

## The complaint

Mr B complains that Gill Financial Services Limited ('GFS') advised him to opt out of his employer's defined benefit ('DB') pension and contribute to his employer's defined contribution ('DC') pension instead.

## What happened

Mr B says a few friends had used GFS previously to transfer their workplace pensions and so he contacted GFS to have a chat about his pension and met with them in April 2017. Mr B says GFS immediately recommended that he should transfer his DB pension. Mr B was a widower and he says GFS stressed that he could leave his pension to his children if he transferred.

It was explained that GFS couldn't do the transfer themselves but that they worked closely with a pension transfer specialist ('IBC') who could organise the transfer. Mr B completed a fact find and a letter of authority for IBC to request information from his DB pension scheme.

Mr B said he met with IBC briefly in May 2017 who recommended a transfer for the same reasons as GFS. IBC carried out a transfer analysis which Mr B said was never discussed. There is no evidence of any written advice given at the time. Mr B says he was busy with work and thought he was too young to make decisions about his pension and so didn't proceed with anything.

A year later, in July 2018, GFS emailed Mr B and said:

*"...[adviser] at IBC sends me an annual reminder of any clients who may be looking to review their position and I can't quite actually believe it was a year past May when we last sat down and discussed [the DB pension] with you. I know it is a very tough call to make with many ins and outs and not one to take lightly however it is still worth revisiting again. The good news is Gilt Yields have remained steady so transfer values will be much the same as they were a year ago but with one years more service your transfer value should have risen... If you want another chat on this we would be happy to arrange a catch up..."*

Mr B responded within minutes and said:

*"... yes I would like to move the pension pot out and have it managed privately. I could pop in and see you end of week. Thursday or Friday morning. I can pop into [IBC] next week..."*

GFS then told Mr B the next step would be for him to resign from the DB scheme and they attached the opt-out form Mr B would need to complete and send to his employer. He was told that once he had confirmation that he had left the DB scheme, IBC could request a transfer value. GFS also told Mr B he should elect to join the DC scheme once he had left the DB part of his pension, so he could continue to build up pension benefits which would be more tax efficient than just taking his salary. GFS also said:

*[IBC] will then be able to assess the merits of transferring however as you will have gathered from the previous meetings it is in your interest to do so. If for any reason the transfer is not*

*suitable or you change your mind then you keep the deferred final salary pension until you retire and continue to contribute to the DC part..."*

Mr B signed the opt out form for the DB scheme on 14 August 2018. GFS emailed him a couple of weeks later to check whether he had heard back from the DB scheme about him leaving the scheme. Emails followed which show Mr B hadn't realised he had to send the form off and then had technical issues submitting it. In an email on 15 January 2019 Mr B informed GFS that he had finally got through to the DB scheme on 11 December 2018 and that he had requested a transfer value. He was hopeful to *'wrap up the transfer'* by the end of February. He also told GFS that he had received notification about proposed changes to his DB pension (*NB: the employer closed the DB scheme in July 2019*) and said *'I think we all knew this was coming'* and that his ultimate plan was to *'secure his plan ASAP'*. Mr B left the DB scheme with effect from 1 April 2019.

Mr B completed a new letter of authority for IBC and in July 2019, IBC prepared a transfer analysis, cashflows and a suitability report which recommended Mr B to transfer his DB benefits to a personal pension. Mr B says he never received the suitability report. The transfer completed shortly after.

In 2022 Mr B made a claim to the Financial Services Compensation Scheme ('FSCS') about the unsuitable advice he received from IBC who had since gone into default. Mr B says he wasn't told about the substantial benefits he was giving up and no other options were explored other than transferring his DB pension. He was also not informed about any Lifetime Allowance implications.

The FSCS declined the claim as evidence indicated GFS, also a regulated firm, was involved in Mr B opting out of the DB scheme and that a transfer couldn't have happened if Mr B had remained an active member of the scheme. So they considered GFS's actions should be considered first and potential routes of compensation should be exhausted given the FSCS is a fund of last resort.

Mr B complained to GFS who rejected his complaint. They said they never had the permissions to advise on his DB scheme and never gave such advice. They say they gave factual information about the next steps Mr B needed to take once he had confirmed he wanted to transfer. The advice to transfer came from IBC.

Mr B then referred his complaint to this Service. One of our investigators thought we couldn't consider the complaint as GFS only introduced Mr B to IBC which in itself wasn't a regulated activity. One of my ombudsman colleagues decided that GFS's actions amounted to a regulated activity or at the very least an ancillary activity to a regulated activity and so we could consider the complaint.

The investigator then considered Mr B's complaint and didn't uphold it. She said Mr B had already decided to transfer his pension before he was told about the opt-out requirement and around the time he opted out of his DB scheme, he also likely knew about his employer's plans to close the DB scheme by July 2019. The investigator didn't think GFS's comments about Mr B having to opt-out impacted on Mr B's decision to transfer his DB pension.

Mr B disagreed and so the complaint was passed to me for an ombudsman's 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.

Having done so I've decided not to uphold Mr B's complaint against GFS.

For completion I would like to note that I agree with my ombudsman colleague that this is a complaint our Service can consider. I think GFS's actions here went beyond a mere introduction to IBC and their actions amounted to a regulated activity. Given that I'm not upholding this complaint, I'm not going to dwell on the jurisdiction issue any further in this decision.

Mr B says GFS told him from the start he should be transferring his pension. I don't know what exactly was said at the time and whether they actually verbally recommended the transfer-which they shouldn't have. Given that GFS had a financial interest in Mr B transferring his pension -they received a significant fee for referring him to IBC and also became financial advisers on Mr B's personal pension plan after the transfer- it's plausible that GFS was speaking favourably about a transfer. However, even if their initial conversations strayed into advice, in my view these conversations didn't ultimately cause Mr B to transfer.

Mr B was interested in discussing his workplace pension and GFS referred him to IBC, a pension transfer specialist. Even without any potential positive comments from GFS I think Mr B would have ended up speaking to IBC and they would have told him it was a good idea. Ultimately Mr B couldn't have transferred his DB scheme without a formal recommendation from a pension specialist like IBC who needed to make sure such a transfer was suitable for Mr B. Mr B needed a written confirmation from IBC to provide to his DB scheme before funds would be released. It was clearly IBC who provided the formal recommendation to transfer and they are the firm responsible for this advice.

It is correct that Mr B couldn't transfer his DB benefits whilst he was still an active member of the DB scheme. It's also correct that the DB scheme would only provide a guaranteed transfer value if Mr B had left the scheme. However, it was misleading for GFS to tell Mr B that as a next step he needed to opt out of the DB scheme before he could receive advice.

I appreciate Mr B had said he wanted to transfer and that he had discussions with IBC about a transfer a year before, however at this point IBC had not yet provided Mr B with a formal recommendation to do so. So there was still a possibility that IBC would recommend against the transfer or that Mr B changed his mind. GFS even acknowledged these possibilities in their email in July 2018.

An opt out of the DB scheme was irreversible. So Mr B shouldn't have been led down this path before he had received advice from IBC that a transfer was in his best interest. Opting out would only be the next step if IBC had recommended a transfer and Mr B had accepted that recommendation. Advice to transfer in such circumstances would be based on an estimated transfer value with caveats that a guaranteed transfer value could only be provided once Mr B had opted out. IBC would have also had to consider in their advice that Mr B was still an active member and whether an opt out was the right thing to do. The opt out and transfer were closely connected.

Advice to opt out of a DB scheme can only be given by a pension transfer specialist with the right permissions. GFS didn't have such permissions and I appreciate that it might have not been their intention to give advice or arrange the opt-out for Mr B. However, in my view they clearly did more than just introduce Mr B to IBC. They told Mr B he needed to opt out and made arrangements by sending him the necessary form and chasing this up with Mr B. And they told him to redirect his contributions to the DC scheme instead.

I don't think it was unreasonable to contact Mr B and see whether he was interested in having another chat about his DB pension. Mr B said the GFS adviser kept 'hounding' him

when they met socially about leaving the DB scheme. I haven't seen any evidence of this and when GFS emailed Mr B in July 2018 and asked whether he wanted to have another chat, he immediately replied that he wanted to transfer. I don't get the impression from the emails I've seen that Mr B was being pressured in any way. However, when Mr B said he wanted to transfer GFS should have just referred him back to IBC for advice on his DB pension which would include whether he should opt out.

If they had done so, IBC would have needed to consider whether opting out and transferring his pension would have been suitable and in Mr B's best interest. Mr B says IBC told him in their meeting in 2017 that he should transfer and IBC knew at this point that Mr B was still an active member of the DB scheme. And their recommendation letter in 2018 was mainly based on Mr B wanting flexibility and taking control of his pension. They acknowledged that if Mr B wanted to take benefits in retirement in the same form as his DB benefits, i.e. in the form of a guaranteed income through an annuity, they wouldn't recommend the transfer. So I think on balance IBC still would have recommended Mr B to transfer his DB scheme even if he had contacted them whilst still being an active member of the scheme. And they would have had to advise him to opt out in order to be able to do this.

So if GFS had done what they should have done and simply referred Mr B back to IBC, I think IBC would have recommended him to transfer out and told him the opt out was needed.

I've considered the possibility that IBC maybe didn't want to provide opt out advice as they saw that as more risky and more difficult to justify and so maybe only wanted to provide formal advice where an opt out had already happened and the DB benefits were deferred. Or that if they had provided advice whilst Mr B was still a member of the DB scheme, they might have recommended to remain an active member.

Given that IBC's advice to transfer was based on creating different, more flexible benefits I think on balance they still would have recommended a transfer which required an opt out. However, even if I'm wrong on this, by January 2019 Mr B knew that his DB scheme was likely to be closed by July 2019 and emails quoted above show that he was keen to transfer quickly. With the information that his DB scheme would be closed and DB benefits would become deferred very soon anyway, I think IBC would have been even more inclined to recommend an opt out.

Overall, I think GFS gave Mr B misleading information that he needed to opt out of his DB scheme in order to receive transfer advice. However, I think on the balance of probabilities if they had just referred Mr B back to IBC, he would have received the same recommendation from IBC and the opt out and transfer still would have happened around the same time.

I also considered Mr B's representative's argument that Mr B wasn't aware of GFS receiving commission for introducing him to IBC and if he had known this he would have had a better understanding of why GFS was keen for him to transfer.

The suitability report in 2019 set out that GFS would receive a proportion of the advice fee which had been agreed in IBC's client agreement. I appreciate that Mr B says he never received this report. However, I see no reason why this wouldn't have been provided to him and why Mr B wouldn't have queried not receiving any formal advice documents when he had agreed to pay over £25,000 for IBC's advice. However, even if I accept that Mr B didn't receive this and didn't know GFS was receiving some of this fee, I think it's likely that he would have understood GFS had a commercial interest in this transfer as they would be becoming the adviser on the personal pension plan. In any event, Mr B was interested in exploring a transfer and even if GFS just introduced him to IBC I think Mr B still would have followed IBC's recommendation to transfer. As I said above I don't consider checking in with

Mr B whether he was still interested in considering a transfer-even though undoubtedly driven by commercial interest-was unreasonable.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 19 June 2025.

Nina Walter  
**Ombudsman**