DRN-4250930

The complaint

Mr B complains that the retirement advice service provided by Brian Mellor Financial Services Limited (BMFS) was deficient, and he now faces a potential pension shortfall due to the deficiencies in the advice.

What happened

On 15 April 2021 Mr B and his wife met with BMFS to discuss the options of them both retiring early. Mr B was 56 at the time of the meeting.

On Mr B's request, BMFS produced various cashflow analysis documents showing his potential income should he retire at 57 and 60 years old.

Mr B contacted BMFS again on 15 July 2021 and said they were both seriously considering retiring as soon as possible due to problems at work. He asked BMFS to run the figures as if he was to retire on his 57th birthday, in October 2021, and provide the cashflow analysis, with a joint annual income requirement of £30,000.

Mr B and his wife met with BMFS to discuss this in August 2021, and BMFS produced a formal recommendation report on 1 September 2021. In this BMFS recommended Mr B do the following:

- Switch two of his personal pensions (plans A and B) into one wrapper with a new provider in a Flexi-Access Drawdown arrangement, and use the available 25% tax-free cash (TFC) to supplement his income in the current year. The remaining funds would be invested reflective of his attitude to risk (ATR) and withdrawn as required.
- Retain his two other personal pensions (plans C and D) and to take an annuity from them at age 60 and 65 respectively.

BMFS reported that his pension plan C had a guaranteed annuity rate (GAR) on 100% of its value available from his 60th birthday. It also reported that pension plan D had a GAR available from his 65th birthday.

In its recommendation BMFS demonstrated that it was likely that there would be a shortfall in pension income from when Mr B reached the age of 91. It also ran the analysis with a market adjustment every 10 years, which showed a potential income shortfall for two years when Mr B was 66, and onwards from when he was 77. It said that should this scenario occur BMFS would reassess his income needs as part of the annual review process.

The above recommendations were accepted, plans A and B were switched and Mr B retired in October 2021, aged 57.

A review meeting was held on 14 March 2022 where his income needs for the following tax year were discussed, and it was recommended that this was taken from the new pension plan (the consolidation of plans A and B).

Mr B had an annual review with BMFS in October 2022. In preparation for this meeting

BMFS reviewed his pension arrangements, and discovered that it had misinterpreted the GAR element of pension plan C. It had said the GAR applied to 100% of its value, but in fact the GAR element applied to less than one third of its value. The effect of this was to mean the potential annuity payment the plan could provide was substantially less than BMFS had previously indicated in its September 2021 recommendation. This meant Mr B had a projected income shortfall for the two and a half years in the run up to him claiming his state pension at 67. It calculated this shortfall could amount to about £60,000.

On 24 October 2022 Mr B complained to BMFS that the previous recommendations were now subject to change, and had resulted in a shortfall of about £60,000 due to BMFS overlooking details.

BMFS obtained clarification on the GAR from the provider of plan C, and then carried out further research and analysis to identify alternative options for Mr B. These were presented to Mr B in November 2022 along with an amended cashflow analysis, and BMFS issued its formal recommendation on 12 December 2022. This provided two options:

1. Annuitise the GAR element of plan C immediately and place the non-GAR element into a drawdown fund; or
2. Delay annuitising the GAR element of plan C until Mr B is 60, and placing the non-GAR element into drawdown.

Mr B elected to take option two.

On 13 December 2022 BMFS issued its final response to Mr B's complaint. It agreed that it had made a mistake in its analysis in September 2021, but no financial loss had occurred. It offered Mr B £500 for the inconvenience it had caused him.

Mr B was unhappy with this outcome so referred the complaint to our Service where it was considered by an Investigator who didn't think BMFS needed to do anything more. In summary, our Investigator thought:

- BMFS had provided an alternative recommendation to Mr B which was in accordance with his ATR, his income needs and retirement objectives.
- The fees charged by BMFS (initial advice – 2% and ongoing advice – 0.75%) were fair and he didn't think the initial advice fee should be refunded.
- £500 compensation for the distress and inconvenience he'd been caused was fair.

But Mr B didn't agree. He said that because BMFS hadn't used reasonable care and skill in its 2021 review it couldn't justify charging for it. And it was only because he'd received an additional £30,000 into plan C since the review that BMFS was able to mitigate its error. Having considered this, our Investigator wasn't minded to change his view, so the matter has come to me for a final decision.

Mr B made some final submissions for me to consider. In summary, he said;

- the full charges, which amounted to about £7,000 weren't justified as BMFS had made such a basic error with the GAR.
- BMFS's error was only mitigated by the additional £30,000 that had been paid into plan C. He had made BMFS aware of this upcoming payment prior to the initial advice and had planned to take this as TFC, which is no longer available to him.

Mr B concluded that the review process was not carried out thoroughly and had exposed him to significant stress and uncertainty, therefore he requested that BMFS be required to reimburse him for the cost of the service.

BMFS has confirmed that the fee it charged for the advice process and recommendation it gave in September 2021 was contingent on the advice being accepted. So if Mr B had decided not to accept the recommendation no fee would be payable. It also confirmed that it was aware in March 2021 about the proposed restructuring of one of Mr B's pension plans, which ultimately provided the uplift to plan C's value in early 2022.

On 9 August 2023 I wrote to both Mr B and BMFS setting out my provisional thoughts as to a fair and reasonable outcome to this complaint. I have set out my full reasoning below, but in summary, I said I didn't think it would be fair to require BMFS to refund the initial 2% fee imposed upon Mr B when he accepted the September 2021 recommendation, because:

- Early retirement was a very important objective for Mr B;
- Had the projection used accurate GMP figures I didn't think it likely Mr B would have accepted the recommendation on those terms;
- He would have likely asked BMFS to rerun the projection using the forthcoming uplift in value to Plan C. This would most likely have looked similar to the projection BMFS provided in October 2022, which Mr B accepted.
- the above scenario would have likely occurred had the error in the September 2021 recommendation not been made. So, whether the mistake was made or not, this fee would always have been paid by Mr B.

BMFS did not respond but Mr B did. He said, the angle of my review seemed to be based on the assumption of whether he would have taken retirement or not, rather than facts. The facts were that the review and service he paid for was not carried out properly and mistakes were made. It was unfair to pay for a service in full when it was not carried out accurately. He went on to say that the facts showed that he had always been risk averse and extremely cautious with any decisions made, therefore he had not been willing to retire at any cost.

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.

Throughout this complaint Mr B has made a number of detailed points and provided a lot of evidence, and I thank him for this. I can assure him I have looked at it all. We're an informal dispute resolution service, set up as a free alternative to the courts. In deciding this complaint I've focussed on what I consider to be the heart of the matter, rather than commenting on every issue in turn. This isn't intended as a discourtesy to Mr B, rather it reflects the informal nature of our service, its remit and my role in it.

And having reconsidered everything in light of Mr B's response, I remain in agreement with the view of the Investigator, for broadly the same reasons. I'm satisfied that BMFS has done enough in its resolution of this complaint. I will explain.

It is agreed that BMFS made an error in its interpretation of the GAR attached to Mr B's pension plan (plan C). In its formal recommendation in September 2021, BMFS recommended Mr B take plan C as an annuity from age 60, to provide a proportion of his income from that point on. It based its projected income figures on plan C having a GAR on 100% of its value, but this was not the case. The GAR was applicable to less than one third of the plan value, so the annuity income it would provide was less than BMFS had projected.

Mr B has argued that this error was so fundamental that he should be refunded the whole advice fee which was paid to BMFS, which was 2% of the funds transfer value. But I would only agree this was a fair outcome if I thought it likely that Mr B, had the advice he was given been correct and suitable, would have not accepted the advice.

I cannot know for certain what Mr B would have done had he been presented with the correct information. Where there is a lack of definitive information I must make my decision on the balance of probability – that is, what I think would have most likely happened. So I must make my decision based on what Mr B wanted to do, and what he knew at the time of the advice.

Mr B approached BMFS in early 2021 and asked it to produce a retirement cashflow analysis if he and Mrs B retired when he was 60, and another using an earlier retirement date of April 2022 when Mr B was 57. The former showed no potential income shortfall until Mr B was 92 years old, but the earlier retirement analysis showed a projected shortfall in retirement income at age 66/67 of approximately £8,000.

In July 2021 Mr B spoke to BMFS and said he and Mrs B wished to retire as soon as possible due to problems at work, and asked it to re-run the early retirement analysis with revised income requirements. This option was discussed at a meeting between Mr and Mrs B and BMFS on 11 August 2021. At this meeting three options were proposed by BMFS.

1. Retire in 2024 – no income shortfall modelled.
2. Retire in 2021 & maintain a car loan – income shortfall modelled age 90/91.
3. Retire in 2021 and clear car loan – income shortfall modelled age 91/92.

It is accepted by BMFS that these projections were based on its incorrect interpretation of the plan C GAR. As I've said, I need to decide what I think Mr B would have most likely done had BMFS presented its cashflow analysis using the correct figures. I cannot be sure what these would have looked like, and the only guidance I have is the analysis that BMFS presented in October 2022 using the correct figures, which showed a projected shortfall for two years when Mr B was 65. So I think the analysis, had it been produced in 2021, would probably have been similar and would likely have shown the shortfall.

I can see from the notes from 2021 Mr B was very interested in retiring earlier than he had originally thought possible. He was already considering it in April 2021, and from the notes of a call he made to BMFS in July 2021 I can see that this was then a priority for him. And I can see from the notes that he would have been willing to reduce his projected annual expenditure in order to achieve this early retirement. Mr B has said that he has always been risk averse and extremely cautious. Having reviewed the fact find and September 2021 recommendation I can see Mr B was described as having a "Cautious to Moderate" ATR, and I can't see this has been disputed. So whilst I agree Mr B could be described as cautious, I do think he was likely to accept some risk. However, whilst I think early retirement was very important to him, I don't think it likely that he would have accepted the recommendation when it showed such a large projected shortfall from when he was 65. But I do think it likely he would have looked to achieve his desired early retirement in another way.

As Mr B has told our Service, he was aware that one of his pension plans was being restructured and he had discussed this with BMFS in March 2021. And he's told us he knew this would probably result in an uplift to the value of plan C. So had BMFS used the correct GAR figures (not including the uplift as it hadn't materialised at that stage) in its September 2021 recommendation, I don't think retirement at 57 would have been feasible for Mr B given the projected shortfall. But given that he and BMFS both knew about the impending uplift in value to plan C, I think it likely that an alternative cashflow analysis would have been produced, using this projected uplifted value. And this would most likely have mirrored the report which was produced in November 2022 as this used the correct GAR figures and uplifted value. And given I believe Mr B was intent on retiring at age 57, I'm satisfied, on the balance of probabilities, that he would have likely accepted this alternative recommendation had it been presented in September 2021.

So, as I'm satisfied that Mr B would have accepted the recommendation that would most likely have been given had BMFS correctly interpreted all the information about his pension plans, he would have paid the fee for that advice. So whilst I agree that initial recommendation was flawed, BMFS, in providing a further recommendation using the correct data, has put Mr B in the position he would most likely have been in had it not made the error in 2021. So I am satisfied that Mr B has not suffered any financial loss, and it would not be fair or reasonable for me to require BMFS to refund the advice and recommendation fee paid to it.

But I do agree the error in the September 2021 report has meant Mr B has suffered a loss of expectation. And I can see that to hear that his retirement plans, after only one year, may be not as feasible as he was led to believe would have likely been upsetting and stressful. So I agree that some compensation is due to reflect this, and I can see BMFS has offered £500. So I need to decide if I consider this is fair and reasonable.

As I have said, I can see that the news that BMFS gave Mr B in October 2022 would have been unsettling and stressful. And he has said this news was presented in a blasé manner. But I can also see BMFS made efforts to provide the alternative plan within a few weeks, and this alternative plan enabled Mr B to continue with his retirement. So the impact of the error was not lasting. And while I can see it was inconvenient to have to hold additional meetings to sort it out, I'm satisfied that £500 is fair and reasonable in the circumstances and broadly in line with what I would have awarded had this not already been offered by BMFS.

My final decision

I require Brian Mellor Financial Services Limited, if it hasn't already done so, to pay Mr B £500 compensation for the distress and inconvenience it has caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 8 September 2023.
Chris Riggs
Ombudsman