DRN-4894807

Financial Ombudsman Service

The complaint

Mr G complains about the suitability of the advice provided by Purely Financial Ltd trading as Purely Pensions ("Purely Pensions") to transfer the value of his defined benefits ("DB") pension in the Local Government Pension Scheme ("LGPS") to a personal pension plan ("PPP").

Mr G is represented in this complaint by a claims management company ("CMC").

What happened

I issued my provisional decision on this complaint on 1 May 2024 in which I set out the background and my provisional findings. I've repeated what I said here:

"The sequence of events isn't in dispute and were set out in detail by our investigator in her assessment which she provided to both Purely Pensions and the CMC. So I've only set out a brief summary of what happened.

Between June 1981 and September 2020 Mr G was a member of the LGPS. This is a public sector DB pension scheme that provides a guaranteed lifetime income to members.

In September 2020, Mr G left the LGPS but remained employed by the local council. His DB pension in the LGPS was preserved. He was interested in transferring the value of his DB pension to a private pension arrangement to convert it into a flexible fund to achieve several financial planning objectives.

In November 2020, Mr G was introduced to Purely Pensions by another firm (the "introducer"). The cash equivalent transfer value of his DB pension in the LGPS at that time was £283,135. Purely Pensions completed a fact find document which recorded details of Mr G's personal and financial circumstances at that time, summarised as follows:

- *He was aged 57 and in good general health although he was taking medication for high blood pressure and cholesterol. He was unmarried but co-habiting with his long-term partner of 17 years. He had a daughter aged 26 from his previous marriage who was financially independent;*

- *He had been employed by his local council as a painter and decorator since 1979. He was paid gross annual income of about £27,000 and expected this to increase to £30,000 from April 2021. He didn't expect his employment status to change in the foreseeable future;*

- *He and his partner generally kept their finances separate. His partner was financially independent;*

- *His assets comprised a 50% share in the house he shared with his partner which was valued at about £160,000 (so his share was about £80,000). Other than about £500 in a bank account (which had recently been reduced to cover the cost of architect fees), he didn't have any other savings or investments;*

- *His debts and liabilities comprised a credit card valued at about £3,000 which was on a 0% interest deal and cost £40 per month to service. He also had a personal loan of £3,200 which cost £177 per month and had about 18 months left until it was repaid. The house he shared with his partner was owned outright with no debt against it;*

- *After paying for his share of monthly bills, he had surplus disposable income of about £285 available every month – this was expected to increase following his pay rise in April 2021;*

- *He wasn't an active member of any pension scheme at that time. It was noted that he had recently opted out of the LGPS (before being introduced to Purely Pensions) and that once he had transferred the value of his DB pension to a private pension arrangement he would re-join the LGPS. In addition, he was on course to receive the state pension from age 67 which coincided with his planned retirement age; and*

- *It was noted that once he re-joined the LGPS he would be eligible for a lump sum death in service benefit of four times' his salary.*

On 15 January 2021, Purely Pensions issued its suitability report to Mr G in which it recommended that he transfer the value of his DB pension in the LGPS to a PPP provided by Scottish Widows to achieve his stated aims and objectives, as follows:

- *"Access immediate Tax-Free Cash (TFC – sometimes referred to as Pension Commencement Lump Sum – PCLS)*

- *Redeem all debt*

- *Carry out extensive home improvement*

- *Establish a credible Emergency Fund*

- *Provide some capital for daughter – and hopefully preserve a sizeable amount from the pension as an inheritance*

- *Take control of the capital, to invest for growth (income in c. 9 years) – linked to your risk profile*

- *Access a level of income that you can select depending on your individual circumstances at the time*

- *Immediately increase the lump sum available on your death"*

The suitability report noted that Mr G's drivers for this were:

- *"CETV will generate ideal amount of TFC to allow home improvements etc to be carried out immediately: quality of life*

- *Ability to preserve benefits for [Mr G's daughter]*

- *Able to re-join occupational scheme, and so build up more guaranteed benefits*

- *Can re-direct money currently used to service loans etc towards building further retirement funds"*

In formulating its recommendation, Purely Pensions carried out transfer analysis on the transfer value of £283,135. This indicated that:

- *Mr G's estimated benefits payable by the LGPS if he took them immediately at age 57 was an annual pension of £14,666 and a tax-free lump sum of £31,771;*

- *Mr G's estimated revalued benefits payable by the LGPS at his planned retirement age of 67 was an annual pension of £17,528 and a tax-free lump sum of £37,969;*

- *The critical yield to match the benefits payable by the LGPS at age 67 was 10.52% (the critical yield at age 57 wasn't applicable since this was on the basis Mr G was taking benefits immediately);*

- *The transfer value comparator ("TVC") showed that it would then cost £657,493 to purchase an annuity on the open market to secure the same level of guaranteed income offered by the DB pension scheme from age 67. This compared with the transfer value of £283,135.*

Purely Pensions assessed Mr G as having a 'Balanced' risk profile. It recommended that he invest the value of his PPP in the 'Scottish Widows Pension Portfolio B Pension Series 4 Pension Fund' to align with his risk profile. The charges associated with Purely Pensions' recommendation and to be deducted from the PPP fund value were as follows:

- *Initial advice charge of £10,744 payable to Purely Pensions; and*

- *Ongoing annual charges based on the PPP fund value: 0.75% advice charge payable to the introducer who would provide ongoing advice to Mr G; and 0.35% investment charge payable to the PPP provider, Scottish Widows.*

Mr G accepted the recommendation. The transfer to the PPP was completed in February 2021.

Around March 2021, shortly after Purely Pensions' advice, Mr G re-joined the LGPS and has remained in full-time employment with the local council since that time. As a result, he's currently building up benefits in the LGPS.

Following the pension transfer, Mr G withdrew the following benefits from the PPP:

- *February 2021 – the maximum tax-free lump sum available of £71,810*
- *November 2021 – a taxable lump sum of £11,587 (£8,000 net of income tax)*
- *April 2023 – a taxable lump sum of £6,330 (£5,000 net of income tax)*

<u>This complaint</u>

In July 2023, the CMC, on behalf of Mr G, complained to Purely Pensions about the pension transfer advice given to him in January 2021. It didn't think the transfer to the PPP was suitable for Mr G for several reasons and that he should've instead been advised to leave his DB pension in the LGPS.

Purely Pensions didn't uphold this complaint. It admitted that, after reviewing the paperwork in response to this complaint, it had identified errors in its transfer analysis at the time of the advice. It confirmed that the correct critical yield figure was 13.26% (rather than 10.52%) and the correct TVC figure was £837,231 (rather than £657,493). But, in its opinion, these errors

didn't impact its recommendation for the transfer to the PPP which it still considered to be suitable. It said that when formulating its recommendation, it had adhered to the relevant FCA rules and guidance including providing Mr G with all the necessary information and risk warnings in good time to be able to make an informed decision. And that it believed a transfer to a PPP was the only viable option available at that time to meet Mr G's objectives.

The CMC didn't accept Purely Pensions' final response. It referred the matter to this service. One of our investigators considered this complaint and recommended that it be upheld because, in her view, Purely Pensions had failed to obtain sufficient information at the time to demonstrate that transferring to the PPP was clearly in Mr G's best interests. She thought he should've been advised to leave his DB pension in the LGPS and then draw early retirement benefits from that scheme. To put things right, our investigator recommended that Purely Pensions carry out a redress calculation in line with 'FG17/9: Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers' on the basis that Mr G took benefits at age 57 and would be a 20% income taxpayer in retirement.

The CMC, on behalf of Mr G, accepted our investigator's findings and suggested remedy. Purely Pensions disagreed with our investigator and provided substantial comments in response. It requested that this complaint be referred to an ombudsman for review.

This complaint has now been allocated to me.

What I've provisionally 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 the law, any relevant regulatory rules, guidance and good industry practice at the time. This includes the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence is unclear, or there are conflicts, I've made my decision based on the balance of probabilities. In other words, I've looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

I've considered all the evidence afresh including Purely Pensions' comments in response to our investigator's assessment. I'd like to clarify that the purpose of this decision isn't to repeat or address every single point raised by the parties to this complaint. So if I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome.

Before I go any further, I'd like to address a point made by Purely Pensions in response to our investigator's assessment. In support of its view that Mr G's complaint shouldn't be upheld, it's provided examples of other final decisions issued by this service and believes that, "Similar to case law, previous FOS decisions set the precedence for future FOS decisions". Purely Pensions' understanding is incorrect. In line with DISP 3.6.1R, I'm required to determine this complaint by reference to what, is in my opinion, fair and reasonable in all the circumstances of this case. This means I won't take into account the decision reached on any unconnected complaints made by different consumers which were based on different circumstances.

What follows below isn't a comprehensive list of the rules and regulations which applied at the time of the advice but provides useful context for my assessment of Purely Pensions' 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

PRIN 9: A firm must take reasonable care to ensure the suitability of its advice and discretionary decisions for any customer who is entitled to rely upon its judgment

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)

COBS 4.2.1R: A firm must ensure that a communication or a financial promotion is fair, clear and not misleading

The suitability rules and guidance that applied when Purely Pensions advised Mr G were set out in COBS 9.2. The relevant rules were COBS 9.2.1R and 9.2.2R. And the provisions in COBS 19 specifically related to a DB pension transfer.

Businesses are required to follow these rules and consider the guidance because the FCA considers DB pensions to be valuable. Based on the above regulatory rules and guidance, businesses advising on pension transfers should start by assuming that the existing DB pension is suitable and to only recommend a transfer, which converts safeguarded benefits into flexible benefits, if it can clearly demonstrate it's in their client's best interests.

Having considered all of this and the evidence in this complaint, I've decided to uphold it for largely the same reasons given by the Investigator. I've explained why below.

<u>The value of Mr G's DB pension</u>

The primary purpose of a pension is to meet the income needs of an individual during retirement. Mr G's DB pension in the LGPS was built up between June 1981 and September 2020, accounting for 39 years and 2 months' pensionable service, represented his most valuable asset. He didn't have any other assets at that time that could be used to support his retirement income needs. Given the lack of other assets, Purely Pensions ought to have recognised that Mr G was likely to be heavily reliant on the value of his DB pension to generate a minimum level of core income to support his standard of living in retirement.

So I think it was important not to expose the value of his DB pension to unnecessary risk by treating flexibility, control and maximisation of death benefits as a high priority at the expense of the primary income purpose – unless there was a clearly suitable reason to do so.

Purely Pensions stated in its suitability report that Mr G had a "high" capacity for loss and could afford to take the risk of investing on a 'Balanced' risk basis. I disagree. In my view, Mr G had a very limited capacity for loss. He didn't have any other savings or investments he could rely on to provide income in retirement. And he planned to retire in 10 years' time, so had limited ability to replenish any investment losses on his PPP through employed income in the future.

<u>Mr G's capital and income needs</u>

Mr G was aged 57 when Purely Pensions advised him. The basis of the advice was that by transferring to the PPP it would enable him to immediately access the maximum tax-free lump sum available to meet several objectives and leave the residual fund invested in the

PPP until he retired at age 67. Following the transfer he withdrew the maximum tax-free lump sum available of £71,810. But Mr G's recorded immediate lump sum needs were actually less at about £66,200, as follows:

- *£46,000 home improvements*
- *£6,200 debt repayment*
- *£4,000 gift to daughter*
- *£10,000 to hold on deposit to serve as an emergency fund*

So withdrawing the maximum tax-free lump sum available at that point led to Mr G withdrawing more tax-free cash than he needed rather than leaving it invested in the PPP. Furthermore, I think there's a lack of clarity regarding precisely how much capital Mr G required. For example, while it was noted that he was looking to make "extensive home improvements", I cannot see any reference regarding the detail of those improvements, a breakdown of the expected cost or when the money would be required. Furthermore, I cannot see how Purely Pensions showed why it was in Mr G's best interests to repay his debt at the cost of losing valuable benefit guarantees. His credit card debt was on a 0% interest deal and his personal loan was due to be repaid in 18 months' time. The payments for both appeared to be affordable. Finally, while I understand that Mr G liked the idea of gifting money to his daughter and setting aside £10,000 as an emergency fund, I cannot see why it was suitable to lose guaranteed benefits to achieve these lump sum objectives. In my view, there was, at the very least, a lack of certainty or clarity regarding Mr G's capital needs both in terms of how much he required and when he needed it – so I struggle to see how it clearly suitable to transfer at that time.

With regard to Mr G's retirement income need, Purely Pensions recorded three different figures. In the fact find document it was recorded that his minimum annual retirement income need from age 67 was £12,000 but he preferably desired a figure of £16,800. But in the suitability report it was stated his annual retirement income need from age 67 was £12,300. It's unclear to me how these target income figures were established. Based on what I can see, it appears that these were notional figures put forward by Mr G. Again, I think there's a lack of clarity on this point.

In my view, the starting point is for the regulated adviser to establish a realistic target income based on the client's likely fixed outgoings, discretionary spending plans and excess income for saving. This information would then reveal the core income required to cover the expected expenditure from the target retirement age – and this would then provide a basis for the recommendation. But in Mr G's case, Purely Pensions appears to have accepted his own assessment without seeking to understand what this was based on to determine if it was realistic. I don't think this approach was appropriate because without understanding Mr G's retirement income need it's difficult to conclude that the pension transfer at that time was clearly demonstrated to be in his best interests.

Overall, it's my view that Purely Pensions failed to obtain the necessary information relating to Mr G's financial situation including understanding his precise capital requirements at that time and an accurate assessment of his anticipated income and expenditure during retirement.

<u>Mr G's death benefit objective</u>

In the suitability report it stated that one of Mr G's objectives was to "Provide some capital for daughter – and hopefully preserve a sizeable amount from the pension as an inheritance".

So it's not disputed that passing on the value of his DB pension upon his death was

important to Mr G. However, in my view, the question here is whether the pension transfer was required to achieve the objective. I cannot see evidence that any or a combination of the following alternative ways to meet the death benefit objective were adequately considered and discounted by Purely Pensions:

- *using Mr G's disposable income available from his employment to obtain level or decreasing term cover. I can see that the suitability report stated that the cost of whole of life cover was £321.92 per month. However, I cannot see that level or decreasing term life cover were considered and presented to Mr G. Level or decreasing term life cover is cheaper than whole of life cover where Mr G would be charged for benefits he might not need, such as a surrender value or longer-term life cover. Furthermore, decreasing term life cover may more closely match the shape of a decreasing fund value, once accessed; and/or*

- *the death in service lump sum benefit of four times' salary that would be available once Mr G re-joined the LGPS. At that time his annual salary was expected to increase to £30,000 from April 2021 and he planned to remain employed until he retired from age 67. So it seems that a lump sum of at least £120,000 would be available while Mr G remained employed by the local council and until such time as he retired – and that lump sum would increase in line with changes to Mr G's annual salary.*

I think it's clear that lower risk suitable alternative options were available to achieve Mr G's death benefit objective but I cannot see that Purely Pensions adequately considered these, as noted above.

Since Mr G was aged 57 and in good health at the time, he could reasonably expect to live well into his 80s based on average life expectancy. It's fair to say that immediately following the transfer to the PPP the death benefits available would be significant (subject to investment performance) until such time as he accessed and depleted the fund value. But once he started withdrawing money from the PPP to meet his income and lump sum needs, it would likely mean that the size of the fund remaining in later years – when death is more likely – could be much smaller than expected. This doesn't appear to have been considered by Purely Pensions and explained to Mr G.

Mr G wanted to retire from age 67. The TVAS report produced by Purely Pensions showed that based on taking a similar level of benefits in retirement as the LGPS from age 67, the PPP fund value would last until age 77 if taken as income only. This assumed a medium rate of return which of course wasn't guaranteed. In my view, the information in the TVAS report supports the case that, given the lack of alternative assets, Mr G would likely exhaust his pension savings in the proposed PPP during his lifetime, particularly if he lived beyond average life expectancy which of course is a possibility.

It's my view that Mr G had no health issues at the time which might reasonably have prompted him to relinquish the guarantees attached to his own retirement income for the sake of leaving an unknown capital sum for his daughter then age 26 and who wasn't financially dependent on him. So I'm not convinced there was any real merit in him transferring to a PPP at that time to provide a lump sum death benefit at the cost of losing valuable benefit guarantees.

<u>Mr G's objectives for control and flexibility</u>

Purely Pensions recorded that Mr G wanted to "Take control of the capital, to invest for growth (income in c. 9 years) – linked to your risk profile" and from age 67 wanted the flexibility to access "a level of income that you can select depending on your circumstances

at the time".

Flexibility and control might sound attractive, but I can't see that Mr G had any concrete need for it. He was an inexperienced investor. I'm not persuaded that it was appropriate for an inexperienced investor to relinquish the guarantees attached to his main retirement provision in exchange for more risk so that he could access flexible benefits. There's no real evidence that Mr G required the flexibility of variable income during retirement. But if he did require flexibility, then any flexible needs could've been met by the tax-free cash available under the LGPS when he eventually took benefits at retirement. And as for taking control of his pension benefits, he appears to have been a largely passive pension saver up until that point. There's no evidence he had experience of controlling, managing or investing large sums of money.

In my view, Mr G didn't have sufficient knowledge and experience to enable him to understand the risks involved in transferring his main retirement provision. Transferring to the PPP led to the investment, inflation and longevity risks associated with his DB pension being transferred from the LGPS to Mr G. Those risks would've been retained by the LGPS had he been advised to leave his benefits preserved in the scheme – I cannot see that there was any compelling reason for Mr G to take on those risks at that time, particularly since I think there was a lack of certainty or clarity regarding Mr G's capital and income needs, as noted above.

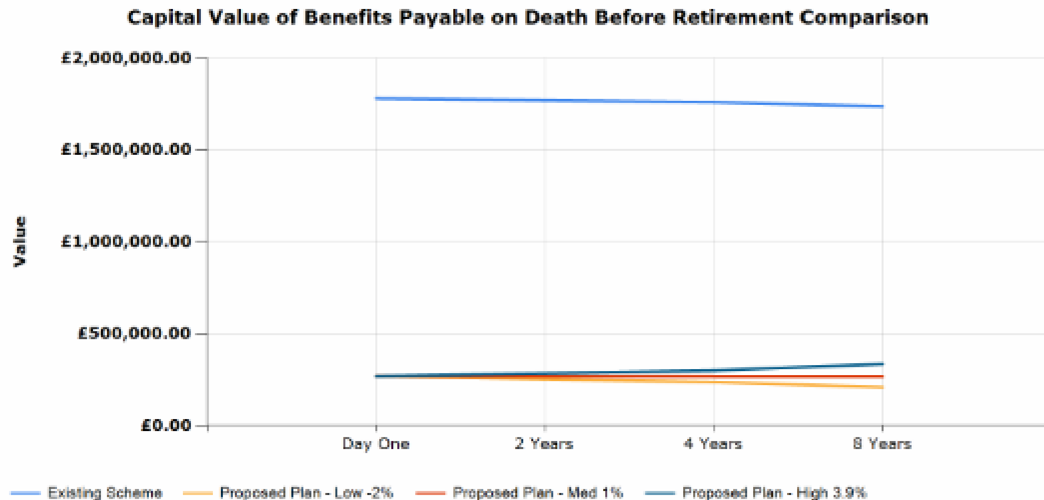
<u>Transfer analysis</u>

In response to this complaint, Purely Pensions admitted that it had identified errors in its transfer analysis at the time of the advice. It confirmed that the correct critical yield figure was 13.26% (rather than 10.52%) and the correct TVC figure was £837,231 (rather than £657,493). But in its opinion these errors didn't impact its recommendation for the transfer to the PPP which it still considered to be suitable. It's taken the position that these errors are essentially irrelevant. I disagree. In line with COBS 19.1, Purely Pensions had a responsibility to calculate and provide accurate transfer analysis information to Mr G so that he could make an informed decision. As it failed to do this, it follows that I don't think Purely Pensions acted professionally and in accordance with Mr G's best interests. Mr G made an irrevocable decision to transfer his DB pension based on incorrect information for which Purely Pensions was responsible. As a result, the information it gave to Mr G, and on which he based his decision to transfer, was misleading and therefore unfair.

The key features illustration for the PPP showed that the assumed growth rates were 3.9% for the upper projection rate, 1.0% for the middle projection rate and -2.0% for the lower projection rate. Those figures took into account assumed annual future inflation of 2.0%. It's my view that the critical yield figure of 13.26% was likely to be unobtainable based on the rates of return shown on the illustration and Mr G's 'Balanced' risk profile.

In addition, the TVC showed that it would then cost £837,231 to purchase an annuity on the open market to secure the same level of guaranteed income offered by the DB pension scheme from age 67. This compared with the transfer value of £283,135. This highlights that the transfer value offered by the LGPS was significantly less than the capital cost of securing on the open market the same level of benefits as the LGPS, further emphasising the likelihood that Mr G would be worse off if he transferred.

Furthermore, according to the TVAS report, the capitalised value of death benefits under the LGPS were significantly higher than the PPP at all points based on the high, medium and low projection rates as shown in the excerpt below:



In summary, my provisional decision was that this complaint should be upheld based on the available contemporaneous evidence. To put things right, I said I was minded to direct Purely Pensions to calculate and settle any redress due in line with PS22/13 and DISP App4 on the basis Mr G retired at the LGPS normal retirement age and was a 20% income taxpayer in retirement.

The CMC, on behalf of Mr G, accepted my provisional decision and proposed remedy. Purely Pensions didn't agree with my view and provided substantial additional comments in response.

I've considered the additional evidence provided by Purely Pensions and set out my final decision below. This is the last stage of our process.

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 findings I made in my provisional decision and set out above form part of this final decision. I've carefully considered the comments received in response to my provisional decision. In deciding this complaint, I don't think it's necessary to respond to every point made but I consider it appropriate to make the following points related to Mr G's retirement income need, his capacity for loss and level of reliance on the DB pension and Purely Pensions' consideration of alternative options. I've considered under separate headings below.

Mr G's retirement income need

As explained in my provisional decision, there's conflicting information in the contemporaneous evidence regarding Mr G's target annual retirement income need from his intended retirement age of 67. There's reference to three figures: £12,000, £12,300 and £16,800.

In response, Purely Pensions has asked me to ignore the figures of £12,000 and £16,800 as they were miscalculated by the adviser at the time. Instead, it has stated that the correct income target was £12,300. It's explained this would be met at age 67 through a combination of Mr G's state pension and additional benefits built up in the LGPS after re-joining that scheme, the aggregated value of which greater than £12,300. In other words, it

says that Mr G wasn't reliant at all on the DB pension at the centre of this complaint to meet his income need from age 67.

I have concerns here. Purely Pensions' appears to be relying on information gathered after 2021 in forming it's view that Mr G wasn't reliant at all on the DB pension. I can see that in a suitability report dated 28 July 2023 that Purely Pensions made reference to Mr G's retirement income need of £12,300. I think it's important to remind Purely Pensions that suitability must be demonstrated on the contemporaneous evidence.

I've re-read the relevant suitability report dated 15 January 2021. I cannot see any reference to the figure of £12,300 in that report. Rather, it states that from age 67 Mr G's minimum annual income need was £12,000 to cover basic needs but he desired £16,800 to maintain his standard of living in retirement. It then went on to explain that he would be reliant on *three* sources of income from age 67 (not two, as recently suggested by Purely Pensions) to meet that need of £16,800:

- State pension: £8,797
- DB pension to be transferred to the PPP: £2,503
- Additional DB pension built up between ages 57 and 67: £5,500

And in that suitability report of 15 January 2021, it said that all the cashflow scenarios it had modelled were based on a gross annual income figure of £18,000 from all sources at age 67. So it's clear the basis of the advice was based on the fact that Mr G *was* going to be reliant on the DB pension at the centre of this complaint, contrary to what Purely Pensions says now.

It was noted that Mr G's employed annual income was expected to increase to £30,000 from April 2021. To maintain his standard of living in retirement, I think his preference would've been to target gross annual income of around £16,800 rather than £12,000. And it's on the basis of the figure of £16,800 that Purely Pensions based its recommendation to transfer.

Purely Pensions calculated that if Mr G left his DB pension preserved in the LGPS that the estimated benefits payable at age 67 was an annual pension of £17,528 and a tax-free lump sum of £37,969. So it seems that had Mr G left his benefits preserved in the LGPS, that scheme would've met his desired annual income need of £16,800 from age 67.

Mr G's capacity for loss and level of reliance on the DB pension

So given that the LGPS met the desired income need, the question is why it was deemed suitable to transfer to a PPP at that time and, in doing so, transfer the investment, inflation and longevity risks associated from the LGPS to Mr G. Those risks would've been retained by the LGPS had he been advised to leave his benefits preserved in the scheme – I cannot see that there was any compelling reason for Mr G to take on those risks at that time bearing in mind the LGPS would've met his desired income need from age 67. Any excess income received from the state pension and other retirement provision built up by that time could've been reinvested for future use. This course of action was a lower risk option than the transfer to the PPP which exposed Mr G's main retirement provision to unlimited downside risks.

In my provisional decision, I stated that the primary purpose of a pension is to meet the income needs of an individual during retirement. Mr G's DB pension at the centre of this complaint was built up between June 1981 and September 2020 and accounted for 39 years and 2 months' pensionable service. It was his most valuable asset by a significant margin at the time of the advice (his only other asset of note being a 50% share of his main home valued at £160,000). At that time of the advice, Mr G was aged 57 and planned to retire at age 67. So he had limited time to build up further retirement provision through employed

income bearing in mind his level of earnings and disposable income available every month.

I think it's fair to say that Mr G would be heavily reliant on his DB pension to meet his desired annual income need of £16,800. This is a reasonable analysis of the situation bearing in mind his limited other provision and that the DB pension represented 39 years and 2 months' pensionable service. So I think it was important that he didn't expose it to unnecessary risks that could negatively impact his standard of living in retirement. All of these factors lead me to conclude that Mr G had limited capacity for loss.

Purely Pensions disagrees. As noted above, it says that Mr G wasn't reliant at all on the DB pension at the centre of this complaint to meet his income need from age 67. It says the transfer value wasn't needed to meet any part of the income need. And so it think there's no capacity for loss issues in this regard. But as I've explained above, this position is contrary to the basis of its recommendation in 2021 – the basis of the recommendation was that the value of the DB pension transferred to the PPP would contribute to the income need; and so, this brings into the equation the issue of capacity for loss. I've considered Purely Pensions' position but it remains my view that Mr G didn't have the requisite capacity for loss to bear the risks associated with the pension transfer. Given the level of reliance on the DB pension, I see no compelling reason why it was suitable to transfer when the LGPS would've met Mr G's desired income need from age 67 without him taking on any of the risks associated with investment in the recommended PPP.

I'd like to make a final point here regarding the spouse's pension available under the LGPS. Mr G was unmarried and so the spouse's pension available under the LGPS was unlikely to be of any value to his long-term partner. This is usually a motivating reason to transfer in some cases so that the partner derives some level of benefit from unused funds that remain in the PPP in the event of the client's earlier death. But this didn't apply to Mr G's situation. This is because in the fact find document it was recorded he and his partner generally kept their finances separate and that she was financially independent. So, in my view, the primary issue here was to ensure that Mr G's income need was met during his lifetime – there wasn't any requirement to provide a spouse's pension to his partner which may have supported the case to transfer. I think is an important point.

Purely Pensions' consideration of alternative options

In my provisional decision, I expressed my opinion that there were lower risk suitable alternative options available to achieve Mr G's death lump sum objective – such as level or decreasing term assurance – but I couldn't see that Purely Pensions had adequately considered this. Or that it had taken into account the fact Mr G would be eligible for a death in service lump sum benefit of four times his salary through employment which would provide some level of cover over the next 10 years until his planned retirement at age 67.

In response, Purely Pensions has dismissed my concerns and stated that neither level nor decreasing term assurance is suitable to meet a death lump sum objective. It hasn't provided any contemporaneous evidence that shows it adequately considered alternative options to meet this objective. And it thinks the death in service benefit is irrelevant too because of Mr G's life expectancy. Purely Pensions has asked me to explain what level of life cover it should've recommended. It isn't my role to quantify Mr G's objectives and provide him with a suitable personal recommendation. That was Purely Pensions' role. Given the FCA's default position (COBS 19.1.6G (2)) and presumption of unsuitability, the onus was on Purely Pensions to adequately quantify Mr G's death lump sum objective taking into account any existing cover and consider alternative ways to achieve his objective instead of the pension transfer (COBS 19.1.6G (4) (e)). And if it deemed those alternative options as unsuitable to clearly record the reasons why. It remains my view Purely Pensions failed to do this.

As for Mr G's immediate capital lump sum objective, Purely Pensions hasn't provided any new information that shows it adequately considered and discounted alternative options and why it was clearly in Mr G's best interests to relinquish his DB pension so that he could obtain an immediate lump sum for home improvements, debt repayment, gifting his daughter money and creating an emergency fund. Overall, I haven't seen any evidence that persuades me Mr G understood the long-term implications of relinquishing his DB pension at that time to achieve his immediate capital sum needs.

Conclusion

I understand why Mr G was interested in transferring the value of his DB pension to a private pension arrangement to convert it into a flexible fund to achieve several financial planning objectives. I don't think because he was a trade union member that it automatically meant he understood the complex risks associated with a pension transfer, as Purely Pensions has suggested. There's no evidence he had previously controlled, invested or managed a large sum of money. It remains my view that he was an inexperienced investor who was entirely reliant on Purely Pensions to act in his best interests, regardless of his own views and motivations.

Financial planning generally involves managing client expectations and a need for compromises. Mr G may have wanted to transfer away at that time to release an immediate tax-free lump sum to achieve several immediate lump sum objectives but it was for Purely Pensions, as the expert, to establish if this was in his best interests, manage his expectations and help him modify his objectives to reflect the reality of his circumstances, if necessary. I think Purely Pensions failed to do this which has resulted in Mr G relinquishing his DB pension upon which he was reliant for no clearly defined advantage.

In my view, Mr G's objectives of achieving control, flexibility and lump sum death benefits weren't sufficiently compelling reasons for him to relinquish the valuable benefit guarantees attached to his main retirement provision by transferring to a PPP at that time based on his circumstances. It's my view that Purely Pensions failed to properly explore, scrutinise or challenge Mr G's objectives to ensure they were appropriate and achievable. Or if they could've been achieved by alternative means that would've enabled him to leave his DB pension preserved in the LGPS.

So, overall, I think it's fair and reasonable to uphold this complaint. Nothing Purely Pensions has said in response to my provisional decision changes my opinion on the merits of this complaint.

Putting things right

To put things right, our investigator recommended that Purely Pensions carry out a redress calculation in line with 'FG17/9: Guidance for firms on how to calculate redress for unsuitable defined benefit pension transfers' on the basis that Mr G retired at age 57 and would be a 20% income taxpayer in retirement. As explained in my provisional decision, I have a different view.

Firstly, redress should be based on 'PS22/13: Calculating redress for non-compliant pension transfer advice' which superseded 'FG17/9' and came into force on 1 April 2023. Secondly, Mr G hasn't retired. So I think redress should be calculated on the basis Mr G took benefits at the LGPS normal retirement age and not age 57, as suggested by our investigator. I say this in full acknowledgement that following the pension transfer, Mr G withdrew money from his PPP. But it's evident that he has and will continue to benefit from flexibility by virtue of the position he's in now. But that has only arisen because of the unsuitable advice provided by Purely Pensions.

Following the pension transfer, Mr G re-joined the LGPS and remains in full-time employment with the local council. He still plans to retire at age 67. This is in line with his intention – as recorded at the time of the advice – to remain employed by the local council, re-join the LGPS and retire at age 67. So had he been advised not to transfer I think it's more likely than not he would've re-joined the LGPS, as he did in 2021, and used alternative options and/or curtailed his objectives linked to the DB pension. For these reasons, I disagree with Purely Pensions' view that redress should be calculated at age 57.

Taking into account the above, it's my view that a fair and reasonable outcome would be for Purely Pensions to put Mr G, as far as possible, into the position he would now be in but for the unsuitable advice. Purely Pensions should 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.

For clarity, Mr G hasn't yet retired and he has no plans to do so at present. So compensation should be based on the LGPS's normal retirement 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, the calculation should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr G's acceptance of my final decision.

If the redress calculation demonstrates a loss, as explained in PS22/13 and set out in DISP App 4, Purely Pensions should:

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

Redress paid directly to Mr G 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, Purely Pensions may make a notional deduction to allow for income tax that would otherwise have been paid. Mr G's likely income tax rate in retirement is presumed to be 20%. However, if Mr G would've been able to take 25% tax-free cash from the benefits the cash payment represents, then this notional reduction may only be applied to 75% of the compensation, resulting in an overall notional deduction of 15%.

My final decision

I uphold this complaint. I direct Purely Financial Ltd trading as Purely Pensions to follow the steps set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 August 2024.
Clint Penfold
Ombudsman