The complaint

Mr P complains, via a professional third-party representative, about the advice given by Greystone Financial Services Limited ('GFSL') to transfer the benefits from his defined-benefit ('DB') occupational pension scheme and use the proceeds to draw tax-free cash and purchase an annuity. He believes the advice was potentially unsuitable for him.

What happened

Mr P was introduced to GFSL by another business, which I'll call 'Firm R', on 4 January 2017. The introduction said that Mr P was unemployed and needed to raise money. It said he had three pension funds, but two of these were 'small' and Mr P didn't plan on accessing those. The third was a DB scheme pension from a previous employment, with a cash equivalent transfer value ('CETV') of £167,000. Firm R said, as Mr P was about to turn 55, he was interested in accessing tax-free cash ('TFC') from this pension and was considering either an annuity or drawdown arrangement to provide an income.

GFSL completed a fact find with Mr P, to gather information about his circumstances and objectives. It said Mr P was now 55, divorced but living with his long-term partner of 14 years and had three grown children, who were not financially dependent. Mr P had a medical condition, and had undergone related significant surgery several years previous, with this now requiring regular medication.

No information was recorded about Mr P's other pension plans. It was noted that Mr P and his partner owned their own home with an outstanding mortgage of approximately £63,000 and a remaining term of 13 years. Mr P also had a loan for £8,000 for his car. Mr P was recorded as having savings of around £15,000. But he'd recently become unemployed, and he and his partners outgoings exceeded their income quite significantly.

GFSL says Mr P explained he had been using savings to help cover the income shortfall, but he didn't want to continue to do so. And finding a new job had been difficult. So, Mr P wanted to access the maximum possible TFC and use this to pay off his car loan, reduce his mortgage by approximately £20,000 – bringing down his expenditure – and gift around £5,000 to his son for his wedding. Mr P then wanted to draw the maximum possible guaranteed income he could from his pension from that point.

GFSL said that Mr P was clear he did not want to take any risk with his pension, so had a 'defensive' attitude to risk.

It appears that GFSL immediately began researching annuities, taking into account Mr P's medical conditions. And on 25 January 2017 it sent him an email, which noted it was in follow up to an earlier telephone conversation. The email included annuity figures, which GFSL had said it had promised to provide. This was based on a transfer value of £167,000. It said the maximum TFC that could be taken was £41,750. And a single life, non-escalating annuity with a ten-year guarantee could pay £5,314. GFSL said it'd contact Mr P again once it had received information from his DB scheme. A copy of the fact find was later sent to Mr P to confirm that it reflected what had been discussed and his opinions. Mr P signed the copy to confirm this on 13 March 2017.

I understand, when GFSL obtained the relevant information from the scheme, the CETV had increased to £170,287.35.

On 20 March 2017, GFSL advised Mr P to transfer his pension benefits from his DB scheme, take the maximum available TFC and use the remainder to purchase a lifetime annuity on a single life, level payment basis, with a ten-year guarantee. It said that taking TFC and using this as Mr P had indicated he intended to would reduce his outgoings. And it said the annuity that Mr P could then take out would pay enough to cover the remaining shortfall between his partner's income and their combined expenditure. It recommended the annuity be on a single life basis as to account for a partner would decrease the amount the annuity would pay. And likewise taking an escalating income would do the same. So, as Mr P's objective was to maximise his income it felt a level basis was appropriate, noting that the ten-year guarantee would afford his partner some protection.

I understand the transfer went ahead in line with GFSL's recommendation.

Mr P complained to GFSL, via his representative, in 2022. The representative said GFSL hadn't explained the guaranteed benefits Mr P would be giving up by transferring or the increase in risk he'd be exposed to by investing. So, they thought he'd been given unsuitable advice.

GFSL didn't uphold Mr P's complaint. It said it had recommended that Mr P take an annuity, so contrary to what the representative had said, there was no investment risk. And this was in line with Mr P's attitude to risk. It said Mr P had contacted it with a very clear intention to access his pension benefits, as he needed to do so having lost his job. It said, while he could've accessed benefits under the DB scheme, having turned 55, he wasn't entitled to take any TFC, due to the scheme position. And the income he could've drawn was less than an annuity. So, it thought its recommendation was suitable, as it had met Mr P's stated needs.

Mr P referred his complaint to our service. In the course of our investigation, Mr P confirmed he was thinking of accessing his pension before speaking to GFSL and he'd used the TFC for the purposes that WFSL recorded. He also said that, if he'd been advised not to transfer, he'd have disagreed with GFSL and looked to transfer. This was because he wasn't sure, at the time, if he was going to find work and was worried about his financial situation and that he could potentially lose his house. So, he wanted to reduce debt and take an income, for the financial security that accessing benefits provided. Mr P also provided a bit more detail about the other pensions, that hadn't been explored at the time. He believed one was valued at around £17,000. The other was also a DB scheme. And, while Mr P didn't know the exact value at the time of the advice he'd received from GFSL, noted that he'd transferred this pension and begun accessing it in 2020, at which point it had a CETV of approximately £217,000.

One of our Investigator's considered the complaint. He noted that the position regarding Mr P's other pensions was likely different to what was described at the time. But GFSL had relied on what it was told by Mr P. The Investigator said he thought the advice to transfer was potentially hasty as Mr P had only been out of work for around four months, when it was given. And, while Mr P may not have wanted to continue to erode his savings, using these to support his needs for a few months longer, while he looked for work, might've been more suitable. But Mr P had been clear, when speaking to our service, that he would always have looked to transfer as he was worried about his financial security and wanted to access his pension to address this. So, in the circumstances, the Investigator thought it was likely that Mr P would always have ended up in the position he was now in – as he wanted to release tax-free cash and maximise his initial income, which the annuity chosen had done. So, he didn't think GFSL needed to take any further action.

Mr P's representatives said he wanted his complaint to be review by an Ombudsman. As a result, it 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.

Mr P's representative said, one of the reasons the advice was unsuitable was that the risks the pension would be exposed to weren't explained to Mr P. But the transfer here didn't involve investing Mr P's pension or any other action that put the amount transferred at risk. So, this argument doesn't appear relevant to what happened here.

Mr P's existing scheme provided a guaranteed annual pension. The normal retirement age for the DB scheme was 65. The suitability report doesn't appear to have made it clear what pension would be payable if Mr P waited and didn't draw benefits until that point – which I'll comment more on later. But information from the scheme indicates that in 2017, the annual pension was worth approximately £6,011 per year. And this would continue to be revalued until age 65, as well as part of it escalating while in payment. The scheme information also indicates that a maximum TFC lump sum of £19,381.90 could potentially be taken from the DB scheme at normal retirement.

Alternatively, Mr P could've taken benefits under the DB scheme at the time of the advice. This would've been a guaranteed pension, starting at £4,208.26 per year. This amount would escalate while in payment. But Mr P was not entitled to take any TFC under the DB scheme at that time.

GFSL recommended that Mr P use the transfer value of his benefits, the CETV, to immediately release TFC of just over £42,500 and then purchase an annuity. That annuity provided a guaranteed level income of £5,620.08 for the rest of Mr P's life. So, the CETV was not invested in a fund that could go up and down in value – and so was not exposed to investment risk. Some money was released to Mr P, to address his objectives, and the rest was used to buy an annuity, which still provided a fixed guaranteed income, but on a different basis. So, Mr P's guaranteed benefits were not given up and investment risk taken – they were exchanged for alternative guaranteed benefits.

What I must decide is whether the advice given – the recommendation to make that exchange – was suitable.

The recommendation made by GFSL did enable Mr P to achieve his stated objectives. The TFC he could take as a result of the transfer was maximised. Which enabled him to repay his £8,000 loan, make a significant reduction to his mortgage and gift a sum to his son. And again, he couldn't actually draw TFC under the DB scheme at the time of the advice. So, taking benefits from the scheme (instead of transferring them) wouldn't have allowed him to achieve this objective.

The annuity Mr P purchased ensured that his pension was not subject to risk – in line with his defensive attitude to risk and general risk aversion. And taking the annuity on a single life and level payment basis meant that the annual income that the pension would immediately provide was maximised. This is because the cost of including benefits for another party or securing future escalation of benefits is greater, which would've been reflected in a lower initial income amount. And achieving the highest starting income was in line with Mr P's stated objectives, with the ten-year guarantee also providing some security to his partner.

The DB scheme information indicated it provided a spouse's pension. Whereas the recommended annuity didn't, and the only protection afforded to Mr P's partner was the ten-year guarantee. But Mr P and his partner weren't married. It isn't clear if she'd have qualified for the spouse's pension under the DB scheme. But the priority here was to advise Mr P about what was best for his retirement provisions, so I don't think this is a significant factor in determining whether it was suitable advice for Mr P to transfer out of the DB scheme.

Mr P signed a copy of the fact find and summary of his circumstances confirming these were his objectives. And so, based on what he was looking to achieve, the recommendation met those objectives.

But it wasn't GFSL's role just to put in place what Mr P might've thought he wanted. Its role was to fully consider his circumstances, needs and goals and provide objective financial advice. When considering if the advice GFSL gave was suitable, 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.

Some of the rules I've considered, which provide useful context for my assessment of GFSL's actions here, include:

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. These include COBS 19.1.6G in which the regulator, the Financial Conduct Authority ('FCA'), states the starting assumption for a transfer from a DB scheme is that it is unsuitable. So, GFSL should have only considered a transfer if it could clearly demonstrate that the transfer was in Mr P's best interests.

When giving advice on transferring benefits from a DB scheme, the adviser was required under COBS 19.1.2R to complete a comparison of the benefits of the DB scheme with those of the new scheme, ensuring this had enough information for the customer to make an informed decision and share this with them. This is known as a transfer value analysis ('TVAS') report. At the time this needed to include a calculation of how much a customer's pension fund would need to grow by each year in order to provide the same benefits as their DB scheme (the critical yield), which serves to illustrate the value of the guaranteed benefits. The rules say that a business need not produce this comparison if benefits are being immediately crystallised and the customer is at normal retirement age under the DB scheme. Here Mr P immediately crystallised benefits. But he wasn't at the normal retirement age of the DB scheme. So, a TVAS report should've been completed. But I can't see that GFSL did so.

COBS 19.1.3G also says, where a customer is seeking to immediately crystallise benefits before the scheme retirement age, a comparison to the benefits the DB scheme would provide at its normal retirement age should be provided. But as I've said above, a TVAS wasn't carried out here. And the suitability report didn't reference the benefits that the DB scheme would provide if Mr P drew them from age 65 – the normal scheme retirement age. So, this comparison also wasn't provided to Mr P.

As a result, I don't think the process employed by GFSL when providing its recommendation met with the regulator's requirements. I also don't think it provided Mr P with the information it should have, in order for him to make an informed decision.

The suitability report did include a side-by-side comparison of the income the DB scheme would provide from age 55 with what a level, single life annuity with a ten-year guarantee could pay. But the figure used in this comparison for the annuity was for the income that could be purchased before taking TFC. So was not representative of what GFSL was recommending that Mr P do. And therefore, this comparison was potentially misleading.

The scheme information from the time indicated that, at that point, Mr P's pension entitlement under the DB scheme from age 65 was worth £6,011 per year. But this would continue to be revalued until age 65. This included a guaranteed minimum pension ('GMP'). And there was some suggestion that by age 65 the GMP alone that Mr P would've been entitled to was likely to be £7,849.31. So, under the DB scheme Mr P could've been entitled to a pension from age 65 beginning at this amount, plus the excess pension Mr P was entitled to under the scheme – which at the time of the advice was over £2,200. And this would've continued to escalate in retirement.

The annuity GFSL recommended however paid £5,620.08 per year. This would not change. GFSL said in the suitability report that it could take over 24 years for the benefits of the DB scheme to catch up with those the annuity provided and therefore give better value. But this comparison was based on the annuity paying £7,253 per year (before taking tax free cash). And the DB scheme beginning at £4,208.26, from age 55. It isn't therefore clear whether Mr P was likely to be better off in retirement as a result of the recommendation.

COBS also required GFSL, when assessing the suitability of its recommendation, to gather sufficient information about Mr P's circumstances to ensure that its advice was suitable. It is clear from the fact find and suitability report that GFSL did gather a lot of information about Mr P's circumstances at the time. But I think there was important information that it failed to collect.

A pension is primarily intended to provide the holders needs in retirement. But I can't see that GFSL gathered information about how much income Mr P expected to need on an ongoing basis in retirement. Instead, all of its analysis was focused on his income position at age 55. But this would change over time, with the repayment of debts and him becoming eligible for state pension. GFSL also doesn't appear to have followed up or gathered any further information about Mr P's other pension arrangements. This was an important consideration, as it would've helped to establish how much of his retirement income needs could be met by these other sources and therefore what capacity to accept loss he had, in respect of the pension that it recommended he transfer. But rather, GFSL seems to have just relied on the statement from Firm R that these were 'small' and Mr P wasn't considering using these for his current needs. Which I don't think was appropriate.

Turning to the reasons for advice, again GFSL says that Mr P wanted to access his benefits from his DB scheme straightaway, to reduce his debt and provide an ongoing income because he was out of work. But again, its role wasn't just to facilitate what Mr P might've thought he wanted. GFSL's role was to advise him on what was in his best interests.

By the time of the advice Mr P had been out of work for three to four months. But when the advice process started, and information about his circumstances and objectives appears to have been gathered, he had only been out of work for one month. It is telling that, in an initial email from GFSL in January 2017, it was already providing an estimate of what Mr P could access from his pension at that time, rather than looking at the alternatives. Which I don't think was in line with the regulators starting position that transfers should be considered unsuitable.

GFSL recorded that Mr P and his partner had an income deficit of £8,993 per annum. And it said Mr P had been meeting this from his savings and didn't want to continue to do so or deplete his savings further. But again, he'd only been unemployed for one month when they first spoke. And this deficit on a monthly basis was just under £750. Whereas his savings were recorded as being around £15,000. So, although he may have preferred not to, he had the capacity to continue to meet this shortfall without accessing his pension benefits for some time to come, while he sought employment. And I think highlighting this, in the context of monthly cost, would've been appropriate.

I also can't see that any consideration was given to the possibility of accessing unemployment benefits in the short term, while Mr P was seeking a new job. Or whether these would've been sufficient to address his income deficit.

It is true that under the DB scheme Mr P could not access TFC at the time GFSL gave him advice. And the scheme information suggests the amount he might be able to access at age 65 was capped at just over £19,000. Whereas by transferring Mr P was able to access a sum in excess of £40,000 immediately. And Mr P has confirmed he used this to pay off his car loan and reduce his mortgage. And if his employment situation had remained as it was these debts could've been unaffordable in the longer term, so Mr P has benefitted from this. But his employment situation wasn't necessarily going to remain as it was – indeed Mr P says he returned to work shortly after the advice was given.

Mr P was also able to gift some money to his son for his wedding. But, while I appreciate this was something that Mr P wanted to do, I don't think this was something he *needed* to do.

Taking all of this into account, while I appreciate that Mr P's financial situation was likely to have been of significant concern to him and using his pension benefits to address this might've appealed, like our Investigator, I don't think his situation was such that this was a genuine need at that point. Or that it was in his best interests to do so. And overall, I don't think I can reasonably conclude the advice given by GFSL was suitable.

I can't ignore though that Mr P has been clear that if he had been advised not to transfer, he'd have disagreed with GFSL and still sought to do so. The information from the point of sale indicated that Mr P's opinion was that he needed to access his benefits and had no choice but to seek to maximise the initial income because he was concerned about his finances and not finding work. Mr P signed a copy of the fact find confirming this reflected his opinion at the time. And when speaking to our Investigator, he has repeated that this was his opinion and that he genuinely felt he needed to use his pension benefits to address his financial situation. And the referral from Firm R to GFSL indicated Mr P had sought advice specifically with a plan to access his pension already in mind, which Mr P has also confirmed.

I can't see that Mr P had any specific knowledge relating to pensions, above that of a normal consumer. And Mr P has confirmed that he had little knowledge in relation to pensions. And, as I've said, I don't think the advice he was given to transfer was suitable. But given he has been clear that he would have disregarded that advice and that he felt it was necessary to access his pension benefits, I don't think I can reasonably say he would've been in a different position than he is now if more suitable advice had been given. I say that because, Mr P has agreed his objective was to take the maximum possible tax-free cash and use this to address his objectives and to take the maximum possible initial income on a guaranteed basis, avoiding ongoing risk. Which is the position the course of action he took put him in.

So, with that in mind, I don't require GFSL to take any further action here. This is because I think that Mr P would've proceeded to transfer his DB scheme benefits even if GFSL had provided him with clear advice not to do so.

My final decision

For the reasons I've explained, I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 30 August 2023.

Ben Stoker
Ombudsman