DRN-5797828

The complaint

Mr H complains through a professional representative that Comer & Farnan Pension and Insurance Consultants (C&F) gave him unsuitable advice to transfer his Defined Benefit pension benefits to a personal pension. The transfer completed in 1996.

What happened

Our investigator set out the background to this complaint, for ease of reference, I have included an amended copy below:

Mr H was a member of an Occupational Pension Scheme. The Scheme was wound up by the Trustees in the 1990's and around 1994, a Buy-Out arrangement was entered in to with Legal & General.

On 27 October 1995, L&G wrote to Mr H with information about the benefits that had been secured with it by the DB Pension Scheme. It confirmed Mr H would receive £3567.30 per annum at his Normal Retirement Date ("NRD") of 65.

On 1 November 1995, Scottish Equitable issued a Transfer Value Analysis ("TVAS") report. Mr H's pension had a transfer value of £2761 and the TVAS showed the fund would need to increase to £43,525 to match the benefits offered by the DB scheme.

The report also showed what Mr H's pension fund could be worth at his NRD if he opted for either the Buy-Out arrangement or a personal pension. It also confirmed the potential income he could receive.

Following this, C&F sent a number of letters to Mr H. On 2 November 1995, Mr H was invited to make an appointment with C&F to discuss whether it would be beneficial for him to transfer his pension funds from L&G elsewhere. On 16 November 1995, C&F sent a further letter inviting Mr H to make an appointment with C&F to discuss his options, and the implications on his individual circumstances, should he wish to transfer his funds.

Mr H accepted the offer of an appointment and met with C&F on 27 November 1995. A fact-find was completed regarding Mr H's circumstances. It said:

- At the time of the advice, Mr H was 27 years old with two children
- He was earning £16,640 per annum and had no debts
- Mr H's Attitude to Risk ("ATR") was a 5 out of 10

A handwritten note on the letter dated 16 November 1995 said Mr H was in possession of all the information and wished to take it away and discuss it further with his partner before making a decision.

On 1 February 1996, C&F wrote to Mr H to ask him to get in touch and inform them as to whether he wished to proceed with a transfer from Legal & General. The letter confirmed if no response was received in 14 days the papers relating to Mr H’s potential transfer would be filed away accordingly.

Mr H met with C&F again on 23 February 1996. He completed an application form to transfer to a Section 32 buyout policy with Scottish Equitable.

On 27 February 1996, Mr H signed to authorise the transfer of £2761 from L&G to Scottish Equitable. The following day, C&F issued written confirmation explaining why it recommended the transfer to Scottish Equitable. The reasons given were:

- Mr H wanted flexibility to take his pension benefits before the normal retirement date under the scheme rules

- The investment return required to improve upon the guaranteed benefits was available and attainable

- Scottish Equitable offer competitive products and investment returns

Mr H’s funds were transferred to Scottish Equitable and the policy commenced on 7 March 1996.

On 2 August 2021, Get Claims Advice wrote a letter of complaint to C&F. It said:

Mr H was approached by C&F and was offered a free pension review. Mr H recalls a single meeting taking place with the advisor at his mother’s home. Mr H was not informed of any benefits that he would be losing by transferring out of the final salary pension. If this had been discussed with him at the time, he would not have proceeded with the advice. C&F didn’t assess Mr H’s Attitude to Risk (“ATR”) or capacity for loss.

C&F didn’t uphold the complaint and said regrettably, Mr H was unlikely to get the pension he hoped to receive, but this was due to unforeseen financial market conditions. They also said Mr H’s recollection of events differed to the notes kept by C&F and after reviewing the documentation, felt the advice he received was correct at the time.

Unhappy with the reply, Mr H’s representatives referred the complaint to this service.

Initially, our investigation focused on whether the complaint was within our jurisdiction to consider. C&F argued that it wasn’t. Another ombudsman at this service issued a decision on our jurisdiction to consider this complaint. He said that the complaint was within our jurisdiction and that our investigator could go onto consider the merits of the complaint.

Our investigator looked into matters but didn’t recommend the complaint be upheld. She concluded that at the time the transfer appeared to be financially viable and that there was nothing to suggest that the advice wasn’t suitable for Mr H.

Mr H’s representatives didn’t agree in summary they said:

- C&F were required to take reasonable steps to be satisfied that Mr H understood the risks of transferring his benefits. C&F haven’t provided evidence that it did take those steps.

- They did not apply the knowledge obtained about Mr H correctly. It recommended a transfer despite Mr H saying he was highly unlikely to draw benefits early. And that he wanted to ensure death benefits as much as possible for his spouse and beneficiaries. Yet the recommendation exposed the excess element to market risks.

- Whilst Mr H was a long way from retirement, he made clear he wanted to plan for retirement. Giving up guaranteed benefits was not in line with this objective.

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.

Both parties have made more detailed submissions than I have summarised above, but my role is to get to the heart of the matter. So, I have focused only on the points that I see as key to the outcome of this complaint.

Before I go onto discuss the merits, I should say there were detailed arguments made by C&F about whether the complaint was one we could consider. I can see they felt strongly about these points. But I don't think it is in anyone's interests to re-open those arguments here, as they alongside Mr H have waited long enough for an answer. And to do so could mean additional time and energy spent to come to the same overall result, that no further action is required. I say this because we have now considered the merits and I am in agreement with the investigator that this isn't a complaint that should be upheld. I'll explain why below.

The advice was provided in January 1996. At that time the adviser was regulated by the Personal Investment Authority ('PIA'). Based on the information I've seen I understand the advising business was likely to have been a previous member of the Financial Intermediaries, Managers and Brokers Regulatory Association ('FIMBRA'). When the PIA took responsibility for FIMBRA businesses in 1994, they adopted the FIMBRA rules and guidance. These adopted rules applied at the time of the advice in this case. And, in short, the adviser was required to ensure the recommendation it made was in Mr H's best interests having regard for his circumstances and alternative options.

Mr H was 27 at the time of the advice and the normal retirement age of the scheme was 65. The critical yield required to match Mr H's benefits at age 65 was 8.71% if he took tax free cash and a reduced pension.

This compares with the discount rate of 10.1% per year for 37 years to retirement in this case. For further comparison, the regulator's upper projection rate at the time was 12%, the middle projection rate 9%, and the lower projection rate 6%.

I've taken this into account, along with the composition of assets in the discount rate, Mr H's recorded attitude to risk (5 out of 10) and also the term to retirement. There would be little point in Mr H giving up the guarantees available to them through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here, given the lowest critical yield was 8.71%, I think Mr H had a good opportunity to receive benefits of likely higher overall value than the DB scheme at retirement as a result of investing in line with that attitude to risk.

The advice was given nearly three decades ago and the documentary evidence available from the time is limited in part due to this and the requirements from the time. It wasn't unusual at the time, particularly given the financial climate, for consumers to consider whether they could achieve better returns on their investments. The figures show at the time that it was reasonable to think that on transfer a better pension could be achievable.

At the time of the advice Mr H was 27. So, he had a significant amount of time until he was due to retire. I think it was reasonable to expect he'd continue to make other provisions for his retirement. Meaning that while the DB scheme benefits represented a significant portion of the provisions he had at the time (the other pension benefits section wasn't completed in the fact find), he reasonably expected to have other provisions when he retired – given how much of his working life remained. So, taking his circumstances at the time into account, I think Mr H was likely willing to, and had the capacity to, take risk with his pension fund at the time of the advice.

Mr H's representatives have argued that C&F didn't do enough at the time to establish Mr H's circumstances and whether he understood the risks involved on transfer. But the evidence does suggest that conversations took place around the differences between the scheme and the proposed pension. Mr H's representatives says this isn't enough, it has not shown in recorded evidence what was said. But I take the view that this was nearly thirty years ago and it's clear that meetings took place that weren't recorded in any detail. I think it is likely that a discussion about the downsides of transferring occurred with Mr H given what the documentation we do have shows.

The objective of improved flexibility wasn't something Mr H likely needed to make a decision about at the time – given how long he had to retirement. And it is true that transferring exposed the death benefits to market risk. But like the guaranteed income benefits, if performance met the achievable discount rate, these benefits would be increased. The benefits also only accounted for a couple of years of Mr H's working life, so he had plenty of time to build up additional retirement benefits including death benefits, if he ended up worse off from transferring. So, I don't think the recommendation to transfer out of the DB scheme was unsuitable for Mr H's circumstances and at the time it was considered financially viable.

My final decision

For the reasons explained above I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 8 December 2025.

Simon Hollingshead
Ombudsman