

The complaint

Mr J complains about the advice given by Premier Independent Investments UK Ltd (Premier) 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 J approached Premier in 2014 to discuss his pension and retirement needs. Premier has told us Mr J had already requested a transfer quote from his DB scheme due to contact from another firm.

Premier completed a fact-find to gather information about Mr J's circumstances and objectives. Premier also carried out an assessment of Mr J's attitude to risk, which it deemed to be 'high medium'. In terms of his capacity for loss it was recorded as he could tolerate small to medium losses.

At the time it was recorded Mr J was:

- a self-employed taxi driver and earned £25,000 a year
- owned a property outright which was estimated to be worth £90,000
- suffered from a medical condition in the past, but was in good health

His objectives were:

- intended to fully retire in around six years
- wanted to know if there was any merit in transferring his final salary pension scheme
- take tax free cash (TFC) to pay off a personal loan and have some money in his bank account.

On 10 October Premier advised Mr J to transfer his pension benefits into a personal pension. The suitability report said the reasons for this recommendation were that Mr J had no spouse and the existing fund would only return just under £13,000 on his death. And so Mr J wanted to maximise the funds he could use in his lifetime. Transferring would give him the flexibility to control the way benefits are paid.

Mr J's transfer completed in January 2015, and he then withdrew £48,000, the adviser in question left Premier shortly after the transfer and I understand Mr J's business stayed with that adviser.

Mr J through a professional representative complained in 2023 to Premier about the suitability of the transfer advice because it felt there was no real need to transfer and Mr J had lost his protected rights whilst being put into a higher charging structure. It also said there was no evidence the adviser had taken the time to get a fully complete picture of Mr J's finances and had failed to ensure the recommendation was suitable.

Premier didn't uphold Mr J's complaint. It said the advice it had given was suitable.

Mr J referred his complaint to the Financial Ombudsman Service. An investigator upheld the complaint and required Premier to pay compensation. The investigator explained that Premier hadn't demonstrated that the advice was suitable. He said there wasn't a compelling argument that Mr J required the tax-free cash at the expense of his guaranteed income in retirement. And Mr J was likely to be worse off for transferring.

Premier disagreed, it said Mr J at the time of advice had already had a heart triple bypass and so health was a major concern of his. And transferring allowed his funds upon his death to be passed to his three adult children. He wouldn't benefit from the spouse's pension attached to the DB scheme as he had no spouse. Medical cover due to his previous health issues would've been too expensive and after his tax-free cash the fund could provide over £120,000 in death benefits compared to the return of fund from the scheme of approximately £13,000. And transferring allowed Mr J to pay off the loan he'd mentioned and to have funds for holidays. He had no other assets other than his home.

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final 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

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 BUSINESS'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, Premier

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

Financial viability

Under COBS Premier was obliged to give Mr J a comparison of the benefits he was giving up.

COBS 19.1.2R A firm must:

- (1) compare the benefits likely (on reasonable assumptions) to be paid under a defined benefits pension scheme with the benefits afforded by a personal pension scheme or stakeholder pension scheme, before it advises a retail client to transfer out of a defined benefits pension scheme;
- (2) ensure that that comparison includes enough information for the client to be able to make an informed decision;
- (3) give the client a copy of the comparison, drawing the client's attention to the factors that do and do not support the firm's advice, no later than when the key features document is provided; and
- (4) take reasonable steps to ensure that the client understands the firm's comparison and its advice.

As the transfer was for immediate vesting in terms of the tax-free cash Premier said it was unable to provide a critical yield calculation. It also said it considered the option of an earlier retirement than age 65 but the scheme would not allow early retirement so it didn't carry out a critical yield calculation for this either. However, in taking this stance, Mr J had no way of knowing the value of his benefits compared with transferring. Premier could've provided a critical yield to 65 to show the benefits he was giving up. And explained if it added in the taking of tax-free cash now this would obviously skew any calculation on that basis. But instead it gave no information at all to Mr J that allowed him to compare the benefits he'd given up to the likely benefits available on transfer.

The product provider's fact-sheet shows that just to keep his benefits at the level of the current annuity available, Mr J's plan would need to grow by 5.7%. This is in part due to the affect the charges of the product and Premier's fees would have.

Premier also failed to give Mr J accurate information about the benefits he was giving up. It told him he was being offered a deferred pension of £6,291.93 per year but that this would increase up to the point of his normal retirement age. Mr J was only 59 at the time and the normal retirement age was 65 – so there was still six years' worth of revaluation to be added to that sum. Premier should've provided the revalued sum so that Mr J was fully informed of the benefits he was giving up. In not doing so, Mr J likely would've underestimated the value of the benefits he was giving up in transferring and he was not placed in an informed position.

So Premier did not meet their regulatory requirements when it failed to carry out a transfer analysis for Mr J. I do not accept that it couldn't carry one out due to the potential that Mr J would take tax-free cash immediately. As Mr J's benefits had been presented in a way that he would likely underestimate them and he had no form of comparison, I think this lack of clear information could've influenced Mr J's decision to transfer.

Premier has failed to demonstrate that the transfer was financially viable. For this reason alone a transfer out of the DB scheme wasn't in Mr J's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Premier 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 J required flexibility in retirement. This is because based on the evidence I've seen, I don't think he had a genuine need to access his tax-free cash earlier than the normal scheme retirement age. I say this because whilst the evidence suggests Mr J was enticed by the opportunity to have a tax-free cash lump sum, this was in the context of no opposing view being provided by Premier. And looking at Mr J's circumstances the tax-free cash was supposedly going to be used to pay off a loan and used to spend on holidays. However, the evidence suggests Mr J was comfortably meeting his loan repayments and that he was already able to enjoy holidays abroad without this tax-free cash.

The fact-find shows that Mr J's income is well in excess of his outgoings, so I think he would've been able to meet the loan repayments and have additional funds to use for things like holidays.

So, I'm satisfied Mr J could have met his income needs at the time and then in retirement through the DB scheme at 65 alongside his state pension.

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 J especially as he didn't have a spouse, so he potentially would not benefit from the spouses pension. But whilst I appreciate death benefits are important to consumers, and Mr J 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 J about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Premier explored to what extent Mr J was prepared to accept a lower retirement income in exchange for higher death benefits.

Premier explained Mr J would only get a return of contributions from the scheme on death and as it stood wouldn't benefit from the spouse's pension. And as he had three adult children, by transferring it said the death benefits in comparison would be the full fund. And Premier has referred to this reason subsequently to say this increased Mr J's death benefit from just under £13,000 to £126,000 after the tax free cash is taken. But this is the figure if he was to pass away immediately. If Mr J lived a long life or investment returns were poor this figure would be hugely decreased. And the benefit it would provide is split between three, so there was a good chance the final figure wouldn't be hugely important in terms of what it could provide for his children. Whilst Mr J had previously had triple bypass surgery, he described himself as in good health at the time of the advice. And many people do go on to live long lives after that type of surgery. So Mr J not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr J would need his pension to last longer. Overall I'm not persuaded the different death benefits available were a compelling reason to transfer given Mr J was reliant on this pension for his income in retirement.

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

It doesn't appear that any challenge was put forward to Mr J's view that he needed the tax-free cash. This was Mr J's only guaranteed income in retirement and Premier failed to clearly set out what he would be giving up to gain access to this tax-free cash. And looking at the information at the time, it doesn't appear that there was a real need for this tax-free cash. One of the reasons given was Mr J wanted some money in the bank, but it ought to have been explained to him that this could be at the expense of a comfortable retirement. Premier failed to provide Mr J with a balanced view and the information required to make an informed decision. It should've started with the assumption that transferring wasn't in Mr J's best interests but I cannot see any evidence that it did.

Ultimately, I don't think the advice given to Mr J was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr J 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 J 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 Premier should've advised Mr J to remain in their DB scheme.

Of course, I have to consider whether Mr J would've gone ahead anyway, against Premier's advice.

I've considered this carefully, but I'm not persuaded that Mr J would've insisted on transferring out of the DB scheme, against Premier's advice. I say this because Mr J was an inexperienced investor with little capacity for loss and apart from his state pension this was his only pension provision.

So, if Premier 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.

In light of the above, I think Premier should compensate Mr J for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

The investigator awarded £400 as he believed this would've caused Mr J some upset regarding his retirement planning, Mr J is now 68 and ought to have now been in receipt of his guaranteed pension. I don't think this is unreasonable in the circumstances, in Mr J's risk profiling he said he'd prefer a guaranteed rate of return rather than have uncertainty with his investments. Transferring will have put his investments at risk of returns and Mr J lost his only guaranteed income in retirement, so I think this will have caused stress and worry.

Putting things right

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

Premier 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>.

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 J'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, Premier should:

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

Redress paid to Mr J 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, Premier 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 J'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

Determination and money award: I uphold this complaint and require Premier Independent Investments UK Ltd to pay Mr J the compensation amount as set out in the steps above, up to a maximum of £190,000.

Recommendation: If the compensation amount exceeds £190,000, I also recommend that Premier Independent Investments UK Ltd pays Mr J the balance.

If Mr J accepts this decision, the money award becomes binding on Premier Independent Investments UK Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr J can accept my decision and go to court to ask for the balance. Mr J 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 J to accept or reject my decision before 15 March 2024.

Simon Hollingshead
Ombudsman