complete.

Further, there are typically a number of steps involved in a DB transfer process. In this case, after GPC's initial triage steps, it effectively offers a two stage process. The first is known as abridged advice. This is a shorter form of advice requiring fewer pieces of evidence to complete and is less complex. It only has two possible outcomes:

- A recommendation not to transfer.
- It's inconclusive whether a transfer is suitable.

And, generally, a client would only move on to the second stage – full advice – if GPC has identified that the abridged advice was inconclusive.

So, if GPC had identified at the abridged advice stage that it would undoubtedly not recommend a transfer, then it would have done so at that stage. That could, potentially, have saved Mr C from paying for the full advice step in the process.

The abridged advice process requires less information than full advice. But the regulator still requires advising firms like GPC to gather what it calls "essential facts". Those include things like Mr C's knowledge, objectives and circumstances, including detailed information about his regular income and assets both currently and into his retirement. It would also need to be aware of his likely tax liabilities. So, even at this shorter stage, GPC was aware that it would have to gather and analyse a significant amount of information to complete its abridged advice.

At the time Mr C approached GPC, he already had a CETV which expired in November 2021. GPC warned him from the outset that, given the regulatory hurdles it had to overcome, it couldn't guarantee it would meet the CETV deadline. And, when Mr C suggested going straight to full advice, it was clear with him that it had no real prospect of completing its advice within that deadline. At that point it suggested abridged advice as an interim measure. I think that was reasonable in the circumstances. That's because: by that time the CETV expired in less than seven weeks; GPC had a good idea it would be required to gather a analyse a significant amount of information; and it had no control over how long third parties took to reply to its enquiries. So it was extremely unlikely, even with a fair wind, that it could complete its advice within that timescale.

I'm aware Mr C had been through the DB process some years earlier. I haven't looked into how long the process took on that occasion. But, as GPC explained, in the interim the regulator had issued further guidance to advising firms about the steps they must go through and the information they must gather before giving DB transfer advice. And the key stages in the process would require the involvement of GPC's compliance agents to ensure it wasn't falling foul of the regulator's rules. So, while it might have seemed to Mr C that this was a fairly straightforward process with an obvious outcome, that wouldn't have been GPC's approach. Each of the DB transfer steps take thought, careful analysis and awareness of the regulatory landscape. And all these things take time.

Further, in this instance, Mr C's case was additionally complicated as he would be moving out of the UK. That introduced a new set of regulatory hurdles and questions that would only slow matters down further. So I don't think it was GPC's fault that it couldn't meet the initial CETV deadline.

Further delays

That said, while acknowledging the complexity of the process and the regulatory rules within which GPC had to operate, I think it took longer than it should have done to complete the advice process.

Having looked into the file, for the most part the delays were generally caused by GPC making enquiries, waiting for answers to those and then giving due consideration to the material it needed to analyse. But there were clearly a number of occasions when it could have speeded things up. I don't intend to go through each of those but two clear examples stand out. The first is between February and May 2022, when there's little sign of any positive movement on file. I note GPC's adviser had been away from work with illness, but at the very least I would have expected GPC to tell Mr C that and to try to move matters on as efficiently as it could in the meantime. The second was between June and September 2022 when, other than telling Mr C he was a priority in an email, it's not clear what action GPC was taking to advance its advice process. I further note that, to add to the frustration caused by its delays, GPC accepted it hadn't given Mr C appropriate updates.

So it's clear that GPC introduced some unwarranted delays and didn't keep Mr C advised as to what it was doing and the timescales involved. To recognise the impact of the gaps in its service GPC offered to waive its abridged advice fee of £1,250 (£1,500 after VAT). I'm aware that Mr C doesn't think that goes far enough. I've dealt with that point below.

Mr C's commented that the abridged advice process took far longer than full advice. That's clearly the case. As I've said above, there were certainly periods during the abridged advice process that met with unreasonable delays. But GPC gathered most of the evidence it needed to conclude full advice before giving its abridged advice. So, while it still had some evidence and other materials (like an APTA) to gather before giving full advice, in the circumstances of this case, it's unsurprising that the full advice process was concluded in a shorter time frame than the abridged advice.

The outcome of the advice process

It's clear Mr C was very disappointed with GPC's conclusion that he shouldn't transfer his DB funds. It seems he was expecting the outcome to be a positive one, so I can understand his dissatisfaction that – some 14 months on – the transfer didn't happen. But I think GPC's advice was reasonable in the circumstances.

DB pensions are a valuable resource and their benefits are often considered to be difficult to match (at a similar cost) compared with other pension products available on the open market. And that's one of the reasons why the regulator insists that consumers require regulated DB transfer advice before a transfer may go ahead. DB pension schemes generally provide a safeguarded, guaranteed and index linked income for their members at virtually no risk to the member themselves. The alternatives generally rely on returns from the investment markets. And those bring with them investment risks. So transferring guaranteed benefits from a DB scheme to an investment environment puts those otherwise safeguarded benefits at risk.

Further transferring from a DB scheme is a one-off event; once transferred there's no going back – the benefits are lost forever. So, when giving DB pension transfer advice GPC's role wasn't to simply do what Mr C wanted it to do, no matter how convinced he was that a transfer was suitable for him. Instead GPC was required to understand his wants and needs, not just his thoughts, wishes and desires. And, in order to meet its regulatory requirements, it could only make a recommendation to transfer if it was convinced, on contemporary evidence, that it was in his best interests.

In this instance, after completing full advice, GPC concluded that a transfer wasn't in Mr C's best interests. In coming to that conclusion, after obtaining an APTA and cash-flow models, GPC identified that Mr C could meet his financial needs while remaining in the DB scheme. So, it said he had no need to put his DB funds at risk, in order to achieve his financial goals. Essentially, GPC's analysis showed that, using the income from his savings Mr C should be able to fund himself in the manner he desired for four of the five years of his early retirement, before he reached age 60. At that point, if he needed to, he could access funds from his personal pension or SIPP. And GPC's analysis was that Mr C would most likely be better off by remaining in his DB scheme. So, it concluded that Mr C didn't have a need to transfer his DB scheme funds and he should leave those where they were. I think its analysis is sound. So I think its advice was reasonable in the circumstances.

Did GPC adequately address Mr C's concerns about its advice?

In response to its suitability report Mr C raised some issues with it. He told us GPC said his concerns made no difference to its findings and it simply restated the same inaccuracies.

I've looked at Mr C's comments and GPC's responses to them carefully. Having done so, I think it's replied reasonably. It addressed each of them individually, although on occasions some of its replies overlapped, in terms of the reasons for its recommendation. I don't intend to address each point Mr C raised individually but I'll cover off what I see as being some of those as an illustration of how GPC replied to his remarks fairly.

Mr C pointed out that GPC had incorrectly said that the earlier DB scheme, which he'd already transferred out of, was in the process of being wound up when Mr C sought its advice in 2019. Mr C said that wasn't the case and the scheme still exists. In response GPC's adviser acknowledged she'd been misadvised about the status of the earlier scheme and apologised. But, she pointed out that the reason why Mr C sought advice concerning the earlier scheme, had no bearing on GPC's advice in this instance. So, while it wasn't helpful that GPC included this mistake within its suitability report, it didn't alter any of the hard facts which affected whether or not GPC considered it was in Mr C's best interests to transfer from his remaining DB scheme.

Also, on more than one occasion Mr C referred to GPC's suitability report saying that he could take benefits from his SIPP or personal pension before he reached age 60. Mr C said that he'd never said he wanted to take an income from his other pensions before he reached 60. GPC accepted that point. But it added he had said he was interested in taking a tax-free cash ('TFC') lump sum from those. And it clarified that TFC was also a benefit of his other pensions. So, regardless that he didn't want to take an income from his other pensions it said its comments were accurate about drawing benefits from those. I agree that's the case.

Further, it went on to explain that while it was Mr C's preference not to access the funds from his other pensions before he turned 60 it was required to establish if Mr C could access sums from other sources. And where a consumer like Mr C can bridge a financial income gap from a source other than the DB scheme then it shouldn't recommend a transfer in those circumstances. I agree that's the case. As I've said above DB income is safeguarded and not at risk of investment losses. So, where a consumer can access funds from another source, such as a SIPP or personal pension, then an advising firm like GPC should consider recommending the consumer use those sources to meet the shortfall, rather than transferring out of a DB scheme. That's the case regardless that it might not have been Mr C's preference. And that was why GPC's information referred to him taking sums from his other pensions before he turned 60, even though that wasn't what he wanted to do.

As I've said above, GPC wasn't simply there to find a way to do what Mr C said he wanted it to do. It was required to examine his needs, not just his desires, and see if there were alternatives, other than transferring out of his safeguarded DB scheme, of achieving those needs. And given that GPC found that Mr C could meet his financial goals, and most likely be better off, by accessing his other pension funds rather than transfer from his DB scheme, then it was reasonable for it to refer to Mr C doing so, even though that wasn't what he'd told it he wanted to do.

As I've said above I don't intend to address each of Mr C's points in response to GPC's suitability report. But I'll add that, if I had found that it had restated inaccuracies I would have said so.

Has Mr C suffered a loss?

Mr C believes he's suffered a loss because of GPC's delays. Most notably, his CETV fell from around £169,500 initially to around £107,000 by the time it issued its suitability report. But that doesn't mean he's suffered a loss. As I've said above I think that, even if things had gone smoothly, it was unlikely that GPC could have completed its advice process before the first CETV expired. So I don't think it's responsible for it not being able to secure that sum.

Also Mr C remains a member of his DB scheme. So he can still access those benefits at a time that suits him. And while that wasn't his preference, it was GPC's conclusion that that was in his best interests. So that's what it recommended. I think that was reasonable,

Further CETV's are typically only guaranteed for three months and they will then require recalculation. That's because they're not only based on the consumer's circumstances, but what's happening in the wider financial markets too. So they are affected by things like interest, gilt and discount rates. That means they can go up and down. And that's what happened in this case. That is the movements in the economy and the financial markets has seen a drop in CETVs. That wasn't GPC's fault, nor is it likely it could have predicted it. And in any event the drop in CETV doesn't mean Mr C's DB scheme benefits are worth significantly less, it simply means that the market rates used to calculate CETVs have altered. So his DB scheme income will, largely, retain its worth.

I'm aware the indexation in Mr C's DB scheme is calculated based on the retail price index (RPI) with a 5% cap. Mr C's said this is currently lower than inflation generally. But, as GPC said in response to his comments on the suitability report, his investments have typically grown at a rate lower than that. And, those non-safeguarded funds could be subject to investment losses, whereas his indexation increases from his DB scheme are guaranteed and not subject to risk. It follows that I don't think he's suffered a loss as a result of GPC's actions.

I do understand that Mr C wasn’t happy with the outcome of the advice process. And the delays involved no doubt added to his disappointment. But, I think GPC’s offer to reduce its fee by £1,500 was reasonable in the circumstances.

I'm aware Mr C doesn't think that goes far enough as he’s still required to pay a considerable sum to GPC. But I've seen that GPC made its fee structure clear to Mr C from the outset. And it told him that he would have to pay its fees regardless of whether the outcome of the advice was to transfer or not. It’s also evident that GPC did a considerable amount of work to complete its advice. So while Mr C is not happy with the outcome, and GPC delayed in arriving at that point, I think it’s offer to reduce its fee in order to put things right was appropriate in the circumstances. It follows that I'm not going to instruct it to take any further action.

My final decision

Goddard Perry Consulting Ltd has already offered to waive its abridged advice fee amounting to £1,500 inclusive of VAT. So my decision is that Goddard Perry Consulting Ltd should waive its abridged advice fee of £1,500*.*

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 4 August 2023.

Joe Scott
Ombudsman