DRN-3717755

The complaint

Mr L complains about the advice given by Cambrian Associates Limited, trading as Cambrian Chartered Financial Planners ('Cambrian') to transfer the benefits from a defined-benefit ('DB') occupational pension scheme, the British Steel Pension Scheme ('BSPS'), to a personal pension. He says the advice was unsuitable for him and believes this has caused a financial loss.

What happened

In March 2016, Mr L's employer announced that it would be examining options to restructure its business, including decoupling the BSPS (the employers' DB scheme) from the company. The consultation with members referred to possible outcomes regarding their preserved benefits, which included transferring the scheme to the Pension Protection Fund ('PPF'), or a new defined-benefit scheme ('BSPS2'). Alternatively, members of the BSPS were informed they could transfer their benefits to a private pension arrangement.

In May 2017, the PPF made the announcement that the terms of a Regulated Apportionment Arrangement ('RAA') had been agreed. That announcement included that, if risk-related qualifying conditions relating to funding and size could be satisfied, a new pension scheme sponsored by Mr L's employer would be set up – the BSPS2. The RAA was signed and confirmed in August 2017 and the agreed steps were carried out shortly after.

On 22 September 2017, the BSPS provided Mr L with an updated summary of the transfer value of his scheme benefits, following the RAA taking effect. These benefits had a cash equivalent transfer value ('CETV') of £348,482.15.

In October 2017, members of the BSPS were sent a "time to choose" letter which gave them the options to either stay in the BSPS and move with it to the PPF or move to the BSPS2 or transfer their BSPS benefits elsewhere.

Also in October 2017, Mr L approached Cambrian to discuss his pension. Cambrian completed a fact-find to gather information about his circumstances and objectives. Mr L was 41, in good health, married, with one dependent child. Mr L was employed full time, earning £37,000 per year. His household income exceeded his outgoings and the mortgage on his property was due to be repaid before he retired.

In addition to the benefits held in the BSPS, Mr L was also a member of his employer's new defined contribution ('DC') pension scheme, to which he and his employer were making combined contributions equivalent to 16% of his salary.

Cambrian noted that Mr L hoped to retire early, around age 57 or 58. And he hoped to have the same net income as he currently received, less mortgage costs which he'd no longer have – which at the time was approximately £1,450 per month. Cambrian said Mr L had lost trust in his employer's handling of his pension and was interested in the lump sum death benefits a personal pension provided.

Cambrian also carried out an assessment of Mr L's attitude to risk, which it deemed to be ‘balanced’.

Cambrian advised Mr L to transfer his pension benefits from the BSPS into a personal pension and invest in one of the provider’s managed funds. Cambrian set out its analysis in a suitability report, which said the reasons for this recommendation were that it gave Mr L control over his pension, which was important because of the ongoing uncertainty and because he had lost faith in his employer’s management of the scheme. It said a transfer gave him flexibility in terms of how and when he took his pension benefits, so he could retire early and potentially obtain a higher income in retirement. And Cambrian said it also provided the potential for Mr L to leave his pension as a legacy for his family. The transfer went ahead in line with this recommendation.

Mr L complained in 2022 about the suitability of the transfer advice. He said he’d recently received a letter from the regulator, the Financial Conduct Authority (‘FCA’), about potential pension transfer mis-selling and he was now concerned the advice he’d received was unsuitable. Mr L said Cambrian hadn’t considered or discussed with him alternative options for meeting his goals, which he now felt were more appropriate. And he’d given up valuable guarantees unnecessarily and had to pay ongoing fees he wouldn’t have otherwise incurred.

Cambrian didn’t uphold Mr L’s complaint. It said the advice was suitable as it gave him the flexibility he wanted to access his pension early without incurring penalties and enabled him to retire early.

Mr L referred his complaint to the Financial Ombudsman Service. One of our Investigators looked into the complaint and said it should be upheld. He thought the chances of Mr L improving his benefits by transferring were limited. And he didn’t think, given his age at the time of the advice and what had been noted in the recommendation, that Mr L had definitive plans about what his retirement would look like. So, the Investigator didn’t believe it was in Mr L’s interests to make an irreversible decision to transfer when he did. And he also didn’t think the potential for alternative death benefits or any negative feelings Mr L might’ve had about his employer, meant a transfer was suitable. So, he recommended that Cambrian compensate Mr L for any losses caused by the unsuitable advice and pay him £300 for the distress he’d incurred.

Cambrian disagreed. It said it believed the advice was suitable based on Mr L’s circumstances and objectives and that a transfer was the only way Mr L could have retired at age 57 and met the level of income he expected to need. Cambrian also argued that the BSPS2 was not confirmed at the time of the advice.

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

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 Cambrian'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 to uphold the complaint for largely the same reasons given by the investigator.

The FCA states in COBS 19.1.6G that the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, Cambrian should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr L’s best interests. Having looked at all the evidence available, I’m not satisfied it was in his best interests, for the following reasons.

- Cambrian was required to instruct a transfer value analysis (‘TVAS’) report by the regulator. This included the calculation of critical yields – how much Mr L’s pension fund would need to grow by each year in order to provide the same benefits as his DB scheme.

- The TVAS Cambrian has provided said that the critical yield was 6.57% to match the full pension Mr L would have been entitled to under the BSPS at age 65 (having said in the suitability report accessing tax-free cash was not important to him). Or, to match the pension the PPF would’ve paid from 65 the critical yield was 4.51%. The report also looked at the critical yields required to match the benefits Mr L would’ve been entitled to from age 57, which is when Cambrian said he hoped to retire. The critical yield to match the pension the BSPS would’ve paid from age 57 was said to be 8.17% and to match what the PPF would pay from 57 it was 5.99%.

- But Mr L did not have the option of retaining and taking the benefits due under the BSPS. Something which Cambrian was clearly aware of as it made reference to this in the suitability report. He either needed to move with the BSPS to the PPF or join the BSPS2 to retain his guaranteed benefits. But there was no analysis of the benefits that Mr L could've received under the BSPS2 and critical yields were not calculated in reference to this. Revaluation and escalation rates were made available in the "time to choose" letters. Cambrian was providing advice at roughly the same time as those letters were issued. So, it is possible that Mr L had not received his, at the time he was speaking to Cambrian. But the transfer valuation issued to Mr L was valid until 22 December 2017. So, he could've waited before making a decision to enable this analysis to be carried out. And, given the one-off nature of a DB transfer, I think Cambrian should've recommended he do so and carried out a TVAS looking at the BSPS2 benefits, so that Mr L could make an informed decision.

- Given what we know about the BSPS2, I think the critical yields to match the benefits it would've provided were likely to be between those of the BSPS and the PPF.

- Cambrian has argued that the BSPS2 may not have gone ahead. But I think it is overstating the chance of this. The restructuring of the BSPS had been ongoing for a significant amount of time by the point it gave advice and instructed the TVAS. Actions had been agreed with the pension's regulator and carried out as scheduled – not least a lump sum payment into the BSPS which enabled the provision of improved transfer value quotations in September 2017. So, based on what had happened to that point, I think the relevant parties, not least the trustees, were confident the BSPS2 would go ahead.

- 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. At the time, the relevant discount rate for 15 years to retirement (age 57) was 4.3% and for 23 years to retirement (age 65) 4.6%.

- There would be little point in Mr L giving up the guarantees available to him through his DB scheme only to achieve, at best, the same level of benefits outside the scheme. But here given Mr L's 'balanced' attitude to risk, the discount rates and considering the regulator's standard projection rates at the time of 2%, 5% and 8% for low medium and high rate returns respectively, I think he was always unlikely to improve on the benefits he'd have received under the BSPS2 or the PPF at the normal retirement age, by transferring. And if he had retired early, I think Mr L was likely to receive benefits of lower value than he'd have been entitled to under the BSPS2 or the PPF.

- Cambrian said Mr L wanted to retire from age 57 and expected to need an income of £17,600. It said transferring gave him the flexibility to access his benefits how he wanted to, without penalty, and was the only way he could achieve this level of income.

- Mr L could've taken benefits under the BSPS2 or the PPF from age 57. It is true that these would've been subject to actuarial reductions. But that was to reflect the fact that benefits would've been payable for longer than if he waited to his normal retirement age. This reduction was not a penalty.

- The TVAS report said that under the PPF Mr L could've taken an annual pension of £14,078.90 at age 57 – which was guaranteed and would've escalated. This was less than what Cambrian estimated he might require in retirement. But Mr L was also contributing to his employer's new DC scheme through which he expected to build up additional pension benefits. And it is reasonable to expect he'd have continued to build pension benefits, either through this scheme or with another employer if he moved roles, until he retired. So, he would've had these benefits to supplement his DB scheme benefits in retirement. And based on the level of contributions he was making to the DC scheme and that it was over 15 years until he might've retired, and not even accounting for increases in salary, investment growth and Mr L making additional contributions, I think the value of the DC scheme, which Mr L would've been able to use flexibly, could've topped up his DB scheme pension and enabled him to meet his required income. Alternatively, he could've used the DC scheme flexibly to meet his entire income needs for several years and drawn the DB scheme benefits at a later point, when any actuarial reduction would've been lessened. So, I don't think Mr L *needed* flexibility.

- And in any event, I don't think Mr L's retirement plans were finalised. He was only 41 at the time Cambrian gave him advice. He was over 15 years from age 57 – when he apparently hoped to retire. And Cambrian noted in its recommendation that Mr L's ideas about retirement were "vague" and that he thought it was difficult to know what he might want to do in the future. So, given his plans were, quite understandably, somewhat unknown and could change significantly in the time until he retired, I think it was too soon for Mr L to make an irreversible decision to transfer out of his DB scheme when he had the option of joining the BSPS2; by joining it he would retain the option to transfer out at a later date if his circumstances required it.

- Cambrian said that the lump sum death benefits available through a personal pension were something Mr L was interested in. Notwithstanding that Cambrian's role was to give objective advice, not to just put in place what Mr L might've thought he wanted, the primary purpose of a pension is to provide for the holder's needs in retirement. And the priority here was to advise Mr L about what was best for his retirement provisions. Mr L was relatively young and in good health, so there was no reason to believe he wouldn't be reliant on his pension to meet his own needs in retirement into his old age.

- While the CETV figure would no doubt have appeared attractive as a potential lump sum, the sum remaining on death following a transfer was always likely to be different and would've been reduced by any income Mr L drew in his lifetime. So, it may not have provided the legacy Mr L might've thought it would. And Mr L's existing scheme provided a spouse's pension, which was guaranteed, escalated and wasn't dependent on investment performance.

- Mr L had death in service benefits through his employer which in my view appears to have been a more appropriate method by which to leave a potential legacy to his family. And his DC scheme pension offered lump sum death benefits.

- If Mr L was concerned about leaving a further legacy for his family, life insurance was an option. Cambrian said in the suitability report that whole of life cover equivalent to the CETV of his BSPS benefits would cost £240 per month and had been discounted because of this. But the information it has provided indicates that this may have been available from a different provider for much less – around £73 per month. That notwithstanding, basing the quote on the transfer value of Mr L's pension benefits essentially assumed that he would pass away on day one following the transfer, and that isn't realistic. So, the starting point ought to have been to ask Mr L how much he would ideally like to leave to his family, and this could've been explored on a whole of life or term assurance basis, which was likely to be a lot cheaper to provide.

- Overall, I don't think different death benefits available through a transfer to a personal pension justified the likely decrease of retirement benefits for Mr L. And ultimately Cambrian should not have encouraged Mr L to prioritise the potential for alternative death benefits through a personal pension over his security in retirement.

- I think Mr L's desire for control over his pension was overstated. I can't see that he had an interest in or the knowledge to be able to manage his pension funds on his own. And the recommendation seems to have been on the understanding he was going to take ongoing advice about how his pension was invested, at additional cost. So, I don't think that this was a genuine objective for Mr L – it was simply a consequence of transferring away from his DB scheme.

- I don't doubt that Mr L was likely to have been upset by what had happened with his pension to that point. Or that he had negative feelings about his employer and might've thought moving his pension away from it was appropriate. I think that would have been a very natural emotional response to what had happened. But again, Cambrian's role was to give impartial, objective advice. Mr L's employer and pension scheme were not one and the same. And Mr L intended to continue in his job and was paying into a new DC scheme with his employer. So, the relationship may not have been as irretrievably broken down as suggested.

- Mr L may have held concerns about the prospect of his deferred benefits entering the PPF. But there had been a number of key announcements that all pointed toward the BSPS2 being established as an alternative. This was expected to provide better benefits than the PPF and still provide Mr L the option to transfer closer to retirement. But even if this hadn't happened, the PPF still provided Mr L with guaranteed income and the option of accessing his benefits early. Mr L was unlikely to substantially improve on these benefits by transferring. So, entering the PPF was not as concerning as he might've thought, and I don't think any concerns he held about this meant that transferring was in his best interest.

Overall, I can't see persuasive reasons why it was clearly in Mr L's best interest to give up his DB benefits and transfer them to a personal pension.

Cambrian says that Mr L made an informed decision to transfer and that it doesn't believe he would've accepted advice not to do so. But Mr L was an inexperienced investor and this pension accounted for the majority of his retirement provisions at the time. While he sought advice from Cambrian, I think this was because of the uncertainty around the BSPS, not because he'd already made up his mind what to do. I can see that Cambrian did give information about some of the risks involved in a transfer, when it made its recommendation. But ultimately, it advised Mr L to transfer. And I think he relied on that advice. And I haven't seen anything to persuade me that Mr L would've insisted on transferring, against advice to remain in the DB scheme.

As a result, I'm upholding this complaint as I think the advice Mr L received from Cambrian was unsuitable.

As I've said, I think it was clear to all parties at the time of the advice that the BSPS2 was likely to go ahead. Mr L had over 15 years before he reached the age at which he'd indicated he might like to retire. But, as I've explained, I think his plans were in any event unconfirmed. I don't think that it would've been in his interest to accept the reduction in benefits he would've faced by the scheme entering the PPF, as it wouldn't necessarily be offset by the more favourable reduction for very early retirement. And by opting into the BSPS2, Mr L would've retained the ability to transfer out of the scheme nearer to his retirement age if he needed to. Also, under the BSPS2 the spouse's pension would be set at 50% of his pension at the date of death, and this would be calculated as if no lump sum was taken at retirement (even if one was ultimately taken). The annual indexation of his pension when in payment was also more advantageous under the BSPS2. So, I think, had he received suitable advice not to transfer, Mr L would've opted into the BSPS2.

Our Investigator recommended that Cambrian make a payment for the distress caused to Mr L. I accept that Mr L has likely been worried to find that the advice might not have been suitable for him. And given the circumstances and uncertainty under which he first asked for this advice, I don't doubt he has been concerned. This wouldn't have occurred but for the advice that is the subject of this complaint. So, in the circumstances, I think the recommended award of £300 is fair and reasonable.

Putting things right

A fair and reasonable outcome would be for Cambrian to put Mr L, as far as possible, into the position he would now be in but for the unsuitable advice. I consider Mr L would have most likely remained in the occupational pension scheme and opted to join the BSPS2 if suitable advice had been given.

Cambrian must therefore undertake a redress calculation in line with the rules for calculating redress for non-compliant pension transfer advice, as detailed in policy statement PS22/13 and set out in the regulator's handbook in DISP App 4:
https://www.handbook.fca.org.uk/handbook/DISP/App/4/?view=chapter.

Cambrian should use the FCA's BSPS-specific redress calculator to calculate the redress. A copy of the BSPS calculator output should be sent to Mr L and our Service upon completion of the calculation together with supporting evidence of what Cambrian based the inputs into the calculator on.

For clarity, Mr L has not yet retired, and he has no plans to do so at present. So, compensation should be based on the scheme's normal retirement age, as per the usual assumptions in the FCA's guidance.

This calculation should be carried out using the most recent financial assumptions in line with DISP App 4. In accordance with the regulator's expectations, this should be undertaken or submitted to an appropriate provider promptly following receipt of notification of Mr L's acceptance of the decision.

If the redress calculation demonstrates a loss, as explained in policy statement PS22/13 and set out in DISP App 4, Cambrian should:

- calculate and offer Mr L redress as a cash lump sum payment,
- explain to Mr L before starting the redress calculation that:
    - his redress will be calculated on the basis that it will be invested prudently (in line with the cautious investment return assumption used in the calculation), and
    - a straightforward way to invest his redress prudently is to use it to augment his personal pension
- offer to calculate how much of any redress Mr L receives could be augmented rather than receiving it all as a cash lump sum,
- if Mr L accepts Cambrian's offer to calculate how much of his redress could be augmented, request the necessary information and not charge Mr L for the calculation, even if he ultimately decides not to have any of his redress augmented, and
- take a prudent approach when calculating how much redress could be augmented, given the inherent uncertainty around Mr L's end of year tax position.

Redress paid to Mr L as a cash lump sum includes compensation in respect of benefits that would otherwise have provided a taxable income. So, in line with DISP App 4, Cambrian may make a notional deduction to cash lump sum payments to take account of tax that consumers would otherwise pay on income from their pension. Typically, 25% of the loss could have been taken as tax-free cash and 75% would have been taxed according to Mr L's likely income tax rate in retirement – presumed to be 20%. So, making a notional deduction of 15% overall from the loss adequately reflects this.

In addition, Cambrian should pay Mr L £300 for the distress caused by the disruption to his retirement planning.

Where I uphold a complaint, I can award fair compensation of up to £170,000, plus any interest and/or costs that I consider are appropriate. Where I consider that fair compensation requires payment of an amount that might exceed £170,000, I may recommend that the business pays the balance.

My final decision

Determination and money award: I uphold this complaint and require Cambrian Associates Limited, trading as Cambrian Chartered Financial Planners, to pay Mr L the compensation amount as set out in the steps above, up to a maximum of £170,000.

Recommendation: If the compensation amount exceeds £170,000, I also recommend that Cambrian Associates Limited pays Mr L the balance.

If Mr L accepts this decision, the money award becomes binding on Cambrian Associates Limited.

My recommendation would not be binding. Further, it's unlikely that Mr L can accept my decision and go to court to ask for the balance. Mr L may want to consider getting independent legal advice before deciding whether to accept any final decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr L to accept or reject my decision before 23 November 2023.

Ben Stoker
Ombudsman