DRN-5003157

The complaint

Mr G complains about the advice given by HARBOUR ROCK CAPITAL LIMITED trading as Pension Access ('Pension Access') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). He says the advice was unsuitable for him and believes this has caused a financial loss.

Mr G received advice from a firm called Portafina Investment Management Limited that has now been rebranded to Pension Access. I shall refer to the respondent firm throughout this decision as 'Pension Access'.

What happened

Mr G approached Pension Access in February 2020 to discuss his pension and retirement needs. Mr G was aged 56 at the time and he completed Pension Access's Pension Review information form providing details of his occupational pension scheme. Mr G wanted to see if it was possible to access his DB pension scheme early whilst continuing to work until his retirement age of 67.

Pension Access contacted the administrator of Mr G's pension scheme in order to find out what the cash equivalent transfer value ('CETV') of the scheme was.

On 20 October 2020, Pension Access provided Mr G with a transfer analysis report. The report recorded that the CETV was worth £196,589.32 and that at age 67 Mr G's DB scheme was forecast to provide him with an annual income of £13,592 along with tax-free cash ('TFC') of £21,981. It also included a transfer value comparator which said that it would cost Mr G £498,922 to replicate the benefits offered by the DB scheme at his normal retirement date ('NRD') of age 67. The report said this meant that obtaining the same retirement income would cost Mr G an additional £302,333 as a result of transferring. And the report also provided Mr G with the critical yield (the annual investment return his pension would need to attain in order to be able to match the benefits offered by his DB scheme at NRD) which was 10.4%.

On 4 November 2020, Pension Access completed a fact-find with Mr G to gather information about his circumstances and objectives. It noted the following: -

- Mr G was aged 56, widowed with no dependent children. He was employed and in receipt of a small widow's pension. His total monthly income was £1,761.00 including a spouse's pension of £61 per month.
- Mr G lived in rented accommodation for which he paid £440 per month. He had credit card debt of just over £1,800 which he was repaying at £40 a month along with a personal loan which cost him £75 per month. His loan had an outstanding balance of £3,353 and a remaining term of just over 4 years.
- Mr G anticipated reducing his essential expenditure in retirement to £804 per month.
- Mr G had £8,500 of life cover and wanted to retire at age 67.
- Mr G had no savings, investments or assets and wanted no debt having had a debt management plan he had cleared two years previously. Mr G had no disposable income left each month.

- Mr G's objective for transferring was to release money from his pension in order to purchase a property to live in. He told Pension Access he wanted a sum of £49,147.33 and had no other means of raising the funds to achieve his objective.
- Mr G had calculated that by buying a property he would save himself in excess of £53,000 in rent payments over the course of the next decade until he retired.
- Mr G received over £2,000 in overtime payments from his employer each January for working overtime over the Christmas period which he intended to use to clear his credit card debt.

Pension Access also carried out an assessment of Mr G's attitude to risk ('ATR'), which it initially assessed as 'moderately cautious' but which was downgraded to 'cautious' after further discussion with Mr G.

On 11 November 2020 Pension Access provided Mr G with its suitability report in which it recommended he transfer his pension benefits into a SIPP with a provider I shall call 'A' and invest the proceeds in a cautious portfolio split between a global short-dated bond (40.3%), a world equity fund (54.7%) and cash (5%). It also recommended that Mr G's funds were managed on a discretionary basis.

The suitability report said the reason for this recommendation was so that Mr G could release money from his pension to buy a property outright.

On 18 November 2020, Mr G signed: -

- Pension Access's declaration form which stated that Mr G understood the benefits he was giving up and the risks he was taking on.
- Pension Access's investment management agreement giving it permission to manage his investment portfolio on a discretionary basis for an annual fee of 1%.
- A suitability report summary where Mr G accepted the loss of his guaranteed income, Pension Access's recommendation and its ongoing management advice (for a fee).
- The SIPP transfer forms.

The SIPP was opened but the transfer did not proceed straight away possibly because Mr G was still an active member of the DB scheme and so needed to opt out before the transfer could proceed. In the meantime, the CETV expired and Pension Access had to apply for a new one. Upon receipt, the CETV had increased to £262,434.

On 16 April 2021 Mr G had a call with Pension Access during which he informed it he had recently found a property to purchase which cost more than he'd initially set out to spend (I understand it cost in the region of £100,000). Mr G said he would therefore need access to more of his transferred pension than originally planned. Mr G said he was comfortable losing the guarantees associated with his DB scheme and that he intended to opt back into the scheme after the transfer had taken place.

An updated pension transfer report based on the new CETV and dated 12 April 2021 was sent by Pension Access to Mr G on 26 April 2021. The summary report noted that replicating the benefits offered by the DB scheme at Mr G's NRD would now cost £590,000. The report forecasted that at NRD Mr G could expect his DB scheme to provide an annual pension of £12,614 together with TFC of £84,091. The critical yield required to match a full annual pension (taking no TFC) was recorded as 11.3%

On 26 April 2021 the completed transfers forms were sent to A.

Pension Access issued a second suitability report to Mr G on 21 June 2021 which contained the same transfer and investment recommendation as the first suitability report it sent him in November 2020. The second report included an additional recommendation that Mr G release a total of £118,832.83 (comprised of TFC of £65,608 and a further income payment of £53,224.31) from his SIPP upon transfer so that he could achieve his objective of buying a house outright.

Shortly after, the transfer went ahead and a total amount of £262,433 was paid into Mr G's SIPP. Pension Access charged Mr G £11,329.47 for arranging the transfer along with a 1% annual management charge and A made a product charge of 0.483% along with a fund charge of 0.35%. A total of £118,832.83 was released to Mr G and he purchased a house outright.

Mr G, through his representative, complained to Pension Access in September 2023 about the suitability of the transfer advice he had received. He said he had approached several advisors prior to approaching Pension Access all of whom advised him that transferring his DB scheme was inadvisable. Further, Mr G said his objective of buying a property could have been achieved with a mortgage. He also said the DB scheme rules were such that he could have drawn benefits from it at age 60 had he remained a member. If he'd done so, Mr G said this would have given him a considerable amount of TFC towards buying a property and that, with receipt of an income from his DB scheme could have obtained a mortgage into his retirement.

Pension Access looked into Mr G's complaint but didn't think it had done anything wrong. It issued its final response letter on 1 December 2023 and said that the only way Mr G could achieve his objective of purchasing a property was by using his pension fund. It also said his SIPP had been set up using funds in line with Mr G's ATR and suitable investments were made. Pension Access said the recommendation it made was suitable for Mr G's circumstances and needs and had the added benefit of releasing him from the burden of paying monthly rent which, over the course of the next 10 years, would save him a total sum of over £53,000.

Pension Access said there was no evidence Mr G would have been able to get a mortgage into retirement and, in any event, he had made it clear to Pension Access during the advice process that he didn't want to take on any debt. Pension Access also said that having looked at the scheme rules it didn't think Mr G could have accessed his scheme benefits at the time of the advice so the option of doing so wasn't relevant to his circumstances.

Unhappy with the outcome of his complaint to Pension Access, Mr G complained to the Financial Ombudsman Service. One of our Investigators looked into the complaint and recommended that it was upheld as he thought the transfer wasn't a financially viable one. He also thought that Mr G's objective of wanting to buy a house didn't justify the transfer and the loss of his guaranteed DB scheme benefits. Overall our Investigator thought that the transfer wasn't in Mr G's best interests so he recommended that Pension Access compensate him in line with the regulator's rules for calculating redress for non-compliant pensions transfer advice.

Mr G accepted our Investigator's recommendation but Pension Access didn't. It said there were a number of advantages to its advice to transfer including: -

- being able to purchase a property thereby removing the uncertainty around his future accommodation requirements.
- Saving a minimum of £440 per month (likely to increase over time) in rental payments which, after ten years, amounted to £52,800. These savings would continue into retirement.

- He would acquire a property which had the potential to increase in value.
- He would have sufficient funds to live on in retirement as he had full state pension entitlement, new guaranteed pension benefits as a result of opting back into his employer's DB scheme as well as the residual transferred fund which he could choose to access flexibly or use to purchase an annuity.
- Mr G's retirement financial circumstances were more secure as a result of buying his home and having two forms of guaranteed escalating pension benefits and one form he could access flexibly.

Our Investigator thought about what Pension Access had said but wasn't persuaded to change his mind so the complaint was referred to me.

I issued my provisional decision on this complaint in August 2024 in which I explained why I thought this was a complaint that should not be upheld. I made the following provisional findings: -

"Financial viability

The advice was given after the regulator gave instructions in Final Guidance FG17/9 as to how businesses could calculate future 'discount rates' in loss assessments where a complaint about a past pension transfer was being upheld. Prior to October 2017 similar rates were published by the Financial Ombudsman Service on our website. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor.

The 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 3.7% per year for 9 years to retirement. For further comparison, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. The critical yield required to match Mr G's DB scheme benefits at age 67 was 11.3% if he took a full pension (no critical yield was calculated for taking TFC and a reduced pension). And the transfer analysis undertaken by Pension Access noted that Mr G's SIPP would need to attain a value of £590,000 just to replicate his DB scheme benefits at retirement

I've taken this into account, along with the composition of assets in the discount rate, Mr G's 'cautious' ATR and also the term to retirement. There would be little point in Mr G giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. However, in this case, given the figures I've cited above, I think that Mr G's pension was unlikely to grow within his SIPP in a way that would make transferring financially worthwhile. In my view, I think that Mr G was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, as a result of transferring.

And Pension Access's own transfer analysis tends to support this given the fund it estimated would be needed to purchase an annuity of equal value to Mr G's existing DB scheme at retirement was £590,000. The transfer analysis establishes the true value of the benefits Mr G was giving up.

I've thought too about Mr G's capacity for loss and I think it is fair to say he didn't really have any. He had no savings, assets, surplus monthly income or investments and his DB pension was his only retirement provision aside from his state pension entitlement. So, on the face of it, his DB scheme benefits weren't ones he could afford to lose.

It seems therefore that from a financial viability perspective, the transfer wasn't in Mr G's best interests. But what I have set out here doesn't convey the full picture. Financial viability isn't the only consideration when giving transfer advice; there might be other considerations which mean a transfer is suitable, despite providing overall lower benefits. I've considered these below.

Reasons for transferring

The fact-find and suitability report cite one sole reason for Mr G wanting to transfer his DB scheme benefits: to release money from his pension in order to buy himself a home. Pension Access says its recommendation to transfer meant that Mr G was able to realise his objective.

In his complaint letter to Pension Access Mr G explained that he had approached his employer to see if he could access his pension early whilst continuing to work but was told that the only way he could do so was by retiring. Mr G said he didn't want to retire because he enjoyed his job. He went on to explain to Pension Access that, having been denied early access to his DB scheme by his employer, he had approached a number of other financial advisers about arranging the transfer of his DB scheme. He said that all of them had told him his reason for wanting to access his pension was understandable but none of them were prepared to arrange the transfer because of the guaranteed benefits he would be giving up. I understand he approached Pension Access having been recommended by work colleagues.

As Mr G was an active – rather than deferred – member of his employer's DB scheme, it is indeed true that he would have been unable to take his benefits from the scheme and have continued to work and/or remain a member. His employer had been clear with him that the only way he could access his benefits was to take early retirement. And Mr G has been clear that he enjoyed his job and wished to continue working until he was aged 67. So I think it is fair to say, accessing his DB scheme benefits early was not a realistic option for him. So whilst I have noted Mr G's point, made as part of his complaint, that he could have taken benefits at age 60 and remained a member, I've not seen any evidence that this was actually possible. I can see that Mr G said he benefitted (due to his length of service) from 'Rule 85' and thus he could have taken TFC at age 60 for a deposit and used his pension to pay a mortgage. But there is no evidence that Mr G could have taken his pension under this rule at age 60, continued working (as was his wish) and remained a member. And (as discussed in further detail below) taking on lending was something Mr G was clear he was not prepared to undertake.

I've listened to the fact-find phone call between Mr G and Pension Access. It is clear to me from the call that Mr G had fully thought through his objective over the course of the previous year and came to the meeting with a fully formed plan and a specific objective that he was determined to realise. And the fact he'd already spoken with several other advisers before approaching Pension Access also evidences that Mr G's plans were well-formed.

Mr G told the adviser during the call that he had looked at the figures and calculated that he would save around £53,000 in rent payments over the next decade if he was able to purchase a property outright and cease paying rent. Mr G explained that he was living in local authority sheltered accommodation and that he lived there because of his late wife. He also said he had paid over £48,000 to the local authority in rent already over recent years. Mr G stated that he wanted to cease renting, to own his own property and to be able to choose where he lived. During the call he went on to say that he didn't want to take out a mortgage as he wished to own his property outright and because he wanted to increase his monthly income and standard of living in the process.

When asked by Pension Access, Mr G said he felt there was no way – given he had no disposable income left each month and no savings, assets or investments – that he could save up the amount he needed to buy a house outright. He also said that he had approached a mortgage lender the previous year but decided that he didn't want to take on debt as this defeated the purpose of what he was trying to achieve, namely the cessation of rent payments and outright property ownership. So I'm satisfied that Pension Access considered alternatives with Mr G – indeed it has documented them in its suitability report – but that Mr G valued the security of owning his own home outright above all else.

Finally, Mr G told Pension Access that he would definitely be re-joining his DB scheme once the transfer had gone ahead and that he intended to use the £2,000 overtime payment he would receive in January 2021 to clear his credit card debt. And whilst he told Pension Access he was comfortable with the personal loan repayments he was making, he also said that any surplus from his TFC he was releasing from his pension which wasn't going towards his property purchase would be used to clear the outstanding balance on his personal loan.

It is apparent to me, from listening to the phone call that Mr G was someone who knew what he wanted and had carefully thought through how he would achieve it. The security of owning his own home outright was manifestly very important to him as was the fact he did not like debt, nor wished to take on any more of it. I understand he had recently finished with a debt management plan so I can understand why the option of borrowing as a means of potentially achieving his objective wasn't something Mr G was willing to entertain. Similarly Mr G didn't want to wait until his NRD and use his TFC to buy a property at that point (be that outright or with a mortgage) because he wanted to stop having to pay for his accommodation – be that rent or a mortgage – preferring instead to have the additional sum as disposable income each month in the interim. So I think, from the evidence I've seen, Mr G had a very specific objective, personal to his circumstances, that he was focussed on achieving. As he himself said to Pension Access, the security of outright home ownership outweighed the accrued guaranteed pension benefits he was giving up.

And I can see from the fact-find and the suitability report that Pension Access warned Mr G about the guarantees he was giving up. It said:

"By transferring to your recommended new scheme you will be able to access the £118,832.83 you need. And the remainder of your pension savings will be reinvested for your future.

I have considered a lot of important factors when making my recommendation including why you need this money, your current circumstances, the specific terms of your current schemes and whether there is another viable way for you to raise the money you need (I don't believe there is).

You might have noticed that [your DB scheme] has some valuable guarantees, which you will lose if you follow my recommendation. I have carefully considered these guarantees as they shouldn't be given up lightly.

The need you have for this money outweighs what you would be giving up and that's why we believe that following our recommendation is in your best interests."

Mr G also signed Pension Access's declaration forms stating that he understood the guaranteed benefits he was relinquishing and the risks associated with doing so. Notwithstanding the warnings he received from Pension Access however, in Mr G's opinion his need for the security of his own home and his desire to stop paying rent overrode any guarantees his DB scheme offered to him. For Mr G, security in retirement clearly meant having stable accommodation. And, as he himself noted, he intended to opt back into the *scheme (thereby benefitting from its death benefits and the fact he could build up guaranteed pension benefits over the next decade until he retired).*

I've looked at the advice process undertaken by Pension Access, and I'm mindful of the financial viability assessment of the transfer I have set out above, but I'm satisfied from the evidence I've seen that Mr G's objective wasn't to secure better retirement income, it was to secure a home. And I think Pension Access made it clear to Mr G that its recommendation would help him to achieve that, but that this would result in lower overall retirement benefits for him.

There were aspects of the advice process that could, in my view, have been better executed. For example, I can see the forecasting in the transfer analysis isn't based on what Mr G intended to do (take in excess of £118,000 out of his plan immediately at age 57) rather it assumes that the transferred funds remain invested in their entirety until Mr G is aged 67. I think Pension Access should have provided Mr G with forecasting based on his stated intentions.

However, in looking at the process overall, I'm not persuaded Mr G received unsuitable advice, despite any gaps in the advice process. I'm satisfied that Pension Access made Mr G aware of the guarantees he was giving up and that he was provided with sufficient information to make a fully formed decision about what he wanted to do. I also think that even had Pension Access undertaken a flawless advice process, that Mr G would have proceeded regardless such was his determination to do so. And had Pension Access's recommendation been not to transfer, from what I know about its processes, I believe it would have accepted Mr G as an 'insistent client' and facilitated the transfer that way. And I don't think that would have been unreasonable, given Mr G's objective and in my view, his clear determination to achieve it.

So I don't think any minor flaws in Pension Access's advice process adversely affected the decision Mr G made. I'm not sure what would have made such a difference to Mr G that he could have been persuaded to accept a recommendation not to proceed. The fact remains that Mr G had a specific and clear objective which he wanted to achieve. I think this is further underscored by the fact he had already tried to arrange a transfer with a number of other financial firms but had not been put off doing so when they advised him not to proceed. Mr G persevered until he found a firm that was prepared to help him achieve his objective.

And I can see too that adequate consideration was given by Pension Access to how Mr G would fare financially in retirement, despite giving up his guaranteed DB scheme benefits. Pension Access assessed that Mr G would need an annual income in retirement of £804 per month/£9,654.00 annually to meet his basic needs. Having reviewed the fact-find I can see that Mr G's current monthly outgoings were clearly noted as well as what he expected his core outgoings to be in retirement. So despite his anticipated retirement outgoings being approximately half of his current outgoings, from what I have seen, they were fairly assessed.

In its suitability report Pension Access advised Mr G to opt back into his employer's DB scheme, stating that its recommendation to transfer was based on the fact he followed this advice. It is my understanding that Mr G has in fact done so and will therefore be building up entitlement under the scheme until he retires. This will provide Mr G with a guaranteed, index linked pension (as well as TFC should he elect to take it) for the remainder of his life.

Pension Access further recommended to Mr G that the remainder of his transferred pension (approximately £133,000) was suitably invested for his future. I understand that the balance remains invested. Mr G will therefore be able to access his SIPP flexibly or purchase an annuity in retirement if he so wishes.

Further I can see that Mr G is also entitled to the full state pension at age 67. In Pension Access's second transfer analysis report I can see that Mr G was entitled at that point to an annual state pension at age 67 of £9,339.20. His state pension, taken with his spouse's pension of £732 per year therefore covers Mr G's basic needs. But as he also has the benefits from opting back into his DB scheme and his SIPP pension fund, it is clear that he will likely have sufficient retirement income to meet his basic needs. Further, by not paying rent, and freeing up further income by clearing his personal debt, Mr G will have benefitted from having monthly disposable income for around a decade until he retires that means he could build up a savings buffer should he so wish. It should also not be overlooked that Mr G now has an asset he owns outright in the form of his own property.

So I'm satisfied that Pension Access's recommendation left Mr G with adequate income in retirement as well as a secure home of his own.

Death benefits

Mr G was widowed and had no dependent children. He was clear with the adviser that he did not have any need for the spouse's or dependent's pension that the DB scheme provided. So, I don't think losing these benefits disadvantaged Mr G. And I think he preferred the ability to pass on whatever remained of his pension to a beneficiary of his choice on his death. He also opted back into his employer's DB scheme so that, had he any need for a spouse's pension in the future, his entitlement for such started to accrue again. But at the time of the advice, no need for such benefit was present. Mr G also had £8,500 life cover which would have been of benefit to any future spouse and which, had he ever needed to, could have been increased given he now benefitted from monthly disposable income.

Summary

Whilst Mr G needs a pension in retirement, he also needed the security of a home of his own, which would've otherwise been a significant cost to him in retirement. He approached Pension Access with a well thought through objective and a plan about how to achieve it. Mr G had calculated the substantial savings he would make in the years until he retired and had a pragmatic approach to debt. Pension Access, for its part, took Mr G through a suitable advice process where it discussed the alternative means of achieving his objective with him and warned him about the guarantees he was giving up. Sufficient consideration was also given by Pension Access as to how Mr G would fare financially in retirement. So, although the advice process was not without flaw, I'm satisfied that overall Mr G was provided with all the information he needed to make a fully informed decision about what was in his best interests.

For Mr G, the need for a home of his own was paramount. Once the funds were released he bought his house and thus he enjoys the security that provides him with now and the release from worry about his accommodation needs in the future. Mr G achieved what he set out to do, ensuring in the process his retirement income needs would be met. While it appears that Mr G has since questioned whether the advice he received was suitable, he has not put forward a credible alternative means – one that could be argued that was overlooked by Pension Access – of achieving his goal. And whilst he has mentioned he could have taken out a mortgage it is apparent from the advice process that this wasn't something he was willing to entertain and with genuine reason. It is also far from clear whether Mr G would've qualified for a mortgage given his financial position.

Based on the evidence I've seen and set out above, I'm satisfied that Mr G had a genuine need to access his TFC (as well as an additional lump sum) earlier than the normal scheme retirement age and to also leave the residual funds invested until a later date. Mr G earned *sufficient income to cover his needs – and benefitted from surplus income after his house purchase – so had no need to take a pension income until he stopped working at age 67. Mr G could not have done this had he remained in his DB scheme.*

And had Mr G taken benefits from his DB scheme at 57, not only would they not have provided him with the amount of TFC he needed to purchase a property outright (around £38,000), he would had to have left his job. Mr G evidently did not want to retire yet as he said he enjoyed what he did. And, in any event, he had no other savings or investments he could use to 'top up' any TFC he got from the DB scheme if he took the benefits at age 57 in order to meet his need. So his objective of outright property ownership would not have been attained.

I don't think there was any other realistic way that Mr G could have bought his house without transferring his DB scheme benefits. So it follows, taking all the circumstances of Mr G's situation into account, that I think he was suitably advised by Pension Access to transfer his DB scheme in order that he could achieve his objective of outright property ownership. So I'm not intending to uphold his complaint."

Pension Access didn't respond to my provisional decision. Mr G's representative responded to my provisional decision and made the following points: -

- That Mr G had a cautious ATR and didn't want to take on any risk.
- The critical yield required to match his DB scheme benefits at NRD was 11.3%
- The substantial part of the transfer comprised the final salary element (older part) of Mr G's DB scheme. The combined transfer represented Mr G's only pension provision.
- The provider of Mr G's DB scheme is known for offering low CETVs in comparison to other such schemes thus it represented a very poor value for money transfer. This should have been disclosed to Mr G in order to underline the risk Pension Access was recommending that he take.
- At the time of the transfer, Mr G's DB scheme was made up of two elements. His employer's older style DB scheme and the newer part which replaced the older one in April 2015. The newer style DB scheme in which Mr G had been building up benefits since April 2015 contained no guarantees thus, despite rejoining his employer's pension scheme after the transfer, he rejoined the newer part of the scheme. Thus, on transferring, Mr G thus lost the element of his occupational pension scheme that contained guarantees.
- Pension Access failed to engage with Mr G's DB scheme to see if he could have merely moved the newer part of his occupational scheme and left the older DB element untouched.
- Mr G had no capacity for loss and no previous investment experience.
- Mr G had poor financial judgment as evidenced by his past credit issues.
- Insufficient consideration was given by Pension Access to Mr G potentially obtaining a mortgage. The property Mr G purchased cost £68,000 and as a member of an occupational pension scheme he could have obtained a high 'loan to value' mortgage until age 70/75 which would have been affordable and involved minimal fees. Mr G could have sought a 90/95% loan to value affordable mortgage then, on retirement, he could have used the TFC from his DB scheme to repay the balance at that point. Yet Pension Access failed to adequately explore this with Mr G.
- The reason there is no evidence that Mr G could have obtained a mortgage is the fault of Pension Access; it was required to consider all options and its failure to have done so should not now prejudice Mr G's position.
- Pension Access should have directed Mr G to the services of an independent mortgage broker. He had already been approved for a mortgage with a well-known

national provider.
- Pension Access said it had done undertaken a mortgage affordability calculation with another national provider and that it had shown Mr G could not get a mortgage. However, that he could not would depend on the term of the mortgage the calculation was based upon.
- Pension Access was not authorized or regulated to provide mortgage advice at the time and it should have sought advice for Mr G on this critical issue.
- Whilst taking on debt was unattractive to Mr G, he now needs a much higher return on his transferred pension to match his DB scheme benefits.
- It is likely that detailed analysis would have shown that the DB scheme would have led to greater income in retirement even if Mr G had had a mortgage because interest rates were low at the time.
- Mr G was single, with a good income and under no financial pressure at the time plus he was expecting some extra income. Rather than using the extra income to repay his credit card, as an alternative, Pension Access could have advised Mr G to take out a new personal loan to fund the balance of a deposit and clear his existing small debts without it having any material effect on his outgoings.
- The other firms Mr G had approached first were not prepared to act on his instructions but Pension Access was heavily involved in Mr G opting out of his DB scheme. If it had not done so then the transfer would not have happened.
- Much has been made of the money Mr G would save by not having a mortgage but the advice lead to him unnecessarily paying thousands of pounds in fees and tax. His DB scheme was guaranteed, index-linked with no risk or associated costs. Pension Access failed to communicate key costs, risks and potential consequences and benefits of the transfer and this failure means Mr G's retirement income will now be substantially lower.
- If a client needs capital and a transfer from a DB scheme to take a tax-free lump sum is being considered then it is important the reasons for doing so are made clear and documented and that all alternative options have been considered.
- Pension Access failed to meet its regulatory obligations to Mr G. It failed to have due regard to his needs and to treat him fairly; to have due regard to his information needs and to communicate with him in a way that was clear, fair and not misleading; and it failed to act honestly and fairly and in accordance with his best interests.

The complaint was passed back to me for 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 Pension Access'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.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Pension Access should have only considered a transfer if it could clearly demonstrate, on contemporary evidence, that the transfer was in Mr G's best interests.

I've thought about all of this, along with the points Mr G's representative has made in response to my provisional decision and the evidence in this case. Having done so I've decided not to uphold the complaint. I'll explain why by addressing each of the points Mr G's representative made on his behalf in response to my provisional decision. But Mr G should understand my provisional findings, which I've repeated above, also form part of my reasoning.

I refer to my provisional decision where I noted that Mr G had a cautious ATR and didn't want to take on any risk. As stated previously, however, I'm still persuaded that Mr G's stated need for the security of a home of his own was his main objective, not improving upon his existing pension. .

I stated and accepted provisionally that the critical yield required to match Mr G's DB scheme benefits at his NRD was 11.3% (although this figure was based on him taking a pension only at NRD so it was likely to be lower if he took TFC and a reduced pension). And I accept this is high and therefore unlikely to be matched by investing the pension instead.

The component parts of Mr G's occupational pension scheme are noted.

Mr G's representative has said that the transfer value factor used by the scheme trustees to calculate his CETV was low compared to larger company schemes and thus represented bad value for money in comparison. The transfer value factor may well have been much lower for Mr G's DB scheme than those applied to large company schemes; his was a public (and funded), rather than a private, sector scheme after all.

And whilst trustees of DB schemes broadly apply the same approach to calculating DB transfer values, they do have some discretion over the assumptions used. This means that different schemes can and do offer very different transfer values for the same amount of DB pension. But whether a large company DB scheme would have used a much larger transfer value factor to calculate Mr G's CETV is not something I can take into account here. I can only consider the advice Mr G received from Pension Access in relation to the DB scheme he was actually a member of. Telling Mr G that *if* he was a member of a large company's private sector DB scheme he may well have been looking at a larger CETV and thus the CETV offered by his DB scheme was low in comparison isn't, in my view, likely to have made a difference here. Pension Access had to advise Mr G on the scheme he was actually a member of and I don't think that in failing to provide him with a comparison such as this demonstrates that Pension Access mislead Mr G or ignored his information needs.

My understanding of Mr G's employer's occupational pension scheme is that there were indeed changes made to it around 2014/2015 but that it remained a DB scheme and its members are still ensured a certain level of pension benefits when they retire based on the number of years worked and the salary they received over that period.

According to the CETV Mr G received in March 2021 the newer element of his DB scheme entitlement was worth £45,665 of the £262,434. Mr G's representative says that Pension Access should have engaged with his DB scheme trustees to see if he could make a partial transfer of his total benefits. My understanding of Mr G's DB scheme is that either all or none of components must be transferred or retained. I don't know what knowledge Pension Access had about Mr G's DB scheme rules but regardless, there was no disadvantage to Mr G to any failure on its part to ask the scheme trustees about a partial transfer that wasn't possible.

I noted provisionally that Mr G had no capacity for loss, no investment experience and had experienced past credit issues. I have no further comment to make about these facts.
I dealt at length in my provisional decision about Mr G's clear and stated desire not to take on any debt. As I stated there, I listened to the fact-find phone call and it is clear from what Mr G said during it that he did not like debt, had no desire to take on any more of it and had recently finished with a debt management plan. Again, as stated provisionally, Mr G's attitude to debt given his circumstances was understandable so I can understand why the option of borrowing as a means of potentially achieving his objective wasn't something he was willing to entertain.

It follows that if he was unwilling to undertake any borrowing then taking out a new personal loan both to fund a house deposit and consolidate his personal debt as well as take out a mortgage would have likely been unpalatable to Mr G. By borrowing to fund a deposit, (even if he had used his modest overtime payment towards it) would have meant he was borrowing close to 100% of his property's value in order to make the purchase. And, in any event, I've seen no evidence that someone with Mr G's credit history could have obtained a 95% loan to value mortgage, or at least one he could afford, given his personal circumstances as they stood at the time. But the lack of any such evidence hasn't in any way prejudiced Mr G's position. I say that because any such absence of evidence is outweighed by Mr G's firmly stated – and understandable – position at the time of the advice that he simply did not want to take on any debt.

And I can't ignore either that Mr G also had no disposable income left over each month so any further and/or restructured borrowing would have to have cost less than his rent and current borrowing payments combined. Indeed Mr G made it clear that one of his aims was to secure some disposable income each month. Given Mr G told Pension Access that the property he was looking to purchase was costing around £100,000 I've seen no evidence that Mr G's income would have been sufficient to meet any repayments. But I'm satisfied that Pension Access did consider alternative means of Mr G achieving his objective and this included taking out a mortgage. But Mr G's understandable aversion to debt meant he was unwilling to entertain the option of borrowing in order to achieve his objective.

It follows that I don't consider there was any omission on the part of Pension Access's in failing to refer Mr G to a mortgage broker.

I noted provisionally that Mr G had approached other financial firms before arriving at Pension Access. And I noted too that it was indeed involved in him transferring his pension. I can't say with any certainty however, that without its involvement the transfer would not have occurred. Mr G may well have gone on to find another firm that would assist him or, at least, treat him as an insistent client so that he could transfer his pension even where the firm advised against it.

For the reasons I gave provisionally, I can't agree that Pension Access failed to make Mr G aware of the costs, risks and potential consequences of the transfer.
I accept that Mr G's retirement income will now be lower as a result of the transfer. But I don't think there was any other way for him to achieve his objective of the security of owning his own home outright. I think that doing so was of paramount importance to him. Nor can I ignore the fact that whilst his retirement income will be lower, he now owns a capital asset outright and has been able to cease paying rent each month since he made his purchase. So he has indeed incurred charges by transferring, along with a larger tax bill, however, he also needed the security of a home of his own, which would've otherwise been a significant cost to him in retirement. Mr G has achieved what he set out to do, ensuring in the process his retirement income needs would be met.

Having reviewed the documentation from the time of the sale I am satisfied that the reasons for transferring Mr G's DB scheme were made clear and were well documented. I am also satisfied that the alternative options applicable to Mr G's circumstances were considered by Pension Access. So I can't agree that it failed to meet its regulatory obligations to Mr G.
I remain of the view that I stated provisionally that based on the evidence I've seen, I'm satisfied that Mr G had a genuine need to access his TFC (as well as an additional lump sum) earlier than the normal scheme retirement age and to also leave the residual funds invested until a later date. Mr G earned sufficient income to cover his needs – and benefitted from surplus income after his house purchase – so had no need to take a pension income until he stopped working at age 67. And thereafter, I'm satisfied that Mr G's needs in retirement would be met by his state pension entitlement, his employer's pension and his remaining SIPP funds. Mr G could not have done this had he remained in his DB scheme.

So I don't think there was any other realistic way that Mr G could have bought his house without transferring his DB scheme benefits. It follows, taking all the circumstances of Mr G's situation into account, that I think he was suitably advised by Pension Access to transfer his DB scheme in order that he could achieve his objective of outright property ownership. So I'm not upholding this complaint.

My final decision

My provisional findings now form part of this my final decision.

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 October 2024.

Claire Woollerson
Ombudsman