DRN-4326021

The complaint

Mr T complains about the advice given by Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co (Pi Financial) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr T approached Pi Financial in June 2018 to discuss his pension and retirement needs. He says he first made contact with Pi Financial as he received a phone call saying he could receive a government paid for review of his personal pensions.

Pi Financial completed a fact-find to gather information about Mr T's circumstances and objectives. Pi Financial also carried out an assessment of Mr T's attitude to risk, which it deemed to be medium high or 6 out of 10.

On 18 September 2018 Pi Financial advised Mr T to transfer his pension benefits into a personal pension and invest the proceeds in the Royal London Governed Portfolio 4. Just over £79,000 was transferred. The suitability report said the reasons for this recommendation were:

- He wished to access his tax-free cash (TFC) so he could pay off his debts, clear a large portion of his remaining mortgage and pay for flights to Australia to visit his son.
- He wanted flexibility to take his pension income as and when he wished.
- He wanted the maximum amount to pass to his wife and non-dependent children should he pass away.

Through representatives Mr T complained in 2023 to Pi Financial about the suitability of the transfer advice because:

- He was a low-income individual near to his retirement age and would never be able to rebuild his retirement funds.
- His pension funds were put at unnecessary risk, and the transfer meant he was subject to higher charges.

Pi Financial didn't uphold Mr T's complaint. It said:

- There is clear evidence in the file Mr T was put in an informed position with all relevant information supplied
- It correctly assessed Mr T's financial and personal circumstances and conducted his review using multiple questionnaires to gather information.
- Mr T was placed in a fully informed position with regards to the disadvantages and
- advantages of transferring.
- Mr T already held an equity-based pension held in a SIPP. Mr T was accessing the tax free cash from this pension to help meet his objectives.
- Cashflows were produced to demonstrate the effects of different stress tests applied to Mr T's proposed transfer.

Mr T referred his complaint to our service. An investigator upheld the complaint and required Pi Financial to pay compensation. The investigator said Mr T properly advised would've stayed in his DB scheme as he had always intended to work until 66 – and this alongside his state pension would've met his needs in retirement. The investigator said his objectives for immediate cash and different death benefits shouldn't have been prioritised over his income in retirement.

Pi Financial disagreed, it said the advice met his objectives such as clearing his debt after his health scare (Mr T had recently had a heart attack). And that Mr T had done what he'd set out to do after the advice, accessing his tax-free cash and repaying his debts. And if his health further deteriorated he could stop work comfortable in the knowledge he had no debts and he had this pension and another that could plug the gap until state pension.

It also said Mr T had some capacity for loss and stress tests were modelled taking his tax-free cash at 58 matching the scheme income and this alongside his other sources of income would last him beyond 99. It didn't agree that properly advised Mr T would've favoured the guaranteed benefits available in the scheme.

The investigator wasn't persuaded to change their opinion. She explained that this pension represented Mr T's only secure income in retirement. He was already taking money out of another pension to help pay his debts but this would mean that pension was exhausted by age 66. Meaning his DB pension took on even more importance. She agreed it may have been Mr T's main priority to pay off his debts and why he sought advice but Pi Financial's job wasn't purely to facilitate a customer's wishes. It was instead to assess what was in his best interests.

She said the cash models used aren't always an accurate way of assessing the financial viability of a DB transfer and rely on assumptions that can't be guaranteed and a customer withdrawing funds in a specific way.

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 Pi Financial'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.

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, Pi Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr T's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Pi Financial carried out a transfer value analysis report (as required by the regulator) showing how much Mr T's pension fund would need to grow by each year in order to provide the same benefits as his/her DB scheme (the critical yield).

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.

Mr T was 58 at the time of the advice and wanted to retire at 66. The critical yield required to match Mr T's benefits at age 65 (the normal scheme retirement age) was 17.14%.

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 3.3% per year for 6 years to retirement. I've kept in mind 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 T's 'highest medium' attitude to risk and also the term to retirement. There would be little point in Mr T 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 17%, I think Mr T was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

Pi Financial has provided cashflow models which it says shows Mr T would've been able to meet his needs despite the high critical yields. I've considered these, but Pi Financial's models show that it relied on inflation beating returns at 5% every year across two pensions for his funds to remain until 99. I think returns of this level year on year are unrealistic. Furthermore when you strip out the other forms of income it shows that this pension would be depleted at age 69 (graphic shows 69 commentary in report says 72) after taking tax-free cash with growth at the middle projection of 2.4% and £700 per month withdrawn from age 66. This is 13 years before the average life expectancy of age 85. Whilst I appreciate Mr T was concerned he would have a reduced life expectancy following his recent heart attack, this wasn't known and his prognosis was good if he lived a healthy lifestyle.

Also, as Pi Financial 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.

Pi Financial also carried out a Transfer Value Comparator which showed the transfer value offered by his DB scheme of approximately £79,000 would at the time cost £189,000 to buy the benefits available in the DB scheme. So essentially the cost of transfer to Mr T was £110,000.

For this reason alone a transfer out of the DB scheme wasn't in Mr T's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Pi Financial 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

Pi Financial said in their recommendation that Mr T wanted to use this pension for extra spending and paying off debts.

But I don't think he had a genuine need to access this pension earlier than the normal scheme retirement age. I say this because Mr T had little other options for funding his retirement available. He did have another pension of similar value to this one but I understand he had already withdrawn the tax-free cash from that plan for his mortgage/debts.

The fact find and suitability report recorded that Mr T wanted to take benefits early and use the tax free cash to pay off his debts, pay off a large portion of his remaining mortgage and to take a once in a lifetime trip to see his son in Australia.

But Mr T has told us he was able to manage his mortgage payments and debts as he was still working and receiving an income of approx. £20,000 p.a – and the evidence collated in the fact find supports this. The fact find said that following his recent heart attack he wanted to make sure he was debt free at retirement, but Mr T didn't intend to stop working until age 66.

But given this was Mr T's only remaining guaranteed source of income in retirement and that he was still planning on working for another eight years – I think this objective ought to have been something for the future. He also had other income that he could draw on for this use, the other personal pension he already had accessed. And he would've also received tax free cash at age 66 from the DB scheme. This could be used to repay any remaining debts at retirement.

Whilst I appreciate Mr T saw the trip to Australia as once in a lifetime, I don't think this should've been prioritised ahead of security in retirement. The cost of the flights was approximately £1,500 and so I think other options for financing this should've been explored.

Ultimately I don't think Pi Financial did enough to explore whether his requirements for immediate cash meant he needed to give up the guaranteed DB scheme benefits. Pi Financial say its advice met Mr T's needs but its job wasn't purely to facilitate what Mr T wanted to do. It should have challenged his requirements and gave its expert opinion and in light of the fact that the starting position should be that transferring won't be suitable. If it felt

Mr T was set on transferring regardless, it could've considered him an insistent client, but it didn't. So Pi Financial cannot simply say it followed Mr T's wishes, it's responsibility was to give advice that was in his best interests. And I don't think that it did.

I'm satisfied Mr T could have met his income needs in retirement through the DB scheme at 66 when he intended to retire. Mr T needed £12,000 per year in retirement according to the information gathered by Pi Financial. And under the DB scheme, Mr T was entitled to an annual income of £5,216 from the scheme at 66 without tax free cash or approx. £25,000 as tax free cash and a reduced annual pension of £3,716. This alongside his state pension would've met his needs in retirement. Mr T intended to work until age 66 and had another pension which he'd already made withdrawals from, so I think he ought to have been able to finance his holiday plans and manage his debt/mortgage until he reached age 66 at which point he could use his tax free cash to meet any outstanding costs/debts.

Pi Financial have argued his state pension could meet all his needs in retirement. However, if Mr T's needs had been fully explored and challenged, I don't think he would've given up extra income in retirement (making himself poorer). This was done to pay debts that he had under control and a holiday that whilst expensive could've been financed through other means – such as the pension he'd already accessed or credit. I appreciate further withdrawals from the pension he'd already accessed wouldn't have been as tax efficient at the time but it would then have allowed Mr T to receive his tax-free cash at age 66 whilst retaining guaranteed income in retirement.

Ultimately, Pi Financial's advice was very likely to make Mr T substantially worse off in retirement in exchange for non-essential requirements that likely could've been met through other means.

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 T. But whilst I appreciate death benefits are important to consumers, and Mr T 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 T about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Pi Financial explored to what extent Mr T 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 T was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr T predeceased them. I don't think Pi Financial made the value of this benefit clear enough to Mr T. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And as the cashflow analysis shows, the fund would soon be depleted, so there is a good chance Mr T's spouse wouldn't receive anything in any event. Pi Financial should not have encouraged Mr T to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

I acknowledge that Mr T had a health condition and so appears to have had concerns about his life expectancy. But Mr T not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr T would need his pension to last longer. If Mr T transferred out of the DB scheme he would be relying on investment returns to ensure sufficient capital remained in the personal pension to provide the death benefits, whereas the spouse's pension was guaranteed and escalated.

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 T.

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 T. But Pi Financial wasn't there to just transact what Mr T might have thought he wanted. The adviser's role was to really understand what Mr T needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr T was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr T 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. Mr T shouldn't have been advised to transfer out of the scheme just to repay debts that were affordable, and the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme.

So, I think Pi Financial should've advised Mr T to remain in their DB scheme.

Of course, I have to consider whether Mr T would've gone ahead anyway, against Pi Financial's advice. I've considered this carefully, but I'm not persuaded that Mr T would've insisted on transferring out of the DB scheme, against Pi Financial's advice. I say this because Mr T was an inexperienced investor and this pension accounted for the majority of Mr T's retirement provision. So, if Pi Financial had provided him 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.

I'm not persuaded that Mr T'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 had sought out, didn't think it was suitable for him or in his best interests. If Pi Financial had explained that Mr T 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 T would have insisted on transferring out of the DB scheme.

In light of the above, I think Pi Financial should compensate Mr T 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 T, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr T would have most likely remained in the occupational pension scheme if suitable advice had been given.

Pi Financial 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, Mr T has not yet retired, and plans to retire at age 66. So, compensation should be based on him taking benefits at this age.

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 T'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, Pi Financial should:

- calculate and offer Mr T redress as a cash lump sum payment,
- explain to Mr T 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 T receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr T accepts Pi Financial's offer to calculate how much of their redress could be augmented, request the necessary information and not charge Mr T 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 T's end of year tax position.

Redress paid to Mr T 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, Pi Financial 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 T'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 £190,000, 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 £190,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co to pay Mr T the compensation amount as set out in the steps above, up to a maximum of £190,000.

<u>Recommendation:</u> If the compensation amount exceeds £190,000, I also recommend that Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co pays Mr T the balance.

If Mr T accepts this decision, the money award becomes binding on Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co.

My recommendation would not be binding. Further, it's unlikely that Mr T can accept my decision and go to court to ask for the balance. Mr T 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 T to accept or reject my decision before 17 November 2023.

Simon Hollingshead
Ombudsman