DRN-4811154

The complaint

Mr C complains about the advice given by Purely Financial Ltd 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 C approached Purely Financial in April 2021 to discuss his pension and retirement needs. A colleague of his had already had advice from Purely Financial to transfer out and so it already had knowledge of the scheme. In advance of the speaking to Purely Financial, Mr C had opted out of his employer's scheme but had the option to opt back in.

Purely Financial completed in early August 2021 a fact-find to gather information about Mr C's circumstances and objectives. Purely Financial also carried out an assessment of Mr C's attitude to risk, which it deemed to be 'balanced'.

On 17 August 2021, Purely Financial advised Mr C to transfer his pension benefits into a personal pension and take the tax-free cash (TFC) of approximately £85,000 and invest the remaining balance. The suitability report said the reasons for this recommendation were to access his TFC (why he wanted it is stated later in this decision), pay off his unsecured debt, take control of the capital and invest for growth, have the ability to take a flexible income, and leave a lump sum for his son in the event of his death.

Mr C complained in 2023 to Purely Financial about the suitability of the transfer advice because his main objective was to access TFC and this could have been deferred. And his debts were manageable.

Purely Financial didn't uphold Mr C's complaint. And said it was not true that accessing TFC was Mr C's only objective and they discussed the risks of the pension transfer with him and that their advice was suitable.

After the complaint was brought to this service, Mr C confirmed he did use the TFC for broadly the reasons he'd intended to.

Our investigator upheld the complaint and required Purely Financial to pay compensation. The investigator felt that requirement for TFC to pay off manageable debts and for home improvements and a gift to his son should've been seen as nice to haves and not been at expense of a comfortable retirement. He felt much of that could've been met by savings and disposable income. He didn't agree that Mr C would've wanted to retire on the amounts Purely Financial used in their cash flow analysis. He said that would put Mr C well into the category of absolute poverty.

Purely Financial disagreed, saying its advice allowed Mr C to meet his objectives. It gave Mr C peace of mind regarding reducing his debt and he could opt back into the scheme, so he would still have some of the benefits of his Occupational Pension Scheme (OPS). It said Mr C did not need the guaranteed income at retirement, this was surplus to his requirements.

It said Mr C’s objectives were:

- Access immediate TFC
- Redeem all unsecured debt
- Carry out extensive home improvement
- Provide some capital for son – and hopefully preserve a sizeable amount from the pension as an inheritance
- Take control of the capital, to invest for growth– linked to risk profile
- Access a level of income, if you need it, that you can select depending on circumstances at the time
- Immediately increase the lump sum available on death

And these couldn’t be achieved within the scheme.

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

Financial viability

Purely Financial carried out a transfer value analysis report (as required by the regulator) showing how much Mr C's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield).

Mr C was 55 at the time of the advice and wanted to retire at 67, although he was looking to access his tax-free cash. The critical yield required to match Mr C's benefits at age 55 was in excess of 50%. At age 67 by comparison the critical yield was 10.81% on a single life basis.

As Purely Financial said in the suitability report, these yields weren't likely to be achievable. The value of his scheme benefits was approximately £1million. If he transferred, an illustration for the recommended provider at the highest rate of return, 4.91%, showed Mr C's fund would only reach £437,000 at age 67 by comparison.

Purely Financial also produced a Transfer Comparator which showed the costs of replacing the income Mr C was going to be giving up was around £600,000 higher than the transfer sum. So the cost of transferring out was potentially very high.

I've taken this into account, along with Mr C's balanced attitude to risk, the likely returns achievable and also the term to retirement. There would be little point in Mr C 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 10.81%, I think Mr C 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.

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

Mr C was only 55 at the time of the advice, and he didn't plan to stop working until 67. By that time he could've accrued a guaranteed annual pension of approximately £30,000 in the scheme. This would allow Mr C a comfortable retirement. As the transfer comparator showed the cost of giving this up to him could be substantial across his lifetime.

Mr C wanted to take benefits early to use the TFC for the reasons set out in the background. But I am not satisfied that this was suitably challenged – as it should've been with the presumption of unsuitability being the starting point. As an inexperienced investor potentially giving up hundreds of thousands of pounds, this needed to be challenged with alternatives considered. Mr C did come with a view that transferring was a good thing for him but he was paying for expert advice that should've put forward all the alternatives to transferring. And emphasized the downsides of taking that course of action.

I think this is especially important here given the likely cost Mr C would be paying to access approximately £85,000 11 years earlier than his retirement date. Mr C had excess income and all his debts were easily manageable. I accept it was difficult for Mr C to achieve his aims for the TFC in the short term without accessing it. And I accept he wanted to help his son and make home improvements. But the role of an adviser is not simply to just transact what Mr C might have thought he wanted. The adviser's role was to really understand what Mr C needed and recommend what was in his best interests. I don't think giving up his extremely valuable guaranteed benefits, with the result of likely being much poorer in retirement, was in his best interests just to meet short term wants.

Purely Financials' position is that Mr C lived frugally, and he only needed £12,000 in retirement. And that from his state pension, re-joining his workplace pension and money from his private pension, Mr C could receive a figure in excess of this. And of that figure, £13,800 of this would be guaranteed. Mr C may have received more depending on his final salary figure (he was able to opt back into the scheme after transferring). But regardless as the investigator pointed out by transferring Mr C had reduced his guaranteed benefits in retirement below the poverty line according to the Joseph Rowntree Foundation's study.

The pensions and Lifetime savings association say that a single person household as a minimum in retirement needed £14,400. To have a moderate level of income in retirement £31,300 and a comfortable retirement came in at £43,100. The minimum figure for example didn't have room for owning a car, something that it seems like was important to Mr C.

Also at the time Mr C was earning approximately £39,000 a year and he had a surplus income of approximately £700pm and yet he still felt he needed £85,000 for various expenses. I think this brings into question whether an income in or around £10-£20,000 was really realistic for his needs in retirement. Whilst his debts would reduce or cease on transfer, there was likely to be more one-off costs before and after his retirement. By then he may need another new car, further home improvements, further support for his son (or potentially grandchildren) etc that he'd need capital for at a later date. Using his remaining pension fund after transfer to meet these costs would further decrease his income in retirement and reduce the lump sum available to his son on death.

So whilst taking a lump sum at 55 would allow him to meet his needs in the short term, he'd likely have made himself much poorer in the long run and reduced his ability to meet the costs of future needs that will occur. Retaining his benefits in the scheme and either reconsidering the importance of his short term needs or looking at other ways to fund them should've been considered. I don't think it did much at all to challenge Mr C's objectives nor consider whether they could be achieved at least in part whilst keeping in place his extremely valuable retirement benefits.

Whilst I understand Mr C wanted to reduce his borrowing, and Purely Financial has said we haven't factored in the peace of mind this would've brought him, I don't think Mr C fully comprehended what he was giving up for this. And if explained properly, his guaranteed pension due to him should've given peace of mind his financial future was secure.

Mr C had excess income each month that he could've put towards reducing his debt but didn't. Had it been that important to him, I think he would've reduced that debt as quick as possible. But up to the point he met with Purely Financial it appears he wasn't taking any steps to decrease his debt more quickly. I note that the suitability report says one of the drivers of the transfer was

'*Can re-direct money currently spent servicing loans etc towards building further retirement funds'*

This really doesn't make sense when you consider Mr C already had a very valuable retirement package through the scheme and excess income to meet that debt. In reducing his debt by transferring and taking TFC, he was also likely vastly reducing his retirement funds. This should've been explained to Mr C. I think this shows a lack of understanding on Mr C's part and this is something Purely Financial should've explored in relation to his views on why he wanted to reduce his debt – and the effect this would have on his retirement provision.

I note Purely Financials' cashflow analysis has Mr C in his late 50s going into a deficit but this is on the basis of him stopping working and taking benefits from the scheme at 55. Which wasn't something Mr C wished to do. This also halved his income compared to the comparison with transferring – which was done on the basis of remaining employed. So I don't think this can be relied upon as a fair comparison. The starting point to the advice should've been not transferring (and remaining employed) this should've been compared to give Mr C an informed view. Had Mr C remained employed and within the scheme but still wished to spend the money to make home improvements and to give his son a helping hand onto the property ladder, Mr C would've had plenty of excess income to meet increased borrowing – or to save and postpone his plans until he had more capital.

It was also recorded that Mr C had said '*Value of assets is extremely high compared to very small level of debt (credit card and loan). As before, will be clearing/reducing debt with TFC'*. I think it is clear that if Mr C felt his home improvements and a sum to his son were essential in the short term that he could consider increasing his borrowing. This was likely to be a much less expensive way to achieve his objectives whilst keeping in place his valuable guaranteed benefits which will provide further advantages in later life. And previously Mr C clearly hadn't been against making use of credit and debt to meet his needs. If explained clearly to him that he could meet the debts comfortably and he would as a whole likely be better off, I think he may have agreed to that course of action. And this would've allowed the objectives for his tax free cash to be met whilst retaining his guaranteed income in retirement.

But as Purely Financial didn't present any of these options and actually presented a cashflow analysis showing Mr C running out of capital but for a scenario that wasn't a fair comparison. So Mr C wasn't given the chance to make an informed decision about how to finance his needs at the time.

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 C. But whilst I appreciate death benefits are important to consumers, and Mr C 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 C about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Purely Financial explored to what extent Mr C was prepared to accept a lower retirement income in exchange for higher death benefits.

I acknowledge that Mr C previously had cancer ten years prior to meeting with Purely Financial and so appears to have had concerns about his life expectancy. But Mr C not reaching his life expectancy was only a possibility and it was also possible that he would exceed this, in which case Mr C would need his pension to last longer. And at the point of advice Mr C told Purely Financial that he was in good health and all he required was check-ups and Purely Financial accepted this. I appreciate this could've affected his ability to purchase life insurance as an alternative to the lump sum he may pass on transferring his pension. But his son wasn't financially dependant on Mr C and I think Mr C's retirement provision should've taken precedent. Also with a higher pension payable at retirement, Mr C could use the excess to help his son during his lifetime.

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 C.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits alongside the immediate tax-free cash on offer through a personal pension would have sounded like attractive features to Mr C. But Purely Financial needed to provide suitable advice and explain what was in his best interests, rather than simply providing him with a route to get what he thought he needed.

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

So, I think Purely Financial should've advised Mr C to remain in their DB scheme.

Of course, I have to consider whether Mr C would've gone ahead anyway, against Purely Financials' advice. Purely Financial argues that this is the case, saying that the fact Mr C had already opted out of the scheme prior to coming to Purely Financial (seemingly based on a discussion with a colleague who had already transferred out on Purely Financials' advice) meant that he would've transferred regardless.

I've considered this carefully, but I'm not persuaded that Mr C would've insisted on transferring out of the DB scheme, against advice. I say this because Mr C was an inexperienced investor with a balanced attitude to risk and this pension accounted for the majority of Mr C's retirement provision. So, if Purely 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.

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

Putting things right

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

Purely 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 C has not yet retired, and he has no plans to do so at present.

Purely Financial have said the calculation should be at age 55 as Mr C has taken some of his benefits. But had he not received the unsuitable advice he would've remained in the scheme and his plans are to retire at age 67, so the retirement age should be 67 for the calculation.

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 C'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, Purely Financial should:

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

Redress paid directly to Mr C as a cash lump sum in respect of a future loss includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4.3.31G(3), Purely Financial may make a notional deduction to allow for income tax that would otherwise have been paid. Mr C's likely income tax rate in retirement is presumed to be 20%. In line with DISP App 4.3.31G(1) this notional reduction may not be applied to any element of lost tax-free cash.

Where I uphold a complaint, I can award fair compensation of up to £415,000, 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 £415,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Purely Financial Ltd to pay Mr C the compensation amount as set out in the steps above, up to a maximum of £415,000.

Recommendation: If the compensation amount exceeds £415,000, I also recommend that Purely Financial pays Mr C the balance.

If Mr C accepts this decision, the money award becomes binding on Purely Financial Ltd.

My recommendation would not be binding. Further, it's unlikely that Mr C can accept my decision and go to court to ask for the balance. Mr C 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 C to accept or reject my decision before 14 November 2024.

Simon Hollingshead
Ombudsman