DRN-4177002

The complaint

Mr S complains about advice he received in relation to his pension in 2000 and 2003. Mr S has complained to Capital Professional Limited, trading as Ascot Lloyd, ('CPL') about that advice and subsequently asked our service to consider the same complaint.

I understand the advice that is the subject of this complaint was given by a business, which I'll refer to as 'Firm B'. Aspects of Firm B's business were then taken over by another business, which I'll call Firm I. CPL later acquired the business and assets of Firm I. And CPL has provided an answer to Mr S and our service about this complaint. So, for ease of reading this decision, I'll largely refer to CPL throughout.

Mr S is being represented by a professional third party. Again, for ease of reading this decision, I'll largely just refer to Mr S throughout.

What happened

Mr S held benefits in an occupational pension scheme ('OPS') from a period of previous employment. The benefits seem to have been accrued from July 1986 to October 1993.

His representative has referred to this as a defined benefit ('DB') scheme. DB schemes tend to provide a guaranteed escalating pension income from a set retirement date, for the rest of the pension holder's life, as well as often including other benefits, such as a guaranteed spouse's pension on the death of the scheme member.

A scheme benefit summary that has been provided to our service however refers to this OPS as a money purchase scheme. These are otherwise known as defined contribution ('DC') schemes. This is different to a DB scheme and does not provide a guaranteed pension income amount. Funds within a DC scheme are invested, so fluctuate in value. And on retirement the fund can be used to purchase pension benefits – the amount of which is not guaranteed and is dependent on the value of the fund at that time.

In March 2000, Mr S transferred the benefits from his OPS to an income drawdown personal pension. The pension provider's records indicate that Firm B was the independent financial adviser at the time of the transfer. Illustrations from the time show that these were prepared by the pension provider for Firm B, to in turn give to Mr S. And these illustrations say that Firm B was to receive commission. I've also seen evidence that the relevant documents that needed to be completed by the OPS scheme were sent to Firm B, as part of the application process.

The pension illustration, issued by the proposed new pension provider at the point of the advice, noted that Mr S was 51 and married. Mr S has said, in addition to this, he had five dependent children. He was a homeowner and had an outstanding mortgage. He said he doesn't recall having any other outstanding debts or liabilities, but he also doesn't think he had any substantial savings. Mr S has said he had no prior investment experience and had no set objective for transferring his benefits and only did so because CPL advised him to.

The illustration from the pension provider said the transfer value was £150,687.69. It said, at that point, the fund value would enable Mr S to purchase an annuity paying a starting pension of £4,427.20, escalating by 3% per year and providing a 50% spouse's pension on Mr S' death.

Alternatively, Mr S could take a tax-free sum of £27,611.56 and move to a draw down pension plan. He could then take an income between 35% and 100% of the rates produced by the Government Actuary's Department ('GAD').

The information from the time indicates Mr S took the maximum possible tax-free cash at the time of the transfer. Initially it appears to have been agreed that income would be at the minimum level under the GAD rates. But shortly after the transfer Mr S elected to increase this and take the maximum annual income of £8,246.10 each year. He drew this maximum income each year for the three years following the transfer.

In April 2003, Mr S used the remaining funds within the pension, £74,240.97, to purchase an annuity with the same pension provider he held his personal pension with. This annuity was on a single life basis – so it wouldn't provide a spouse's pension on his death – and provided a level pension of £4,152.29 per year. I've seen evidence that Firm B wrote to the pension provider on Mr S' behalf, confirming he wanted to purchase the annuity. The annuity key features document from the time also indicated that Firm B would be paid commission for advice received in relation to the annuity purchase. And the pension provider wrote to Firm B, confirming that the purchase had gone ahead.

Mr S complained to CPL, via his representative in 2022. His representative said that he had been given unsuitable advice to transfer the benefits from his DB pension scheme and to give up the associated guaranteed pension. They said the level of risk involved was too high, he was not fully aware of the implications and if he had been, he wouldn't have gone ahead with the transfer. It also said the advice to take an annuity in 2003 was unsuitable as Mr S was a significant time from his expected retirement date and doing so had resulted in him achieving a lower income than he might otherwise have done.

CPL explained that the circumstances in which it had acquired Firm I meant that it had no evidence available from the time of the sale, such as a fact-find recording information about Mr S' circumstances or objectives or a reason why letter setting out a transfer might've been recommended. So, it said it could not establish whether or not Mr S had been advised by Firm B. And it said, as the complaint was made more than six years after the event complained about, it was likely made too late for our service to consider, as it could be more than three years from when Mr S ought to have known he had reason to complain. So, CPL said, for these reasons, it didn't uphold the complaint.

Mr S referred his complaint to our service. CPL gave further details of the acquisition of Firm B by Firm I and in turn CPL. And it explained again that, largely because of this, it had very limited records from the point of sale.

One of our Investigator's looked into the matter. She thought it was one we could consider, as she hadn't seen any evidence that suggested Mr S should've known he had cause to complain sooner than he did. Turning to the merits of the complaint, the investigator set out to both parties that this was not a transfer of DB scheme benefits but appeared to involve moving a DC scheme pension. Nevertheless, she thought the complaint should be upheld.

CPL did not accept the Investigator's opinion. It again said it could find no evidence Firm B had given advice. And it said, given the lack of evidence, it didn't think it was reasonable to conclude that it had done anything wrong, with reference to the requirements around transfers from a DB pension. And it suggested the complaint was purely speculative, given how long the annuity had been in payment.

The Investigator highlighted again that this was not a transfer from a DB scheme. CPL apologised for this error in its response but said that its position still stood – there was no evidence that Firm B had been paid on an advisory basis and in any event, due to the lack of evidence, it couldn't be fairly concluded that there had been an error.

The investigator wasn't persuaded to change her opinion, so the complaint was referred to me to decide.

I issued a provisional decision in July 2023. I was satisfied on balance that Firm B had advised Mr S, not least as the information suggested on balance it was to receive commission. And while CPL had given a lot of context about why it was answering the complaint, it did seem to have been accepted that it should do so. I also felt the complaint had been made in time for us to consider. I noted CPL had made no comment on when it thought Mr S should've been aware of having reason to complain. And I said I didn't think I could reasonably conclude, based on the information available, that Mr S ought to have been aware he had cause to complain about the advice he received more than three years before he did so.

I went on to explain that I didn't intend to uphold Mr S' complaint. Below are extracts from my provisional findings, explaining why.

"*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. And again, 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 advice in 2000

As I've summarised, it appears that in 2000 Mr S was advised to transfer his pension benefits from a DC occupational pension scheme to a personal pension with a different provider. He immediately began drawing pension benefits after the transfer, taking tax free cash and an annual income.

I think its first worth noting that, contrary to the complaint made by Mr S' representative, the existing pension that Mr S held does not appear to have been a DB scheme. So, the majority of the arguments it has put forward as to why the advice was unsuitable – that the transfer resulted in Mr S giving up guarantees, he didn't fully understand the risks of this and he didn't want to take additional risk with his pension - aren't relevant to what actually happened. The summary information available in respect of the OPS indicates there were no guaranteed benefits attached to that policy. It also indicates that the pension fund was already invested, with two separate providers, and subject to market risk. And it hasn't provided any further commentary on why a change of DC scheme wasn't appropriate. Nevertheless, I've thought about whether the transfer seems to have been in Mr S' interests based on the limited information available.

Mr S was 51 at the time of the advice. So, based on the regulations at the time, was entitled to begin accessing his pension benefits. Mr S has said he had no particular objectives for transferring his pension. But he began drawing benefits, including taking tax-free cash, immediately after the transfer took place. And while Mr S has said he was employed at the time of the advice in 2000, he's also said he had five dependent children and a mortgage with an outstanding balance he estimated to be in the region of £250,000. So, I think it's reasonable to assume, based on what he's said about his circumstances and what he subsequently did, that one of his objectives may have been to start drawing benefits to supplement his income at the time, as he'd reached an age at which he could do so.

The information from the point of sale is limited. And this is particularly the case in respect of the OPS. What is available though is a transfer value summary. This document indicates that the normal retirement age of Mr S' pension was 65. But it also says early retirement from age 50 was possible, subject to the employer's agreement. However, the information suggests that the only option under the OPS was to use the fund value to immediately purchase an annuity, based on the prevailing rates. Flexible drawdown does not appear to have been possible.

There isn't any information in that document about what level of annuity could be purchased. But an illustration from the time from the provider that Mr S transferred his pension to said that the transfer value could purchase an annuity with an annual income of £4,427.20, increasing by 3% per year, with a 50% spouse's pension. I think this is likely a reasonable approximation of the pension that Mr S could therefore have taken at the time from the OPS.

The OPS summary information also confirmed that Mr S could take tax-free cash from it, prior to purchasing an annuity. But it noted that the maximum tax-free cash that could be taken under the OPS was £15,598.85.

The drawdown arrangement that Mr S transferred to allowed him to take tax-free cash in excess of £27,600. And it allowed him to take a pension income between a minimum and maximum level, set by GAD. And at the time, the maximum was in excess of the level of annuity that could be purchased. From the limited information available it appears that the advice was to take income at the minimum level. But, shortly after the transfer, Mr S elected to make a change and take income at the maximum level – indicating a preference on his part to maximise his benefits.

So, if Mr S was looking to begin drawing benefits from his pension and maximise these – which on balance I think appears likely – the benefits he could've drawn after a transfer appear to have been greater than he could've instead taken under the OPS.

It is true that using the drawdown arrangement would result in the fund value depleting, leaving Mr S with less money to purchase an annuity at a later date – which again at the time was a requirement. But at the same time the drawdown balance would benefit from market growth. And, as Mr S has said he was still working, it's reasonable to conclude that he could've continued to contribute to alternative pension arrangements, in the meantime. Meaning, by the time he came to purchase an annuity, he wouldn't have only had the residual balance of the drawdown pension to utilise. While he would also have benefitted from the extra income the pension provided in the meantime.

The makeup of the investments through the OPS is unclear. The drawdown pension appears to have been invested across three funds equally. One of these was described as providing capital security and one low risk, meaning two thirds of the pension was invested on at worst a low-risk basis. Mr S' representatives have said he wasn't looking to take risk – although when it said this it was in reference to not giving up guarantees which the OPS didn't actually provide. Given Mr S' age and what he's said about this pension being his main retirement provision, I think it's reasonable to conclude he wouldn't have been looking to take significant risk with his pension. But the recommended investment seems to have been in line with that. And I can't see that the risk was greater than that of the OPS, as Mr S and his representatives have been unable to provide further information in order to compare this.

It isn't clear what level of charges were applicable to the OPS. The illustration from the point of sale indicates that the charges on the drawdown policy would have the effect of reducing any growth achieved by around 2%. So, it's possible that the charges for the personal pension exceeded those of the OPS. But again, the benefits immediately available under this pension seem to have been greater and offered Mr S more flexibility in how he took those *benefits.*

A significant amount of time has passed since this sale, meaning any recollections Mr S might've had may be unreliable – as I think the basis of his initial complaint being largely not applicable to the actual circumstances suggests. And there is very limited information still available. But Mr S was at a point where he could start drawing retirement benefits. While information about his financial circumstances are extremely limited, based on what he has told us, I think it was reasonable to assume that he wanted to access his benefits. And the transfer appears to have given him the option, which he incidentally elected to take, to access greater benefits than it appears likely the OPS would've allowed. So, based on the limited information that is available I don't think I can reasonably say that the advice to transfer was necessarily unsuitable.

The advice in 2003

In 2003, Mr S used the funds remaining in his personal pension to purchase an annuity – to provide a guaranteed income for the rest of his life. Mr S was 54 at the time. Mr S' representative says Firm B advised him to do this and this wasn't in his interests as, if he'd waited, he'd have potentially been able to purchase an annuity paying a higher income later.

The evidence from 2003 is again very limited. Mr S has though mentioned that he had recently been made redundant and said he recalls this being part of the reason for the recommendation he received.

For the three years since Mr S initially transferred to a personal pension, he'd been drawing the maximum income allowable from the policy, based on the GAD tables. This was in addition to having taken tax-free cash following the transfer. GAD rates are regularly amended. And in 2003, changes to these and the updated balance of his pension taking into account previous withdrawals, meant the maximum Mr S could draw from his personal pension each year from that point reduced to £4,046.69 per year. So, the amount he was going to be able to take as an income had decreased significantly. Again, we don't know a great deal about Mr S' circumstances but I don't think it's unreasonable to say that Mr S might have come to rely in part on the income his pension was providing.

Alternatively, Mr S could purchase an annuity from that point paying a guaranteed amount for the rest of his life. And the income from the annuity purchased at that time was higher than he could take under flexible drawdown. The documents from the time also indicate that, if Mr S waited until he was older, his pension would still need to achieve growth in excess of 7.5% per year to purchase an equivalent annuity from age 65 onwards. Achieving that growth was not guaranteed and so it is not certain that, if he had waited, he would've been able to purchase an annuity paying him more.

Purchasing an annuity meant that Mr S' income from the pension would be guaranteed from that point onwards – above what he could draw on a flexible drawdown basis at that stage. So provided him with certainty, which given he says he'd recently been made redundant, might've been useful. And I'd note that part of the reason, albeit erroneously, his representatives have said giving up the OPS was unsuitable was that Mr S would've been giving up guarantees. So, saying that guaranteeing his income was also wrong, seems at odds with its other arguments.

The annuity option taken appears to have been on a single life basis – not providing a spouse's pension – even though I understand Mr S was married. And the income was level rather than escalating. Again, there is no information from the time about why this option was ultimately taken. But the initial pension provided by an annuity which provides a spouse's pension or income escalation is normally significantly lower. So, it appears likely this was *done to maximise the income the policy provided at what was an uncertain time, given Mr S' redundancy.*

I appreciate with the benefit of hindsight, Mr S, and his representatives, feel he might've been better off had he taken a different course of action. But at the moment, based on the information that is available, I don't think taking an annuity in 2003 was inappropriate, based on his circumstances.

Taking all of this into account, I don't think, based on the information and evidence available in this specific case, that I can reasonably say the advice Mr S received in relation to his pension was unsuitable or wasn't in line with his needs at the time."

Responses to my provisional decision

I gave both parties an opportunity to make further comments or send further information before I reached my final decision.

CPL didn't provide any further comments in relation to the merits of the complaint and said it agreed in principle with my findings. It did though provide further information and clarification relating to the acquisition of Firm B by Firm I and subsequently CPL's acquisition of Firm I.

Mr S' representative said he did not accept my provisional decision. They said the initial complaint made was based on an incorrect understanding that Mr S originally held a DB scheme. But even though it was in fact a DC scheme, they still felt the advice to transfer wasn't suitable. They said they didn't think Mr S needed to transfer or incur different product charges as he was employed and had skills that would be in demand. And they still didn't think the recommendation of an annuity was suitable because, even though Mr S had been made redundant, his skills would've still been in demand and the income the annuity provided was modest.

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 appreciate the information that CPL has provided about how it has come to respond here and thank it for this clarification. I note though that CPL has also said it is satisfied, in the specific circumstances, the complaint has been set up correctly. And that it is the correct respondent. As a result, and as it hasn't provided any further comment to suggest it still believes we should not consider the complaint for any other reason, I don't see any reason to depart from my provisional finding that we can consider this complaint.

Having considered everything again and the comments made by the parties, while I know this will come as a disappointment to Mr S, I'm not inclined to depart from my provisional findings that the complaint should not be upheld.

The information from the point of sale here is limited. While Mr S doesn't recall having any motivation for transferring his pension, as I've explained, a significant amount of time has passed since the advice. I wouldn't expect Mr S to recall the advice in significant detail. And, for the reasons I've already explained, any recollections he might have are, in my view, likely to potentially be unreliable.

So, I've had to make my decision 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.

While Mr S' representative doesn't think he needed to access his pension benefits, he was at an age at which he could do so if he so chose. He wasn't giving up any guarantees by doing so. The pension was already subject to risk. The recommended funds appear to have been intended to limit the risk of the new pension. And I haven't seen anything to suggest the risk was increased. The transfer also appears to have provided Mr S access to higher levels of tax-free cash and income than he could've obtained at that time by taking his OPS benefits. And while his representative does not agree, I think this might've been useful to him. While the charging structure was different, I haven't been provided evidence of the charges which applied to the existing scheme. And, while it might be likely the charging structure under the new pension was higher, I don't think this means that the transfer was unsuitable – particularly as it appears to have allowed Mr S access to greater levels of retirement benefits initially, which he utilised.

Turning to the annuity, again Mr S' representatives previously argued that giving up guarantees was not in Mr S' interests. So, its argument now that securing a guaranteed income was also unsuitable, appears contradictory. And as I've explained, the level of income secured through the annuity was greater than Mr S could draw on a flexible basis. And the information available suggests that if he had waited until age 65 to purchase an annuity, to secure one that provided the same level of income as he was able to take at age 54 would've required him to achieve growth in his pension portfolio of 7.5% per year. Which was by no means guaranteed. So, he may not have achieved a better secured income, had he waited.

Taking all of this into account, I don't think I can fairly say that the advice Mr S received was unsuitable. So, I'm not asking CPL to take any further action.

My final decision

For the reasons I've explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 October 2023.

Ben Stoker
Ombudsman