DRN-4354070

The complaint

Mr H complains that Greystone Financial Services Limited (Greystone) mis-advised him to transfer out of his Occupational Pension Scheme (the Scheme), losing valuable guarantees. He wants compensation for the losses incurred.

Mr H is represented by a claims management company (CMC) in bringing his complaint.

What happened

Mr H had been in poor health and wasn't working. He contacted the Scheme about taking his benefits and it provided a retirement pack in January 2016. Which confirmed the Scheme couldn't pay benefits as it didn't offer annuities. So, Mr H contacted Greystone, an independent financial adviser. It reviewed his pension benefit options over the telephone and sent the completed fact find to him to check and sign before returning. It subsequently sent a suitability letter dated 31 March 2016 recommending he take the maximum tax-free cash sum of £20,424.05 and purchase an annuity providing a fixed income of £2,601.12, guaranteed for 10 years with a 50% spouses' pension. And to use the tax-free cash to reduce living expenses by partially repaying his outstanding mortgages, which were currently unaffordable.

Mr H says it wasn't until talking with former work colleagues in 2021 that he realised he was receiving lower pension benefits. So, he spoke to the CMC, which having requested documents from Greystone, raised a complaint, making multiple points including:

- Mr H was suffering from cancer at the time and was financially vulnerable, which hadn't been considered
- Mr H had no capacity to suffer investment losses and that there had been no consideration of his health issues
- That valuable guarantees had been lost on transfer and this hadn't been considered or explained
- That the spouse's pension offered by the Scheme had been lost
- That Greystone hadn't considered alternative courses of action to transferring
- That Greystone had failed to consider whether the existing Scheme could have been accessed instead of being transferred

Greystone said it didn't need to consider the complaint as it had been made too late. As it was both more than six years since it gave the advice and three years since Mr H should have reasonably known he had grounds for complaint. Notwithstanding this it said the complaint was without merit as its advice had been suitable for Mr H. It said many of the points raised by the CMC were incorrect or had been addressed in the March 2016 suitability letter. It said Mr H and Mrs H's income was below their expenses and he'd wanted to use his tax-free cash to substantially reduce their outstanding mortgages which would significantly improve the family's finances pending receipt of an inheritance which would fully repay the debts.

Mr H referred his complaint to our service. Our investigator said he thought the complaint had been made within time. But he didn't uphold it.

Our investigator said Greystone's advice had been suitable. He said the fact find information confirmed Mr H was facing financial difficulties as he hadn't worked for several years following treatment for cancer in 2011 and he suffered with other health issues. And that Mr H and Mrs H's outgoings exceeded their income, with mortgage repayments being a significant expense which was causing distress.

Our investigator said the loss of the Guaranteed Minimum Pension (GMP) element in the Scheme had been considered in Greystone's suitability report along with Mr H's circumstances and objectives. He said benefits could only be accessed by transferring from the Scheme. And the evidence showed Mr H had already enquired directly with the Scheme about taking benefits before speaking to Greystone, so it was likely he was already considering this course of action.

Our investigator said the fact find and suitability report referred to likely inheritances for Mr H from his father and from Mrs H's late father. But that at the time these outcomes weren't certain. He said the evidence indicated Mr H had used most of the tax-free cash to reduce the mortgage before receiving an inheritance and clearing the balance the following year.

The CMC disagreed. It said Mr H had used the tax-free cash to reduce the mortgage, to *"meet everyday expenditure*" and on a newer car. And whilst he wanted to reduce his outgoings it wasn't the role of a financial adviser just to facilitate a transfer when there wasn't an urgent or desperate need. And Greystone should have established the extent of Mr H's debts and what alternatives were available, but it hadn't done so. The CMC said Mrs H's earnings hadn't been considered and their joint income was sufficient to meet their outgoings. As these alternatives hadn't been explored Mr H hadn't been able to make a *"fully informed decision".*

Our investigator said Greystone had considered Mrs H's income in giving the advice. And he said debt wasn't the only factor influencing his conclusion that the advice was suitable as Mr H's health was an important consideration. In terms of alternative options, he said further borrowing would be unlikely to reduce the stress caused by the debts and it was likely that help from family and friends would already have been explored.

As Mr H doesn't agree it has come to me to decide.

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.

The rules about making complaints set out time limits for them to be made. Both parties are aware of the rules, which are broadly within six years of the event complained about or within three years of the person reasonably becoming aware they had grounds to complain, if later. It seems reasonable that Mr H didn't become aware of any potential loss until discussing his pension with former colleagues in 2021. And he complained within three years of this, so his complaint was made in time and is one our service can consider.

And, having considered the complaint, I've decided not to uphold it.

Much is disputed and there are some inconsistencies in the evidence. In coming to my decision, I have focused on what I consider to be the key issues, although I have considered all the points made by Mr H and his CMC. Although I think many of these were directly addressed in the suitability report provided to Mr H in March 2016.

The issue for me to decide is whether the advice was suitable for Mr H given his financial circumstances and objectives. His pension contained a safeguarded right (the GMP pension element), which meant Mr H had to take financial advice about taking his benefits in a different way.

The Regulator's approach is that consumers shouldn't give up a safeguarded right, unless it can be clearly demonstrated that it is in their best interests to do so. Simply wanting to access a cash sum wouldn't usually be a sufficient financial objective to justify such a recommendation. Instead, it is what the sum is needed for that is relevant and whether alternative courses of action might have been available to better meet the need. And I think the advice Mr H was given with was suitable.

I don't have any information of what benefits Mr H understands his former colleagues to be receiving. But there are several explanations as to why these might be different to his own. Principal among these will be the largely money purchase nature of the Scheme. In Mr H's case his fund value was able to provide a significantly higher amount than the GMP that was guaranteed. And it provided those benefits around 10 years before the age that guarantee would apply. Mr H's former colleagues may have had larger fund values and/or taken benefits later and could generally be expected to be receiving higher payments as a consequence. And Greystone did provide specific risk warnings about taking benefits early in the suitability report.

Decisions to access pension benefits when dealing with issues like debt and ill-health are far from clear cut. And, with hindsight, identifying a superior strategy, might be easy, but may not reflect the situation at the time.

The CMC argues that repayment of the mortgage was a *"preference rather than an urgency"* and that Mr H had wanted advice on reducing his outgoings. And had Mrs H's earnings been considered there wasn't a problem. But it hasn't provided any evidence in support of these arguments. Or to rebuff the financial information and objectives recorded by Greystone in the fact find. And, because this document was sent to Mr H to check and sign to confirm the information was accurate, I think it is persuasive evidence.

Mrs H's income is noted and included in the appraisal. But at around £2,000 per annum less than what the CMC now states it was. Mr H is recorded as having retired due to ill health, having been treated for cancer around five years before. Whereas the CMC says he had cancer and was unemployed. Both the fact find and suitability report outline a situation of quite significant financial stress, although this would be easier to follow had this been summarised. And if this information wasn't accurate and in particular didn't reflect Mr H's objectives, he did have time to query this before the transfer was completed and there is no evidence that he did.

Mr H and Mrs H's annual expenditure is recorded as being around £16,800 per annum, before their two mortgage payments totalling a further £8,340 per annum. But their joint gross income appears to be only £20,700. That indicates quite significant financial problems even if Mrs H's earnings were £2,000 higher than Greystone recorded.

The suitability report sets out the options with the pension and that if the tax-free cash is used to reduce the mortgage pending receipt of expected inheritances their expenses would be significantly reduced. And once mortgage free Mrs H's income and the income from Mr H's annuities would meet their ongoing expenses.

There is some uncertainty about Mr H's income. Greystone refers to Statutory Sick Pay (SSP), then calls this *"State Benefits"*. If he'd retired, it's unlikely he would be receiving SSP. Equally, if he was unemployed, as the CMC says, he wouldn't be receiving SSP either. The weekly amount received of £116 was rather higher than either SSP or unemployment benefit at the time. Documents from Mr H's pension Scheme indicate he'd left that employment in June 2013. So, I think it is more likely that Mr H was receiving some form of incapacity benefit or Universal Credit.

The suitability report says that if Mr H took his pension benefits his State benefits were likely to reduce or even stop, suggesting it was means tested. But that he was prepared to accept this in order to significantly reduce the family outgoings by reducing debt. It's possible that any State benefit was payable for a fixed period or subject to ongoing fitness to work type assessments and therefore wasn't certain to continue. And this may have led Mr H to make enquiries about accessing his pension benefits before he approached Greystone.

The suitability report considers the benefit of reducing one of the two mortgages, presumably as this had the greatest annual cost and would provide the most cashflow benefit. The calculated reduction in payments was from £5,940 to £1,188 per annum. So, total mortgage costs would reduce from £8,340 to £3,588 per annum. The annuity would provide £2,601.12 per annum. So, as long as any reduction in State benefit (that solely due to accessing the pension benefits) didn't exceed the reduction in the mortgage costs, there does appear to be a clear advantage here.

And it does appear that Mr H used the tax-free cash to pay or reduce the mortgage before being able to fully repay this the following year as only £21,813.93 was outstanding then, compared to £37,000 noted in the fact find. I think it is likely that accessing the benefits when he did greatly reduce the level of stress and worry, particularly given his health and possible uncertainties in respect of future finances. It is in that context that the loss of any guaranteed benefit needs to be considered.

The guarantee here was a minimum annual pension of £696.80 per year from age 65, so 10 years after Mr H actually took his benefits. This minimum pension would then increase by inflation and provide a 50% spouses pension if he died. The Scheme guaranteed to pay at least this amount if the value of his fund at that point wasn't sufficient to secure at least this level of income. So, the value of this guarantee depended on the value of Mr H's fund and annuity rates at the time benefits were taken. And Mr H's fund was sufficient to provide more than the minimum GMP benefit, what wasn't secured was any increase in the level of income to be paid. But this aspect was considered by Greystone.

Greystone did research the annuity market and considered the available options, including one that would provide the GMP from age 65. From when the GMP "amount" of £696.80 per annum would start increasing by inflation. An increasing pension to help offset inflation is obviously attractive but was and remains a relatively expensive benefit to secure under an annuity. And, under this option the initial annuity income would be £356.08 per annum less than the actual annuity selected.

As Mr H was 55 years old, he would have received around £3,560 less in income before this increase started. And, under this option it was likely to be many years before the £696.80 per annum increasing element. would "catch up" to the higher fixed alternative. And, depending and how long Mr H and his wife lived, it might not ever exceed the cumulative income on the higher fixed option. As Mr H wanted to maximise his income Greystone advised that the higher fixed annuity better met this objective. So, whilst Mr H gave up a guarantee he did so in choosing to take his benefits in a different manner. One that helped reduce living costs and maximised his initial income, which does seem to have been the financial priority at the time, whilst still providing some security for his wife in the event of his death.

Alternative options

The CMC says Greystone should have considered alternative solutions such as raising loans or borrowing from friends. I think it is more likely than not that Mr H would have explored alternative options before making enquiries about his pension Scheme.

I think it is unlikely that a re-mortgage could have been arranged at the time. A significantly longer term would be required to reduce monthly costs to affordable levels and its likely only Mrs H's income would have been considered. Mr H and Mrs H already had what appears to have been an expensive second charge mortgage with high repayments given the outstanding loan amount and term. That suggests a high interest rate, perhaps indicating an additional borrowing solution had been attempted before.

It may be that the main mortgage lender, where the outstanding mortgage term was down to around five years may have been prepared to accept interest only payments or an extension of the term. But there is no guarantee that it would have done, and the second charge mortgage may have complicated this further. And whilst an inheritance was expected it wasn't clear how long this would take to finalise. So, uncertainty would continue even if this was an option, whereas taking the pension benefits provided an immediate solution.

I do think Mr H's health situation was considered in how and when he should best access his benefits. The suitability report states that Mr H had said:

> *"based on your current state of health you wish to draw your pension funds, to enjoy in the early years of your retirement due to the uncertainty of the quality of later life."*

It goes on to confirm that taking benefits immediately meant they were likely to be lower than had they been left until later, but that Mr H had said he:

> *"had no choice but to access your pension funds with immediate effect to fund your personal living expenses"*

I think there were valid reasons for using the pension benefits in the way they were. And the value of the guarantee given up was relatively modest. Reducing debt is also a low-risk strategy, providing a guaranteed return of the interest saved. For a risk adverse investor, as Mr H says he was, I don't think this was an unreasonable approach. And it did help address what appear to be pressing financial concerns, pending the future inheritance which would significantly improve the family's finances.

So, I think that Greystones advice was suitable for Mr H and I don't think it has treated him unfairly.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 February 2024.

Nigel Bracken
Ombudsman