DRN-4782591

Financial Ombudsman Service

The complaint

Mr O complains about the advice given by Pi Financial Ltd (Pi) to transfer the benefits from his 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

Following a recommendation from a family member, Mr O approached Pi in late 2018 to discuss his pension and retirement needs. Mr O was also considering repaying his mortgage early.

Pi completed a fact-find to gather information about Mr O's circumstances and objectives. It noted the following:

- Mr O was aged 57 and married with no dependent children. Mrs O was aged 56.
- Mr O was employed with a gross annual income of £36,000. Mrs O had a gross annual income of £26,000.
- Mr O's net monthly income was £2,300 and his monthly outgoings were noted as £2,075. Mrs O had a net monthly income of £1,600 and net monthly outgoings of £1,300.
- Mr and Mrs O owned their own home valued at £600,000, which had an outstanding mortgage of £110,000 costing them £1,200 in monthly repayments and a remaining term of nine years.
- Mr and Mrs O had a joint personal loan with an outstanding two-year term costing them £150 in monthly repayments.
- Aside from £2,000 on deposit, they had no other savings or investments.
- Aside from his DB scheme, Mr O was also a current member of his employer's defined contribution pension scheme which had a fund value of £56,992. Both he and his employer made monthly contributions to the plan. Mrs O was a member of her employer's occupational scheme.
- Mr O said he wanted to retire at age 63 or have the option to go part-time. Mrs O said she proposed to retire at age 67. Mr O estimated he would need an income of £14,347 per year in retirement.
- His DB scheme had a cash equivalent transfer value ('CETV') of £131,132.
- Mr O said he wanted to use tax-free cash ('TFC') to reduce his mortgage amount and the outstanding repayment term. He also said that once the personal loan was repaid he would redirect that amount towards overpaying on his mortgage to further help reduce the term.
- That Mr O was comfortable with investment risk and had a good understanding of what it meant. He was happy to take some risk with his DB scheme to gain flexibility and to be able to pass any residual fund to his beneficiaries upon his death. Mr O said that his state pension would provide him with a fixed income in retirement.

Pi also carried out an assessment of Mr O's attitude to risk ('ATR'), which it deemed to be 'low-medium' or five on a scale of one to ten.

On 29 March 2019 Pi produced a transfer value comparator report ('TVC') as required by the regulator. This stated Mr O's DB scheme was estimated to provide him with an annual pension at the scheme's normal retirement date ('NRD') of age 65 of £8,357 or tax free cash ('TFC') of £33,431 and a reduced pension of £5,014. At age 63 the figures were £7,522 or £30,558 and £4,583 respectively.
On 15 April 2019, Pi issued Mr O with a suitability report in which it advised him to transfer his DB scheme pension benefits into a personal pension plan. The suitability report said the reasons for this recommendation were, in summary:

- To transfer his pension in order to pay a lump sum off his mortgage and reduce the outstanding term.
- To leave his pension fund to his wife and then his children in the event of his death.
- To have the flexibility to take an income from his pension so he could have the option to retire at age 63 or go part time as his mortgage would be largely paid off by that point.

Mr O signed the necessary application and discharge forms on 25 April 2019 and the transfer went ahead shortly after. The amount transferred was £131,132 and Pi charged Mr O £6,556 for the transfer advice along with an annual management charge of 1% of the fund value. In addition there was an annual product charge of 0.45% and an annual fund charge of 0.89% from P. Mr O took £32,783 from his transferred pension as TFC paying £14,000 off his mortgage and using the remainder to help family, make home improvements and take a holiday.

Pi undertook annual reviews for Mr O in 2020, 2021 and 2022. No changes were made to his personal pension. In April 2023 the value of Mr P's pension was £108,469.

In August 2023 Mr O, through his representative, complained to Pi about the suitability of the transfer advice it had given him. He also said Pi hadn't considered alternative ways of him achieving his objectives which could have enabled him to retain his DB scheme benefits. And he said Pi failed to clearly communicate the true value of the benefits it was recommending he give up and to make sure he understood the risks associated with the transfer. Mr O said he had suffered a financial loss as result of transferring and thus sought to be compensated.

Pi looked into Mr O's complaint but didn't think it had done anything wrong. It said accessing TFC hadn't been Mr O's only objective. It also said Mr O had been able to achieve his objectives by making the transfer as a result of the flexibility it gave him and that these would have been forfeited had he remained in his DB scheme. And Pi said its suitability report had been clear and not misleading.

Unhappy with the outcome of his complaint to Pi, Mr O complained to the Financial Ombudsman Service. One of our Investigators looked into the complaint and recommended that it was upheld. He said alternative ways of meeting Mr O's objectives without the need to transfer had not been considered by Pi. He also said the transfer wasn't financially viable and that it wasn't worth exchanging the guarantees associated with Mr O's DB scheme for enhanced death benefits either. Overall our Investigator thought Pi's recommendation to Mr O that he transfer his DB scheme was unsuitable so he recommended that Mr O be compensated in line with the regulator's (the Financial Conduct Authority – 'FCA') guidance.

Pi disagreed with our Investigator's findings but he wasn't persuaded to change his mind 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.

I've 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'). And 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

What follows 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 Pi's 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.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for largely the same reasons given by the investigator.

The FCA, states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pi should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr O's best interests. And having looked at all the evidence available, I'm not satisfied it was in his best interests.

Financial viability

Pi produced a TVC (as required by the regulator) showing how much Mr O's pension fund would need to grow by each year in order to provide the same benefits as his DB scheme (the critical yield). Mr O was 57 at the time of the advice (and 58 by the time the transfer took place) and wanted to retire at 63. The critical yield required to match Mr O's benefits age 63 was 22.7% if he took a full pension and 14.34% if he took TFC and a reduced pension. At age 65 the critical yields were 16.92% and 11.19% respectively.

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 for the period before 1 October 2017, and was 3.3% per year for 6 years to retirement (or 3% for 4 years to retirement). I've kept in mind that the regulator's projection rates had also remained unchanged since 2014: the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2%.

I've taken this into account, along with the composition of assets in the discount rate, Mr O's 'low-medium' ATR and also the term to retirement. 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. But here, given the lowest critical yield was 11.19%, I think Mr O was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of investing in line with his ATR. Indeed I can see from the suitability report that Pi accepted that the critical yields required to match Mr O's benefits at both NRD and at age 63 were unachievable. Pi said. *"In my opinion you will not achieve critical yield of 16.92% by the age of 65/22.7% by the age of 63 to allow your benefits to match those that are offered by [the DB scheme]."*

I've also considered Pi's cash flow models which it said it produced in order to provide projections on how Mr O's pension plan could be used (in conjunction with his state pension and his DC pension) to help fund his income requirements in retirement. Pi's models are based on Mr O's pension achieving investment growth of either 5.2% or 6.2% a year but given Mr O's ATR was low medium, if returns fell below Pi's forecasted rates his financial assets would actually be lower in the long-term than if he had kept his DB pension and they show that the benefits from his transferred pension would run out by age 75 at the latest (and even earlier in some of the models Pi produced). And once Mr O's transferred pension ran out he would then be reliant on his state pension and whatever remained of his employer's DC scheme for his income.

This is in contrast to Mr O's DB scheme which would have provided him, at the scheme's NRD of age 65, with an annual income of £5,014 along with TFC of £33,431. The DB scheme was a risk-fee indexed linked scheme which was guaranteed for life, unlike Mr O's personal pension plan which was forecast to run out by age 75 at the latest and more likely (based on the lowest investment growth rate Pi used in its cash flow forecast) by age 70. Given Mr O's modest DC fund value, and the fact it was subject to investment risk, he was highly reliant on his DB scheme for his retirement. Together with his state pension entitlement, Mr O could have enjoyed an index linked annually escalating pension for the remainder of his life.

Also, as Pi will know, past performance is no guarantee for future performance and so I consider the discount rates and the regulator's standard projections to be more realistic in this regard rather than forecasting or projecting historic returns forward.

I've thought too about Mr O's capacity for loss. Mr O had no savings or investments except for £2,000 in a bank account. The income he was forecast to receive at retirement from the scheme (if he remained) is, I think, one he didn't have the capacity to lose. And even if he thought he wouldn't need his DB scheme in retirement, the fact is his retirement was seven years away so it was too early, in my view, to decide that. Mr O's view of what retirement income he needed may have changed by the time he reached retirement age so the DB scheme could have assisted him had it been retained. And if Mr O reached his retirement age and still felt that his DB scheme was surplus to his needs then he could have transferred it at that point.

The pension from the DB scheme would have helped Mr O meet his retirement income needs and any shortfall he had and any capital expenditure he needed to meet in retirement,

could have been met from his DC scheme. The DC scheme already afforded Mr O any retirement income flexibility he needed without having to transfer his DB scheme and expose that to investment risk and charges too.

For this reason alone a transfer out of the DB scheme wasn't in Mr O's best interests. Of course financial viability isn't the only consideration when giving transfer advice, as Pi has argued in this case. There might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered this below.

Flexibility

Mr O's principal objective in transferring his DB scheme was to pay off some of his mortgage to reduce its outstanding term. To achieve this Mr O said he needed to take TFC there and then, at age 58. But I'm satisfied he could have achieved this by staying in the DB scheme.

This is because he was entitled to take £30,558 TFC from the DB scheme at 63 which he could have used at that point to reduce both his mortgage and its outstanding term. And it was also possible for him to have taken his DB scheme benefits at age 58 but on a reduced basis. Taking his benefits at age 58 would have given him TFC of £24,475 and an annual pension of £3,671. Thus whilst taking his DB scheme benefits immediately would not have given Mr O the amount of TFC he said he wanted to pay off his mortgage (£32,783) it seems to me in any event that this amount was predicated on the CETV of his DB scheme rather than any need for that precise amount. This is borne out by the fact that Mr O only used £14,000 of the TFC he received towards his mortgage.

So I think it could have been possible for Mr O to have accessed TFC from his DB scheme to put towards paying down his mortgage whilst retaining his valuable DB scheme benefits. But I can't see this option was explored in any meaningful way by Pi.

In addition, there is no evidence that Mr O was in any way struggling to make his mortgage repayments. I can see too that he had some residual income left over each month which could have been put towards reducing his mortgage quicker had he so wished. And I can see that by 2022 the personal loan he had would have been repaid; this too in turn would have freed up more income for him to put towards overpaying his mortgage early as was Mr O's stated intention.

But I can't see that Pi explored any other means to Mr O achieving these objectives. Nor can I see it challenged him on any urgency he may have felt to pay an amount off of his mortgage before he ceased working. Advising Mr O that it was in his best interests to wait until he wanted to retire and then consider using his TFC to reduce his mortgage at that point would have had little detrimental effect on Mr O as the interest rate on his mortgage was low. And, in so doing, he would have been able to retain the valuable guarantees provided by his DB scheme. I don't typically consider debt reduction to be a good reason to transfer a DB scheme as in so doing it sacrifices the guaranteed income it would have provided. This objective should have been scrutinised by Pi and led it to explore other ways it could be achieved.

Whilst I can see that Mr O's mortgage was due to be repaid about the same time as he was due to receive his state pension, I also note another of his objectives was to retire at age 63, some four years before that point. But I don't think that Mr O needed to transfer his DB scheme though in order to be able to retire early.

I say this because, as I have mentioned above, Mr O was also a member of his employer's DC scheme which, at the time of the advice, had a fund value of £56,992. And by the time

Mr O reached age 63 his DC scheme would have enjoyed a further six years' worth of contributions and should, therefore have been worth even more. At that point, if Mr O still wanted to retire early, and whether he wanted to also draw his DB scheme benefits at the same point or leave them until the scheme's NRD or age 65, his DC scheme could have been utilised to provide him with both the TFC and income he needed. Thus any flexibility Mr O thought he needed – including to pay a lump sum off his mortgage – was already available to him through his employer's DC scheme. But I can't see that Pi placed any emphasis on this option. And, as I have said above, had Mr O retained his DB scheme, then by the age of 65 he could have taken TFC of £33,431 along with an annual pension of £5,014.

But by failing to provide Mr O with all the information he needed about the options he had, he wasn't able to make a fully informed decision about what was action was best for him to take. So I don't think that Pi acted in Mr O's best interests in this regard.

So for these reasons I'm not persuaded that the only means – as Pi has argued – that Mr O could achieve his objective, was by transferring his DB scheme.

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. And I don't think Pi explored to what extent Mr O was prepared to accept a lower retirement income in exchange for higher death benefits.

I also think the existing death benefits attached to the DB scheme were underplayed. Mr O was married and so the spouse's pension provided by the DB scheme would've been useful to his wife if Mr O predeceased her. I don't think Pi 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 for Mrs O or their adult children to benefit from beyond Mr O's early seventies. In any event, Pi 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 wife, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Pi should've instead explored life insurance. I appreciate that the suitability report mentioned a whole of life policy with a sum assured of £113,132 – this was discounted by Mr O because of the cost (£212 per month). But I don't think that this was a balanced way of presenting this option to Mr O.

Basing the quote on the transfer value of Mr O's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. Ultimately, Mr O wanted to leave whatever remained of his pension to his wife and adult children, 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 to his wife and adult children, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr O. And I don't think that insurance was properly explored as an alternative.

Control or concerns over financial stability of the DB scheme

Whilst I've seen that Pi cited in the suitability report that Mr O no longer wished to be *'at the mercy'* of the DB scheme trustees and preferred to move his funds to a plan that was under his control, I can't see that his reasons for doing so were ever ascertained or his assumptions challenged. So I think Mr O's desire for control over his pension benefits was overstated. Mr O was not an experienced investor and I cannot see that he had an interest in or the knowledge to be able to manage his pension funds on their own. 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.

Suitability of investments

As I'm upholding the complaint on the grounds that a transfer out of the DB scheme wasn't suitable for Mr O, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr O should have been advised to remain in the DB scheme and so the question of the appropriateness of investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the flexibility, control and potential for higher death benefits on offer through a personal pension would have sounded like attractive features to Mr O. But Pi 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. By transferring, Mr O was very likely to obtain lower retirement benefits and in my view, there were no other particular reasons which would justify a transfer and outweigh this. Mr O shouldn't have been advised to transfer out of the scheme just to part repay a mortgage that was affordable. There was no pressing need for him to make a lump sum payment off his mortgage or to transfer his DB scheme in order to retire early at age 63. And the potential for higher death benefits wasn't worth giving up the guarantees associated with his DB scheme for.

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

Of course, I have to consider whether Mr O would've gone ahead anyway, against Pi's advice. I've considered this carefully, but I'm not persuaded that Mr O would've insisted on transferring out of the DB scheme, against Pi's advice. I say this because Mr O was an inexperienced investor with a low-medium attitude to risk and this pension accounted for a significant portion of Mr O's retirement provision. So, if Pi 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've accepted that advice.

I'm not persuaded that desire to pay down some of his mortgage and his concerns about death benefits were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out, didn't think it was suitable for him or in his best interests. If Pi had explained that Mr O could meet all of his objectives – including taking early retirement – without risking his guaranteed pension, I think that

would've carried significant weight. So, I don't think Mr O would have insisted on transferring out of the DB scheme.

In light of the above, I think Pi should compensate Mr O for the unsuitable advice, in line with the regulator's rules for calculating redress for non-compliant pension transfer advice.

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 the unsuitable advice. I consider Mr O would have most likely remained in the occupational pension scheme if suitable advice had been given.

Pi 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.

For clarity, Mr P has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age of 65, as per the usual assumptions in the FCA's guidance.

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 O'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, Pi should:

- calculate and offer Mr O redress as a cash lump sum payment,
- explain to Mr O before starting the redress calculation that:
  - his 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 his redress prudently is to use it to augment his DC pension
- offer to calculate how much of any redress Mr O receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr O accepts Pi's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr O for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr O's end of year tax position.

Redress paid to Mr O 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, Pi 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 O'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.

Where I uphold a complaint, I can award fair compensation of up to £415,000, 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 £415,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Pi Financial Ltd to pay Mr O the compensation amount as set out in the steps above, up to a maximum of £415,000.

Recommendation: If the compensation amount exceeds £415,000, I also recommend that Pi Financial Ltd pays Mr O the balance.

If Mr O accepts this decision, the money award becomes binding on Pi Financial Ltd.

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 2 August 2024.

Claire Woollerson
Ombudsman