DRN-3647461

The complaint

Mrs E complains about the advice given by Cambrian Associates Limited ('Cambrian') to transfer the benefits from her defined-benefit ('DB') occupational pension scheme to a self-invested personal pension ('SIPP'). She thinks the advice may have been unsuitable for her and has caused a financial loss.

What happened

In March 2016, Mrs E's employer announced that it would be examining options to restructure its business, including decoupling the employer's DB scheme (the 'BSPS') from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined benefit scheme ('BSPS2'). Alternatively, members were informed they could transfer their benefits to a personal pension arrangement.

In October 2017, members of the BSPS were sent a "Time to Choose" letter which gave them three options; to either stay in BSPS and move with it to the PPF, move to the BSPS2 or transfer their BSPS benefits elsewhere. The deadline to make their choice was 11 December 2017 (and was later extended to 22 December 2017).

Mrs E wasn't sure what to do about her pension so she got in touch with a representative of Cambrian. Mrs E and her husband met with Cambrian in October and November 2017 and it gathered information about her circumstances and objectives. It noted Mrs E was 33, that she was married and had three young children. Mrs E and her husband owned their home, which was subject to a mortgage of £280,000 over 25 years and was protected with term assurance. It was recorded that Mrs E earned around £37,300 per year and Mr E around £41,000 per year and their combined income exceeded their outgoings. However, they presently had no savings as everything had been put towards the purchase and furnishing of their new home.

Cambrian noted Mrs E had a 'balanced' attitude to risk but in terms of capacity for loss, this was cautious, as the DB pension was an important part of her overall retirement planning and she couldn't afford to lose it. It was noted Mrs E had received a cash equivalent transfer value ('CETV') of her DB scheme of £118,916.43 and she and her employer were contributing 16% of her salary per month to her employer's new defined-contribution ('DC') pension scheme, equivalent to around £6,000 per year. Cambrian recorded that Mrs E wanted to retire early, at age 57 and take £2,000 per month from that age. She'd then reduce this to £1,250 per month from age 68, once she was in receipt of her state pension.

Cambrian noted Mrs E's priorities were to be able to retire early, to maintain her present standard of living and to be able to increase her pension at her realistic retirement age. It also recorded that Mrs E wanted flexibility and control of her pension funds and for them to be secure, as she didn't trust her employer.

In December 2017 Cambrian advised Mrs E to transfer her BSPS benefits to a SIPP. It said this would give Mrs E the option to retire at 57 and adjust her income as per her needs. Cambrian said that transferring her BSPS benefits gave her a better opportunity of increasing the annual pension she'd be entitled to from the PPF. And transferring also gave her the security she wanted because although the BSPS2 looked likely to be going ahead, her employer still had a 33% stake in the business so she still had concerns over its future. Mrs E accepted this advice and £118,916.43 was transferred from the BSPS to a SIPP.

In 2022 Mrs E complained to Cambrian about the advice she received, believing it may have been unsuitable for her.

Cambrian maintained the advice was suitable as it allowed Mrs E to achieve her objective of retiring early and gave her increased flexibility. It said remaining in the DB scheme wouldn't have met her objectives and Mrs E didn't trust her employer so wanted to move away from it. It said there was still a possibility of Mrs E's benefits falling into the PPF in future even if the BSPS2 went ahead. It also said Mrs E would be building up further pension benefits over the next 23 years, which when added to her state pension would meet her needs.

Unhappy with Cambrian's response, Mrs E referred her complaint to the Financial Ombudsman Service to investigate. One of our Investigators looked into the complaint and said it should be upheld. She said she accepted Mrs E likely had preconceived ideas about transferring and concerns about the PPF/her employer but it was Cambrian's job to rationally address these and provide suitable advice. The Investigator thought the advice was ultimately unsuitable as Mrs E wasn't likely to be able to exceed the benefits available to her under the BSPS2 or the PPF whatever age she retired at. And she didn't think there were any other compelling reasons for Mrs E to transfer out of the BSPS given she had at least 23 years before she could think about retiring, she already had a degree of flexibility because of the funds she'd be building in her DC scheme and there was no reason to put all of her retirement funds at risk. The Investigator recommended Mrs E should be compensated based on her having opted to join the BSPS2.

Cambrian didn't agree – it maintained the advice was suitable as the transfer met all of Mrs E's objectives. It said it had discharged its responsibilities by outlining all of Mrs E's options and it started from the position that transferring out of a DB was usually unsuitable. However, Cambrian maintained the only way Mrs E could retire at age 57 and meet her income need of £24,000 per year was by transferring out of the DB scheme. And she needed the flexibility of income that transferring would provide. It said the reality was that if the BSPS2 fell into the PPF, Mrs E would suffer a 10% reduction in benefits. Cambrian also commented that Mrs E's pension had achieved net growth of around 4.5%, which represents a good rate of return. Ultimately, it said Mrs E made an informed decision to transfer out of the BSPS.

As no agreement could be reached, the complaint was subsequently referred 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 Business ('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

The below is not a comprehensive list of the rules and regulations which applied at the time of the advice, but provides useful context for my assessment of Cambrian's actions here.

PRIN 6 : *A firm must pay due regard to the interests of its customers and treat them fairly.*

PRIN 7: *A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading.*

COBS 2.1.1R: *A firm must act honestly, fairly and professionally in accordance with the best interests of its client (the client's best interests rule).*

The provisions in COBS 9 which deal with the obligations when giving a personal recommendation and assessing suitability. And the provisions in COBS 19 which specifically relate to a DB pension transfer.

Having considered all of this and the evidence in this case, I've decided to uphold the complaint for broadly similar reasons to those our Investigator gave. I've summarised my findings below.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable and that a transfer should only consider the transfer to be suitable if it can clearly demonstrate it is in the consumer's best interests. I'm also mindful that under COBS 9.2.1R Cambrian needed to take reasonable steps to ensure that its recommendation to Mrs E was suitable for her. And having looked at all the evidence available, I'm not satisfied Cambrian took reasonable steps to ensure the advice to transfer was suitable for Mrs E or that it was in her best interests.

Financial viability

I think Mrs E was likely to received pension benefits of a lower overall value in retirement if she transferred out of the DB scheme to a SIPP. I say this because:

- Cambrian carried out a transfer value analysis report ('TVAS'), as required by the regulator, showing how much Mrs E's pension fund would need to grow by each year in order to provide the same benefits as her DB scheme (the critical yield). It doesn't seem that the TVAS was produced using the benefits available to Mrs E through the BSPS2 for comparison purposes. Instead it was based on the old BSPS. Based on my experience, the critical yields applicable to the BSPS2 were likely to be between those reflecting the old BSPS and the PPF.

- The TVAS showed that assuming a CPI rate of 2.5%, the relevant critical yield at age 65 was 6.42%% if Mrs E took a full pension; if she took tax-free cash ('TFC') and a reduced annual pension it was 5.66%. At age 57 it was 7.41% for a full pension and 6.42% with TFC and a reduced pension. Under the PPF the equivalent critical yields at age 65 were 5.16% if Mrs E took a full pension and 4.97% if she took TFC and a reduced pension. At age 57 it was 6.19% for a full pension and 6% with TFC and a reduced pension.

- 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, I consider they provide a useful indication of what growth rates would have been considered reasonably achievable when the advice was given.

- The critical yields do not compare favourably with the discount rate of 4.6% for 23 years to retirement at age 57, or the regulator's middle projection rate of 5%, particularly if Mrs E retired early. However, in the suitability report Cambrian gave Mrs E the impression that the critical yield of 6.42% was possible, though not guaranteed. That wasn't fair to Mrs E as it led her to believe the return was achievable, when this was well above the discount rate and the regulator's middle projected growth rate.

- In my view, the critical yields were not achievable if Mrs E invested in line with her medium attitude to risk, particularly if she retired earlier than age 65. So, I think Mrs E was likely to receive benefits of a substantially lower overall value than the DB scheme at retirement, even if the scheme moved to the PPF.

- Cambrian says it carried out cash flow modelling showing that Mrs E's funds would last beyond her life expectancy. But it appears that this was based on Mrs E achieving an average annual return of 6.2% every year, based on the recommended investment fund's past performance. But as Cambrian will know, past performance is no guarantee of future performance so I find the discount rate and the regulator's standard projections to be more realistic in this regard in the long term rather than projecting historic returns forward, particularly over such a long period of time.

So, overall, I don't think it was in Mrs E's best interests to transfer out of the BSPS as she was likely to receive lower overall benefits at retirement, whether she retired early or nearer to age 65. I also don't think Mrs E needed to risk her guaranteed pension in this way, given this represented her main pension provision and she said she couldn't afford to lose it. Furthermore, any pension benefits she went on to accrue in future would all be subject to investment risk. So for this reason alone, I don't think Cambrian has shown that it was clearly in Mrs E's best interests to transfer out of the BSPS.

However, financial viability isn't the only consideration when giving transfer advice. Other objectives might mean a transfer is suitable overall and I've carefully considered these here.

Flexibility and income needs

I don't think Mrs E needed to transfer out of the BSPS in order to have flexibility in retirement. And I think she could've most likely met her income needs at age 57 whether she opted into the BSPS2 or moved to the PPF. This is because:

- Mrs E would likely be building up additional pension funds over the next 23 years that she could access flexibly. If she contributed £6,000 per year for 23 years to her DC scheme, and achieved modest net growth of 2%, this could be worth around £180,000. So, remaining in the DB scheme gave her a guaranteed income stream and she could top up whatever income she needed above this by withdrawing funds from her DC scheme. She could also have put off accessing her BSPS benefits until closer to age 65, instead drawing down from her DC scheme first. So, to my mind, she already had flexibility in how she accessed her pension.

- I also don't think she would've needed extra flexibility of income beyond this. That's because the income she could take from the BSPS2 or the PPF from age 57, together with her state pension entitlement, was below Mrs E's minimum income requirements in retirement (£2,000 per month between ages 57 and 68 and £1,250 per month from age 68). So, Mrs E wouldn't likely need to take less income from the DB scheme as she could simply decrease the income she took from the DC scheme if she needed to.

- I'm also mindful that Mrs E was at least 23 years away from being able to access her pension. So, although she thought she'd like to retire early – as most people do – whether that was realistically achievable for her, or whether she'd actually individually need £2,000 per month, wasn't something she or Cambrian could say with any certainty. And I don't think that was a decision she needed to make at this time – if she joined the BSPS2, she could've made a decision to transfer out of the scheme closer to her retirement age if her circumstances required it.

Overall, I think that Mrs E had more chance of meeting her income needs in retirement through a combination of taking her benefits under the BSPS2 and taking flexible drawdown from her DC scheme. And this provided her with a higher amount of guaranteed income, thereby decreasing her overall risk in retirement. So, I don't think it was suitable or in Mrs E's best interests for Cambrian to advise her to transfer her DB pension, exposing her to the risks of the financial markets, just to have extra flexibility that she didn't need. That's particularly the case given Mrs E's DC scheme already provided her with a degree of flexibility and would already be exposed to investment risk.

Death benefits

I don't think Mrs E had a genuine need for death benefits beyond those provided by remaining in the DB scheme. If Mrs E genuinely wanted to provide a legacy for her family, there were other ways of achieving this without risking her own security in retirement. I say this because:

- Death benefits are an emotive subject and of course most people would like their loved ones to be taken care of when they die. And I'm sure that the idea of leaving a large sum to her family in the event of his death sounded attractive to Mrs E, as it would to most people. But whilst I appreciate death benefits are important to consumers, Cambrian's role was to advise Mrs E on what was best for her retirement. And the existing scheme already offered death benefits, by way of a spouse's pension, that could've been valuable to her family in the event of her death.

- The CETV figure would no doubt have appeared attractive as a potential lump sum, but the sum remaining on death following a transfer was always likely to be different. As well as being dependent on investment performance, it would've also been reduced by any income Mrs E drew in her lifetime. The cash flow model also showed the fund would be depleted by age 83 based on her taking an income of £2,000 per month from age 57 and reducing it to £1,250 per month at age 68. So, it might not have provided the legacy that Mrs E thought it would. I'm also mindful that Mrs E expected to build further pension funds through her DC scheme and she could've nominated any beneficiaries of her choosing to receive the funds remaining in it on her death.

- Mrs E already had term assurance covering her mortgage, so was already sufficiently covered for the largest monthly outgoing if she passed away before retirement. And if she desired further protection beyond this, she could've taken additional insurance on a whole of life or term assurance basis. It appears Cambrian explored this, and the comparison report provided suggested it was affordable for Mrs E. As such, I think it ought to have recommended this as a solution if Mrs E genuinely wanted additional protection for her family.

Overall, I don't think different death benefits available through a transfer justified the likely decrease of retirement benefits for Mrs E. And ultimately Cambrian should not have encouraged Mrs E to prioritise the potential for alternative death benefits through a personal pension over her own security in retirement.

Control and concerns over the financial stability of the DB scheme

Cambrian ought to have addressed Mrs E's concerns about the PPF and the stability of the BSPS2. Had it done so, I think Mrs E would've most likely been assured by this.

- Mrs E may have legitimately held concerns about how her employer had handled her pension and the prospect of entering the PPF. But it was Cambrian's role to objectively address those concerns. At the time of the advice, all signs pointed toward the BSPS2 being established. But even if not, the PPF still provided Mrs E with guaranteed income, and according to the suitability report, she would've been entitled to higher benefits through the PPF if she retired at age 57. And Mrs E was unlikely to improve on these benefits by transferring. So, entering the PPF was not as concerning as she might've thought – I don't think any concerns she had about this meant that recommending she transfer out of the scheme was in her best interest.

- Mrs E seemed to have ongoing concerns about the BSPS2 because her employer retained a 33% stake in it. But I think those concerns have been overstated – Mrs E was continuing to work for the same employer, and she had joined its DC scheme. And I think Cambrian ought to have emphasised that the BSPS2 was well-funded and if there were future issues, it would still be covered by the PPF. So, even though Mrs E might have perceived there to be risk attached to the BSPS2, I think Cambrian ought to have emphasised that she would be taking on greater risk by exposing all of her pension funds to investment risk.

- I think Mrs E's desire for control over how her pension was invested was overstated. I can't see that she had an interest in or the knowledge to be able to manage her pension funds on her own. And the recommendation seems to have been given on the basis she'd receive, and pay for, ongoing support with her pension. So, I don't think that this was a genuine objective for Mrs E, it was simply a consequence of transferring away from her DB scheme.

I don't think that Mrs E's concerns about the PPF or the BSPS2 should've led to Cambrian recommending Mrs E transfer out of the DB scheme altogether. And I think she would've accepted advice to join the BSPS2 had assurances been given.

Overall, I can't see persuasive reasons why it was clearly in Mrs E's best interest to give up her DB benefits and transfer them to a personal pension. And I also haven't seen anything to persuade me that Mrs E would've insisted on transferring, against advice to remain in the DB scheme. So, I'm upholding the complaint as I think the advice Mrs E received from Cambrian was unsuitable for her.

Putting things right

A fair and reasonable outcome would be for the business to put Mrs E, as far as possible, into the position she would now be in but for the unsuitable advice. I consider Mrs E would most likely have joined the BSPS2 if suitable advice had been given.

Cambrian 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.

Cambrian should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mrs E and our Service upon completion of the calculation.

Although Mrs E expressed an interest in retiring early, I haven't seen enough to persuade me she would've accessed her DB scheme benefits any earlier than age 65, had she been advised to remain in it. 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 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 Mrs E's acceptance of my final decision.

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

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

Redress paid to Mrs E 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, Cambrian may make a notional deduction to cash lump sum payments to take account of tax that Mrs E would otherwise pay on income from his pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mrs E'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 Cambrian Associates Limited to pay Mrs E 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 recommend that Cambrian Associates Limited pays Mrs E the balance.

If Mrs E accepts my final decision, the money award becomes binding on Cambrian Associates Limited.

My recommendation would not be binding. Further, it's unlikely that Mrs E can accept my decision and go to court to ask for the balance. Mrs E may want to consider getting independent legal advice before deciding whether to accept my final decision.

Cambrian Associates Limited should provide details of its calculations to Mrs E in a clear, simple format.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 10 November 2023.

Hannah Wise
Ombudsman