DRN-2864691

The complaint

Mr B complains about the suitability of the advice he was given by Wine Lewis Hemingway Ltd (Wine Lewis Hemingway) to transfer his occupational pension scheme (OPS) benefits to a personal pension policy (PPP).

In particular, he has said that the advice fell short of the regulatory requirements and that he wasn't given a written recommendation or any information to analyse. Mr B has also said that he should have been offered other alternatives, rather than focussing solely on the transfer, and that he should ultimately have been advised not to proceed with the transfer.

What happened

Mr B took voluntary redundancy from his employment in July 2014. His OPS benefits were available from 2015, but he continued to live off his redundancy funds until, in 2018, Mr B wanted to know what lump sum and income he could expect from his deferred OPS. Mr B was provided with figures for his pension at that time and was also made aware that the pension had a cash equivalent transfer value of £707,880.62.

When he received the figures, Mr B spoke to an adviser who suggested the alternative of transferring the pension. He told Mr B that he would pass his details to another adviser and so, in October 2018, Mr B met with Wine Lewis Hemingway to discuss a pension report which analysed the viability of a transfer. Wine Lewis Hemingway said a transfer to a personal pension would require an investment return of 18.3% per annum to match the existing scheme benefits. But as it believed that Mr B understood what he'd be giving up, and on the understanding that the income couldn't be replaced by way of a transfer, it said it would go ahead with the transfer – for a fee of £6,000.

The new plan was set up on 26 October 2018 and the funds were placed into a cash fund from November 2018. But Mr B said he didn't hear from the original adviser regarding the investment of his funds, so he engaged another adviser who subsequently questioned the suitability of the original advice to transfer. So, in March 2019 Mr B complained to Wine Lewis Hemingway. He said the advice he'd been given to transfer his OPS benefits had been unsuitable – and he made the following points in support of that position:

- The pension report he was provided with didn't give a definitive recommendation to switch. It presumed he was aware of the benefits he'd be giving up and wasn't thorough enough to put him in an informed position.
- Wine Lewis Hemingway didn't provide an alternative solution to the transfer.
- The necessary paperwork for transferring was available at the first (and only) meeting that took place. No investment strategy had been discussed and it seemed as though the application was "rushed" because the transfer quotation expired at the end of November 2018.
- Advice should have been given to remain with the OPS.
- The fees that were being taken from the fund, while it remained in cash, weren't explained.

Wine Lewis Hemingway didn't uphold the complaint. It said that it had made it clear that the transfer wasn't viable if Mr B wanted to take income from the plan at the same level as the OPS – to the extent that it had said to Mr B that it wouldn't process the transfer if he was at any point considering replacing the income provided by his OPS. This was a repeated theme of interactions between Mr B and Wine Lewis Hemingway. It said that Mr B confirmed that he didn't need regular income from the plan. Mr B had said that he had enough assets to support his standard of living, which he'd said was "low". And he understood that if he needed to supplement this, he could take ad hoc payments from the PPP as required.

Wine Lewis Hemingway also confirmed that it had made Mr B aware of the advantages and disadvantages of transferring, had disclosed its costs and confirmed that, following the transfer into cash funds, further investment advice would be required from Mr B's financial adviser. It said that the most important factor in the transfer – in fact according to Wine Lewis Hemingway, the only reason he could consider transferring - for Mr B was his ability to control the fund to provide for his family in the event of his death, which he couldn't do with the OPS.

In particular, Wine Lewis Hemingway said that Mr B had a range of health conditions which might lead to his premature death.

It also said that Mr B had been assessed as having an attitude to risk of "seven out of ten", where "one" was the lowest risk and "ten" was the highest. It said that this meant that he had the "highest medium risk".

It said that Mr B had a reputation with his previous employer of being a "*fastidious and meticulous analyst*", and that he had himself said in an email to Wine Lewis Hemingway that "*I am one of those that tries to understand things as fully as possible – at work they wrongly thought I was a perfectionist"*.

He had also said in the same email that, *"I do know that in a transaction like this I have to rely on specialist advice. Just don't like paying for it."*

Mr B had confirmed that he wanted the transfer to proceed, and Wine Lewis Hemingway said that it would begin the process, but that it could be stopped at any time if Mr B decided to do so. It would process the transfer and the funds would be placed in cash, for the original adviser to then decide on a subsequent investment strategy.

It noted that Mr B then asked for further information in an email at the end of October 2019, to which Wine Lewis Hemingway responded and then Mr B re-confirmed that he was happy to proceed.

Wine Lewis Hemingway concluded that Mr B had been satisfied with the advice given, and that the driving force behind the transfer was his state of health, which had led to conversations about the lump sum death benefits payable before and after age 75 from the PPP. It said that Mr B's only concern was the cost of the advice, which it now believed was the crux of the matter.

Mr B wasn't happy with this outcome, so he brought his complaint to us where one of our investigators looked into the matter. She said the complaint should be upheld, making the following points:

- Mr B had been a member of his OPS for 36 years, so it was the main component of his retirement provision and meant security of income was likely to be important to him.

- The Conduct of Business Sourcebook (COBS) states that a firm should adopt the default position that an OPS transfer is unsuitable. So she thought Wine Lewis Hemingway needed to demonstrate clear reasons for why the transfer was in Mr B's best interest.
- The rate of return needed to match the OPS benefits was in excess of the returns Mr B was likely to achieve, and no illustrations were provided to demonstrate a projection of the likely growth on the personal pension.
- Mr B suggested, within his risk profile questionnaire, that he could only afford a small loss from his pension and anything more would affect his standard of living. He said he'd need to access his benefits within one year – so the fund would only have a short time to grow initially.
- The risk required to potentially match the OPS benefits was significantly higher than Mr B's attitude to risk. So the investigator didn't think Mr B would have agreed to transfer on that basis.
- Whilst it was accepted that flexibility of withdrawals and death benefits were important features for Mr B, it was unlikely these would have been a priority over the receipt of greater income.
- Mr B still hadn't made the purchases he'd suggested he wanted to make, such as a new kitchen and a trip overseas. His funds remained in cash which supported the view that he didn't need to transfer his pension to free up cash for the purchases.
- Mr B was retired at the time of the advice and wasn't in a position to take on the risk involved in matching the OPS benefits. The limited investment horizon available, along with the initial and ongoing fees Mr B paid meant it was unlikely he'd recover his previous (OPS) level of income.
- The investigator concluded that Wine Lewis Hemingway should have advised Mr B to retain his benefits in his OPS and that it should therefore undertake a calculation to determine the size of any loss he'd suffered on transferring – and compensate him accordingly.

Wine Lewis Hemingway didn't agree. It said the following in summary:

- Mr B had initiated the transfer, having initially discussed it with his own adviser.
- It consistently told Mr B that his OPS income couldn't be matched by transferring, so the recommendation to transfer was based on the assumption that income wasn't an issue and no comparison could be provided.
- The reason for transferring was twofold. Mr B was concerned his wife would only receive 50% of his OPS pension if he died as opposed to the whole of a PPP fund, and he didn't want to draw the OPS (taxable) income – preferring to take the tax free cash and ad hoc payments from the PPP as and when necessary.
- Mr B also wanted to be able access cash lump sums in case he needed specialist medical help in the future.
- Mr B's state of health was the main factor in his decision to transfer – not his income.
- Mr B didn't seek advice about his options, he knew what they were and just wanted to transfer "as *cheaply as possible*". This was confirmed when he used a firm that didn't impose advice charges to invest the funds, which he manages himself.
- Mr B told Wine Lewis Hemingway that he didn't need the income his OPS would provide, and he thought he could live off the tax free cash from the personal pension – without touching the residual funds.
- Security of income wasn't important to Mr B – the important factor was the security of the lump sum death benefits so that he could provide for his family in the future.

- Mr B's poor health was the best reason for him to transfer. On the balance of probabilities, he was unlikely to live a long life and it was more appropriate for him to provide a fund for his family in the event of his death.
- It had informed Mr B that, on an income basis, he would almost certainly be disadvantaged by removing his benefits from the scheme. Both he and Mrs B had signed statements attesting to their understanding of this risk.
- Wine Lewis Hemingway emphatically denied that the purpose of the transfer was to fund a new kitchen and a holiday abroad. Mr B was in any case well aware that he could receive a tax free lump sum from the scheme which would amply cover a new kitchen and holiday.
- It also said that an illustration was provided to Mr B, along with other relevant documentation.

The investigator wasn't persuaded to change her view. She made the following additional points:

- She thought Wine Lewis Hemingway said it had treated Mr B as an insistent client – but there was no evidence to show that he had been treated this way. Indeed, Mr B had been described as "*a perfect candidate to transfer his pension*".
- She'd considered whether Mr B would have gone ahead with the transfer regardless, but couldn't say for certain that he would have, if he'd been advised against it by Wine Lewis Hemingway.
- It was Wine Lewis Hemingway's responsibility to ensure it gathered all the necessary information and gave advice in Mr B's best interest. She thought that if Wine Lewis Hemingway had said it wasn't in Mr B's best interest to transfer then it's likely he would make a different decision.
- She hadn't seen anything to suggest Mr B sought advice because of poor health and thought his health was being well managed by medication. She didn't agree that Mr B's health was the primary reason for transferring his OPS benefits.

As no resolution could be found the complaint was passed to me to review.

my provisional decision

In my provisional decision I concluded that Mr B would have facilitated the transfer regardless of whether Wine Lewis Hemingway recommended it or even if it had declined to carry out the transfer. But I did think that Wine Lewis Hemingway should have ensured Mr B's funds were invested after the transfer instead of remaining in cash. So I said it should carry out a calculation to compensate him for any financial loss arising from the lack of investment. I made the following summarised points in support of my findings, although this decision should be read in conjunction with the full text – and findings - of that provisional decision, which form part of this final decision:

- The COBS rules say that when advising a retail client about an OPS transfer it should assume the transfer won't be suitable unless it can clearly demonstrate that it's in the client's best interest.

- I didn't believe Wine Lewis Hemingway had acted entirely appropriately during the transfer. That's because it didn't know what investments Mr B would be using after the transfer so it's not clear how it assessed the transfer and conducted its analysis without knowing this information. And I don't think it provided a sufficiently detailed recommendation within the two page suitability report it issued to him.

- Alternatively, Wine Lewis Hemingway could have categorised Mr B as an insistent client, but it didn't do this either. However, these failings wouldn't automatically mean the complaint should be upheld.
- On a like for like income basis a PPP would have been required to achieve growth of 18.3% to match the OPS benefits – which was unlikely to be achieved especially within the level of risk Mr B was prepared to take. Wine Lewis Hemingway did confirm that it wouldn't transact the transfer if Mr B was seeking to replace or better the income from the scheme.
- But income wasn't the main consideration here and I thought the main driver for the transfer was the provision of enhanced benefits for Mr B's beneficiaries, particularly Mrs B.
- Wine Lewis Hemingway's fact find noted several health conditions, including quite significant heart surgery. It also set out other aspects of Mr B's health in its complaint response which Mr B said it had only recently become aware of – but of course Mr B would have been aware of the additional issues which might result in shortened life expectancy. This would have been a concern for Mr B and meant that the death benefits from his pension would have become of greater importance.
- In an email exchange between Wine Lewis Hemingway and Mr B on 26 October 2018 Mr B seemed to demonstrate his understanding of the proposal including the advantages and disadvantages – and he sought confirmation of matters on which he remained unclear. But there was little doubt that Mr B confirmed an understanding that following the transfer he was likely to be worse off financially (in terms of income) but his beneficiaries would receive enhanced death benefits. This would seem to confirm that he viewed the enhanced death benefits as the main reason for transferring. He would of course have been the most aware of the implications of any health issues from which he was suffering.
- Mr B had talked about the lack of discussion relating to alternatives. But I didn't think there were any alternatives that weren't discussed – or at least noted with the TVAS document. It seemed to be a choice to transfer or not. With regards to the alternative proposed by Mr B of providing a lump sum benefit by means of a life insurance plan, given Mr B's medical history and health at the time, it's likely such a plan would have been prohibitively expensive or even declined.
- The ability to fund the new kitchen or holiday that was mentioned as a need could have been achieved by the tax free cash from either the scheme pension or the PPP - or available savings.
- The choice Mr B had was to either retain his benefits and enjoy a higher guaranteed income, but lower dependants' benefits, or transfer and draw his income flexibly with any fund value remaining to be paid in its entirety to his beneficiaries on his death. I thought that Mr B had decided the transfer was the better option for him and his family.
- Although there were shortcomings in Wine Lewis Hemingway's advice and there was a possible counter argument to my conclusion, I thought the evidence pointed to the fact that death benefits for his beneficiaries were the defining consideration here and that Mr B would have transferred his OPS benefits regardless. I thought the transfer satisfied Mr B's and his family's primary concerns.
- However, I hadn't seen sufficient communication between Wine Lewis Hemingway and Mr B's other adviser to ensure the investment of Mr B's funds took place as soon as possible after the transfer. So I thought Wine Lewis Hemingway should compensate Mr B for the period that his funds remained uninvested.

Responses to my provisional decision

Mr B didn't agree with my provisional decision and he made the following points in reply:

- He was surprised with my provisional decision especially considering the original assessment took the opposite view – and he was advised it had also been checked by another colleague. In addition, I had also accepted that Wine Lewis Hemingway had "*acted inappropriately*".
- Although Wine Lewis Hemingway said it wouldn't transact the transfer on the basis of replacement income – that was actually a primary consideration for him. His annual income at the time, as recorded in Wine Lewis Hemingway's fact find, was under £5,000 – so it was clear he needed income.
- He said that Wine Lewis Hemingway had never contacted his doctor regarding his health issues or asked him about his health at all. And he didn't think the pain he was suffering from when they were discussing the transfer was taken into account when assessing if he was in a fit state to be able to make significant decisions at that time.
- Although he had undergone heart surgery there was no medical evidence to suggest that would significantly affect his life expectancy. He said the annual checks he'd received since the surgery had all been good.
- He'd yet to consider specialist medical help which would suggest his condition wasn't too severe.
- No formal review of his risk profile was conducted during the process. This included the risk of moving from a guaranteed OPS into an investment backed plan as well as the risk of his funds falling after the transfer.
- The focus of the meetings he had with Wine Lewis Hemingway had always been the lump sum benefits that would be received on his death. He did question this area of discussion after the meeting but was told he was "*the perfect candidate to transfer.*"
- His experience in financial services wasn't relevant in respect of his decision because it had been in an administrative/customer service capacity. His own experience of the OPS was purely signing up to the scheme and receiving annual updates on the scheme finances – with no further advice ever being given.
- He explained the perceived reluctance on his part to pay fees as "simply negotiating the lowest fees he could obtain". He said that typical fees for transfers of this size should be three to five times higher, so he thought that Wine Lewis Hemingway saw his own situation as relatively straightforward and the chance to earn its fee without too much effort. He felt this explained why Wine Lewis Hemingway had "*acted inappropriately*" and had already decided the outcome of its recommendation before meeting him.
- He didn't think Wine Lewis Hemingway carried out its duty of care. There were no alternatives discussed, no verification of his medical situation, and time pressures imposed because of the possibility that the transfer value might fall. Overall, he thought he was "*significantly let down*" and left in a vulnerable position.
- He said he'd suffered a great deal of stress and upset which had affected him socially and financially as well as impacting his health.
- He had kept his funds invested until my provisional decision so had been unable to take advantage of a market upturn as well as having an alternative investment recommendation withdrawn because of his ongoing complaint.

Wine Lewis Hemingway also made further submissions particularly in respect of my provisional direction that it should compensate Mr B for any investment loss he'd suffered as a result of his funds remaining in cash.

- It was agreed at the outset that Mr B's financial adviser (and friend) would provide investment advice at the earliest opportunity after the completion of the transfer.

- It was agreed that the funds would remain in cash until the servicing of Mr B's plan was transferred to the other adviser.
- There had been some earlier discussions between Mr B and his adviser – and a risk profile exercise had been completed - but nothing was to be finalised until the funds were transferred. Wine Lewis Hemingway believed that any delays in investing funds post transfer were attributed to Mr B not responding to or liaising with his adviser.
- Wine Lewis Hemingway's own advice – had it been requested at the time of the transfer – would have been to remain in cash because of the prevailing market conditions.
- It provided copies of emails between all the parties involved post transfer, which it believed confirmed its view of the arrangements regarding investment of the funds.

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 was sorry to learn of the family bereavement that Mr B suffered shortly after my provisional decision. And I'm also mindful of the delay in issuing this decision following the responses. This is a finely balanced case and I wanted to review the entire file again before making my final decision, but I also apologise to both parties for the time taken to reach this position.

But having reviewed matters and thought very carefully about the responses I've received I see no reason to change the outcome I reached in my provisional decision.

As I said previously Wine Lewis Hemingway didn't conduct this transfer in the way I would have expected it to. I think there were some failings. I don't think it actually set out a recommendation for Mr B to follow and its suitability report simply summarised the main highlights of the TVAS, concluding that "*the fund would need an investment return of 18.3% to match the scheme benefits at age 60…. This means that on an income basis, you will almost certainly be financially disadvantaged by removing your benefits from the scheme."*

It also said: *"In summary, the [OPS] has guaranteed benefits, whilst the new scheme has no guarantees. It is highly likely that you will not meet the income benefits provided by the [OPS] through effecting a transfer. This needs to be fully understood by you before you agree to transfer."*

So Wine Lewis Hemingway did make it clear that if it simply compared whether Mr B would be worse off financially, in other words the income he would receive from the OPS against the income from the new plan – then the transfer wasn't in his best interests, but I don't think it was clear enough in its actual recommendation around this issue. And Mr B has now told us that his income at the time was under £5,000 per annum – so he says income was important to him and he needed Wine Lewis Hemingway, as part of its duty of care, to provide a recommendation which was in his best interest – which he says he would then have followed regardless.

But at the time of the advice Mr B had suggested that income in retirement wasn't a major consideration and that he had other resources to draw upon. This was also the adviser's understanding and it was put to Mr B in an email dated 27 October 2018 when the adviser said, "*you do not require income initially nor later at a constant level. You can make good use of the flexibility once transferred to plan your financial situation, plus there are lump sum death benefits in the transferred plan. Once transferred, you then will need to plan how best to use your pot. If you keep your plan with (the OPS) then you will receive an ongoing taxable income (which I do not believe you need)".*

If that wasn't an accurate summary of Mr B's income requirements, then I would have expected him to have questioned that position. If Mr B did in fact need the income from the plan, I think he ought to have stated that clearly at the time. Wine Lewis Hemingway made numerous references to the fact that the transfer wasn't viable on an income comparison basis – and Mr B acknowledged that position. If income had been important to him then it's unclear to me why he wouldn't have rejected the recommendation if, after transferring, he would have had access to far less income than from the OPS.

Mr B says his medical issues weren't discussed in any great depth and his attitude to risk wasn't explored during the process – so he's concluded that Wine Lewis Hemingway had already decided to transfer his OPS benefits when he first met them and that it simply carried out the transaction in exchange for the fee it had negotiated – which he thought was much lower than other firms would have charged for the same size of transfer.

Wine Lewis Hemingway did record a lot of information about Mr B's health at the time of the advice and although there were no medical questions that needed to be answered when applying for the new plan, in hindsight, Wine Lewis Hemingway could have made further enquiries about his health to be fully aware of the medical factors which I think drove Mr B's reason for transferring. But I don't think it made a mistake by not making further enquiries, and I haven't seen any persuasive evidence to suggest that Wine Lewis Hemingway ought to have made an assessment to ensure Mr B was in a fit state to go through the decision making process. Mr B raised a number of questions during the process and didn't suggest that he might have been "rushed" into making the decision at the time. Indeed, in one of its emails to Mr B, after he had said he wanted to go ahead with the transfer, Wine Lewis Hemingway stated that the process "could be stopped at any time" if Mr B decided to do so.

To some extent I agree that Wine Lewis Hemingway, based on what it has said previously about Mr B's desire to transfer for other reasons – and on the basis that it didn't feel the need to provide a detailed recommendation, ought to have considered treating him as an insistent client instead, if indeed Mr B could be categorised as such. But regardless of its failings, I believe that there were other more important factors (to Mr B) that, understandably, drove this pension transfer. And for the reasons given in the provisional decision, I remain of the view that, having satisfied himself of the various aspects of the transfer, and what it would mean for him personally and for his wider family, Mr B would have gone ahead and transferred irrespective of any advice to the contrary.

To reiterate and expand on some of my thinking about this, in his email exchange with Wine Lewis Hemingway on 26 October 2018 Mr B confirmed that he was aware of the almost £412,000 shortfall in capital (to provide the same pension benefits) that he would incur on transferring. He also raised a number of points about the death benefits that would be available from both schemes. In my view he demonstrated not just a good understanding and grasp of what was at stake upon transferring, but also showed that when weighing up those advantages and disadvantages he saw the main benefit to him and his family as being the death benefits which would be produced by the transfer.

And whilst I've taken into account Mr B's more recent comments about his state of health, there was evidence to suggest that Mr B had a number of health issues which could affect his life expectancy, as also evidenced in some of the comments made in bringing his complaint, and with the cash equivalent transfer value of his OPS being over £700,000, I can understand that this would be a big loss to Mr B if he died and his wife then only received 50% of his annual pension income. I think, looking at Mr B's circumstances at the time, it's not unreasonable that this would have been the most important factor in deciding to transfer - and I don't think it's unfair or unreasonable to conclude that, in that specific set of circumstances, he would have gone ahead with the transfer regardless of what Wine Lewis Hemingway may have said.

I've also taken into account that Mr B had 36 years' experience within financial services. I appreciate he didn't have direct experience of pension transfers, but he didn't need to be an expert in pensions here. It's likely he had financial literacy, combined with his seemingly good level of understanding of what was being proposed as evidenced by the emails. It's likely he understood what was being proposed and the implications.

So, although I've said that I don't think Wine Lewis Hemingway acted without failings, I'm not persuaded that those failings would, or should, automatically lead to the transfer being unsuitable, or the complaint being upheld on that basis. I think the death benefits Mr B's family would receive were a more important driver here and would have led to Mr B, not unreasonably, proceeding with the transfer.

In my provisional decision, although I concluded that Wine Lewis Hemingway weren't responsible for unsuitable advice around the transfer, I did think it should compensate Mr B for the lack of investment of his funds after the transfer. I said that part of the actual transfer process was to consider the suitability of the overall transaction – including the investments to be used - in order to determine whether it was in Mr B's best interest. A failure to take that information into account could affect the advice given – particularly when considering the risk involved with any investments.

However, I did say that "*had there been communication between Wine Lewis Hemingway and Mr B's adviser to effectively "hand over" this responsibility and ensure that reinvestment advice was promptly given, I might be inclined to attribute no responsibility to it for the lack of investment return on the transferred funds until they were in fact invested.*"

So I've thought carefully about Wine Lewis Hemingway's further submissions on the matter.

Following conformation that the transfer had completed, Wine Lewis Hemingway sent Mr B an email on 20 November 2018. It said "*the money is with [the new provider]. We will send written confirmation. Copied to Ian".* That would suggest the other adviser was made aware that the transfer had completed, and he was able to pick up with Mr B at that point – although I understand a change of agency form hadn't been completed at that point.

But I've seen no acknowledgement of this from the other adviser, or that, in its absence the matter was followed up to ensure that reinvestment took place. I don't consider that to have copied in the other adviser constituted handing over "*this responsibility and ensuring that reinvestment advice was promptly given".* And so I'm not persuaded that the email constituted an effective "*hand over*" or that it should now mean I change my view on the matter of further investment.

And secondly, I appreciate that Wine Lewis Hemingway says it had an arrangement whereby it would transfer the funds into cash awaiting the other adviser's further investment advice.
But when a risk profile questionnaire was completed during the transfer process it was agreed that Mr B was a highest medium (7 out of 10) risk investor – and this should have been the basis on which the suitability of the transfer was assessed and recommended. Although my prevailing view remains that Mr B would have transferred, irrespective of a specific recommendation not to do so, if a suitability consideration had been based upon investment into 'highest medium' funds then I think Wine Lewis Hemingway should have confirmed its assessment of the suitability was based on investment along those lines. I don't think copying the other adviser into an email which simply said that the transfer was complete fulfilled that requirement.

Wine Lewis Hemingway says that it had made arrangements for the future investments to be put in place – but for whatever reason they weren't carried out. But my view is that the responsibility for ensuring that these investment plans were, at the very least, carried out by the other adviser lay with Wine Lewis Hemingway – because it knew Mr B had been assessed as being suited to investment in "highest medium" funds. I think responsibility for that investment not taking place and the funds remaining in cash until Mr B himself later invested them, must lay predominantly with Wine Lewis Hemingway, and so I think it should compensate Mr B as follows.

Putting things right

Wine Hemingway Lewis Ltd should compare the current value of Mr B's pension funds with a notional value, had the eventual investment strategy been implemented once the funds were received in the PPP – and I think this should have been possible within a week of the funds being received in the PPP.

If there's a loss, Wine Hemingway Lewis Ltd should ensure Mr B's PPP is increased by that value, taking account of any available tax relief and charges.

If it's not possible to do so, or it would conflict with any annual allowance or protections in place, the loss should be paid to Mr B, net of a notional amount of tax to reflect his tax free cash entitlement and income tax rate. I've assumed that Mr B is a basic rate tax payer, so this should be an overall notional deduction of 15%.

My final decision

For the reasons given, I uphold Mr B's complaint against Wine Hemingway Lewis Ltd in part.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 25 November 2021.

Keith Lawrence
Ombudsman