DRN-3074523

The complaint

Mr A complains about the advice given by Better Retirement Group Ltd (BRG) to transfer the benefits from his defined-benefit ('DB') occupational pension scheme alongside other pension funds to a self-invested personal pension ('SIPP'). It was invested with a discretionary fund manager (DFM) that I will refer to as "S". He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

Mr A took early retirement in September 2015. He later found he had been a member of a DB scheme with a former employer. As the pension fund associated with the scheme was of a high value Mr A approached BRG in early 2018 to discuss his pension and retirement needs.

BRG completed a fact-find at Mr A's home to gather information about his circumstances and objectives. BRG found that:

- Mr A was 62 years of age retired and was married with two adult children.
- He was financially dependent on his wife, who was also retired and in receipt of benefits from her pension. This provided an annual net income of £17,500.
- Mr and Mrs A owned their home and had no outstanding debts or liabilities other than normal monthly home expenses.
- Mr A had a DB Scheme with a cash equivalent transfer value (CETV) of £494,451.71 and three other personal pensions with a transfer value combined of £53,015.63.
- His objectives were to consolidate his pensions schemes to achieve more flexibility in the way funds could be used. He also felt the death benefits applying to a SIPP would be advantageous to his family in the future. He was considering taking his lump sum which could be used to carry out works on their home and help their children.
- If possible, Mr A wanted to achieve an annual income of around £11,000 to prevent Mr and Mrs A from using their existing capital and allow them to live comfortably until their state pension qualification (age 66)

Mr A also answered some questions to assess his attitude to risk (ATR) which was assessed to be "low medium".

On 4 April 2018, BRG advised Mr A to transfer all of his pension benefits into an Intelligent Money SIPP and invest the proceeds in the S income portfolio. The suitability report said the reasons for this recommendation were:

- To allow access to Tax- Free Cash (TFC) any time after age 55.
- To give flexibility in the future.
- To allow Mr A to take a higher or lower level of income as he needed.
- To allow Mr A to leave his money to whomever he chose upon his death.

In August 2019 Mr A was advised that S had been placed into special administration and in May 2020 he was advised that his pension fund value stood at approximately £115,000. As Mr A felt he had been wrongly advised to transfer his pension provisions he complained to BRG.

BRG didn't uphold Mr A's complaint it said it had carried out the correct due diligence on S and it could not be held responsible for being misled.

Mr A referred his complaint to our service. An investigator upheld the complaint and required BRG to pay compensation. The Investigator said Mr A was likely to receive benefits of a substantially lower overall value transferring his pension out of the DB scheme, and the potential benefits of the transfer did not outweigh the benefits that were safeguarded under the DB scheme.

BRG disagreed. Overall, it said that the advice it gave Mr A about transferring his pension provisions were suited to his ATR and it could not be held responsible for the actions of S.

The investigator wasn't persuaded to change her opinion, so the complaint was referred to me to make a final 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.

When considering what is fair and reasonable, I am required to take into account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

Having done so, I've decided to uphold the complaint for largely the same reasons given by the investigator.

Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

BRG stated that the critical yield required to match Mr A's benefits at age 65 was 24.05% if he took a full pension.

The relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service for the period before 1 October 2017, and was 2.7% per year for 2 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

I've taken this into account, along with the composition of assets in the discount rate, Mr A's 'low medium' attitude to risk and also the term to retirement. Based on the critical yield alone I don't think the recommendation to transfer out of the DB scheme was suitable for Mr A.

BRG says that in any event, Mr A had no intention of buying an annuity at 65 so the critical yield was not a significant factor in determining the advice. Instead, it says it analysed the growth the fund required in order to match Mr A's DB pension using the average life expectancy for someone in his demographic, plus five years. This showed that if growth of 5% gross per year was achieved it would match Mr A's DB income until age 91. Even if the growth rate was as low as 2% the fund would have exceeded Mr A's need of £11,000 per annum.

Firstly I disagree that critical yields are irrelevant. They provide a good indication of the value of benefits a consumer is giving up by transferring and the regulator deems it an important part of the decision-making process.

BRG's illustrations showed that with returns of 2% per year, funds would run out at age 86. With returns of 5% benefits would last until age 91. However, there was a risk Mr A could live longer and/or returns of lower than 5% would be achieved. Of course Mr A could have taken lower benefits and extended the time his benefits would last, however I can't see the benefits of doing this. And I also see no reason why Mr A needed to take these risks with his pension. I also note that when BRG mentions the DB benefits being "matched" they don't take the spouse's pension into consideration.

Considering the DB scheme represented the majority of Mr A's pension provisions I can't see that he had the required capacity for loss to give up the guarantees in his DB scheme and take the risks of being worse off in retirement.

However, I did consider whether there were any other objectives which made a transfer suitable despite very likely providing overall lower retirement benefits.

Flexibility and income needs

I haven't seen persuasive evidence that Mr A had a strong need for flexibility in retirement. He also had no significant investment experience and I don't think he had a need to 'control' his investments Mr A had already retired and had the option to take TFC from his DB scheme, however I appreciate this would have reduced his monthly pension substantially to below what Mr A felt he would need.

However, Mr A had other pensions with a total value of over £50,000 which he could have used flexibly to take additional income until the scheme retirement age and joint savings of around £27,000. So, I think Mr A would have had other options to access cash that were more suitable than risking his main pension provision by transferring his DB pension to a SIPP.

Mr A explained that he wanted to use the TFC to carry out work on his home and help assist family members. But I'm not persuaded Mr A had a strong enough need to access TFC from his DB scheme at the time of the review to risk the full guaranteed pension he was able to claim just three years later.

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 was likely an attractive feature to Mr A. But whilst I appreciate death benefits are important to consumers, and Mr A 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 A about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement. And I don't think BRG explored to what extent Mr

A was prepared to accept a lower retirement income in exchange for potentially higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr A was married and so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr A predeceased her. I don't think BRG made the value of this benefit clear enough to Mr A. 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 as the cashflow analysis shows, there may not have been a large sum left, or the fund could have been completely depleted, particularly if Mr A lived a long life. In any event, BRG should not have encouraged Mr A to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Overall, I don't think different death benefits available through a transfer to a SIPP justified the likely decrease of retirement benefits for Mr A.

Ultimately, I don't think the advice given to Mr A was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr A was very likely to obtain lower retirement benefits and, in my view, there were no other reasons which would justify a transfer and outweigh this. I also think that the transfer of Mr A's other pensions would not have taken place had it not been for the incorrect advice given to Mr A to transfer funds from his DB scheme to the SIPP.

I say this because Mr A contacted BRG having found details of the DB scheme and was primarily seeking advice on how to use the funds to achieve his pension goals. The DB scheme made up the majority of Mr A's pension provision and had almost 10 times the value of his other pensions combined. I think it's unlikely he would have moved his smaller pension provisions into the SIPP had he been correctly advised not to transfer the DB scheme fund too.

So, I think BRG should've advised Mr A to remain in their DB scheme and think this would have resulted in Mr A not moving any of his pension provisions to the SIPP.

Other parties

BRG considered the recommendation that Mr A should use a DFM to manage his pension funds. As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr A, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr A should have been advised to remain in the DB scheme and so the DFM would not have had the opportunity to manage his funds if suitable advice had been given.

I understand that BRG is concerned about the actions of the DFM and I've considered that the DFM was also a regulated party with their own regulatory obligations and possibly have contributed to Mr A's losses. However, I can only consider the complaint in front of me which is against BRG and I think it's fair in the circumstances that they compensate him for his losses in full. I say this because, as explained above, without BRG's unsuitable advice Mr A likely would have remained in his DB scheme and his other pensions wouldn't have ended up in a SIPP or DFM. Consequently, he wouldn't have experienced the losses he did.

It follows in my view that the losses Mr A suffered in his SIPP could have been fully avoided if BRG had given suitable advice and so I consider it fair and reasonable that they should compensate him for any losses he suffered by transferring out of his secure DB scheme.

Putting things right

My aim in awarding redress is to put Mr A as far as possible in the position he'd be in now if BRG had given him suitable advice. I think Mr A would have retained his existing pension arrangements.

What should BRG do?

To compensate Mr A fairly, BRG must determine the ***combined fair value*** of his transferred pension benefits as outlined in *Step One* and *Step Two* below. If the ***actual value*** is greater than the ***combined fair value***, no compensation is payable.

actual value

This means the actual amount payable from the SIPP at the date of the calculation. My aim is to return Mr A to the position he would have been in but for the actions of BRG. This is complicated where investments are illiquid (meaning they cannot be readily sold on the open market), as their value can't be determined. That appears to be the case here.

To calculate the compensation, BRG should agree an amount with the SIPP provider as a commercial value, then pay the sum agreed to the SIPP plus any costs and take ownership of the investments. If BRG is unable to buy the investments, it should give them a nil value for the purposes of calculating compensation. The value of the SIPP used in the calculations should include anything BRG has paid into the SIPP and any outstanding charges yet to be applied to the SIPP should be deducted.

In return for this, BRG may ask Mr A to provide an undertaking to account to it for the net amount of any payment he may receive from the illiquid investments. That undertaking should allow for the effect of any tax and charges on what he receives.

BRG will need to meet any costs in drawing up the undertaking. If BRG asks Mr A to provide an undertaking, payment of the compensation awarded may be dependent upon provision of that undertaking.

fair value – step one

If Mr A had been given suitable advice, I think he would have remained in the DB scheme. BRG must therefore calculate the value of the benefits Mr A lost as a result of transferring out of his DB scheme in line with the regulator's pension review guidance as updated by the FCA in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.

This calculation should be carried out as at the date of my final decision, using the most recent financial assumptions at the date of that decision. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr A's acceptance of the decision.

BRG may wish to contact the Department for Work and Pensions (DWP)to obtain Mr A's contribution history to the State Earnings Related Pension Scheme (SERPS or S2P). These details should then be used to include a 'SERPS adjustment' in the calculation, which will take into account the impact of leaving the occupational scheme on Mr A's SERPS/S2P entitlement.

fair value - step two

BRG will also need to determine the notional value of Mr A's other pensions, had they not been invested in the DFM. I don't know how exactly Mr A would have invested, so I used a reasonable benchmark .

Any additional sums paid into the SIPP should be added to the *fair value* calculation from the point in time when they were actually paid in. Any withdrawal, income or other payment out of the investment should be deducted from the *fair value* at the point it was actually paid so it ceases to accrue any return in the calculation from that point on. If there are a large number of regular payments, to keep calculations simpler, I will accept if BRG totals all those payments and deducts that figure at the end instead of deducting periodically.

The combined value of the sums produced by the above two steps is the ***combined fair value***.

If the redress calculation demonstrates a loss, the compensation should, if possible, be paid into Mr A's pension plan. The payment should allow for the effect of charges and any available tax relief. The compensation shouldn't be paid into the pension plan if it would conflict with any existing protection or allowance.

If a payment into the pension isn't possible or has protection or allowance implications, it should be paid directly to Mr A as a lump sum after making a notional deduction to allow for income tax that would otherwise have been paid. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to his likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

The payment resulting from all the steps above is the 'compensation amount'. The compensation amount must, where possible, be paid to Mr A within 90 days of the date BRG receives notification of his acceptance of my final decision. Further interest must be added to the compensation amount at the rate of 8% per year simple from the date of my final decision to the date of settlement for any time, in excess of 90 days, that it takes BRG to pay Mr A.

It's possible that data gathering for a SERPS adjustment may mean that the actual time taken to settle goes beyond the 90 day period allowed for settlement above – and so any period of time where the only outstanding item required to undertake the calculation is data from DWP may be added to the 90 day period in which interest won't apply.

In addition, BRG should pay Mr A £400 for the trouble and upset caused as a result of the disruption to his retirement planning.

Determination and money award: I uphold the complaint. I consider that fair compensation should be calculated as set out above. My final decision is that Better Retirement Group Ltd should pay Mr A the compensation amount as set out in the steps above, up to a maximum of £160,000 plus any interest on the balance as set out above.

Where the compensation amount does not exceed £160,000, I additionally require Better Retirement Group Ltd to pay Mr A any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I only require Better Retirement Group Ltd to pay Mr A any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Better Retirement Group Ltd pays Mr A the balance. I additionally recommend any interest calculated as set out above on this balance to be paid to Mr A.

If Mr A accepts my final decision, the money award is binding on Better Retirement Group Ltd. My recommendation is not binding on Better Retirement Group Ltd. Further, it’s unlikely that Mr a can accept my decision and go to court to ask for the balance. Mr a may want to consider getting independent legal advice before deciding whether to accept this decision.

My final decision

I uphold the complaint and direct Better Retirement Group Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 8 July 2022.

Terry Woodham
Ombudsman