DRN-4174836

The complaint

Mr R complains that Burfield Financial Planning Limited (BFP) gave him unsuitable advice to transfer his deferred Defined Benefit (DB) pension scheme to a personal pension plan (PPP) causing him to lose valuable retirement benefits.

What happened

Mr R had deferred benefits in a DB pension and, in 2016, he sought advice from BFP regarding his options with his pension.

BFP conducted a fact-find and, based on the information it received, recorded that Mr R:

- was aged 55
- had been divorced for 3-4 years and had no financial dependants
- had just started a self-employed job earning around £14,000 a year
- had outstanding debts of around £15,000 (around £5,500 to family, the rest on credit card and car finance)
- had no savings or investments or other pension provision
- had an urgent need to access money for dental treatment
- had a cautious attitude to investment risk.

BFP issued Mr R with a suitability report in July 2016 recommending that he transfer the cash equivalent transfer value (CETV) of his DB pension to a PPP and then access the pension commencement lump sum (PCLS). It said it would enable Mr R to achieve his objective of clearing his debt and self-fund his dental treatment.

Mr R followed BFP's recommendation and transferred around £84,500 from his DB pension to a PPP.

Mr R complained to BFP in July 2022, via a legal representative, about the advice he received. He said it was unsuitable because:

- telephone calls were lengthy and the process was rushed
- BFP didn't consider alternative ways for Mr R to pay off his debts rather than use his DB pension
- BFP didn't fully consider Mr R's circumstances
- Mr R lost valuable benefits and will have lower benefits in retirement

BFP looked into what happened and didn't uphold Mr R's complaint. It explained that it carried out a fact-find to understand Mr R's circumstances and objectives and that its advice was suitable for him. It said that he was in financial difficulties and had no other means to achieve his objectives.

Mr R didn't agree and brought his complaint to our Service. Our investigator looked into what happened and didn't think that BFP's advice had been unsuitable. She agreed that the level of retirement benefits Mr R would receive by transferring was likely to be lower overall than if he'd retained his DB pension. But she explained why she thought that Mr R was in a position of financial hardship at the time he was advised by BFP. She thought that the evidence showed BFP had considered Mr R's options and there was no other viable means that allowed Mr R to meet his objectives.

Mr R disagreed and asked for the case to be referred to an ombudsman. Mr R's representative highlighted the following in objecting to the investigator's view:

- Mr R was in a difficult place, suffering poor mental health at the time of the advice
- Mr R had gone through a divorce
- Mr R was suffering from depression and had lost his father
- It accepted that he needed a PCLS for urgent dental care etc. But said the dental care was £2,000, debt to family was around £5,500 and Mr R was paying the minimum payment of £150 a month towards his credit card debt. So it argued he could have taken the benefits already available in the scheme (of £6,808 PCLS and £2,851 a year)
- BFP should have explored the option of a loan instead of the pension transfer
- It disagreed with investigator's view that Mr R would have gone ahead anyway. It said that he wouldn't have done if he'd been made aware of the guarantees he would lose.

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 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 BFP'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 for largely the same reasons given by the investigator.

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, BFP should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr R's best interests. And having looked at all the evidence available, I think it most likely was.

Financial viability

BFP analysed the CETV and concluded, in its recommendation, that it didn't represent good value. It obtained a critical yield figure of 9.05% and explained what that meant to Mr R. I think it was clear that any transferred fund would have to achieve that level of investment growth every year until age 65 just to match the benefits being given up. And BFP's recommendation made it clear that level of return couldn't be achieved.

I agree with BFP's finding. BFP assessed Mr R as having a cautious attitude to risk. And that he had a low capacity for loss. It has shared the questionnaire that it used to estimate these for Mr R. I've seen no evidence that questions these findings and they seem quite appropriate for someone in Mr R's position. He still had 12 years until he retired. Which was time to make additional provision for when he stopped working. So he did have some capacity to recover from any investment losses he suffered. But the absence of other investments or pensions, combined with his income meant he did most likely have a low capacity for loss.

By way of comparison for potential growth, the regulator's upper projection rate at the time was 8%, the middle projection rate 5%, and the lower projection rate 2% per year. I don't consider that someone with Mr R's ability to accept investment risk would have been likely to have approached, let alone consistently exceed even the medium projected return. It meant that a transfer would mean Mr R trading his DB pension benefits for something that would likely be of an overall lower value in the long run.

In this case though, BFP made that clear to Mr R. It didn't recommend that Mr R transfer his DB pension in expectation of getting better benefits. It explained that Mr R had other objectives that made its recommendation suitable for his circumstances. And I will go on to consider that.

Flexibility in accessing pension benefits

Mr R had significant debts, around £15,000, which were causing financial difficulty as he didn't have sufficient income to meet those debts. Mr R did not have any savings or other assets he could've used to ease the financial pressure he was under. Mr R also couldn't likely afford to retire until 67, so I think he had a genuine need to access his PCLS earlier than the normal scheme retirement age and leave his remaining funds invested until a later date. By accessing his TFC, Mr R would've been able to clear his debt and meet a pressing need for, what he described as, urgent dental treatment.

I don't think that Mr R had any reasonable alternatives that enabled him to meet his objectives. He was concerned about his ability to service his existing debt, so I don't think it would have been suitable or in his best interests to recommend he try to obtain additional borrowing. He had no savings and no other assets to access. He was living with a family member who he owed rent to. Entering into any kind of individual voluntary agreement (IVA) to manage his debt wouldn't have addressed the issue of debt he wanted to pay back to family. Nor would it have enabled him to pay for the dental treatment.

BFP clearly looked at the options available to Mr R through his DB pension too. It calculated that he could access an immediate lump sum around £6,800 and annual income around

£2,850 a year. Whilst this would have undoubtedly helped, it was understandably not an attractive option to Mr R as it didn't provide enough money to meet his immediate objective, as per the information BFP had been given in its fact-find.

BFP have provided us with phone calls it had with Mr R at the time. It is apparent that he was really quite set on taking the whole of his pension immediately. And BFP went to, what I consider to be, great lengths to explain to him why that wasn't a reasonable course of action. It explained the tax implications of that and that it would leave Mr R with no pension in retirement. It explained that he didn't need to take any more than his PCLS in order to achieve his goal and that would leave a pot that he could draw on in the future.

Although this meant Mr R wouldn't be able to take as much income from his pension at 65 as he would've been entitled to through the DB pension, I'm satisfied this was necessary in the circumstances. It appeared likely that Mr R would have been in a better position to manage his finances going forward once he'd used the PCLS for its stated purpose. After which he had his income and potential to drawdown as necessary to supplement his state pension at retirement age. Overall, I think that BFP weighed up Mr R's specific circumstances fairly. He was of an age where he understood he could legally use his pension fund to support his income deficit. BFP's recommendation to him wasn't unsuitable for his circumstances.

I've considered the additional arguments Mr R's representative has submitted on his behalf but I don't think they change the outcome. I'm sorry to hear that it was a difficult time for Mr R. And it is easy to see why that would be the case. But BFP could only respond to information it had. I don't think it would have considered that Mr R had any mental health concerns unless told. In his phone calls he was lucid and good humoured and very clear about what he wanted to do. I think BFP took sufficient time to explain, during its phone calls, the reasons for its recommendations and the value of his DB pension and what he was giving up. And why its recommendation was more suitable for Mr R than what he wanted to initially do with his pension.

My final decision

For the above reasons, I'm not upholding Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 August 2023.

Gary Lane
Ombudsman