DRN-5156933

The complaint

Mr M complains that he was given unsuitable advice to transfer two defined benefit (DB) pension schemes to personal pension plan arrangements. The first pension was transferred in 2018 and the second took place in 2019.

Sublime Business Financial Advisers Limited is responsible for answering this complaint and so to keep things simple, I'll refer mainly to "SBFA".

What happened

It's helpful to start out by explaining that Mr M had quite a few pensions but only two have been complained about.

1. "Pension M" – this relates to a DB pension scheme Mr M had from a job held approximately between 1995 – 2000. As of 2018, he was a deferred member of this scheme.

2. "Pension K" – this was also a DB scheme and linked to employment from 2000 - 2018. However, in 2012 Pension K was stopped as an ongoing DB scheme (in common with many DB schemes). It was superseded by a new defined contribution (DC)[1] pension scheme. This meant Mr M also became a deferred member of Pension K, as of 2012.

3. "Pension K2" – this was the DC scheme which was started by Mr M's employer in 2012 after Pension K was closed (as described above).

4. An independent DC pension Mr M had started himself. This didn't appear to be connected directly with any employment and as such was a purely personal pension arrangement.

5. In the course of investigating Mr M's complaint I discovered he also probably had some other 'old' pensions relating to shorter periods of work during the 1980s and early 1990s. We can't say whether these were DB or DC schemes as he couldn't remember, and it seems the SBFA adviser never checked.

<u>Which complaint this Final Decision refers to</u>

I'd like to reiterate that Mr M only complains about the first two pensions above: namely both the DB schemes Pension M and Pension K. None of the other pensions are the subject of any complaint although I'll occasionally be referring to them as they have some relevance to what happened and whether his complaint should be upheld.

[1] With a DC pension (sometimes called a money purchase pension) you build up a pot of money to provide an income in retirement. Unlike DB schemes, which promise a specific income, the income you might get from a DC scheme depends on factors including the amount you pay in, the fund's investment performance and the choices you make at retirement.

It’s also very important to note that I’ll be splitting the two different DB pension transfer events Mr M has complained about into **two separate complaints**. I’ve already told the parties involved about this.

This is because I am bound by regulatory rules concerning the maximum amount of compensation which I can award when a complaint is upheld. For example, the maximum award allowed can be affected by issues such as when the complaint was first raised, and also when the alleged act or omission that caused the complaint occurred. In this situation, because Mr M’s two DB pension complaints refer to dates which span two different award categories (2018 and 2019), I’ve decided to deal with these two matters as two separate complaints.

This first Final Decision is about Pension M. A Final Decision about Pension K will follow.

The Pension M complaint - Mr M’s circumstances at the time

Information gathered about Mr M’s circumstances in early 2018 (the first transfer event) was broadly as follows:

- He was 55 years old. Mr M had been given a cash equivalent transfer value (CETV) for Pension M of £80,673. The normal retirement age was 65.

- Mr M worked in the retail sector as a senior manager and had done so for many years. He was still employed as such at the time of the transfer of Pension M in 2018. He earned £77,000 per year.

- Mr M lived with his partner in what appeared a long-term relationship. He had a grown-up daughter from a previous marriage who was not financially dependent on him.

- Jointly, Mr M and his partner had savings totaling around £100,000. Mr M also jointly owned two investment properties with a close relative, and I understand his partner also had investments in her own right. Mr M derived an income of around £14,000 per year from his rental properties, shared with his co-investor. Mr M’s partner had an independent salary of around £35,000 per year.

- Mr M’s main home was evidently worth around £250,000 as of 2018. He had a mixed repayment / interest-only mortgage on this with around £130,000 still outstanding. The records imply he also had modest interest only mortgages on his rental properties, at low interest rates. Mr M had no other known financial liabilities.

SBFA set out its advice to Mr M in respect of his Pension M, in a suitability letter of 1 February 2018. In this, it advised Mr M to transfer out of the DB scheme and invest the funds in a personal pension. Mr M accepted this advice and so transferred to a personal pension plan which was also recommended by SBFA.

In March 2024 and now aged 61, Mr M made a complaint to SBFA about the two pension transfers. He said that as a result of the transfers he had lost guaranteed benefits that, upon reflection, he could not afford to lose. He said SBFA’s advice was negligent and it was in breach of its statutory duty around these matters.

SBFA didn’t agree with the complaint and said it had acted in Mr M’s interests and in accordance with his wishes at the time. SBFA therefore didn’t uphold the complaint. Disagreeing with this, Mr M referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and issued a ‘view’ which said that his complaint should be upheld because both DB scheme transfers were not in Mr M's best interests. Mr M accepted the investigator's 'view' in full. SBFA still disagreed and asked for an ombudsman's decision. It sent in some further information and evidence for the ombudsman to consider.

As no informal resolution could be found, it falls to me to make a Final Decision. I am therefore now making a Final Decision about the merits of the complaint in relation to Pension M.

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 also 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'). 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 SBFA'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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, SBFA should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr M's best interests.

I've also considered everything said by Mr M's representative in bringing his complaint (including its full acceptance of the investigator's 'view'). Likewise, I've considered everything said by SBFA. I've considered everything SBFA sent to us, with great care, but in particular I'm grateful for the comprehensive submissions sent to us on 14 October and 19 November 2024. Again, both of these have been duly considered.

I've used all the information we have to carefully consider whether transferring away from Pension M to a personal pension was in Mr M's best interests. Like our investigator, I don't think the advice to transfer was in his interests.

I'm therefore upholding the complaint in relation to Pension M.

Introductory issues

I've noted that when defending this complaint, SBFA has mentioned on numerous occasions that Mr M wanted to transfer, that he apparently understood the risks, that lots of documents were generated and given to him by the adviser, and that he was in a financially strong position. I've also got no doubt that Mr M probably went to SBFA with some preconceived ideas about his DB pensions and how he wanted to proceed. So, I do understand the points being made by SBFA which are that Mr M was a mature and knowledgeable client and probably quite comfortable in engaging in most aspects of personal financial matters.

However, it's also important to understand that it was SBFA which was the regulated party here and *not* Mr M. Due to the size of his CETVs for both Pension M and Pension K, there was a requirement that if transferring, he'd need to obtain regulated financial advice. SBFA was responsible for providing that regulated advice and was also charging Mr M for doing so. There's also no evidence that whilst Mr M may well have been 'financially experienced' in a general sense, he certainly wasn't a pensions expert, and because of the number and different types of pensions involved in his then situation, I think Mr M would have found navigating his way through the complexity of these matters quite challenging.

Against this backdrop, the adviser's role was to really understand what Mr F needed and to recommend what was in his best interests, rather than what Mr M himself might have thought was a good idea. Mr M had every right to expect that the information and advice given to him by the adviser was correct, well evidenced and in his best interests; it was SBFA's responsibility to provide suitable advice in accordance with the rules I've set out above.

Financial viability of the transfer of Pension M

When looking at whether I thought the advice given by SBFA made this transfer suitable, I considered whether transferring appeared viable from a financial comparison perspective. Put another way, was Mr M's situation – and specifically his benefits in retirement - made better or worse from transferring, compared to the pension benefits he already enjoyed with Pension M? I don't think transferring from Pension M was in Mr M's best interests when viewed through this lens.

SBFA referred in its transfer analysis and suitability letter to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment growth for a transfer-out to become financially viable.

Before setting this issue out in detail, I've noted SBFA's later comments when defending the complaint, about it not being *"appropriate or necessary that the analysis focuses on the critical yield or that the advice process be framed as a mathematical exercise regarding future projected yields".* So here, SBFA is essentially making the point that the financial viability of transferring is only one narrow issue that ought to be considered, together with all other relevant issues. Again, I understand the point being made. But as I'll go on to show, this aspect of transferring is only one of several I've considered.

I start from the position that there would seem little point in transferring from a DB scheme if the client was destined to obtain less retirement benefits overall. If this were the case, other factors would need to make transferring substantially worthwhile. In this case, SBFA carried out a transfer value analysis (TVAS) comparison using several different personal pension providers - pensions that Mr M might transfer to. The one eventually recommended by SBFA had a critical yield of 8.1% if assuming a retirement at the age of 65 and 16.7% for a retirement at 60. In my experience, these are very high yields and in 2018 I would say the chances of them being achieved should have been viewed as highly unlikely. I note in particular, that although Mr M's plans weren't entirely fixed, he told the adviser he would probably want to stop working completely at the age of 60. With this in mind, achieving or exceeding anywhere near 16% annual growth simply wouldn't be credible. However, I don't think achieving or exceeding 8.1% was realistic either.

I say this with the knowledge that the regulator's growth projection rates at the time, which had remained unchanged since 2014, said the upper growth projection rate should be 8%, the middle projection rate 5%, and the lower projection rate 2%.

Mr M was deemed by SBFA to have an attitude to risk (ATR) of a "high medium" investor. However, in 2018 we were still in a period of sustained ultra-low interest rates and the Bank of England base rate was just 0.5%. So, I think a growth projection at a much lower percentage than the critical yield(s) shown above was appropriate in his case. I think that it's also important to bear in mind that Mr M, if transferring away, would inevitably incur costs associated with a personal pension plan and this could have a drag effect on growth. I see the recommended platform chosen did contain relatively low charges when benchmarked against the wider industry alternatives. However, at 0.25% (annual service charge) and 0.13% (annual management charge) these were still costs not being borne at all within his existing Pension M DB scheme.

I have considered that Mr M was at the time not married and evidently had no current plans to get married. In my view, the adviser used this feature to promote the idea that obtaining a direct pension comparison in a personal plan, with exactly the same benefits as found in Pension M's, was somewhat unnecessary due to his unmarried status. This was seemingly because Mr M didn't really need the (expensive) feature within a new personal pension that would pay a spouse approximately 50% of his pension for the rest of her life should Mr M pass away first. In this regard, SBFA made comparisons with the 'hurdle rate' rather than the critical yield. The hurdle rate was described as being the estimated annual investment return needed in order to purchase an annuity of equal value to the DB scheme but assuming *no* spouse's pension, *no* increases, and *no* guarantee.

In the suitability letter, SBFA described the hurdle rate in what was a complex and number-rich paragraph. I think Mr M would have found this hard to digest but it promoted the use of the hurdle rate and said it was 1.95% if retiring at 65 and -2.35% if retiring at 60. But these simply weren't like-for-like comparisons. I also noted that this much lower growth requirement actually came from within a TVAS from a pension platform provider which was not being recommended that Mr M transfer to. The provider he was being recommended to move his DB scheme to, mentioned no such rates (although SBFA said the hurdle rate would be similar in both cases). The hurdle rate provided to him also assumed Mr M would take a tax-free cash element upon crystalising his pension, which he may or may not have done, whereas taking all his benefits as an annual pension produced higher hurdle rate figures. We also can't be sure that the benefits – such as the spousal benefits upon death – would never be beneficial to Mr M. He was in a long-term relationship and was only 55, so he may have decided to get married again.

None of this is to try and second guess Mr M's intentions or to work out what path his future life might take. But the point I'm making here is that he was still relatively young in pension terms, and the comparisons being made were not direct comparisons with his existing DB scheme. The fair and equal comparisons between a personal pension and his existing Pension M, were clearly showing that transferring was most likely going to cause him to have lower retirement benefits in the longer-term, if leaving the DB scheme.

Of course, I've only used this section to consider one aspect of the potential rationale for transferring away from Pension M. And to be fair to SBFA, the adviser wasn't really promoting financial viability as the most relevant reason or priority for him leaving his existing DB scheme. I've therefore looked at the other possible reasons and rationale used by SBFA for Mr M transferring away.

<u>Other reasons to transfer</u>

Mr M's stated intention, upon getting regulated advice, was to voluntarily leave his job at some point in the next few months. However, he was not intending to stop working completely until the age of 60 meaning he had almost 5 years of employed earning potential left.

Nevertheless, I think it's fair to accept that Mr M probably wanted to at least explore the feasibility of transferring Pension M. This is because it seems he'd already obtained a CETV from his provider, showing the transferring value as £80,673. This figure was a guaranteed CETV and valid from November 2017 until February 2018.

SBFA's suitability letter in relation to Pension M was produced on 1 February 2018. This recommended that Mr M should transfer away from Pension M and invest the funds with a well-known personal pension provider; it also said he should withdraw £5,000 tax-free cash. In my view, it's difficult to get a clear picture from the suitability letter of SBFA's rationale for recommending this particular course of action. Whilst the letter itself is long and to some extent detailed, the key sections in it, such as Mr M's apparent financial / pension objectives at the time contain only facts about his current financial circumstances, rather than setting out clearly what it is that he wants to achieve with Pension M.

In my view, the reasoning for the transfer recommendation was not made clear enough within the letter. So, when the letter said the recommendation was based on factors including Mr M's 'needs, his risk attitude and the options available to him', I think these were merely generic comments which didn't really explain what the actual reasons for him to transfer away from his DB scheme were. Given the starting stance which the regulator said should be adopted – that transferring from a DB scheme is unlikely to be suitable – I think the failure to clearly articulate the reasons for transferring was a shortcoming on SBFA's part.

I therefore looked for the transferring rationale within the wider commentary in the letter and I considered everything it said carefully. I've also used a hand-written letter Mr M prepared for the adviser, no doubt in response to a specific request that he articulate his own reasoning and to confirm his understanding of what he was doing. It seems to me that the following areas were included as supporting a recommendation to transfer away and place the funds in a personal plan:

- *Tax-free cash*

A key aspect in the letter appeared to be a desire to release a small amount of cash. It explained how transferring provided the ability for Mr M to transfer and then draw down a single tax-free sum of £5,000. It's not possible from the documentation I've seen to specify precisely what this money was for but having reached the age of 55 and by transferring the full £80,673, the adviser said Mr M would be able to help his daughter.

I do understand that Mr M would have probably wanted to help his daughter. I also understand that the adviser's comments likely originated from such a conversation with Mr M himself. But the reasons for this gift (if that is what it was) weren't clear and I think this is important. Mr M's circumstances show that irreversibly transferring from Pension M to achieve such a small amount of releasable cash was completely unnecessary. We know, for example, that Mr M already had access to £100,000 in savings. He also had other DC schemes from which a similar drawdown could have been taken, so there was simply no reason to transfer the whole of his Pension M into a personal pension plan just to access this amount of money.

- *Security and funding of the DB scheme*

I've noted the adviser also drew Mr M's attention to the Pension M scheme being historically underfunded. It certainly wasn't unreasonable to have pointed this out to Mr M. However, these issues related initially to 2014, some 4 years before the advice. Since that time considerable improvements had been made to the overall funding of the scheme via a systematic improvement plan. I've also noted the company involved was a relatively large one and so it had been able to 'pump in' cash in large amounts over a sustained period to improve the funding situation. It's also true to say that during that period, due to significant changes to bond yields, many DB schemes were experiencing similar issues.

I therefore don't think the financial security of Pension M could fairly have been portrayed as an issue of such magnitude as to merit transferring out. In any event, even if this was an issue of real concern, I think the pension protection fund (PPF) comparisons should have been used in much more detail to evidence whether transferring was suitable. Ultimately however, this whole issue was merely mentioned in the suitability letter, rather than used as a powerful argument to leave the DB scheme; it isn't a relevant matter on which Mr M's complaint now hangs.

- *Flexible use of the pension*

Flexibility generally sounds like a good thing and I think Mr M was influenced by this. Again, the adviser didn't clearly set this out as a reason on its own to transfer but the letter explained how by transferring to a personal plan Mr M could 'retire' anywhere between 55 and 75. The adviser promoted other flexible and common features about a personal type of pension which looked good, including flexible drawdown as and when needed, rather than being an 'inflexible' pension that was paid every month.

However, in my view, the flexible features mentioned in the suitability letter were all generic features of a personal type of plan, rather than specific features that made leaving Pension M the right thing to do. I don't think Mr M required the financial flexibility which was implied in the suitability letter. In fact, Mr M already had considerable financial flexibility in his other pensions and these weren't inconsiderable amounts. We know, for example, that Mr M had an existing independent personal pension plan which had a fund balance of around £60,000. Pension K2 – another DC scheme – had a fund balance of around £145,000. He also had his large savings balance. On the other hand, Pension M paid a guaranteed amount for life which at the NRA could have been over £4,000 per year, or he could have taken a slightly less annual pension of around £2,800 to obtain a tax-free cash element of around £19,000. I accept these weren't huge amounts given Mr M's situation, but of course he also had another DB scheme in Pension K and this was much larger.

With all this in mind, it's my view that the use of flexibility as a rationale for transferring Pension M would be no more than a 'stock' objective with little or no real meaning to Mr M's situation. There was simply no need to transfer away in order to achieve a cash lump-sum as this was eminently possible from a variety of other tax efficient sources in his case, whether he transferred or not. Nor did he need other forms of flexibility.

I've thought about Mr M's apparent aspiration to give up his current job quite soon (although at that time he hadn't yet done so). With this in mind I've thought about whether any flexibility of income was needed – cash to live on if you like. At that point he was still working and even though he was intending to leave his job, he had the financial resilience to do so, with some comfort. However, Mr M's intentions weren't to completely stop working as I understand it and even if he did want to bolster his income, his other pensions ought to have been considered first. In my view, these would have provided significant income if needed. But Mr M already had some investment income too, and his partner earned £35,000 per year and all the evidence I've seen shows their outgoings were relatively modest. In short – there were no urgent income requirements which meant leaving his DB scheme was necessary.

Mr M could also have used his existing DB scheme – both Pension M and Pension K – to have provided income and / or moderate tax-free lump sums. I accept these options were probably discussed and discounted due to the actuarial reductions involved. But overall, this wasn't necessary in Mr M's case due to the good financial position he was in. I therefore think Mr M's circumstances here were much more aligned to him remaining in the DB scheme and retiring from that when he felt he was ready to do so. All the evidence pointed to him still being able to stop working early if he felt he really wanted to, because his financial position and preparations for retirement supported this.

- *The CETV*

In my view, the value of the CETV was not a justified reason to recommend transferring. At £80,673 the CETV may well have seemed an attractive figure to Mr M and perhaps one he might not be offered again. I also accept that he probably viewed this sum, for only a few years' service, as a very agreeable amount and perhaps one he ought to liquidate as soon as he possibly could. But Mr M already had flexible pension assets, a considerable savings base, and a reasonable expectation of wealth moderately increasing until his preferred retirement age. What Mr M was being advised to give up by transferring was a guaranteed and index-linked pension for the rest of his life. I don't think this was in his best interests because even though the CETV was a considerable sum in its own right, we know there were no compelling financial reasons to transfer his deferred DB scheme away to a personal pension plan. Mr M could have met his retirement income needs and cash needs by remaining in the DB scheme until it became payable much closer to the scheme's NRA.

By transferring, Mr M was committing to exposing his CETV to the risks of the markets. And by doing so he was incurring ongoing fund management and platform charges which didn't exist within his current deferred DB scheme. Mr M was still only 55 years old and in good health and it's reasonable to say his outlook and plans could still evolve in the years ahead. Irreversibly transferring was therefore a risk he simply didn't need to take.

But even if I do accept that his view of taking the £80,673 was somewhat preferred by him, I don't think there were any ways of really telling whether this CETV would have materially reduced in the future, when viewed through the lens of that time. As of 2018, we were still in a sustained period of low interest and bond rates which were largely the cause of enhanced CETV's such as the one Mr M had been quoted. This financial landscape had persisted for some years and there was no indication at the point of the advice that this would change. In short, the amount of the CETV was not a reason on its own to leave such a valuable pension scheme which had the benefits I've described.

- *Death Benefits*

I can see that SBFA and Mr M discussed the death benefits in his deferred DB scheme. I do accept that if Mr M intended never to re-marry then this was the one feature that could be used to show a personal pension was a better fit to his situation. This is because the spousal and child death benefits didn't really apply to Mr M.

However, I think from the evidence I've seen, a personal pension arrangement was portrayed as being better also in a wider financial sense, owing to the possible retention of the full value of Mr M's funds if he died. So, if he died relatively young, I note he wanted to provide his daughter and partner with respective percentages of his full fund. But with the DB scheme, his pension would have just 'died with him'. I've therefore considered this issue.

Most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer here through a personal pension were probably made to look like an attractive feature to Mr M as his two nominees might have inherited the value of his transferred funds tax-free in such circumstances. However, Mr M was still only 55 years old and very much in good health. So, an obvious drawback with a personal pension's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. There was therefore every chance that the amount left to pass on would realistically be depleted, particularly if Mr M lived a long life and spent the money on leisure and international travel, as he stated was his hope for retirement. The main purpose of a pension is to provide retirement income and Mr M still had many other assets to pass on to his family.

I also can't say if life insurance was discussed in this case. But at just 55 years old, a modest 'term' life insurance policy may have still been an affordable product if Mr M really did want to leave a reasonable lump sum legacy for his partner and adult child in the event of his sudden death. It also doesn't appear that SBFA took into account the fact that Mr M could have nominated a beneficiary of any funds remaining in his other DC pension schemes, valued at over £200,000. So, to this end, Mr M already had plenty of options ensuring part of his pension wouldn't just die with him. Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr M. It seems to me he also had other financial assets to pass on.

- *Other issues*

Information disclosure - I've also noted that the suitability letter did not set out the monetary values of Mr M's other pensions and simply said these were "unknown". I've noted that the firm acting for SBFA in defending the complaint also says that Mr M did not disclose all his financial details at the time. It's not entirely clear to me what these comments add to SBFA's defence of the complaint. However, I think it's more likely that the entirety of Mr M's other pensions was known to the SBFA adviser at the time of advising him in February 2018. The names of the individual pensions were set out on the suitability letter, so it would seem very odd indeed that these were not at least discussed between adviser and client. SBFA's final response letter of 15 May 2024 also certainly reads as if these values were known at the time and I think it's unlikely that each of them would be individually named, yet not further enquired into. But in any event, it would, in my view, be an egregious failure on the part of any adviser not to have duly obtained the details of other pensions when advising on transferring out of a DB scheme.

Provision of information / warnings to Mr M - SBFA said in October 2024 that it could not have been clearer about the loss of guarantees that would occur by Mr M transferring and that he both understood and accepted this. Nevertheless, whilst this might be true SBFA still recommended that he should transfer away and I think it's reasonable to believe that Mr M was heavily influenced by this. If SBFA thought the warnings and losses of guarantees were of such seriousness, then I think the final recommendation ought to have been *not* to transfer.

Outstanding mortgages – I've thought about the outstanding mortgages Mr M had. Although not heavily featured in this case, I've thought about whether these change anything. However, Mr M didn't have any other debts and the mortgage on his main home is something I understand was being mainly paid down in accordance with the repayment part of his mortgage. For the interest-only part, the documents I've seen imply Mr M had plans to address this. However, as I've said, I don't think the adviser discussed this much with him and it wasn't part of the pension advice. For the investment properties, my understanding is that the mortgages were small and that there was equity in the properties. The established 'system' used in buy-to-let properties usually involves using the income to pay the mortgage, whilst property values steadily rise until it is right to eventually sell the asset(s). The documents I've seen imply Mr M actually derived some additional income from these two houses. So, with all this in mind, I don't think Mr M's mortgage arrangements were anything other than under control and planned for. I don't think they relate to what happened with this pension.

Would Mr M have transferred anyway?

I have considered whether Mr M would have still transferred even if SBFA hadn't recommended this course of action.

As I've mentioned earlier, it's reasonable to say that Mr M probably came to the advice process with some preconceived ideas about transferring away from Pension M. But I think if the advice had been more clearly set out and had given him a well-explained rationale for not transferring – with good reasoning – I think it's more likely he'd have followed that advice. Mr M didn't need to transfer and there were no critical financial demands on him at the time which meant obtaining a large cash lump-sum or increasing his income, were things he urgently needed to do.

Suitability of investments

SBFA recommended that Mr M invest his funds in a personal pension. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for him and I don't think he would have insisted on transferring out of the scheme if clear advice had been given to him, it follows that I don't need to consider the suitability of the investment recommendation. This is because he should have been advised to remain in the DB scheme and so the investment in the new funds wouldn't have arisen if suitable advice had been given.

Summary

I've considered all the issues in this case with great care.

I acknowledge that Mr M probably went to SBFA with preconceived ideas about what he thought he wanted to do. However, as I've said, Mr M wasn't a pensions or investment expert. He paid SBFA for its regulated financial advice. So, the adviser's role wasn't to just follow Mr M's lead, it was to really understand what he needed and recommend what was in his best interests. I do accept that the SBFA adviser provided a lot of information, but they still ultimately recommended the transfer, which I don't think was right.

What I've shown in this Final Decision is that transferring was not financially viable. The critical yield analysis and reasonable growth assumptions meant that, when looked at through the lens of early 2018, Mr M would likely see less retirement benefits overall as a result of transferring away from Pension M.

He also already had the flexibility that SBFA implied would be created by transferring away. With at least two DC pensions and sizeable cash savings, there was no need to transfer to obtain a £5,000 sum to help out his daughter. And Mr M had no other apparent need for cash.

By transferring, what Mr M was irreversibly giving up was a guaranteed pension. Although relatively small, this annual pension would clearly make up an important minority of his security in retirement, providing as it did, an index-linked pension for the rest of his life. He would be able to use this annual pension, add his other DB annual pension, and complement these with his DC schemes. I don't think there were any other particular reasons which justified the transfer and outweighed this approach.

I've therefore seen no reasons why Mr M wouldn't want to retain his DB pension in Pension M and use it in exactly the way it was intended. In my view, this would have seen Mr M approach retirement in an agreeable financial situation. On one hand he had this DB pension and another DB scheme. But he also had at least two other DC schemes which provided all the flexibility and options he appeared to want.

In light of the above, SBFA should compensate Mr M 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 SBFA to put Mr M, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr M would have most likely remained in the deferred DB pension (Pension M) scheme if suitable advice had been given.

SBFA must therefore now 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.

If there is a loss compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 M'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, SBFA should:

- calculate and offer Mr M redress as a cash lump sum payment,
- explain to Mr M before starting the redress calculation that:
    - the 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 his DC pension
- offer to calculate how much of any redress Mr M receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr M accepts SBFA's offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr M 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 M's end of year tax position.

Redress paid to Mr M 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, SBFA 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 M's likely income tax rate in retirement – I've presumed this 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* £195,000, 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 £195,000, I may recommend that the business pays the balance.

My final decision

<u>Determination and money award</u>: I uphold this complaint and require Sublime Business Financial Advisers Limited to calculate and if appropriate pay Mr M the compensation amount as set out in the steps above, up to a maximum of £195,000.

<u>Recommendation:</u> If the compensation amount exceeds £195,000, I also recommend that Sublime Business Financial Advisers Limited pays Mr M the balance.

If Mr M accepts this decision, the money award becomes binding on Sublime Business Financial Advisers Limited.

My recommendation would not be binding. Further, it's unlikely that Mr M can accept my decision and go to court to ask for the balance. Mr M 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 M to accept or reject my decision before 13 February 2025.

Michael Campbell
Ombudsman