DRN-4544182

The complaint

Mr P has complained about advice he received from one of Pi Financial Ltd's appointed representatives to transfer his defined benefit ("DB") pension to a self-invested personal pension ("SIPP").

Mr P has a professional representative helping him with his complaint but to make things easier I will just refer to Mr P. Similarly, I will just refer to "Pi" rather than the appointed representative.

What happened

Mr P approached Pi in 2020 to discuss his pension and retirement needs. His objectives and circumstances were recorded on a form he completed on 15 May 2020 and on a Fact Find he completed on 21 May 2020. The objectives included:

- wanting to retire at the end of June
- wanting tax-free cash on the total value of his pension to do as he wished and enjoy life (eg holidays) while he was in good health – he had cancer the previous year so this was important to him; the loss of his younger sister also put this requirement into perspective
- wanting flexibility and the freedom to access various amounts
- wanting the guarantee that his nephew would be paid out upon his death (as he had no dependents or spouse) – he objected to the pension trustee having discretion as to who the money would be paid to
- having a set payment over a long term didn't appeal to him; he was adamant that he didn't need a fixed income for life as he didn't know his life expectancy
- wanting his funds to last as long as they possibly could.

Mr P's circumstances were recorded as:

- assets from which he could get a retirement income from were:
  - the DB pension – which had a transfer value of £188,361
  - a personal pension valued at around £110,000
  - £60,000 from the sale of a rental property he had a 50% share in
  - £60,000 from an investment that was due to mature at the end of May
- his anticipated monthly expenditure in retirement was £925 – but he wouldn't need income from the pension straightaway as he had money in his current account as well as the investment and the expected proceeds from the rental property sale
- the existing pensions formed a significant source of his retirement income.

Pi assessed Mr P's attitude to risk as 5 out 10, which it described as "low to medium". It also recorded that Mr P said his lifestyle wouldn't be too affected if he lost the DB pension as he had the other pension and the savings/investments referred to above. So Pi said Mr P had a 100% capacity for loss – although it said in the later recommendation report it had established that Mr P was able to withstand losses of up to 35% of the transferred pension without it affecting his standard of living.

Pi issued its suitability report on 10 June 2020. Of relevance, it:

- described Mr P's health as poor and mentioned a hyperactive thyroid, thyroid cancer under remission, hernia, gallstones and respiratory issues
- set out the benefits provided by Mr P's DB pension as:

Age benefits taken	Annual pension	Annual pension if tax-free cash taken
59	£2,840.81	£2,066 plus £13,778 cash
65	£4,636.54	£3,235 plus £21,571 cash

- set out how much Mr P's new pension would need to grow by in order to match the benefits of the DB pension (this is known as the 'critical yield'):

Age benefits taken	Full pension	Reduced pension and tax-free cash
59	–20%+	–20%+
65	2.61%	0.3%

- said £197,158.34 would be needed to buy the benefits offered by the DB pension on the open market (which compared to the transfer value of £188,361)
- said Mr P's average life expectancy was 84 years.

Pi outlined four potential options:

1. stay in the DB pension and retire at 65
2. stay in the DB pension and retire at 59
3. transfer away from the DB pension to a drawdown arrangement, and leave the funds invested until Mr P needs access to them
4. transfer away from the DB pension to a drawdown arrangement, and buy an annuity.

It recommended option 3 to Mr P as it met his needs and objectives to:

- retire in June and ensure his pensions work in retirement how he wants them to
- leave his pension to his nephew upon his death
- have the flexibility to do what he wants to do.

Pi did highlight various concerns about how long Mr P's pension fund would last as the income level with the new pension isn't guaranteed and there was a danger that Mr P could deplete his funds within his lifetime – both of which could lead to a drop in living standards later in life. It nevertheless pointed to a cashflow analysis and said if Mr P transferred the DB pension to a personal pension and invested in a cautious portfolio he would be able to maintain his standard of living comfortably beyond his life expectancy and he wouldn't runout of money in his lifetime.

Mr P complained to Pi in February 2023. In summary, he felt the advice was unsuitable and that it will cause him to suffer a financial loss to his retirement income. Pi investigated the matter but didn't uphold the complaint. It felt the advice process complied with the relevant regulations and the advisor acted in accordance with Mr P's best interests.

What I provisionally decided – and why

I issued a provisional decision in which I explained why I didn't think the complaint should be upheld. The relevant parts of my provisional decision are outlined below and form part of this final decision.

The applicable rules, regulations and requirements

- I took into account relevant law and regulations, regulator's rules, guidance and standards and codes of practice, and what I considered to have been good industry practice at the time. This included the Principles for Businesses ('PRIN') and the Conduct of Business Sourcebook ('COBS'). Where the evidence was incomplete, inconclusive or contradictory, I reached my conclusions on the balance of probabilities – that is, what I thought was more likely than not to have happened based on the available evidence and the wider surrounding circumstances.

- The below isn't a comprehensive list of the rules and regulations which applied at the time of the advice, but they provided useful context for my assessment of Pi'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).

  COBS 9, which deals with the obligations when giving a personal recommendation and assessing suitability; and COBS 19, which specifically relates to a DB pension transfer.

  COB 19.1.6G: where the regulator, the Financial Conduct Authority ("FCA"), states that the starting assumption for a transfer from a DB pension is that it is unsuitable.

- So, Pi should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests. Having considered all of this and the evidence in this case I was satisfied the advice was suitable and that the transfer was in Mr P's best interests.

Financial viability

- Pi used two metrics to highlight the financial viability of the transfer – the critical yield and the transfer value comparator. Both were ways of showing how likely it is that a consumer will be better off if they transfer.

- The critical yield is the average amount (expressed as a percentage) Mr P's new pension would need to grow by in order to match the benefits of the DB pension. The transfer value comparator is a measure of what sum of money Mr P would have needed to invest at a risk free return to provide equivalent benefits to the DB pension. The idea is to give a lump sum figure which can be compared with the DB pension transfer value – the further apart the two figures are, the harder it will be to achieve the returns necessary.

- Both the critical yield and the transfer value comparator were based on an annuity being used at retirement to secure benefits on the most like-for-like basis to the DB pension (ie including the provision of spouse or dependents benefits). When the FCA required critical yields to be calculated (up to October 2018) most consumers bought an annuity at retirement. Even if they weren't planning to do so the critical yield was closer to a like-for-like comparison with the DB pension – as only purchasing an annuity could ensure that the consumer didn't run out of money in retirement. I therefore considered the critical yield and transfer value comparator important in determining whether or not a transfer was financially viable.

- 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 we published similar rates 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 P's benefits at age 65 was 2.61% if he took a full pension and 0.3% if he took tax-free cash and a reduced pension. The relevant discount rate closest to when the advice was given which I can refer to was published by us for the period before 1 October 2017 and was 3.3% per year for six years to retirement. For further comparison, the FCA's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year.

- As outlined above, there was a difference of £8,797.34 between the transfer value of the DB pension and the transfer value comparator.

- I took the above into account along with the composition of assets in the discount rate, Mr P's "low medium/five out of ten" attitude to risk and the term to retirement. There would be little point in Mr P giving up the guarantees available to him through his DB pension only to achieve, at best, the same level of benefits outside the scheme. But here, given the critical yields were 0.3% and 2.61% and the difference between the transfer value comparator and the transfer value was quite small, I thought Mr P was likely to receive benefits of a higher overall value than the DB pension at retirement as a result of investing in line with his attitude to risk.

- However, although I thought Mr P was likely to be better off by transferring, there was a risk that he might not be. This was because the DB pension would provide Mr P with a guaranteed income for life whereas the income provided by a SIPP and drawdown arrangement wasn't guaranteed (as it relies on the performance of the underlying investments). And just because Mr P had a low medium attitude for risk didn't mean he had the capacity to take that much risk or to lose his investment. I therefore needed to consider Mr P's capacity to absorb any loss of his DB pension.

- The DB pension wasn't Mr P's only asset that he could draw on for retirement income – he also had a personal pension, a 50% share in a property that was due to be sold (from which he would receive £60,000) and a £60,000 investment that was due to mature. He would also receive the State pension when he reached the State retirement age. I thought it was significant that Mr P said in the Fact Find that given his other assets his lifestyle wouldn't be affected too much if he didn't have the DB pension.

- Although the DB pension formed a significant part of his overall retirement provisions I didn't think Mr P was totally reliant on it. The advisor established that Mr P was able to withstand losses of up to 35% of his DB pension without it affecting his standard of living and given his other assets I didn't think that assessment was unreasonable. I also thought it meant Mr P could afford to take a risk with his pension that matched his risk attitude.

- With all the above in mind, I concluded that the transfer was financially viable.

Other considerations

- Mr P was single and he didn't have any dependent children. He also had a health condition that was potentially life-limiting. And he was clear with the advisor that he didn't have any need for the spouse's or dependent's pension that the DB pension provided upon his death. So, I didn't think losing these benefits disadvantaged Mr P.

- Mr P also had concerns about not being able to pass on the DB pension to his nephew. It wasn't noted in the Fact Find that Mr P held any life insurance that would pay his nephew upon his death. So I thought the ability to pass on whatever remained of Mr P's pension to his nephew was very important to him and he very much preferred this option.

- Mr P told the advisor that he wanted tax-free cash from his pension so that he could enjoy life while he was in good health. I thought Mr P would have been attracted to the thought of receiving a lump sum payment tax-free. However, I felt this was more a 'want' rather than a 'need' because he didn't have any debts that needed paying and he had other funds available to cover other expenses. And if he wanted to get the most tax-free cash possible, the suitability report said the DB pension could be worth around £250,000 when Mr P turned 65. So he could have got more tax-free cash by waiting until then (albeit I noted Mr P didn't want to leave his funds in the DB pension that long due to his health).

- I wasn't persuaded that Mr P needed the flexibility of being able to withdraw varying amounts from his DB pension that transferring enabled him to do because he already had this flexibility through his personal pension. He also had the funds he was due to receive from the investment and from the sale of the rental property that he could use.

- Further, I was persuaded that Mr P's retirement income needs could have been achieved by remaining in the DB pension. The cashflow analysis showed that if Mr P retired in June 2020 and took income from the DB pension when he turned 65 his combined income from his pensions and savings was sufficient to meet his anticipated monthly requirement of £925.

Summary

- In my view, the transfer being financially viable, Mr P having sufficient capacity for loss, Mr P not needing the spouses or dependents pension provided by the DB pension, and him having a strong preference to be able to leave the pension to his nephew supported a conclusion that transferring the DB pension was in Mr P's best interests. On the other hand, the DB pension being risk free and guaranteed, Mr P not having any need for the tax-free cash or the flexibility in drawing income, and Mr P's retirement income needs being able to be met by remaining in the DB pension supported a conclusion that transferring wasn't in his best interests.

- I nevertheless concluded that the advice to transfer was suitable. I felt the transfer being financially viable (ie Mr P would likely be better off) and Mr P's strong desire to leave his pension to his nephew given that he had no spouse or dependents meant transferring was in Mr P's best interests.

Responses to my provisional decision

Mr P didn’t agree with my provisional decision. He made several points, which I’ve considered when re-reviewing the complaint. I haven’t received anything further from Pi.

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.

A significant part of Mr P’s response to my provisional decision concerned his view that Pi’s advice was based on incorrect information and fact finding. I’ve outlined above some of Mr P’s objectives and circumstances that were recorded on forms in May 2020. One form was titled *“Should you take financial advice in respect of your Defined Benefit Pension Scheme?”*. Mr P signed this form on 5 May 2020. The other form was titled *“Your Information (Retirement Planning)”*. Mr P signed this form on 21 May 2020.

The information in these forms was later outlined in the suitability report. The report said (in the “Introduction” section) that Mr P should read it carefully to ensure it accurately reflected his circumstances, objectives and priorities; and to let Pi know if any of the information was incorrect. Mr P signed the suitability report on 12 June 2020 confirming that he’d read it, the advice was based on the information he’d provided and the recommendations were a fair reflection of his circumstances, objectives and priorities. I’m not aware that Mr P corrected any of the information.

So the information that Pi relied on when making its recommendation was provided by Mr P.

As I’ve said above, Mr P now says the advice was based on incorrect information. For example, he now says:

- neither his health nor leaving his pension to his nephew were factors in him wanting to transfer
- he didn’t ask for flexibility
- he had no need for the lump sum tax-free payment.

While I appreciate that based on Mr P’s recollection he feels that Pi’s advice was based on incorrect information, I’m not persuaded his recollection is accurate. I say this because he signed three separate documents effectively confirming that the information contained within them was correct. If it wasn’t correct, I would have expected him to either correct the information or not sign the forms. He did neither. Accordingly, in my view, what was recorded at the time – rather than what Mr P now recalls – most likely reflects the true situation in respect of Mr P’s circumstances, needs and objectives at the time.

Part of the advice concerned the underlying investment where Mr P’s pension savings would be placed. Mr P has said he told the advisor he didn’t want a high risk investment and he feels the investment recommended was inappropriate.

As I’ve mentioned above, Pi assessed Mr P’s attitude to risk as 5 out 10, or “low to medium”. Pi recommended that Mr P invest his pension savings in the Liontrust SF (Sustainable Future) Cautious Fund. The aim of the fund is to deliver capital growth and some income over a five year or longer period. It invests in a combination of global equities, bonds and cash in the following allocation ranges: equities 40 to 60%; fixed income 20 to 50%; cash 0 to 20%. In my view, the combination of these assets/investments fits within Mr P’s low medium attitude to risk. I’m not therefore persuaded that Pi’s recommended investment was unsuitable or inappropriate.

Mr P has made various comments throughout the complaint about what Pi didn't do. I think some of these allegations are misguided. For example, he said Pi didn't establish his assets and liabilities and didn't undertake adequate risk profiling to establish his capacity for loss – whereas the documentation from 2020 shows that Pi did do this. In any event I'm not persuaded that any failures by Pi in explaining certain points would have made a difference to the outcome of the complaint. This is because it remains that Pi's advice was to transfer and that I consider this advice suitable. And I think it's most likely that even with all the explanations Mr P would have acted on the professional advice he received. In other words, I think it's unlikely that he would have sought professional advice, paid for it and then ignored it.

To summarise, I concluded that Pi's transfer advice was suitable and that transferring was in Mr P's best interest. Having considered Mr P's further comments I'm not persuaded to change my mind. This is because I think the transfer being financially viable and Mr P's desire to leave his pension to his nephew, as well as him having the capacity to lose some of his pension and him not needing the spouse or dependent's benefit provided by the DB pension outweighs the DB pension being risk free and guaranteed, there being no need for the tax-free cash or flexibility and Mr P's income needs being able to be met by the DB pension.

Separate complaints

This complaint concerns Pi's advice to transfer the DB pension – the assertion being that Mr P should have been advised to remain in the DB pension. In response to my provisional decision Mr P raised other issues that he wasn't happy with, eg him telling Pi he wasn't happy the new pension was making losses and that he wanted to change, but Pi telling him to ride things out due to the Covid pandemic and the Ukraine war; Pi failing to act on his request to withdraw funds from his personal pensions.

These issues aren't part of the original complaint made to Pi and aren't part of the complaint we've been asked to consider. Accordingly, if Mr P wishes to pursue these issues he will need to do so as a separate complaint.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 February 2024.
Paul Daniel
Ombudsman