

The complaint

Mr B has complained that he was given unsuitable advice by Myers Davison Ginger Ltd (MDG) in 2005 to transfer his deferred occupational pension scheme (OPS) benefits into a personal pension arrangement. Mr B has said that, as a result, he'll be significantly worse off in retirement.

What happened

The investigator who considered this matter set out the background to the complaint in her assessment of the case. I'm broadly setting out the same background below, with some amendments for the purposes of this decision.

Mr B contacted an advisor from MDG in December 2005 to discuss his existing personal pensions. The advisor completed a fact find at the time which revealed the following information about Mr B's circumstances:

- Mr B was 47 years old and married with 4 children. He worked full time as a property developer and planned to retire at age 65.
- Mr B was in good health.
- He didn't have any significant debts or liabilities recorded.
- Mr B was a deferred member of his OPS. The scheme benefits had a transfer value of £22,250 and a Guaranteed Minimum Pension of £6,346 pa which would be payable from age 65.
- Mr B also held two other personal pensions which had a combined value of around £27,000.
- Mr B's attitude to risk was recorded as moderate and it doesn't appear that he had previous investment experience.
- Mr B had explained that his motives for considering his options were to maximise the death benefits available to his wife in the event of his untimely death and to have more flexibility to access his pension from age 55.

MDG provided Mr B with its initial thoughts on his circumstances verbally. Its adviser told Mr B that a transfer of his pensions would unlikely benefit him financially, but that a personal pension would achieve his objectives compared to the deferred pension scheme.

Mr B got back in touch with MDG several months later to request that it proceed with assisting him to make the previously discussed transfer. Mr B explained that he didn't want to pay for full advice and so agreed that he would be treated as an insistent client in order for the transfer to go ahead. Mr B wrote a handwritten letter explaining why he wanted to go ahead with the transfer against the initial recommendation he had received back in December 2005.

Mr B explained that he had discussed the matter with his wife and he wanted to continue with the transfer because:

- He wanted to provide for his wife in the event that he unexpectedly passed away before age 65.

- He wanted to have greater options to access his pension from age 55.

Mr B signed a client service agreement on 13 July 2006 agreeing to pay MDG £29.37 per month for on-going service. MDG provided Mr B with a recommendation report dated 14 July 2006. It explained that Mr B was being treated as an insistent client and that full advice hadn't been provided because Mr B hadn't agreed to its costs.

The report reiterated that Mr B would unlikely be able to match the GMP attached to his deferred OPS benefits and then went on to discuss the different personal pensions available, showing projections of potential benefits each option could provide.

MDG recommended that Mr B open a Norwich Union (now Aviva) personal pension to transfer his existing pensions into. Mr B accepted this advice and MDG sent Norwich Union the application form the same day.

In February 2024, Mr B complained to MDG about the transfer it facilitated for him back in 2006. Mr B explained that his new adviser had explained that he had given up a valuable GMP that couldn't be matched by his existing personal pension and this had left him significantly out of pocket in retirement.

MDG didn't uphold Mr B's complaint. It said that it hadn't provided Mr B with advice, only executed his instructions as an insistent client. And therefore there was no evidence that its actions had caused a loss. MDG also said that it believed Mr B was aware of the benefits he was giving up when he decided to proceed with the transfer and so it said he had likely complained outside of the time limits allowed.

Mr B didn't accept MDG's response, so referred his case to this service for investigation.

The investigator noted that MDG had raised an objection based on the time limits allowed to raise a complaint, and so she said that she needed to consider this before commenting on the merits of the case.

But with regard to our jurisdiction to consider the matter, she said that she didn't think Mr B had complained too late for this service to be able to consider it. In support of this position, the investigator said the following:

- She referenced the "DISP" rules from section 2.8.2 of the regulator's handbook under which this service operates, which sets out the following:

"The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(2) more than:

- *six years after the event complained of; or (if later)*
- *three years from the date on which the complainant became aware (or ought reasonably to have become aware) that you had cause for complaint; unless the complainant referred the complaint to the respondent or to the Ombudsman within that period and has a written acknowledgement or some other record of the complaint having been received."*
- As Mr B received the recommendation report from MDG in July 2006, it was the three year limb of the rule which she needed to consider.

- MDG's position was that, as Mr B had been categorised as an "insistent client", he would have been fully aware of the pension benefits he was relinquishing. And so he should have complained within three years of receiving the recommendation report.
- But in the investigator's view, if Mr B had been aware of having cause for concern in 2006, then it was very unlikely that he would have proceeded with the transfer in the first place.
- Nor was there any other event which the investigator was aware of which might have given Mr B cause for concern until his new adviser reviewed his pension affairs.

The investigator then proceeded to consider the merits of the complaint, but didn't think it should be upheld. She said the following in summary:

- She agreed that Mr B was likely to have been worse off in retirement by transferring – the GMP which Mr B would have received in retirement was almost a third of the transfer value. The required growth rate of between 9 and 11% would be considered to be likely unachievable in the type of funds suited to Mr B's attitude to risk. And so it was likely that Mr B would have received a lower income in retirement by retiring.
- MDG noted this in its report, and told Mr B both verbally and in writing that he shouldn't expect to receive the same pension benefit if he transferred – and that a transfer wasn't advisable because of this.
- The investigator was satisfied that this had been communicated to Mr B in a clear way.
- However, as MDG still assisted Mr B with the transfer, she needed to ensure that it had treated him fairly as an insistent client.
- In her consideration of this, the investigator said that she was satisfied that MDG had used the correct process. MDG had provided Mr B with an initial recommendation in December 2005, which said that he shouldn't transfer his pension benefits.
- The available evidence didn't support the position that MDG had pressured Mr B into getting back in touch with it and so she was satisfied that Mr B made his decision to transfer independently.
- Further, Mr B set out his understanding and choices in his handwritten letter which he sent to MDG in June 2006.
- MDG had then reiterated its position in the report dated 14 July 2007, in which it also gave investment advice to Mr B if he did decide to transfer. There was no other evidence which suggested that MDG had given Mr B advice to transfer his pension benefits.
- The investigator was satisfied that Mr B had made the decision to transfer against the advice of MDG.
- In terms of the investment advice, MDG still needed to provide Mr B with a suitable recommendation. But the investigator didn't think that the personal pension plan, or the funds used to invest within that plan, were unsuitable for Mr B and his moderate attitude to risk. It provided the greatest growth potential based on growth projections produced at the time.

Mr B replied to say that, whilst he understood the outcome of the case, there were aspects with which he disagreed. He said that he wasn't given verbal advice against transferring, and he would have found it challenging to understand the rationale at the time. If he'd been given verbal advice to not transfer, then he would have heeded this, he added.

Mr B also said that he had no recollection of the handwritten letter.

In a phone call with our investigator, Mr B reiterated that his situation at the time meant that he wouldn't have understood the content of the report, and that he was verbally advised to transfer by the adviser, with whom he had a personal friendship.

Mr B then submitted further information relating to his health at the time, along with other documentation relating to the transfer. Mr B said that information from the pension providers didn't indicate that he was an insistent client.

As agreement couldn't be reached, the investigator said that it would be referred to an ombudsman for review.

In response, Mr B reiterated that he'd been a personal friend of the adviser, and that he trusted him. He never queried anything he was told, he added.

Mr B further said that he'd wanted to care for his wife and provide for his family, and it upset him to think that the transfer would have disadvantaged them.

The case has now been referred to me.

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.

And having done so, whilst I'm sorry to disappoint Mr B, my conclusions are similar to the investigator's and for broadly the same reasons.

I do acknowledge what Mr B has said about not taking in what was written about the proposed transfer, but the report dated 14 July 2006 said that the matter had been verbally discussed in some detail. It said that *"we sat together and discussed [the previous report] in some detail"* and that Mr B asked that the report be left with him so that he could digest the content and mull his options.

After a period of two months, Mr B contacted MDG and informed it that he was concerned about several matters, which the adviser summarised as follows:

- "1. The first point was that under no circumstances could you access your pension benefits before the age of 65.*
- 2. The second point was the death benefit position if you should die before the age of 65, i.e. £232 to your spouse and a refund of your own contributions which would be £1898.*
- 3. You were also very disappointed with the performance and lack of service received in relation to [another personal pension] and even though there was a transfer penalty applicable you wanted to consider the option of transferring the plan to a different company.*
- 4. You also stated that as the [further pension plan] had no difference between the fund and*

transfer values that if you did transfer your [deferred pension] and your [other personal pension] that you would also want to transfer this plan as well.

Taking these points into account you asked me if I could arrange to transfer all of your pensions into just one decent personal pension plan, with a company that I would recommend."

The report set out that, in answer to Mr B's questions and concerns, it still wouldn't be the adviser's recommendation that he transfer his deferred OPS benefits. The adviser then set out the reasons as to why that was the case, as follows:

"1. The quoted pension Excess and GMP benefits are guaranteed to be paid at age 65 (assuming that you do not die before that age).

2. The value of the deferred benefits will never decrease (even though the benefits will not increase in line with inflation being above 5% a year).

3. You cannot assume that you will die and therefore forecast the outcome of the payment of the death benefits before age 65.

4. It is unlikely given the transfer value and the fact that you have 18 years until your 65th birthday that any personal pension plan that you transferred to would be able to accumulate a sufficient fund value to match the benefits guaranteed by Prudential (GRPS)."

And then it also said the following relating to the verbal advice which had been given to Mr B:

"Re-enforcement of my verbal advice

In my opinion the transfer of the pension benefits offered by the [OPS] and from [the personal pension policy] would very likely result in overall lower retirement benefits and that I could not recommend a transfer took place in the absence of work required to conclude otherwise, therefore my recommendation is that no transfer takes place in relation to your pensions and that they remain in place without change, save for any possible fund switches."

I think the above information was clear enough in terms of the reasons for Mr B to not transfer. And I can't see any indication in the report that he might have been given an alternative impression as to the adviser's view on the transfer proposal.

I also appreciate what Mr B has said about his state of health and medical condition at the time, but I need to take into account the quite protracted timescales here. There was no seeming urgency for Mr B to transfer, and no evidence of pressure being put on him by MDG. Mr B took several months to consider his options, in which he said he talked to his wife about matters, before deciding that he wished to proceed with the transfer.

I've also noted what Mr B has said about being verbally informed to transfer, and I acknowledge that this is of course possible. But I also need to take into account to what degree an individual such as Mr B ought reasonably to have been concerned about such a disparity between the quite emphatic written recommendation to not transfer and any verbal advice which entirely contradicted this. I think this ought reasonably to have given Mr B pause for thought as to whether the transfer was a suitable course of action.

That he didn't seemingly challenge this difference between the written opinion and what Mr B has said was the quite different verbal opinion does, I think, lend greater credence to the prospect that Mr B was a genuinely insistent client.

And this is further enhanced by the handwritten letter from Mr B. It set out quite clearly as to why Mr B wished to transfer, the predominant reasons being that Mr B was concerned that any death benefits would be substantially lower for his wife if he was to die before age 65, and that he wouldn't be able to access his pension benefits before that age either.

Mr B said that he wished to be treated as an insistent client and that he would like his plans, including the OPS benefits, to be transferred into one new plan.

Mr B has said that he has no recollection of writing that letter, but having compared his signature against other examples on the file, I have no reason to believe that the signature on that letter isn't his.

Further, I think given what Mr B has said about his state of health at the time (and without going into too much detail in this decision, I've read what Mr B has provided in response to the investigator's view in that regard), that he might quite plausibly have been concerned about the death benefits which would be payable to his wife before age 65, or his inability to access the benefits himself before that age. This compared to the lump sum death benefit and greater flexibility in terms of access which would apply if the deferred OPS benefits were transferred to a personal pension arrangement.

And so the decision to transfer doesn't seem to have been without foundation. Rather, it seems to have been well thought through, and as I've noted above, over a reasonable amount of time.

I appreciate that, with hindsight, the decision may not have turned out to be the best one financially, but I don't think I can fairly or reasonably hold MDG responsible for the decision which was made at the time – and again, to reiterate, for seemingly quite well thought out reasons.

And to add to that, I've noted what Mr B has said about wanting to care for his wife and family. And if there's any sense harboured by Mr B that an unwise financial decision has been made here, I'd just note again that the reasons set out in the handwritten letter might quite reasonably justify a transfer in some situations, especially if there were health concerns.

It can sometimes be the case that making contingency plans for the future means that, if someone is fortunate enough to live a longer life than expected, the overall pension benefits might be reduced. But that doesn't necessarily invalidate the grounds for the original decision.

As with the investigator, I've then thought about the investment advice given to Mr B as to the recipient plan for his OPS benefits.

And having done so, I agree that the recommendation that Mr B transfer into the personal pension arrangement wouldn't have been unsuitable. Mr B could have transferred into what's called a "section 32" policy, but this would have replicated the way the GMP would be paid, just in a private arrangement with the possibility of enhanced fund growth on the "excess" over the GMP.

By translating the GMP and non GMP benefits into "protected rights and "non protected" rights, Mr B would have been able to access benefits away from the strictures of the GMP.

Further, I also agree that the chosen investment funds weren't at odds with Mr B's moderate risk rating.

Overall therefore, for the reasons given, I don't think an assessment of the available facts of this case means that it should fairly or reasonably be upheld.

My final decision

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 November 2024.

Philip Miller
Ombudsman