

## The complaint

Mr L has complained about the advice he received from Bigmore Associates Limited trading as Bigmore Financial Planning ('Bigmore') to transfer two defined-benefit ('DB') occupational pensions to a self-invested personal pension ('SIPP').

## What happened

Mr L received pension transfer advice from Bigmore in 2017. At the time Mr L held two deferred DB pensions with former employers, DB1 and DB2. DB1 had a cash equivalent transfer value ('CETV') of £100,508.44. DB2 had a CETV of £123,262.00.

The available sales paperwork recorded the following about Mr L's circumstances:

- He was 55 years old, married with two children and currently in good health;
- He was a director at a company he owned a stake in (recorded in the fact find as 20%). And had a total annual income of £40,800;
- He owned his own property outright, which was worth around £400,000;
- He had £80,000 in savings.

Mr L's objectives were recorded as:

- To release 25% tax free cash ('TFC') from the DB pensions to cover the cost of an extension to Mr L's property (at the cost of around £50,000), with moderate growth of the remainder of his pension funds;
- When reaching retirement age, emigrate to Spain, sell his current property, sell his stake in his business and continuing working as a consultant;
- Being able to benefit from a flexible level of income in retirement and provide for his wife and children in the event of his death.

After completing a risk profile questionnaire, Bigmore assessed Mr L as a high risk investor. This was further clarified in the suitability report as *"only prepared to take a medium degree of risk with their financial decisions. When faced with a major financial decision they are usually more concerned about the possible gains than the possible losses"*

Bigmore advised Mr L to transfer out of both DB schemes to a SIPP, investing funds in a model portfolio. Mr L accepted the recommendation and his DB schemes were transferred. He subsequently took the maximum TFC.

In February 2025 Mr L appointed a representative (a 'CMC') to make a complaint on his behalf about the advice he received from Bigmore. The CMC said the advice to transfer out of the DB schemes was unsuitable for Mr L. The CMC said Mr L had specifically stated that he didn't want to lose any of his pension funds but he was worried about the claims Bigmore made about his existing DB schemes.

Bigmore didn't uphold the complaint. It said the advice was suitable for Mr L because it met his stated objectives, taking into account his personal and financial situation, ATR and capacity for loss. It also said that neither of the DB schemes were able to support Mr L's

objectives and he'd stated that he was unlikely to use the DB scheme for his retirement due to his other assets.

Our Investigator considered the complaint and found the advice Bigmore provided to be unsuitable. The Investigator recommended that Bigmore compensate Mr L for the unsuitable advice in line with the Regulator's guidance. Mr L accepted this but Bigmore didn't agree the advice was unsuitable. In summary it said:

- The recommendation met Mr L's primary objective of releasing TFC to fund an extension to his property, which in turn would increase the property value and then be sold, thereby meeting the bulk of his planned retirement income.
- If Mr L had taken the TFC from the DB schemes, he would also have had to start taking the pension income, which would have been reduced due to early retirement factors and taxable at least at basic rate, possibly higher rate given the level of his earned income.
- Mr L's high attitude to risk meant that he had a reasonable chance of meeting, if not exceeding, the critical yield from the schemes and this was a risk that he understood and was prepared to take.
- Mr L understood the risks and had experience of investing in property. And when he bought the property in March 2017, it was purchased for £325,000 and sold in February 2019 for £440,000, which is growth of circa £115,000.
- Mr L was never open to not taking benefits, the only options were to take it from the scheme pension or to transfer to another pension. The transfer allowed him to take a higher level of TFC, with the benefit of not having additional income that he did not want or need and he could leave any remaining pension to his spouse and children in the event of his premature death.

The complaint has been passed to me to make a decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I've taken into account relevant law and regulations, Regulator's rules, guidance and standards and codes of practice, and what I consider to have been good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). And where the evidence is incomplete, inconclusive or contradictory, I reach my conclusions on the balance of probabilities – that is, what I think is more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

#### *The applicable rules, regulations and requirements*

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Bigmore'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.

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, Bigmore should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L's best interests.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the Investigator. I've explained my reasons below.

Bigmore carried out a transfer value analysis report (as required by the regulator) showing how much Mr L's pension fund would need to grow by each year in order to provide the same benefits as his DB schemes (the critical yields). Mr L was advised to transfer both DB schemes so like our investigator, I think it's appropriate to consider the combined transaction, rather than each DB scheme individually.

I appreciate Bigmore disagrees on this point. It says Mr L had two distinct DB schemes so the fact he had another guaranteed income from a second DB pension had a bearing on his capacity for loss and therefore the suitability of transferring either pension separately. And while it remains of the view its advice to transfer both schemes was suitable, it's also suggested that it would have been suitable advice to transfer just the smaller of the DB schemes. However, that's not what Bigmore advised Mr L to do, it advised him to transfer both schemes.

I'm considering the suitability of the *actual* advice Bigmore provided; it's not my role to determine what would have been the best advice for Mr L. So as Mr L was advised to transfer both DB schemes, I'm satisfied it's appropriate to consider the transaction as a whole.

Mr L was 55 at the time of the advice and wanted to retire at 65. The suitability report states that the critical yield required to match Mr L's benefits at age 65 was 6.01% for DB1 and 9.9% for DB2. This was based on him taking full TFC and a reduced pension. So the average critical yield when both schemes were combined was around 7.95%. This compares to the regulator's upper projection rate at the time of 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've also thought about Mr L's ATR. Bigmore assessed him as having a high ATR. This was based on Mr L's answers to a number of questions in a risk profiling questionnaire and Mr L's previous investment experience. However, Bigmore also needed to consider Mr L's capacity for loss.

The two DB pensions appear to have been Mr L's only pension provision. The fact find document notes that he had £80,000 in savings and owned 20% of the company he was a director in. So it appears the DB schemes would have been Mr L's only form of guaranteed income in retirement, other than his state pension. For this reason, I think the DB schemes

were an important part of Mr L's retirement provision and he ought to have been deemed a medium risk investor, rather than high.

Given that the average critical yield was just under 8%, I think Mr L was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his ATR. Even if I was to accept that Mr L was a high risk investor, there would be little point in Mr L giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

For this reason alone a transfer out of the DB scheme wasn't in Mr L's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Bigmore has argued in this case. There might be other considerations which mean a transfer is suitable, despite being likely to provide overall lower benefits. I've considered this below.

### *Flexibility and income needs*

I don't think Mr L required flexibility in retirement. This is because based on the evidence I've seen, I'm not satisfied he had a genuine need to access his TFC earlier than the normal scheme retirement age. I say this because it was noted in the sales paperwork that Mr L already had £80,000 in savings and his property was noted as being worth £400,000 and he didn't have a mortgage or any other debts. It's also noted that Mr L required £50,000 to complete an extension, after which he would sell the property for a gain of around £100,000.

I would have expected Bigmore to have explored other means in which Mr L could have raised funds for his extension, such as using his savings or taking a loan or small mortgage. But it doesn't appear it did this. I note Bigmore has said that Mr L was never not open to taking his pension benefits. But Bigmore wasn't there to just facilitate what Mr L wanted to do; it needed to give suitable advice so the adviser shouldn't have simply tried to meet Mr L's objectives without considering alternatives.

I also can't see evidence that Mr L had a strong need for variable income throughout his retirement. Mr L was 10 years away from retirement at the point of advice and Bigmore didn't carry out a comprehensive assessment of what his income needs would be once he retired. There's a brief note on the pension transfer questionnaire that suggests he had an income need of £1000 per month but this wasn't a thorough assessment of his needs.

But in any event, I'm satisfied Mr L could have met much of his income needs in retirement through the DB schemes and his state pension.

### *Death benefits*

Death benefits are an emotive subject and of course when asked, most people would like their loved ones to be taken care of when they die. The lump sum death benefits on offer through a personal pension were likely an attractive feature to Mr L. But whilst I appreciate death benefits are important to consumers, and Mr L might have thought it was a good idea to transfer his DB scheme to a personal pension because of this, the priority here was to advise Mr L about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think Bigmore explored to what extent Mr L was prepared to accept a likely lower retirement income in exchange for higher death benefits.

Bigmore has said that Mr L wanted to provide not just for his spouse on death but also his children. However, I also think the existing death benefits attached to the DB schemes were underplayed.

Mr L was married and had children (although his children were adults and it's not suggested in the sales paperwork that they were financially dependent on him). The spouse's pensions provided by the DB schemes would've been useful to his spouse if Mr L predeceased her. I don't think Bigmore made the value of this benefit clear enough to Mr L. This was guaranteed and it escalated – it was not dependent on investment performance, whereas the sum remaining on death in a personal pension was. And the fund may have been depleted particularly if Mr L lived a long life. In any event, Bigmore should not have encouraged Mr L to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr L genuinely wanted to leave a legacy for his children which didn't depend on investment returns or how much of his pension fund remained on his death, I think Bigmore should've instead explored life insurance.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr L. And I don't think that insurance was properly explored as an alternative.

#### *Control and concerns over financial stability of the DB scheme*

The pension transfer questionnaire noted Mr L's top priority as control over his pension benefits. And while the paperwork noted Mr L had previous investment experience, it doesn't appear he held any investments at the time of advice. And I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on his own. So, I don't think that this was a genuine objective for Mr L – it was simply a consequence of transferring away from his DB scheme. And, in part, may have been driven by his concerns about the funding of his DB schemes.

The paperwork suggests Mr L has concerns about his DB pensions. It noted that he thought the DB funds were unsafe and underperforming so needed reinvesting. I would have expected Bigmore to have done more to have allayed Mr L's concerns in this regard. For example, explaining how DB schemes weren't impacted by investment performance. I would also have expected it to have checked the funding position of both DB schemes. It's not clear if Bigmore did this but either way, I've not seen anything to suggest that the position with either DB scheme was such that Mr L should have genuinely been concerned about the security of his pension. Furthermore, if the scheme did end up moving to the PPF, I think Bigmore should have explained that this was not as concerning as Mr L may have thought.

As I've explained above, based on Mr L being a medium risk investor, he was still unlikely to match, let alone exceed the benefits available to him through the PPF if he transferred out to a personal pension.

I also think Bigmore's comments in the suitability report, around the PPF and the alternative protection available through the Financial Services Compensation Scheme ('FSCS') if Mr L transferred his DB schemes, were slightly misleading. While Bigmore explained that in the event of the DB scheme failing, the PPF would cover 90% of the accrued benefits. The report went on to explain that if Mr L transferred his DB scheme, 100% of the transferred funds would potentially be covered by the FSCS if the provider became insolvent. But Mr L was being advised to take out a SIPP. So while 100% would normally be covered, the upper FSCS cap would apply. At the time of advice, this meant that if the SIPP provider failed, any compensation Mr L would have been entitled to from the FSCS would likely have been capped at £50,000. This cap has since increased to £85,000.

Overall, I can't see persuasive reasons why it was clearly in Mr L's best interest to give up his DB benefits and transfer them to a SIPP, when this could likely result in lower overall

retirement benefits. I think he had alternative ways of achieving his objective of funding his extension, without having to transfer out of the DB schemes. I also haven't seen anything to persuade me that Mr L would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mr L received from Bigmore was unsuitable for him.

### **Putting things right**

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

Bigmore must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the Regulator's handbook in DISP App 4:  
<https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter>.

For clarity, two sets of redress calculations will need to be carried out as I think the advice to transfer both DB schemes was unsuitable. Compensation should be based on Mr L taking benefits at the DB schemes' retirement age, as per the usual assumptions in the FCA's guidance.

These calculations 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, these should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L's acceptance of the decision.

If the redress calculations demonstrate a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Bigmore should:

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculations that:
  - his 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 his redress prudently is to use it to augment his defined contribution pension.
- offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts Bigmore's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr L for the calculations, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

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

## **My final decision**

I'm upholding Mr L's complaint and I require Bigmore Associates Limited trading as Bigmore Financial Planning to pay him compensation as set out above.

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.

Determination and money award: I uphold this complaint and Bigmore Associates Limited trading as Bigmore Financial Planning to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £195,000.

Recommendation: If the compensation amount exceeds £195,000, I also recommend that Bigmore Associates Limited trading as Bigmore Financial Planning pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on Bigmore Associates Limited trading as Bigmore Financial Planning.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L 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 L to accept or reject my decision before 17 November 2025.

Lorna Goulding

**Ombudsman**