

The complaint

Mr L complained that he was given unsuitable advice to transfer his defined benefit (DB) occupational pension scheme, to a type of personal pension plan.

Corporate Solutions (NI) Ltd is responsible for answering this complaint and so to keep things consistent, I'll refer mainly to "Corporate Solutions".

What happened

The pension in question here related to a previous DB scheme which at the time of the advice was in deferment. Mr L had accrued a number of years' service with this scheme and in 2019 he was given a cash equivalent transfer value (CETV) of £115,945. The normal retirement age (NRA) of the scheme was 65.

Mr L was referred to Corporate Solutions for regulated pension advice and information gathered about his circumstances and objectives at the time were broadly as follows:

- Mr L was 52 years old, unmarried but with a partner. Mr L had non-dependent children of his own from a previous marriage.
- At the time of the advice, Mr L wasn't working, apparently due to poor health and was in receipt of state benefits. There appeared little prospect of future paid work.
- As well as having the DB scheme with a CETV of £115,945 Mr L had personal pensions which included a "Section 32" arrangement (a type of buyout pension). He also had two other small funds in pension wrappers which I understand to have comprised of free standing AVCs and a defined contribution scheme. These were all fairly modest affairs comprising £10,179 / £6,270 / £4,598 respectively.
- He had £3,000 in cash savings.
- Corporate Solutions said Mr L wanted to start drawing from his DB scheme at the age of 55.

Corporate Solutions set out its advice in a suitability report on 18 June 2019. It advised him to transfer out of the BPS and invest the funds in a type of personal pension plan. Corporate Solutions said this would allow Mr L to achieve his objectives. Mr L accepted this advice and so transferred to a personal pension. In late 2022 Mr L complained to Corporate Solutions about its advice, saying he shouldn't have been advised to transfer out to a personal pension. In response, Corporate Solutions said it hadn't done anything wrong and was acting on the financial objectives Mr L had at the time.

Mr L referred his complaint to the Financial Ombudsman Service. One of our investigators looked into the complaint and said it shouldn't be upheld. The investigator thought that whilst Corporate Solutions hadn't believed transferring away from his DB scheme was suitable for Mr L, it had nevertheless made it very clear that the scheme had substantial benefits and provided Mr L was several and very prominent warnings about leaving the existing scheme.

The investigator said Corporate Solutions had provided enough information and explanation within its recommendation report to allow Mr L to make an informed decision as to whether or not he wanted to proceed in transferring away. Ultimately, the investigator concluded that Mr L had decided to proceed with the transfer anyway.

Mr L is represented in bringing his complaint. His representative disagreed with the investigator's view and added a substantial case for Mr L being particularly vulnerable at the time the advice was given. Corporate Solutions agreed with the investigator.

As the complaint couldn't be resolved informally, it came to me for a final decision.

I issued a provisional decision (PD) about this case on 15 February 2024. In this I said I wasn't minded to uphold the complaint. I set out a number of reasons for this and I invited any party to respond by 28 February 2024 with any new information or evidence they would like me to consider. I said that after this I anticipated issuing 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.

I've also 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'). 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 Corporate Solutions' 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.

I have further considered that the regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Corporate Solutions should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L's best interests.

I've used all the information we have to consider whether transferring away from the DB scheme to a personal pension was in Mr L's best interests. I have considered with great care everything our investigator said and also the responses to my PD.

I still don't think Corporate Solutions demonstrated that the transfer was in Mr L's best interests, so I'm now upholding Mr L's complaint.

Introductory issues

I mentioned in my PD that it had been put forward that Mr L was a vulnerable consumer. I've noted Corporate Solutions has said more about this although it ultimately agrees with me. However, to be clear, in the context of him not having the capacity to make any decisions, I still think there's no supporting evidence showing Mr L didn't have the capacity to understand what was going on. So, when he hand wrote a note at the time the advice was given, in which he said he wanted to go ahead and transfer, there's no medical (or other) evidence showing that this wasn't his genuine wish at the time.

However, everything I've seen shows Mr L was most likely an inexperienced investor and he had very limited knowledge of pension affairs and probably also of wider financial matters in general. I think it's also fair to say he was a person of relatively modest means.

On the other hand, it was Corporate Solutions which was the regulated party here. So, when giving paid-for advice, the adviser's job wasn't just to list or transact what Mr L may have thought was a good idea. Their job was to really understand Mr L's situation and make recommendations that were in his best interests. In its response to my PD Corporate Solutions accepts these responsibilities although it nevertheless repeated that Mr L was given certain warnings about transferring.

But Corporate Solutions still recommended in its suitability report that Mr L should transfer. It also recommended a particular platform he should use together with a recommended fund. And, of course in any event, Corporate Solutions had a duty here, so even if the adviser had believed transferring might not be right, then they should have clearly said so.

Next, I turn to the issue of Mr L's health. My position on this hasn't changed. I certainly wouldn't wish to imply that Mr L's health wasn't an issue of real concern. But there was no evidence that he was about to pass away soon or that he had a terminal illness. This is important because part of Corporate Solutions analysis and recommendation was based on Mr L not living a long life. This was evidently based on Mr L "feeling" he wasn't going to make it to the state retirement age. However, for him this was still almost 15 years away and we simply can't say what his life expectancy was.

I've taken what I consider to be a reasonable approach here given the lack of any substantive / medical evidence. And to be clear, I don't think the information was clear enough that Mr L was going to die any time soon.

In this context, I went on to consider whether the advice to transfer away from the DB scheme was suitable.

Financial viability

Corporate Solutions referred in its transfer analysis and suitability report to 'critical yield' rates. The critical yield is essentially the average annual investment return that would be required on the transfer value - from the time of advice until retirement - to provide the same annuity benefits as the DB scheme. It is therefore part of a range of different things which help show how likely it is that a personal pension could achieve the necessary investment

growth for a transfer-out to become financially viable. The critical yield required to match his existing benefits at the NRA of 65 was 9.6%. Corporate Solutions also calculated that the critical yield for retiring early at the age of 55 was 30.19%.

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 relevant discount rate closest to when the advice was given which I can refer to was published by the Financial Ombudsman Service and was only 4% per year for 12 years to retirement (age 65), which is well below the critical yield figure I've referred to above. For the age of 55, the discount rate was only 2.7% for over 2 years to retirement. These rates infer that reaching the yields above would be highly unlikely.

I've also kept in mind that the regulator's upper projection rate at the time of the advice was 8%, the middle projection rate was 5%, and the lower projection rate was 2%. I've noted too, the attitude to risk (ATR) categorisation which Corporate Solutions applied to Mr L was only "cautious" and we were in a sustained years' long period of low interest rates and bond yields. As I explain below, the fund recommendation Corporate Solutions gave to Mr L would have seen virtually no growth whatsoever.

As a further comparison, Corporate Solutions calculated a transfer value comparator (TVC) of £286,248. This was required by the regulator on transfers after October 2018 - and is a measure of the funds that would need to be invested at the time of transfer on a so-called 'risk-free' basis to provide the same income as the DB scheme at normal retirement age. The transfer analysis report provided another comparison. It said even to purchase a pension with *no* spouse's pension, *no* increases in payment and *no* guarantee at retirement, the fund required was still £207,543. To be clear, this was a much inferior pension to the one he already had.

Corporate Solutions said Mr L didn't really want to replicate the pension he was already in, due to him being in poor health and wanting to have a 'pot' he could pass to his (unmarried) partner and adult children if he died, something he couldn't have done with the DB scheme. I cover these points later. However, in my view, the above figures are important financial comparisons, and indeed, they were requirements from the financial regulator at the time. They provide a useful insight into the real value of the pension Mr L was being recommended to irreversibly give up. The TVC was telling him that buying a similar scheme would be more than double what his current CETV was. And so I think all this data was showing that there was a very real risk that Mr L could be left with lower retirement benefits as a result of transferring away.

Of course, Corporate Solution's recommendation that he should transfer out to a personal pension was not predicated on the financial comparisons with his current scheme alone. Rather, Corporate Solutions said Mr L had different reasons to transfer away, so I've thought about all the other considerations which might have meant a transfer was suitable for him, despite providing the overall lower benefits mentioned above over the longer term.

I've considered these below.

Other reasons to transfer

Corporate Solutions listed a number of themes as supporting the recommendation to transfer away. It said *“your main objective is to improve the death benefits and enable the flexibility and access to funds which you require at age 55. You are happy to give up the guarantees provided by the Defined Benefit Pension Scheme if your objectives can be met”*. I’ve summarised all the transfer objectives as follows:

- Corporate Solutions said Mr L wanted to access 25% tax-free cash and income at age 55 to ‘travel’.
- It said that when he came to draw retirement benefits, he did not require a fixed monthly income. He preferred a flexible income.
- The death benefits were more suitable for Mr L in a personal pension arrangement.

So, it seems the supporting reasons that Corporate Solutions recommended the transfer out to a personal pension was for the flexibility and control it offered to Mr L. I have therefore considered all these issues in turn.

- *Assessing the benefits early and taking tax-free cash*

As I say, I do accept Mr L’s health was probably a worry for him and he wanted to enjoy his pension funds in his fifties as much as possible. However, I still think Corporate Solutions’ thinking on this lacked clarity. On one hand it was saying Mr L was too ill to work and the prospect of working was completely off the table in the future. It was also implying his life could be cut short. So, in my view, transferring his pension to access a lump-sum early for the purpose of travelling, seems to conflict with these themes.

In reality, I don’t think there were any plans to travel; these were mere aspirational thoughts. And however genuine these might have been, Corporate Solutions should have known that in this case, Mr L’s overall pension provision was modest. He was 52 years old and may have still had many years ahead of him where he’d want or need to draw a pension to actually live on.

It may well have been the case that transferring to a personal pension could have resulted in a larger tax-free lump sum; we often see that lump sums in personal pensions are somewhat higher than on offer from a DB scheme. But this difference merely reflects the different ways the benefits are paid. And so the adviser should have been telling Mr L that removing 25% of his transferred funds at the age of 55 came with consequences for his later life. In short, he’d have much less left to live on.

I’ve also seen no evidence that Mr L needed a lump sum of cash for any specific purpose. As I say, there were no travel plans evident and even if there were, he appeared to have other financial resources in the form of either his savings or other small pensions from which he could draw, also at the age of 55. I note also that in 2019 we were in a period of sustained very low interest rates. So, whilst I’m sure extra cash might have sounded attractive, the reality here was that there appeared no apparent *need* for it, given Mr L’s overall pension provision was so modest.

But more so, there was no real reason why Mr L couldn’t just remain in the DB scheme and access the benefits from that early. He’d have been able to do so at the age of 55 onwards and the reasons for not taking advantage of this was not clear, not least since Corporate Solutions referred positively to this saying, *“in all probability the transfer value will increase and additionally at that time you could consider the early retirement benefits being offered by [The Scheme] and make a more informed decision”*.

In summary then, there was no reason to access tax-free cash and doing so would only cause Mr L's overall pension benefits to substantially decrease. As I'll explain later, as an objective of his was to pass on money, this conflicted with his aspirations of passing on wealth to his relatives if he died. But more so, he would be removing funds when he could ill afford to do so. Corporate Solutions did not properly consider the impacts of these actions.

- *Flexibility*

I've seen no compelling evidence that Mr L needed income flexibility in retirement. 'Retiring' early from the DB scheme wasn't comprehensively considered. We also know if Mr L retired at the NRA, the annual pension was estimated as £9,631. And if using 55 as the retirement age, the annual pension was £4,503. These are moderate amounts, but Mr L had a moderate DB scheme. But even with using these rather low pension amounts, I've seen nothing showing why these wouldn't help meet his income needs. I've already set out his benefit entitlements which on the 'fact-find' were shown at £1433 per month. These already seemed to more than cover his outgoings.

I also think insufficient consideration was taken of Mr L's partner and whether she had pensions of her own or a capacity for paid work. But the indications from what I've seen of Mr L's situation is that his living costs were low and already met.

Overall, I've seen absolutely nothing explaining why Mr L needed a flexible income in retirement. In my view, the opposite was true – what he probably needed was a small and steady income source which was guaranteed and protected from future inflation. I therefore think the much more suitable option was for Mr L to use and access his DB pension in the way it was originally intended. The evidence even points to him continuing to draw his state benefits for as long as possible as these already appeared to be supporting him financially. Delaying accessing his DB scheme for as long as possible would be beneficial and eventually help provide a more certain future with a higher pension income.

I've also seen nothing which shows Mr L had either the desire or capacity to exercise personal control over his pension. Mr L had no previous exposure to investing and he had no such investments at the time, despite having some savings. It's true he had a DC scheme with investments – but there's nothing to show these were comprised of anything other than 'off the shelf' investment strategies requiring no direct input from Mr L.

Corporate Solutions made some relevant remarks about this after I'd issued my PD. It pointed out that although the recommendation was to transfer to a self-invested personal pension (SIPP) the initial fund recommendation was for him to broadly keep the funds in cash. Of course, this was only the initial fund recommendation and although clearly a low-risk strategy, there was always the potential to change funds. But what Corporate Solutions was recommending here was for Mr L to place the transferred pension into a fund that would have had, essentially, no growth. At the time, the Bank of England base rate was only 0.75% and the outlook for inflation was that it would remain below 2%. This was the pre-pandemic period and there was no indication these rates would rise any time soon.

So the advice to use this type of 'cash' fund was constraining any growth when Mr L was still only 52 and couldn't yet access his pension, whereas leaving the pension where it was would have benefitted from significant growth within the DB scheme as Mr L approached retirement age.

The CETV was also a large amount of money by Mr L's standards so I think he would have found the complexity, scale and responsibility of managing over £115,000 of his own transferred funds from his DB scheme to be onerous in the years ahead. What I've seen

tends to show Mr L would have required ongoing financial advice and support, all of which would cost him money which his DB scheme didn't require from him.

So, I think Mr L's circumstances were much more aligned to him remaining in his existing scheme and retiring from that when he felt he was ready to do so, and then drawing the DB pension.

- *Death benefits*

Death benefits are an emotive subject and 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 probably made to look like 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 to a personal pension because of this, the priority here was to advise him about what was best for his retirement provisions. A pension is primarily designed to provide income in retirement.

Mr L was only 52. Another obvious drawback with a personal plan's death benefits is that the amount left to pass on – to anyone – may be substantially reduced as the pensioner starts to withdraw his or her retirement income. We know Mr L already had limited funds in pension so the adviser should have therefore additionally known that a male retiring at 55 would likely still have several years ahead in which he would be drawing down his pension funds thus leaving less to pass on to someone, even if their health wasn't good.

Overall, in this case I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr L

- *Other issues*

I understand Mr L was concerned about the reliability of the DB scheme in the years ahead. But there was no threatened prospect of an insolvency of his DB scheme at the time. And even if there was, I would have expected the adviser to have comprehensively gone through the pension protection fund (PPF) options and also detailed the retirement income relating to this. In the event, I think the adviser did demonstrate to Mr L that falling into the PPF wasn't really as bad as it may have sounded. The point of the PPF is to protect pensioners and I don't consider this issue affects the advice or case in any way.

I note Mr L also wrote a handwritten note at the point of transferring his funds from the DB scheme to a personal pension arrangement. Our investigator thought this was significant as he basically explained in this note why he wanted the money. But as I've said, his rationale for accessing these funds was not good – and the adviser should have pointed this out. In my view, the correct thing for the adviser to do would have been to reject Mr L's rationale by clearly explaining the unsuitability of what was being proposed. Instead, the adviser had recommended transferring so I don't consider it relevant, or indeed surprising, that Mr L followed their 'logic' when writing his note about agreeing to transfer.

Summary

I don't doubt that the flexibility, control and potential for different death benefits on offer through a personal pension would have sounded like attractive features to Mr L. But as I've said, Corporate Solutions wasn't there to just transact what Mr L – a relative amateur in these matters - might have thought he wanted. The adviser's role was to recommend what was in his best interests; and the adviser recommended that he should transfer away. In my view, this was wrong.

Ultimately, I don't think the advice given to Mr L was suitable. Mr L's pensions really mattered for his and his partner's future. He was giving up a guaranteed, risk-free and increasing income within the existing DB scheme. In my view, his circumstances show he could ill afford to do this and by transferring to a personal pension, the evidence shows Mr L was likely to obtain lower retirement benefits. I don't think there were any other particular reasons which would justify the transfer and outweigh this, including the reasons put forward about health. I think Corporate Solutions ought to have clearly advised him against transferring out of his DB scheme.

On this basis, I think Corporate Solutions should have advised Mr L to remain in his DB scheme.

I have considered, given the circumstances of the time, whether Mr L would have transferred to a personal pension in any event. I accept that Corporate Solutions disclosed some of the risks of transferring to Mr L, and provided him with a certain amount of information. But ultimately it advised Mr L to transfer out, and I think Mr L relied on that advice. I'm not persuaded that Mr L would have insisted on transferring out of the DB scheme, against Corporate Solutions' advice. I say this because Mr L was an inexperienced investor and this pension accounted for the majority of his retirement provision at the time. So, if Corporate Solutions had provided him with clear advice against transferring out of the DB scheme, explaining why it wasn't in his best interests, I think he would have accepted that advice.

In light of the above, I think Corporate Solutions should compensate Mr L 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 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 occupational pension scheme if suitable advice had been given.

Corporate Solutions 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>.

Compensation should be based on the scheme's early retirement age of 55, as I think this is what he would have gone on to do.

This calculation 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, this 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 calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Corporate Solutions should:

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculation that:
 - the 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 the redress prudently is to use it to augment

the DC 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 Corporate Solutions' offer to calculate how much of the redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of their 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 to Mr L as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Corporate Solutions may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – *presumed* to be 20%. So making a notional deduction of 15% overall from the loss adequately reflects this.

My final decision

I uphold this complaint and now direct Corporate Solutions (NI) Ltd to pay Mr L the compensation amount as set out in the steps above.

If Mr L accepts this decision, the money award becomes binding on Corporate Solutions (NI) Ltd.

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 28 March 2024.

Michael Campbell
Ombudsman