DRN-4503444

The complaint

Mr P complains about the advice he was given by Granard Insurance Brokers ('Granard') 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 him a financial loss.

What happened

Mr P was a deferred member of his former employer's DB pension scheme when he met with Granard in late 1998. At that point Mr P was aged 33. He told Granard that he had recently started a new job and that his new employer provided the benefit of contributing 5% of his salary to a personal pension of his choice.

At the time of the advice Mr P had 11.75 years pensionable service in his former employer's DB scheme and was forecast to receive a pension at the scheme's normal retirement date ('NRD') at age 65 of £4,494.37. Mr P told Granard that his previous employer had recently been taken over by another company and restructured. He also said that its DB scheme had now been closed to new members.

Granard carried out a transfer value analysis of Mr P's DB scheme and provided him with a brief suitability report/reasons why letter in which it recommended that he transfer the cash equivalent transfer value ('CETV') of the scheme (which was £37,122.39) to a personal pension with a provider I shall call C. This was on the basis that it imposed the lowest charges which, in Granard's view, would mean better investment returns.

The suitability report also analysed the future of the DB scheme and Granard stated that in its experience, when a company had been the subject of a hostile takeover bid one of the first things to happen was the closure of the company pension scheme to new members. Granard said this was typically followed by the new owner ceasing company contributions and the DB scheme falling into deficit. Granard said this would mean that the scheme would be unable to meet its liabilities which it thought would inevitably lead to the transfer of the entire scheme to an insurance company as a 'bulk buy-out'. Ultimately, Granard thought this could mean a devaluation on any benefits not in payment which, in other words meant Mr P's paid-up value would likely be reduced.

As a result, Granard recommended Mr P transfer his DB scheme to C, with the added benefits of being able both to reduce his retirement age to 60 and to nominate a beneficiary to receive the entire value of his personal pension plan.

Mr P accepted Granard's recommendation, signed the necessary forms and the transfer took place in around May 1999. The total value of the DB scheme benefits transferred to C was £37,122.39.

In 2007 Mr P transferred his personal pension to another provider I shall call M.

In July 2021, Mr P, through his representative, complained to Granard. He said the advice he had received in 1998/1999 to transfer his DB scheme benefits had been unsuitable. Mr P said Granard had mis-sold him his personal pension which had meant he'd lost all the guaranteed benefits his DB scheme provided. Mr P also said that at the time of the advice he was an inexperienced investor and didn't understand the implications or the risks associated with the transfer. He said that if Granard had made him aware of the full implications at that point then he would not have proceeded with the transfer.

Granard responded to Mr P's complaint in October 2021 but said it didn't think that it had done anything wrong. Granard said it had complied with the industry regulator's rules as they were at the time it conducted its business with Mr P. It also said it had written to Mr P in 1999 and 2000 under the 'Pensions Review' to offer him a review of the transfer but he had never responded.

Unhappy with Granard's response to his complaint, Mr P complained to this service. Our Investigator looked into Mr P's complaint for him but didn't think it was one that should be upheld. Our Investigator thought that the transfer meant Mr P could be financially better off. This was because our Investigator thought that the investment returns needed to match the benefits Mr P had given up in his DB scheme were achievable given Mr P's attitude to risk ('ATR') which he had told her was 'medium' at the time of the advice. Our Investigator also noted that at the time of the advice Mr P had concerns about the financial stability of the DB scheme and this, in addition to the likelihood of the transfer being financially viable, meant she couldn't reasonably conclude that the transfer had been unsuitable.

Mr P disagreed with our investigator's findings. He said that the then regulator's investment return projection rates could not be relied upon for future performance and, as a cautious investor, the lower rate at the time (of 6%) was below that calculated as being needed to exceed the DB scheme (namely 7.2%). He said that whilst it may have been recorded that he was prepared to accept some investment risk there had, in fact, been no need for him to do so as he had a DB scheme. Mr P said that Granard had recommended he move from a no risk situation to a risk-based situation, which was not in his best interests. Finally, Mr P said that there was no evidence that his former employer was in financial difficulty at the time of the advice – he said his comments about this matter at the time were based on opinion.

Granard also provided some comments in response and thanked our Investigator for her detailed reasoning for not upholding the complaint.

The complaint was passed to me and I issued a jurisdiction decision in July 2023 in which I found that this was a complaint that could be considered by the Financial Ombudsman Service. I then issued a provisional decision on the merits of this complaint in mid-September 2023 in which I recommended that the complaint be upheld.

Mr P replied to my provisional decision to say that he accepted my provisional findings upholding his complaint and preferred to have his compensation as a lump sum rather than have his personal pension augmented.

Granard replied to say it rejected my provisional findings upholding Mr P's complaint. It made the following comments: -

- That it could not arrange a redress calculation as the sole remaining partner from the time of the advice was now long retired.
- That I had inferred that Mr P was inexperienced and unqualified when he was in fact educated to a high standard, a homeowner with a mortgage and someone who had moved home several times.
- It had made observations about the new owner of Mr P's former employer. What followed the company takeover wasn't inconceivable.

- Properties in the area where Mr P now lives sell for over £700,000. Mr P is not, therefore, someone who is unable to understand what he is undertaking.
- Mr P's salary more than doubled when he moved jobs to his new employer and he was offered 5% salary contributions to a pension provider of his choice.
- I should not accept that Mr P didn't receive correspondence from Granard in the Autumn of 1999 pertaining to the Pensions Review. Granard issued such correspondence under an enforcement notice issued by the then regulator.
- Mr P sold his home in late November 1999 therefore he would have received the Pensions Review letter Granard sent him. It is inconceivable that Mr P would not have arranged to have his mail redirected to his new home by Royal Mail. Thus, he would have received the letter and, as six years have elapsed since Mr P was aware he had cause to complain, his complaint is time-barred.
- Mr P moved his pension from C to M in 2007 probably because he wanted better returns which demonstrates he can't be classed as someone with a low attitude to risk.
- That the DB scheme was moved to the new employer's pension scheme in 1998/1999 at the same time as Mr P's pension transfer to C was being processed. Granard was shocked to see the CETV statement not citing the name of Mr P's former employer but the successor scheme provider. The pension fund was then transferred to another adviser again in 2001 and is now administered by another entity. This all demonstrates that Granard's opinion from the time of the advice about what happened to DB pension schemes after a hostile takeover was correct.
- The now DB scheme administrator can carry out a calculation to ascertain the critical yield but a letter of authority from Mr P is required for it to do so. Granard's sole remaining partner has no legal capacity to obtain the information needed to retrospectively carry out the critical yield calculation and has asked us to do so.
- To investigate this complaint correctly I should review the entire file and likewise reject the complaint as vexatious and time-wasting.

The complaint was returned 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. 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

The advice was provided by Granard in late 1998 to early 1999. At this time it was regulated by the Personal Investment Authority ('PIA'). Granard was a previous member of the Financial Intermediaries, Managers and Brokers Regulatory Association ('FIMBRA'). When the PIA took responsibility for FIMBRA businesses in 1994, they adopted the FIMBRA rules. And these adopted rules applied at the time of the advice in this case.

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 HM's actions here.

The FIMBRA rulebook set out the expectations on members when giving advice. The key rules applying from April 1998 were as follows:

- Rule 4.2.1 required an adviser to take reasonable steps to obtain relevant information concerning a client's personal and financial circumstances in order to provide investment services.
- Rule 4.3.1 required FIMBRA members to take all reasonable steps to satisfy themselves that the client understood the risks involved in a transaction.
- Rule 4.4.1 required members to establish, based on their knowledge of the client and 'any other relevant information which ought reasonably to be known' to them, which types of investment that were the most suitable for them.

In July 1988 an amendment to the guidelines on best advice required members to ensure their recommendations were made on the basis of the client's best interest rather than the income generated for the member. In July 1994, in a further amendment to the guidelines, members were required to produce a Transfer Value Analysis ('TVAS') and a 'reason why' letter to explain the recommendation being give and why the advice is suitable. It was possible for a pension provider to carry out the TVAS on behalf of an IFA.

The regulator, the PIA, also indicated in July 1994 that it expected firms to find that many customers would be better advised to remain in their occupational schemes, however, it should be presumed that it would be unsuitable for an active member to opt-out of their occupational DB scheme.

I've considered the responses to my provisional decision, however, they have not persuaded me to change my mind. I remain of the opinion that Mr P's complaint is one that should be upheld. I've repeated my provisional findings here and also addressed the additional comments Granard made in response to my provisional decision.

"My provisional findings

Financial viability

The advice was given during the period when the regulator was publishing 'discount rates' for use in loss assessments resulting from the industry-wide Pensions Review. Whilst businesses weren't required to refer to these rates when giving advice on pension transfers, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable for a typical investor at the time the advice was given in this case.

I've not seen any evidence to show that the critical yield was calculated by Granard at the time of the advice. There is mention that a TVAS was produced but no copy has been retained or provided. We have recently asked both Granard and C whether they have a copy of the TVAS containing the critical yield or whether it was possible for it to be retrospectively calculated. Unfortunately it seems it has not been possible to come up with either. However, at the point the advice was given the relevant discount rate was 7.2% per year for 31 years to retirement.

For further comparison, the regulator's upper projection rate at the time was 12%, the middle projection rate 9% and the lower projection rate 6%. I've taken this into account, along with the composition of assets in the discount rate, Mr P's medium attitude to risk and also the term to retirement.

Mr P was 33 at the time of the advice and his scheme's NRD was age 65. There is mention in the suitability report of an 'added advantage' of transferring being that Mr P could take his *pension at age 60. But as there is no fact-find available, nor a copy of the TVAS, I can't say with any certainty whether Mr P intended to retire at age 60 or age 65.*

Without knowing what the critical yield was I can't reasonably conclude that by transferring, Mr P would achieve benefits that were better than those offered by the DB scheme he was giving up. Mr P's personal pension needed to provide an annual return greater than the critical yield each year but, in the absence of knowing what the critical yield was, I can't know if that was achievable and therefore that the transfer was a financially viable one.

Nor can I ignore that transferring a DB scheme is not suitable in most cases. And whilst the regulatory standards at the time were slightly less onerous than they subsequently became, it is for Granard to demonstrate that the transfer of Mr P's pension was in his best interests. Without knowing what the critical yield was, and therefore the growth Mr P's personal pension needed to achieve throughout its entire term in order just to match the benefits he was giving up, I can't reasonably conclude that Granard has been able to demonstrate that the transfer was a financially viable one that was in Mr P's best interests to make.

So despite Mr P having a medium attitude to risk and the discount rate of 7.2% being lower than the regulator's then middle projection rate of 9%, I can't fairly conclude that these facts all meant Mr P was likely to exceed the benefits offered by his DB scheme unless I know what the annual investment return the pension needed to achieve in order to do so. There would be little point in any event, of Mr P giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme.

Nor do I think that the length of time Mr P had to go to retirement means his capacity for loss was significant. I can't see that Mr P had any savings at the time of the advice. He had a mortgage but I don't know how long it had left to run. But it can't be assumed that just because Mr P had 33 years to go until he retired that he could afford to 'gamble' by transferring his DB scheme. 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.

With this in mind, I don't think the recommendation to transfer out of the DB scheme was a suitable one or in Mr P's best interests.

Other considerations

Of course financial viability isn't the only consideration when giving transfer advice, as Granard 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.

From the available evidence it appears that Mr C had no specific objectives in making the transfer beyond wanting to do so because he didn't trust his former employer with the future of his pension. And whilst there was a passing mention in the 'reasons why' letter to reducing Mr P's retirement age to 60 and the added benefit of being able to nominate a beneficiary to receive the entire value of his personal pension fund in the event of his death, I'm not persuaded that these were reasons for Mr P transferring his DB scheme as there is no other reference to them in the evidence I've seen.

Concerns over financial stability of the DB scheme

Granard's 'reasons why' letter sets out that Mr P had explained that his former employer had been taken over by another company in 1996 and that the DB scheme had been closed to new members as a result of a restructure. Mr P also said that there had been more redundancies than had initially been expected.

I can see that Granard explained to Mr P that having left his employer prior to retirement he would receive what was known as a 'paid up benefit'. It said that this had no declared guarantees and that, if it had, it would have recommended a transfer to a s32 buy-out plan. Granard also noted in the suitability report its discussion with Mr P about the future of his former employer and how takeovers could lead to the closure of DB schemes to new members, the cessation of employer contributions to the scheme and the scheme falling into deficit before being sold to an insurer. Granard said that this usually led to a devaluation of any benefits (such as Mr P's) not already in payment.

So it appears to me that one reason for recommending the transfer was so the paid-up value of Mr P's pension wasn't devalued at any point in the future. Given the limited evidence available from the time of the sale, it's not possible to say with any certainty that the DB scheme faced an unsettled future. I've certainly seen no evidence that it did. All I can see is that at the time of the advice there was some concern from Mr P about the scheme's future and some speculation by Granard as to where that could lead. Mr P has since told us that there was no evidence the DB scheme was in financial difficulty nor was the strength of the company and its future solvency in doubt. Mr P said that at the time of the advice he had just expressed an opinion.

But based on what I've seen, the funding of Mr P's DB scheme was not in a position such that he should have genuinely been concerned about the security of his pension. And if it was acting in Mr P's best interests I think that Granard should have done more to allay any fears Mr P had in this respect or, at the very least, explored with him why he felt that way. But I've seen no evidence that it did so.

Given the lack of any evidence that Mr P's concerns about the future stability of the DB scheme were founded in any fact, this isn't a good enough reason on its own to justify the transfer.

Earlier retirement

Nor have I seen any evidence that Granard explained to Mr P that if his retirement aim was to retire at age 60 (and it is not clear to me that it was an actual objective of Mr P's) then this could be achieved by remaining in his DB scheme (albeit that his scheme pension would be subject to reduction). In any event, Mr P was only aged 33 at the time of the advice, and based on what I've seen he didn't have concrete retirement plans. As Mr P had 27 years (or 33 years) before he thought he would retire, I think it was too soon to make any kind of decision about transferring out of the DB scheme. So, I don't think it was a suitable recommendation for Mr P to give up his guaranteed benefits when he didn't know what his needs in retirement would be. If Mr P later had reason to transfer out of his DB scheme he could have done so closer to retirement.

Death benefits

As I've previously stated, there was reference in the 'reasons why' letter to Mr P being able to nominate a beneficiary to receive the entire value of his personal pension fund in the event of his death, I'm not persuaded that this was a reason for Mr P transferring his DB scheme. There certainly is no other reference to it in the evidence I've seen. So it seems to me that this was more of a 'nice to have' rather than an actual objective for Mr P.

That said, I do think that Granard failed to highlight the death benefits Mr P had under his existing DB scheme. Mr P was married so the spouse's pension provided by the DB scheme would've been useful to his wife (and indirectly his dependent children) if Mr P predeceased her. I don't think Granard made the value of this benefit clear enough to Mr P. It was *guaranteed and it escalated – it was not dependent on investment performance – whereas any sum remaining on death in a personal pension was.*

In any event, Granard should not have encouraged Mr P to prioritise the potential for higher death benefits through a personal pension over his security in retirement.

Furthermore, if Mr P genuinely wanted to leave a legacy for his spouse and children, which didn't depend on investment returns or how much of his pension fund remained on his death, I think Granard should've instead explored life insurance.

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 P. And I don't think that insurance was properly explored as an alternative.

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 P, it follows that I don't need to consider the suitability of the investment recommendation. This is because Mr P should have been advised to remain in the DB scheme and so the investments wouldn't have arisen if suitable advice had been given.

Summary

I don't doubt that the control of his pension sounded like an attractive feature to Mr P. But Granard wasn't there to just transact what Mr P might have thought he wanted. The adviser's role was to really understand what Mr P needed and recommend what was in his best interests.

Ultimately, I don't think the advice given to Mr P was suitable. He was giving up a guaranteed, risk-free and increasing income. By transferring, Mr P was 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 P's only objective was to remove control of his pension from his former employer but I don't think Granard interrogated this objective in any meaningful way – it didn't establish at the time why Mr P felt that way, nor did it challenge any preconceived ideas he had on the matter. I appreciate the PPF was yet to be established, and that there were some contemporary pension scandals happening but that didn't mean that Mr P's DB scheme was similarly at risk. A robust conversation about this ought to have reassured Mr P that remaining in his DB scheme was in his best interests.

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

I've thought about whether Mr P would have gone ahead in any event. But I'm not persuaded that Mr P's concerns about his former employer were so great that he would've insisted on the transfer knowing that a professional adviser, whose expertise he had sought out and was paying for, didn't think it was suitable for him or in his best interests; I think that would've carried significant weight. So, if Granard had clearly explained this to Mr P I don't think he would have insisted on transferring out of the DB scheme against Granard's advice.

In light of the above, I think Granard should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology."

My provisional findings were predicated on Mr P's ATR being classed as 'medium'. This is how he described his ATR to our Investigator and it is on this basis the suitability of

Granard's advice has been considered. A well-educated homeowner can have a low, medium or high ATR. I've seen no evidence that Mr P's level of education, and status as a homeowner, is in anyway linked to his stated ATR in relation to his pension.
Whilst I note Granard's comments firstly about the takeover of Mr P's former employer, and secondly about its statement that it issued Pensions Review letters to Mr P, neither are new and both have been addressed by me, in full, in both my provisional decision and in my jurisdiction decision issued on 20 July 2023. So, I remain of the view that Mr P's complaint has been brought in time and I have nothing further to add.

I am unable to see the correlation between the value of property where Mr P lives, or the fact he doubled his salary, and his ability to understand what transferring his pension meant. It was Granard's duty to take all reasonable steps to satisfy itself that Mr P understood the risks involved in the transaction. But I don't think the suitability report/reasons why letter provided Mr P with enough information to enable him to be able to make a fully formed decision about what he was doing. Without providing him with the critical yield for example, Mr P was unable to assess whether he would be financially better off or not by transferring his pension.

And, as I stated provisionally, Mr P's only objective was to remove control of his pension from his former employer. But I don't think Granard interrogated this objective in any meaningful way – it didn't establish at the time why Mr P felt that way, nor did it challenge any preconceived ideas he had on the matter. And whilst the PPF was yet to be established, and there were some contemporary pension scandals happening, that didn't mean that Mr P's DB scheme was similarly at risk. A robust conversation about this ought to have reassured Mr P that remaining in his DB scheme was in his best interests.

Granard said in the suitability report/reasons why letter that, in its experience, *"when a company is on the receiving end of a hostile bid…[t]he first indication is that the pension scheme is closed to new members, then the company contributions cease, followed by the scheme being "in deficit" as it's unable to meet its liabilities. The next move will invariably be to transfer the entire scheme to an insurance company as a "bulk buy-out", this will lead to a devaluation of benefits NOT in payment, in other words your paid-up value is likely to reduce."* I appreciate that Mr P's DB scheme has moved providers twice and is now with a further administrator. However I am unable to agree with Granard's comment that the fact it has demonstrates that the forecast contained in its suitability report about what happens to DB pension schemes after a hostile takeover (as quoted here) has been proved to be correct. Moving providers/administrators is not akin to an insurance backed 'bulk buy-out', a devaluation of benefits not in payment or a reduction in the paid-up value of benefits.

In the course of my consideration of this complaint I have reviewed the file in its entirety. For the reasons I have given both provisionally and here in this, my final decision, I don't think that Granard has been able to demonstrate that the transfer of Mr P's DB scheme to a personal pension plan was in his best interests. I think that Granard should have advised Mr P to remain in his DB scheme.

In light of the above, I think Granard should compensate Mr P for the unsuitable advice, using the regulator's defined benefits pension transfer redress methodology. I appreciate Granard's concerns that it may not be straightforward to arrange a redress calculation. My understanding however is that it is not impossible and, as Granard is indefinitely liable for the advice it gave, it must comply with my decision.

Putting things right

A fair and reasonable outcome would be for the business to put Mr P, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr P would have most likely remained in the occupational pension scheme if suitable advice had been given.

Granard 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 P'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, Granard should:

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

Redress paid to Mr P 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, Granard 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 P'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 £160,000, 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 £160,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Granard Insurance Brokers to pay Mr P the compensation amount as set out in the steps above, up to a maximum of £160,000.

Recommendation: If the compensation amount exceeds £160,000, I also intend to recommend that Granard Insurance Brokers pays Mr P the balance.

If Mr P accepts this decision, the money award becomes binding on Granard Insurance Brokers.

My recommendation is not binding. Further, it's unlikely that Mr P can accept my decision and go to court to ask for the balance. Mr P 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 P to accept or reject my decision before 5 January 2024.

Claire Woollerson
Ombudsman