The complaint

Mr I complains about the advice given by Poole Townsend Solicitors Ltd to transfer the benefits from two defined-benefit ('DB') occupational pension schemes (a personal pension was also included) to a self-invested personal pension ('SIPP'). He says the advice to transfer the two DB pensions was unsuitable for him and believes this has caused a financial loss.

What happened

I issued my provisional decision on 1 December 2023 setting out the background to this complaint and my provisional findings. This forms part of this decision and is set out below:

'Mr I approached Poole Townsend in 2019 to discuss his pension and retirement needs.

Poole Townsend completed a fact-find to gather information about Mr I's circumstances and objectives. Poole Townsend also carried out an assessment of Mr I's attitude to risk, which it deemed to be between fairly cautious and medium.

The fact-find said:

- *Mr I was age 54 and his wife was age 59*
- *He was an account manager, earning £42,000 per annum*
- *Mrs I received £800 per month from the DWP. She had worked part time but had to stop working due to a health condition*
- *They had a mortgage of £32,000 outstanding on a property valued at £140,000*
- *Mr I was in a workplace pension plan which was forecast to provide a fund of £140,000 at the age of 67 (when he intended to retire)*
- *He also had a deferred local government pension that was forecast to provide an income of £7,800 per annum from age 60.*
- *Alongside his state pension he would have approximately £22,000 of income in retirement aside from the three pensions subject to the advice.*

On 21 March 2019, Poole Townsend advised Mr I to transfer his pension benefits into a SIPP and invest the proceeds into two Prudential cautious managed funds. The suitability report said the reasons for this recommendation were taking tax-free cash allowed Mr I to significantly reduce his mortgage and then alongside his regular payments it would be paid off in 16 months. And Mr I could also use a small proportion of this sum to fund a holiday. It said Mr I could then leave the remainder invested until he reached 67. And this would meet his stated objectives.

I understand following this Mr I chose not to engage further with Poole Townsend and took his tax-free cash and the remainder of the fund across a couple of years. He's told us this money was spent enhancing his life and nothing has been retained as savings.

Mr I through a representative complained in 2023 to Poole Townsend about the suitability of the transfer advice. It said:

- *Mr I was financially inexperienced and not looking to take any investment risk*
- *He did not understand the full implications of the recommendation made to transfer the benefits from his defined benefit pension schemes or the risks involved with the Prudential funds*

- *Had he been made aware of the full implications of the transfer of his DB scheme benefits he would not have transferred his pensions.*
- *His objectives could've been met by transferring only the personal pension of approximately £18,000.*

Poole Townsend didn't uphold Mr I's complaint. It said the advice had been suitable and met the objectives Mr I stated.

Mr I referred his complaint to our service. An investigator upheld the complaint. He said that after paying £21,000 of the mortgage there would be little tax-free cash left to pay for holidays. So this objective hadn't been met. Also, he questioned whether Mr I needed to pay off the mortgage at the expense of guaranteed benefits in retirement. The investigator said Mr I could've just used the personal pension policy worth approximately £18,000 to reduce the mortgage amount. He concluded by saying that he couldn't see the justification for reducing the mortgage at that point in time and he had no need to give up the guaranteed benefits.

Poole Townsend disagreed, it responded in some detail, but I'll only refer to the key points I feel are relevant to the outcome of this decision:

- *The option of just taking benefits from the personal pension wasn't viable as Mr I was a higher rate taxpayer and so if he was to take it all as cash it would be significantly reduced. And it wouldn't reduce the mortgage by as much as Mr I wished to do nor leave any money left over for holidays*
- *The intention was for him to continue paying the mortgage at the same or a similar level after paying off a portion of it with cash. The objective was to have the mortgage paid off in 18 months, thus creating a significant income surplus that could be used for other purposes.*
- *Mr I's wife had given up work due to ill-health. The motivation to have the mortgage paid off in 18 months was that if Mr I was to pass away, with his wife being unable to work she would not be able to pay the mortgage. Therefore, in those circumstances if the death benefits provided from the plans transferred from did not provide sufficient benefits, there was a risk that the house would have to be sold to deal with the outstanding mortgage. The fact that the Mr I was in good health was not a reason not to want to hedge against this possibility. It was sensible financial planning where the schemes were in excess to income needs to use them in this way to reduce the mortgage by £21,000, allow it to be paid off in 18 months, and be left with about £60,000 in a pension pot. Such financial prudency doesn't require Mr I to have been in poor health.*
- *The recommendation provided was the only way of meeting Mr I's objectives. And Mr I still had other provision that would provide benefits in retirement. The two DB schemes in question only provided relatively small sums.*
- *Mr I signed the report which set out that he had been thinking about this for a over a year now and doing his own research. The fact that he had other pension schemes (including a much larger DB scheme) that he didn't wish to be part of the advice demonstrates that he had a plan in mind.*
- *It disputed therefore that Mr I was an inexperienced investor who didn't understand the advantages of DB benefits*
- *The funds recommended were suitable for his attitude to risk.*
- *The report stated 'a lifelong secure income is not your main objective from the pension schemes as the amount you would receive is negligible. You are looking for alternative and additional benefits from your pensions.'*
- *The death benefits available from the scheme were insignificant in comparison to the value of the transfer and were far from generous.*
- *A significant amount of interest would've been saved by paying the mortgage early, which could be now at a rate exceeding 6%.*
- *The advice and decision to pay off the mortgage with a lump sum then over 18 months was good advice that, if followed would, result in all the required benefits plus a healthy saving of interest.*
- *It disagreed with the investigators view that the lump sum wouldn't provide enough income after the £21,000 intended for the mortgage to also use for holidays. The investigator had said it would leave £875 but the total transfer amount was £92,798.43. The 25% tax free cash would be £23,199.60. Paying £21,000 to the mortgage would leave £2,199.60, not £875, for holidays. Therefore, this meets the stated objective.*

- *Even if the sum was £875, we disagree that this would fail to meet the specific objective. Whatever the sum beyond the £21,000 was, this was just the amount in the immediate term. In paying off the mortgage in 18 months, whilst still working, Mr I would've freed up funds to improve his lifestyle as planned and go on further holidays with the extra £650 a month available once the mortgage was clear. The objective was to treat his wife to a few holidays. There was no suggestion that all these holidays would be taken immediately, so even if the excess after reducing the mortgage was £875, this would not have made the objective unachievable.*

The investigator wasn't persuaded to change their opinion, so the complaint was referred to me to make a final decision.

My findings

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

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 Poole Townsend'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 not to uphold the complaint. I'll explain why.

The regulator, the Financial Conduct Authority ('FCA'), states in COBS 19.1.6 that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Poole Townsend should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr I's best interests. And having looked at all the evidence available, I'm satisfied it was in his best interests.

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 critical yield required to match Mr I's benefits at age 65 was 12.18% for the smaller scheme with a transfer value of approximately £4,000 and 4.19% for the larger scheme of approximately £70,000.

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 3.91% per year for 11 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.

For this reason alone a transfer out of the DB scheme wasn't in Mr I's best interests. Of course 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 this below.

Flexibility

Mr I's objectives were to pay off his mortgage and also to have some money left over to enjoy for holidays. Transferring the three pensions allowed him to meet his objective of reducing the mortgage by £21,000. And with a couple of thousand left over that could be used for or towards a holiday. And as Poole Townsend have set out, once the mortgage was paid off – Mr I would then have substantially more income to use for holidays and leisure. The evidence suggests this was important to Mr I.

Mr I's representatives and the investigator said that the DB benefits could've been kept in place and the £18,000 personal pension could've been taken as a lump sum to meet this objective. However, I think what would've been important to Mr I (and the evidence suggests it was) is taking advantage of tax-free cash. Mr I was a higher rate taxpayer and so if he was to transfer only the £18,000 and take it all as a lump sum he would pay significant tax on any sum beyond the tax-free cash of £4,500. And the final sum realised wouldn't have met his objectives. So I don't agree that this was a viable alternative.

In transferring the two DB schemes Mr I was giving up guaranteed benefits in retirement and he was likely to receive less value from the schemes in question across retirement. However, the smaller scheme with a critical yield of 12% provided a tiny income in retirement – at 65 it would've given Mr I just £297. Mr I's larger scheme had a critical yield of 4.19% compared with the discount rate of 3.91%. So Mr I was unlikely to improve on this upon transferring but the predicted shortcomings were fairly marginal. Whilst the scheme was larger, it would've only provided approximately a 10% increase in income in retirement compared to Mr I's other benefits he had to draw on in retirement, of £22,000. And if he left the remaining money invested until his retirement, he'd still be able to draw an income that would likely significantly reduce any loss on giving up the guaranteed benefits. I don't think Mr I was relying on this income in retirement, whilst it would've given him and his wife's household income a boost, the values show it wasn't by any means essential. And the recommendation would've meant income would've been available flexibly for Mr I to use or to provide an annuity.

In place of a guaranteed income in retirement at 65, Mr I would've been able to reduce his mortgage and it be paid off within a year and half. Have some tax-free cash to enjoy immediately, plus after the mortgage was paid off, additional monthly income of £650 per month. And still have approximately £65,000 invested for future needs. This met the objectives agreed at the time of advice.

I don't know if this is the path Mr I actually followed but I understand he did withdraw the maximum tax-free cash and has subsequently withdrawn the remaining sums to enhance his lifestyle. This was against the advice given in the recommendation to keep it invested for future use. This suggests that Mr I didn't see the fund as important to his future income needs in retirement. And wanted the money to enjoy then, which corroborates the information recorded at the time of advice that he wanted additional money to enjoy holidays with his wife.

The information recorded at the time said Mr I had done his own research prior to coming to Poole Townsend. And was looking at taking advantage of pension freedoms and it seems this is what he has done.

I do think the wording in the recommendation could've been more balanced in places, but Mr I was made aware of what he was giving up on transfer and the risks involved. And given his circumstances and the fact he had other benefits including a more valuable DB scheme still in place, I think the risks involved with transferring two relatively small schemes (comparative to his other benefits in retirement) were slim. And I don't think the advice was unsuitable, it met his stated objectives and if followed would've reduced a debt and increased income in Mr I and Mrs I's younger years to enjoy before retirement. I think this was a good outcome for Mr I in the circumstances.'

In response to the provisional decision Mr I's representatives re-iterated that they felt COBS was clear that transferring out of DB pension was bad advice and this was the default position. Unless it has been clearly demonstrated that it was in the clients' best interests to do so.

And it said my decision had been inconsistent when compared to the investigator's view and other decisions it had received. But understood it was a complicated case and that Mr I's objectives had been met by the advice, but it doesn't believe it was the only option to do so. It did not believe the advice was in Mr I's best interests.

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.

Following my provisional decision that is set out above and forms part of this decision, I've considered Mr I's representatives response. But for all the reasons given in my provisional decision, I do not agree that the advice was unsuitable.

As I discussed in the provisional decision, the advice met Mr I's objectives and the alternative option wouldn't have been tax efficient nor produced enough income to meet his objectives. The advice in my view had quite a few advantages to Mr I and I don't think the downsides of transferring were particular important to Mr I, given his needs and circumstances. So, I am satisfied the advice was in his best interests.

In conclusion, I don't think the advice given was unsuitable for Mr I. It met his stated objectives, and I don't think the DB benefits given up on transfer would've been considered significantly important to Mr I in terms of his overall retirement position.

My final decision

I do not uphold this complaint and make no award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 2 February 2024.

Simon Hollingshead
Ombudsman