DRN-3244950

The complaint

Mr O complains about the advice given by Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co ('Pi Financial') to transfer the benefits from his preserved defined-benefit ('DB') occupational pension scheme to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In July 2018 Mr O met with Pi Financial to discuss his pension and retirement needs.

Pi Financial completed a fact-find to gather information about Mr O's circumstances and objectives. Pi Financial also carried out an assessment of Mr O's attitude to risk, which it deemed to be 'low medium' – a score of five on a scale of one to ten. I can see the investigator referred to Mr O's attitude to risk as being cautious, but this appears to have been a mistake.

In August 2018, Pi Financial advised Mr O to transfer his pension benefits into a personal pension and invest the proceeds in a growth fund deemed to be in-line with Mr O's attitude to risk. The suitability report listed nine bullet points, which outlined Mr O's goals, needs and priorities that the adviser had considered in making the recommendation. These included Mr O's concern about the financial security of his DB scheme and his desire to have flexibility and control of his pension and the income he needed. But in summary the adviser's reasons for this recommendation were:

- To enable Mr O to have control over his pension and to provide flexibility;
- To provide lump sum death benefits to Mr Os' wife and children rather than an income; and
- To provide with Mr O with the income he needed, which the stress testing of the pension's ability to generate over time showed would last beyond his anticipated life expectancy.

In 2020 Mr O, through a representative, complained to Pi Financial about the suitability of the transfer advice because he said he now realises the advice was flawed – his objectives and the implications of transferring weren't properly considered. He said that, had they done so, he believed the transfer wouldn't have been recommended.

Pi Financial didn't uphold Mr O's complaint. In summary it said there is no evidence that the recommendation was unsuitable for Mr O or that it didn't meet his requirements. It disagreed with Mr O's representative's argument that the advice paperwork was confusing – it said at no time did Mr O say he was confused or didn't understand the suitability report, the risk involved or what he was giving up by transferring. It said that Mr O's motivation was to ensure his death benefits were passed to his wife and that he wanted flexibility of a personal pension over the fixed income provided by his existing DB scheme – both of which the transfer provided him with.

Mr O referred his complaint to our service. An investigator upheld the complaint and required Pi Financial to pay compensation. In summary they said that while the transfer looked viable from a financial point of view because the critical yield wasn't unreasonably high, given Mr O's circumstances, they didn't think it was suitable advice to recommend he give up guaranteed benefits from his DB scheme, which would have served him later on in life. They pointed to the assessment of Mr O's attitude to risk, where he'd indicated that the intended use for his pension was to meet his essential living costs and that he could only afford to suffer a small loss. They said that based on these answers and his cautious attitude to risk he should have been advised against transferring. They said they didn't think Mr O was an experienced investor or had a high enough capacity for loss to make the transfer suitable. Overall they said they didn't think there were good enough reasons for Pi Financial to recommend Mr O transfer out of his DB scheme.

Pi Financial disagreed. It said that Mr O's attitude to risk was initially assessed as high medium. But after further discussion with Mr O and consideration of his capacity for loss, and given the low critical yield required to meet his need, they jointly decided Mr O could take a low medium risk to achieve his objectives. It disagreed that Mr O wasn't an experienced investor – it said that because he held a personal pension which he had regular reviews of with an adviser, he did hold enough knowledge and experience to understand investment risk. It went to explain that Mr O's capacity for loss had taken into account all of his retirement provisions including his state pension and personal pensions. It explained that Mr O would receive 75% of the income he said he needed in retirement from his state pension at age 67, with his personal pensions providing the difference. It said his personal pensions would also fund his income need from 65-67 before he received his state pension. Overall it said that Mr O deemed it a bigger risk to remain in his DB scheme, dying prematurely and not having the transfer value to pass down to his beneficiaries.

The investigator wasn't persuaded to change their 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. My reasoning is set out below.

The regulator, the Financial Conduct Authority ('FCA'), states in its Conduct of Business Sourcebook ('COBS') that the starting assumption for a transfer from a DB scheme is that it is unsuitable.
So, Pi Financial should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr O's best interests (COBS 19.1.6). And having looked at all the evidence available, I'm not satisfied it was in his best interests.

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.

The critical yield required to match Mr O's benefits at age 65 was 5.61% if he took a full pension and 3.72% if he took a tax-free lump sum and a reduced 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 4.1% per year for 13 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 O's recorded attitude to risk as a 'low medium' and the term to retirement.

Having done so, the critical yield required to match Mr O's benefits at age 65 was 5.61% if he took a full pension. This is higher than the discount rate and marginally above the regulator's middle projection rate. Based on this, I think Mr O was likely to receive benefits of a lower overall value than the DB scheme at retirement, as a result of investing in line with that attitude to risk.

But assuming Mr O opted to take tax-free cash and a reduced pension, the critical yield is 3.72%. And I accept this is lower than the discount rate. But it is only lower by a very small margin. In my view there would be little point in Mr O giving up the guarantees available to him through his DB scheme only to achieve at best, the same level of benefits outside the scheme. And here because the difference between the two rates was so small, I think it's likely that, at best Mr O would end up receiving benefits of broadly the same overall value as a result of investing in line with a low medium attitude to risk. There of course still remained the risk that Mr O might end up with benefits of a lower overall value than his DB scheme at retirement.

But even if I accept that the transfer had the potential to be financially viable, crucially I think it's likely Mr O's income needs in retirement could already be reasonably met by his existing pension provision along with his state pension – he didn't need to take on any investment risk with his DB scheme benefits. And I think Pi Financial's argument in response to the investigator's findings about Mr Os' capacity for loss actually support this.

I say this because Mr O said that his income need in retirement was £12,000, which the adviser said would likely equate to just under £17,000 at 65 taking account of inflation. Mr O didn't have any significant debts or any mortgage to repay – so given that it appears his outgoings were relatively modest, I think his stated income requirement appears reasonable in the circumstances. Mr O's state pension age is 67. This would give him an income assumed to be worth around £12,000 a year at this time.
If at age 65 Mr O had chosen to take a reduced pension from his DB scheme and a tax-free lump sum, he'd be in receipt of just under £8,000 a year. So at 67, Mr O's combined pension income from these two sources would more than meet his stated need.

The gap in Mr O's income requirement is between taking his benefits from his DB scheme at age 65 and receiving his state pension two years later. I think Mr O could have funded this from his tax-free cash entitlement. But Mr O also had two other sources of pension income –

a personal pension and a workplace pension. It was recorded that Mr O was contributing 1% of his salary to his workplace pension. But importantly it's also recorded that Mr O had a surplus income of £900 a month.

It strikes me that rather than being advised to transfer his DB scheme benefits in the expectation of increasing or providing an adequate pension income, Mr O could have been advised to increase his workplace pension contributions instead. And given Mr O still had a period of 13 years to retirement, I think it would have been suitable advice to do so. I also think this could've likely provided Mr O with sufficient means coupled with his existing personal pension to fund the two-year gap before receipt of his state pension.

Furthermore I don't think this was the limit of the alternatives available to Mr O. Because I don't think Mr O had a need for a large cash lump sum on retirement (as I said above he had no significant debts to repay for example) he could've been advised to take his full pension from his DB scheme at 65 providing him with a greater guaranteed level of income thereby reducing the income needed from his other provision (funded the same as I said above) to bridge the gap from 65 to 67. If Mr O did have a requirement for a cash lump sum, this could have likely been provided by his workplace pension and/or his existing personal pension.

For these reasons, I don't think it was in Mr O's best interests for Pi Financial to recommend that he transfer out of his DB scheme.

I can see that Pi Financial says Mr O was an experienced investor because he had a personal pension and workplace pension already – so he was someone who understood risk-based investments and had a full understanding of the risks and benefits involved with personal pensions. It says Mr O checked the advice paperwork carefully and thought carefully before deciding to go ahead.

I don't think Mr O's holding of a personal and workplace pension reasonably classifies him as an experienced investor. But in any event, while he might have understood the risks involved because Pi Financial disclosed them, this doesn't mean the recommendation was suitable. Pi Financial was under a duty to provide suitable advice and to act in Mr O's best interests. And for the reasons I've set out above, I don't think Pi Financial should have recommended Mr O go ahead with the transfer.

Pi Financial has also pointed to the cash-flow model it carried out as part of the advice, which shows that Mr O's income needs would've been able to be have been met beyond his expected life expectancy of 82. I've considered this, but not only is past performance no guarantee of future performance, as I've set out above I don't think it was necessary or suitable for Mr O to take the risk of transferring out of his DB scheme when he would likely be no better off as a result of doing so. I think his income needs could already have reasonably been met by the guaranteed income from his DB scheme coupled with the income from his other existing pension provision.

Overall, I think Pi Financial ought to have told Mr O it wasn't in his best interests to transfer out of the DB scheme because I think it's clear that he would likely be no better off if he did so. I think Mr O's retirement income needs could likely be met with careful planning and clear advice in relation to his other existing pension provision.
Because Pi Financial didn't do that and recommended he transfer instead, I don't think this was acting in Mr O's best interests.

Of course financial viability isn't the only consideration when giving transfer advice. I accept there might be other considerations, which mean a transfer is suitable. I've considered these below.

Flexibility

Pi Financial recorded that Mr O wanted flexibility to control the income he needed.

But I don't think Mr O required flexibility in retirement or that this was a suitable reason to recommend the transfer. This is because as I've already set out, the evidence shows that Mr O didn't have a need for a variable income throughout his retirement. I'm satisfied Mr O could have met his income needs in retirement through his DB scheme and the flexibility he already had in how he accessed his benefits in the future through his other existing provision. Furthermore, if Mr O did in fact have a need for flexibility in retirement, beyond that which he already had, I think this could've been explored closer to his intended retirement age, which was at least 13 years away.

Overall I'm not persuaded Mr O's need for flexibility was a real objective – I think it was simply a consequence of transferring out to a different arrangement.

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 O. But whilst I appreciate death benefits are important to consumers, and Mr O 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 O about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr O was married, so the spouse's pension provided by the DB scheme would've been useful to his spouse if Mr O predeceased her. I don't think Pi Financial made the value of this benefit clear enough to Mr O. 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 particularly if Mr O lived a long life. In any event, Pi Financial should not have encouraged Mr O to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr O genuinely wanted to leave a legacy for his spouse, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Pi Financial should've instead explored life insurance. I appreciate that the suitability report mentioned term assurance with a sum assured of £229,210 quoted at £34.51 a month. This was discounted by Mr O because it says he didn't want a monthly commitment – albeit this strikes me as somewhat odd given he had significant disposable income. In any event I don't think that this was a balanced way of presenting this option to Mr O.

Basing the quote on this figure essentially assumed that Mr O would die on day one following the transfer, and that isn't realistic. Ultimately, Mr O wanted to leave whatever remained of his pension to his spouse, which would be a lot less than this if he lived a long life and/or if investment returns were poor.

So, the starting point ought to have been to ask Mr O how much he would ideally like to leave – this was likely to be cheaper to provide. Mr O's view about a monthly commitment, would in my view have been very different as a result.

Overall, I don't think different death benefits available through a transfer to a personal pension was a good enough reason to recommend he go ahead. And I don't think that insurance was properly put to Mr O as a more suitable alternative.

Concerns over financial stability of the DB scheme and wanting to sever links with employer

While not one of three key reasons recorded on the suitability letter as to why Mr O should transfer out of his DB scheme, the advice paperwork from the time records that Mr O had some concerns about the financial security of his DB scheme and that he *"...wanted to break all ties with my previous employer and would prefer to move my funds to an individual plan which is under my control."*

I think Mr O's desire for control over his pension benefits was overstated. Mr O was not in my view an experienced investor to the extent that he had an interest in or the knowledge to be able to manage his pension funds on his own – the investment fund choice doesn't indicate this was the case. So, I don't think that this was a genuine objective for Mr O – it was simply a consequence of transferring away from his DB scheme.

The funding of Mr O's employer's DB scheme was not in a position such that he should have genuinely been concerned about the security of his pension. The suitability letter actually explains that whilst the scheme was underfunded at the time of the advice, plans were in place to ensure it was fully funded by 2021. So, I think the adviser ought to have reassured Mr O that this wasn't as concerning as he thought. In any event, I don't think severing links with his previous employer was an objective reason for recommending the transfer to Mr O.

Summary

I don't doubt that the flexibility, control and the potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr O. But Pi Financial wasn't there to just transact what Mr O might have thought he wanted. The adviser's role was to really understand what Mr O needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr O was suitable. He was giving up a guaranteed, risk-free and increasing income. In my view this income could have met the majority of his future retirement income if he'd also received suitable advice about how to make the best of his other existing pension provision. And in my view this would've been far preferable to Mr O giving up his only guaranteed retirement income. By transferring, Mr O was very likely to obtain at best broadly the same retirement benefits with the risk that they might be lower. In my view, there were no other compelling reasons which would justify a transfer.

So, I think Pi Financial should've advised Mr O to remain in his DB scheme.

I now need to consider whether Mr O would've gone ahead anyway, against Pi Financial's advice. Having done so, I don't think Mr O would've insisted on transferring out of his DB scheme and gone head in any event. I say this because Mr O was not in my view an experienced investor, despite what Pi Financial believes - so I think he relied solely on the advice he was given. At the time this pension was the primary source of Mr O's guaranteed future retirement provision.

So, if Pi Financial had provided Mr O with clear advice against transferring out of the DB scheme, explaining why it wasn't suitable for him, and if it had explained that he could likely achieve his overall retirement income needs from careful planning and advice utilising his existing pension provision and not risk his guaranteed pension to do so, I think that would've carried significant weight. I think Mr O would've accepted that advice; particularly as he couldn't access his pension for another four years and didn't intend to retire until age 65.

In light of the above, I think Pi Financial should compensate Mr O 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 the business to put Mr O, as far as possible, into the position he would now be in but for Pi Financial's unsuitable advice. I consider Mr O would have most likely remained in his DB scheme if suitable advice had been given.

Pi Financial must therefore undertake a redress calculation in line with the regulator's pension review guidance as updated by the Financial Conduct Authority in its Finalised Guidance 17/9: Guidance for firms on how to calculate redress for unsuitable DB pension transfers.
My understanding is that Mr O has not yet retired. So, compensation should be based on his normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out as at the date of my final decision and 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 O's acceptance of the decision.

Pi Financial may wish to contact the Department for Work and Pensions (DWP) to obtain Mr O'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 O's SERPS/S2P entitlement.

If the redress calculation demonstrates a loss, the compensation should if possible be paid into Mr O'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 O 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'. This amount must where possible be paid to Mr O within 90 days of the date Pi Financial 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 Pi Financial to pay Mr O.

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.

Where I uphold a complaint, I can award fair compensation of up to £160,000, 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 £160,000, I may recommend that the business pays the balance.

I can see the investigator also recommended an award of £300 for the distress and inconvenience the matter has caused Mr O. And taking everything into account, including that I consider Mr O is now at the age when his retirement provision is of greater importance, I think the unsuitable advice has caused him distress. So I think an award of £300 is fair in all the circumstances

My final decision

Determination and money award: I uphold this complaint and require Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co to pay Mr O the compensation amount as set out in the steps above, up to a maximum of £160,000.

Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co should also pay Mr O £300 for the distress and inconvenience this matter has caused.

Where the compensation amount does not exceed £160,000, I would additionally require Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co to pay Mr O any interest on that amount in full, as set out above.

Where the compensation amount already exceeds £160,000, I would only Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co to pay Mr O any interest as set out above on the sum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also recommend that Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co pays Mr O the balance. I would additionally recommend any interest calculated as set out above on this balance to be paid to Mr O.

If Mr O accepts this decision, the money award becomes binding on Pi Financial Ltd trading as PI Financial Dixon Sutcliffe & Co.

My recommendation would not be binding. Further, it's unlikely that Mr O can accept my decision and go to court to ask for the balance. Mr O 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 O to accept or reject my decision before 18 July 2022.
Paul Featherstone
Ombudsman