

The complaint

Mr C has complained about the advice provided by Pettecrew Financial Planning Ltd ('PFP') to transfer his occupational defined benefit ('DB') pension to a self-invested personal pension ('SIPP') held with Skandia.

Mr C has stated that this advice was unsuitable and has caused financial loss.

Mr C is being represented in this complaint however for ease of reference I have only referred to Mr C throughout the decision below.

I would note here that in addition to the DB scheme transferred Mr C also transferred his defined contribution ('DC') schemes. However, Mr C has confirmed it is only the advice to transfer his DB scheme which is the subject of complaint.

What happened

The advice process began in June 2014 when Mr C completed a pre-retirement questionnaire, a fact-find, and a risk profile ('ATR') assessment with PFP.

The fact find confirmed that Mr C was:

- Aged 60, married and in good health.
- Was employed as a company director with total income of £27,000 a year. Monthly income was recorded as £2,350 with household expenditure of £1,500.
- £28,250 was held in premiums bonds, £7,500 in cash savings and £24,214 in an investment ISA.
- The family home was valued at £300,000 with an outstanding mortgage balance of £12,273.

Details of Mr C pension provision was also included in the fact-find with the notes section stating that Mr C was:

“ . . . not confident in the trustees ability to manage his investments and wants more control over his pension funds (wider range). As a former trustee of the scheme, he believes the benefits would be safer transferred away”.

PFP's advice was documented in their suitability letter dated 12 September 2014.

This confirmed Mr C's circumstances as per the fact find and detailed the benefits payable by the DB scheme. The transfer value was recorded as £181,426 with benefits being an income of £6,157 and a lump sum of £28,418 from age 60, or an income of £8,296 at age 65.

PFP stated an income of £9,730 per year with a lump sum of £60,161 could be provided if the DB scheme (in addition to Mr C's other pensions with a total value of £59,216) were transferred.

Mr C's main objectives were included as being:

- Flexible options at retirement.
- Access to a wide range of investment funds.
- An investment that is automatically reviewed on an on-going basis.
- Portfolio Rebalancing – Ensuring that it does not “drift”.
- Transparent Charging Structure.

On the basis that a transfer would meet the above requirements, allow access to a lump-sum of £6,000, and remove Mr C's concerns about the management of the DB scheme, a transfer was recommended.

Mr C's ATR was confirmed as being “Cautious” with PFP recommending a Skandia Collective Retirement Account and a mix of eleven underlying investments funds selected to match the cautious ATR.

Charges applicable to the recommended pension were detailed as being a 2% initial advice charge, a 1% a year ongoing advice charge, fund charges averaging at 0.714% a year, and a weighted platform charge of around 0.33% a year.

The transfer was completed as per the PFP advice.

Mr C underwent an annual review with PFP in May 2015. This confirmed that Mr C was still working with his income increasing to £36,000, that there was still no need for any additional income from the pension, and that the risk level taken with the pension was to increase from “Cautious” to “Balanced”.

Having become concerned that the advice provided by PFP may have been unsuitable Mr C registered his complaint on 14 June 2023.

PFP issued their complaint response on 3 July 2023. This stated that they considered the advice suitable. Mr C was an experienced investor, a trustee of the ceding DB scheme, and the transfer advice met Mr C's requirement for flexible income in retirement and the immediate provision of a £6,000 lump sum.

Unhappy with the complaint response from PFP Mr C referred his complaint to this service in July 2023.

Our investigator looked into things and upheld the complaint. The investigator concluded that the transfer was likely to lead to Mr C being worse off in retirement and that the other reasons given in support of a transfer did not justify the advice. The investigator said that the other options for accessing £6,000 were not appropriately considered, that the adviser should have better managed Mr C's concerns about the stability and management of the DB scheme, and that the flexibility offered by a transfer was not sufficient justification for the guarantees lost.

PFP did not agree. They pointed to annuity quotes showing that the income which could have been bought with the transfer proceeds was higher than that which would have been provided by the DB scheme, stating that this indicated the transfer was in Mr C's financial interests. Additionally, PFP stated that Mr C was in a unique position to assess the strength and management of the DB scheme as he was a former trustee of the scheme.

Our investigator was not minded to change their outcome, and as no agreement could be reached the case was passed to me for a final decision.

I initially issued a provisional decision which stated:

"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 PFP's actions here.

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

Principle 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.

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, PFP should have only considered a transfer if it could clearly demonstrate 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 best interests.

Financial viability

PFP did not carry out a transfer value analysis report as Mr C was looking to access an immediate lump sum of £6,000 to purchase a car.

As per the investigator's findings, PFP have not clarified why Mr C needed to transfer his DB pension - and lose valuable lifelong income guarantees - to access £6,000 when there were other sources of capital (premium bonds, ISA and cash savings) which could have been used instead.

Had one of these other sources been used, no immediate vesting of pension funds would have been required, and a full transfer value analysis could have been completed. This would have allowed Mr C to accurately compare the true value of the guarantees which applied to his DB scheme and make an informed decision as to whether to accept PFP's advice.

I have considered PFP's point that annuity quotes were completed, with these showing that the transfer value would have allowed Mr C to purchase an annuity which would have provided a higher level of income than that which would have been provided by the DB scheme.

Annuity quotes were produced in 2014 and these were referred to in the suitability letter. These quotes do show an annual income more than the DB scheme income. However, the comparison made is not like for like.

The income provided by the DB scheme was index linked and included a spouse's pension.

The annuity quotes on file have been produced based on level income with no spouse's pension. The omission of index linked income and a spouse's pension would have had a material impact on the annuity quote.

Even if Mr C ultimately decided index linked income and a spouse's pension were not required, quotes should have been completed including these options to provide a clear and fair comparison. The fact that this was not done raises questions about the financial viability of the transfer, whether this was in Mr C's best interests, and whether Mr C was put into a fully informed position about what he was giving up.

Overall, I do not believe the advice file, or PFP's subsequent arguments, sufficiently show that the advice to transfer the DB scheme was in Mr C's financial interests.

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 PFP 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 in retirement

Mr C was noted as needing a lump sum of £6,000 to purchase a car, with no income needed at that time.

I accept that to access any lump sum from the DB scheme, income would have to have commenced at the same time.

However, as above, I do not believe the other sources of capital available to Mr C received adequate consideration at the time of advice. Why could cash savings, premium bonds or Mr C's ISA not be utilised instead?

I have considered the argument that utilising the ISA would have required the sale of investments, and that the timing of this sale may not have been appropriate, however there were cash-based saving that could have been used.

Without the £6,000 lump sum, the DB scheme could have been left intact until such time Mr C chose to retire. At that time, if flexible income was required a transfer could have been considered, if annuity rates had improved appropriate quotes could have been completed and compared.

There is also little detail as to why a flexible income was required by Mr C. I accept that flexibility can be an attractive feature, however the combination of Mr C's DB scheme and his state pension would have exceeded his retirement income goal of around £12,000 a year, leaving Mr C with all his income needs guaranteed to be met (and linked to inflation)

for the rest of his life. I would have expected significant detail as to why Mr C wanted to move away from such a position.

Issues with the ceding DB scheme

The file notes that Mr C wanted control over the underlying investments, a transparent charging structure, and had a desire to move away from the DB scheme as he did not trust the way in which the scheme was run.

Mr C was an experienced investor and as such the desire to have control over where is pension monies were invested is understandable, as is the desire for a transparent charging structure for any new pension.

Within the DB scheme, the benefits payable to Mr C were guaranteed. Should there be any under performance in the scheme's underlying investment performance, it was the scheme trustees and sponsoring employer who had to resolve the issue. It was also the scheme who had to bear the costs associated with investment management / professional investment advice.

In transferring the pension Mr C was able to control where the funds were invested however the transfer also moved all the associated risks and costs onto Mr C, with there being no clear financial comparisons done to establish whether the move was likely to benefit Mr C financially or not.

I also note that whilst the move did provide Mr C with the option to control the funds, in practice Mr C accepted PFP's advice to place the monies in a cautious portfolio, advised on and managed by third parties. Essentially, Mr C swapped one set of investment management which came at no cost / risk to him for another where he had to pay for the advice and investment management.

I accept that as a former trustee of the DB pension scheme, Mr C was more knowledgeable than most about the way the scheme was run, and I have carefully considered the comments within the file stating that a driver for Mr C wanting to move the DB scheme was his unhappiness with the scheme management.

However, Mr C was no longer a trustee and had left his former employer some five years before the advice.

Given the valuable nature of the guarantees being post upon transfer, I would have expected significant detail to have been gathered about what issues Mr C had with the ceding scheme.

The trustees were legally obliged to act in the scheme members best interests and whilst the scheme was underfunded it was still allowing members to take early retirement, with the benefits payable to Mr C protected by the Pension Protection Fund.

Overall, I do not believe there is sufficient detail around what issues Mr C had (or how relevant these were) to justify transferring the DB scheme.

Had PFP documented what actual issues Mr C had with the DB scheme and discussed what actual impact these would have on his pension / retirement, I have decided that most likely outcome would have been Mr C concluding that it was in his best interests to retain the DB scheme.

Summary

Having considered the financial impact of the transfer on Mr C I do not believe sufficient analysis of the value of the benefits being lost on transfer was completed at the time of advice.

Had the £6,000 lump sum been funded from elsewhere, the need for access to the pension monies would have been removed, and a full transfer value analysis could have been completed. In addition, whilst comparative annuity quotes were provided, these were not on a like for like basis and as such the increased level of income they indicated was not a true reflection of the value of the DB scheme.

As such, I have concluded Mr C was not put into a fully informed position about the value of the pension benefits being lost and was likely to be worse off in retirement as a result.

Whilst there were non-financial reasons given in support of a transfer, in line with what our investigator said, I consider these to be insufficient to justify the loss of the valuable benefits given up by transferring.

As such I have concluded that advice was unsuitable, Mr C should have been advised to retain the DB scheme.

I have not gone on to consider the suitability of the Skandia pension as I have concluded the funds should have remained within the DB scheme – the redress below reflects this.”

I went on to ask both parties to provide any additional evidence or commentary they wanted taken into consideration by 1 July 2024.

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 response to the provisional decision Mr C simply confirmed he agreed with the decision reached.

PFP responded and provided additional commentary stating why they consider the advice suitable.

PFP repeated the point that Mr C was a former trustee of the pension scheme and that this experience, along with being a company director would have put Mr C into a more informed position than an average customer. In addition, Mr C would have received annual DB statements which would have provided up to date scheme information.

PFP also noted that given Mr C's investment experience and position as a former trustee of the scheme they did not believe he would have accepted any advice to retain the DB scheme.

PFP stated that the advice was based on Mr C's objective of retiring at age 60 – the time of advice, and whilst this did not come to fruition, they could only base their advice on the information given to them by Mr C.

The rationale previously provided to both parties has already confirmed why I do not believe Mr C's previous role as a trustee of the pension scheme can be considered adequate justification for the advice to transfer and as such am not going to comment on this issue further here.

I accept that Mr C was an experienced investor however do not believe this is adequate to suggest he would have rejected any advice to retain the DB scheme had it been given.

I appreciate it is impossible for me to know exactly what Mr C would have done had PFP recommended the DB scheme be retained, however it is my opinion that it is more likely Mr C would have accepted any advice he was given. Mr C underwent a full advice process with a 2% advice fee being paid, I do not believe it is reasonable to conclude Mr C would have been willing to simply ignore the advice he was prepared to pay a significant fee for.

Mr C's objectives at the time of advice included flexible access, as Mr C wanted access to a £6,000 lump sum, with no income being required. As above, I accept that taking benefits from the DB scheme at the point of advice (in order to access the £6,000) would also have meant commencing income from the DB scheme – something Mr C had no need for.

However, also as above, Mr C had significant other cash and investments which could have been used to fund the £6,000 lump sum, with the DB scheme being retained. Whilst I accept that businesses are reliant on the information given to them by their clients, businesses also have a requirement to ask appropriate questions in order to ensure full and accurate objectives have been identified, and other alternative courses of action (which would have allowed the DB scheme to have been retained) have been sufficiently discounted.

Overall, I do not believe the additional commentary provided by PFP merits a change in the outcome or redress instructions previously communicated.

The redress instructions below are in line with those included in the provisional decision.

Putting things right

A fair and reasonable outcome would be for PFP to put Mr C, as far as possible, into the position he would now be in but for the unsuitable advice. I consider he would have likely remained in the occupational scheme.

PFP should 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.

For clarity, whilst the advice was based on Mr C seeking to partially retire at age 60, and Mr C did make the £6,000 withdrawal, documentation provided by PFP confirms Mr C was still working – with increased earned income – at his follow up annual review in 2015. As such the redress calculation should be based on the DB scheme's normal retirement age of 65, as per the usual assumptions in the FCA guidance, as this is the age at which I consider it most likely Mr C would have accessed these benefits but for PFP's advice.

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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr C's acceptance.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, PFP should:

- calculate and offer Mr C redress as a cash lump sum payment.
- explain to Mr C before starting the redress calculation that:

- 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 the redress prudently is to use it to augment the current defined contribution pension
- offer to calculate how much of any redress Mr C receives could be used to augment the pension rather than receiving it all as a cash lump sum,
 - if Mr C accepts PFP's offer to calculate how much of the 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 the 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 includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, PFP 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%. However, if Mr C would have been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

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.

Determination and money award: I require PFP to pay Mr C 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 PFP pays Mr C the balance.

If Mr C accepts my decision, the money award is binding on PFP. My recommendation is not binding on PFP. 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 this decision.

My final decision

In line with the rationale above I am upholding this complaint. I require Pettecrew Financial Planning Ltd to calculate and pay redress as per the methodology outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 28 August 2024.

John Rogowski
Ombudsman