

The complaint

Mr and Mrs C say the information and advice given by Chesterton House Financial Planning Ltd (CHFP) in respect of the recommended transfer of their defined benefit (DB) and Scottish Widows pension plans was insufficient to be able to make informed decisions.

What happened

Mr and Mrs C decided in 2019 it was time to review their pension arrangements.

Following a meeting with Pension Wise, Mr and Mrs C conducted a search of the market for a financial adviser. They made initial enquiries to 10 firms, asking set questions to help them understand more about each business and their offer. They decided to appoint CHFP as their adviser in November 2019.

During December 2019 CHFP gathered information about Mr and Mrs C's circumstances, objectives and matters such as their attitude to risk.

CHFP's recommendations were delivered in two stages in March and April 2020. This was to accommodate the transfer deadline for one of Mr C's DB scheme's where the cash equivalent transfer value (CETV) was nearing expiry.

Essentially, CHFP advised Mr and Mrs C to transfer all four of their pensions, establishing a personal pension for each with Transact. It also recommended that they invest the fund in a portfolio of medium risk assets, in keeping with their assessed attitude to risk.

Unfortunately, the relationship between Mr and Mrs C and CHFP deteriorated. The transfer of Mr C's two DB pots proceeded. But they didn't switch their Scottish Widows personal pensions. Mr and Mrs C ended their relationship with CHFP at the end of May 2020. They withheld part of the fees due. And they raised a complaint.

Mr and Mrs C raised several concerns about CHFP's service. They said it had failed to:

- Act honestly, fairly and professionally.
- Provide appropriate information in good time before starting its services. Or to provide clear and non-misleading information.
- Set out the charges they would incur in a clear and timely manner.
- Show it proceeded in their best interest and were independent.
- Show that the transfer of Mr C's DB funds was suitable for their requirements in a clear and timely manner.

Mr and Mrs C say they felt pressured to accept CHFP's advice, particularly with the transfer of the DB schemes.

CHFP rejected Mr and Mrs C's complaint. It said it had provided comprehensive advice and had responded at length to their many questions in a timely manner. It said it hadn't put any

time pressure on them to push through the recommendations made, and that any pressure to move things forward as quickly as possible had come from them. Overall it said it had conducted its services appropriately and that its recommendations had been suitable.

The Investigator didn't uphold Mr and Mrs C's case. He concluded:

"Having carefully considered all the available evidence, the initial costs were fully disclosed to you. I also can't say Chesterton provided you with insufficient information to support their recommendations during the advice process. I appreciate you strongly feel there were delays, but as explained pensions advice is time-consuming, particularly where final salary transfers are involved."

"Although you noted two conflicts of interest there's no evidence these affected the advice you received. It's my understanding you're happy with the fact your final salary schemes were transferred, and although Chesterton didn't implement the transfer of your Scottish Widows pensions, you've since switched these as well."

Mr and Mrs C disagreed. They reiterated their main areas of concern, including:

- A lack of guidance and information.
- Cost increases without adequate explanation.
- Conflicts of interests arising.
- The time pressure applied.

As both parties couldn't agree with the Investigator's findings, Mr and Mrs C's complaint has been passed to me to review afresh and to issue a decision. This is the final stage of our involvement.

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.

Where there's conflicting information about what happened and gaps in what we know, my role is to weigh the evidence we do have and to decide, on the balance of probabilities, what's most likely to have happened.

I've not provided a detailed response to all the points raised in this case. That's deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've taken into account all submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm not upholding Mr and Mrs C's complaint. I'll explain why.

How does the regulatory framework inform the consideration of Mr and Mrs C's case?

The first thing I've considered is the extensive regulation around transactions like those performed by CHFP for Mr and Mrs C. The FCA Handbook contains 11 Principles for businesses, which it says are fundamental obligations firms must adhere to (PRIN 1.1.2 G in the FCA Handbook). These include:

- Principle 2 - which requires a firm to conduct its business with due skill, care and diligence.
- Principle 6 - which requires a firm to pay due regard to the interests of its customers.

- Principle 7 - which requires a firm to 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.
- Principle 8 – which requires a firm to manage conflicts of interest fairly, both between itself and its customers and between a customer and another client.

So, the Principles are relevant and form part of the regulatory framework that existed at the relevant time. They must always be complied with by regulated firms like CHFP. As such, I need to have regard to them in deciding Mr and Mrs C's complaint.

At the time of the advice CHFP gave Mr and Mrs C, COBS 19.1.6 made the following specific point about advising on a transfer from an OPS scheme:

(2) When a firm is making a personal recommendation for a retail client who is, or is eligible to be, a member of a pension scheme with safeguarded benefits and who is considering whether to transfer, convert or opt-out, a firm should start by assuming that a transfer, conversion or opt-out will not be suitable.

(3) A firm should only consider a transfer, conversion or opt-out to be suitable if it can clearly demonstrate, on contemporary evidence, that the transfer, conversion or opt-out is in the retail client's best interests.

To do this CHFP had to take into account a range of factors including Mr and Mrs C's intentions for accessing their pension benefits; their attitude to and understanding of the risks of both giving up their safeguarded benefits and of making investments; their realistic income requirements in retirement; and alternative ways in which their objectives could be achieved without transferring from their OPS.

Under COBS 19.1.2B, CHFP was required to conduct an appropriate pension transfer analysis. It had to:

- (1) Assess the benefits likely to be paid and options available under the ceding arrangement;*
- (2) Compare (1) with those benefits and options available under the proposed arrangement;*

COBS 19.1.3A required CHFP to compare the transfer valued offered by Mr and Mrs C's OPS with the estimated value needed at the time of the advice to purchase the future income benefits available under their existing scheme using a pension annuity. It had to inform them of such.

COBS 2.1.1 R requires a firm to act honestly, fairly and professionally in accordance with the best interests of its client, in relation to designated investment business carried on for a retail client. The definition of "designated investment business" includes "arranging (bringing about) deals in investments".

COBS 9.2.1R sets out the obligations on firms in assessing the suitability of investments. They are the same things that I look at when reaching a decision about whether the advice was suitable. In summary, the business must obtain the necessary information regarding: the consumer's knowledge and experience in the investment field relevant to the advice; their financial situation; and their investment objectives.

Did CHFP meet the regulatory obligations placed on it in its dealings with Mr and Mrs C?

There were several weaknesses in CHFP's approach. But on balance the issues I've found are not sufficient for me to uphold Mr and Mrs C's complaint. I'll explain why.

There are several documents relating to CHFP's transaction with Mr and Mrs C that are important to my consideration, these include a fact-find, transfer analysis reports, a financial plan, two retirement planning reports (suitability reports) and an investment plan. I've had access to recordings of discussions between the parties, including of the key meetings. I've also thought carefully about the testimony of both parties.

The regulatory position sets a high bar, which CHFP must be able to *clearly demonstrate* was met, on contemporaneous evidence, that the transfer from Mr C's DB schemes was in his best interests. There are several facets to weighing this matter.

Mr and Mrs C were directors of their own business. The operating environment for them had become more challenging. And Mr C was considering going part-time. At the time they took annual salaries of around £12,500 each, plus bonuses. A detailed analysis of household expenditure, covering essential and discretionary spending showed outgoings of about £29,000 for a year. They didn't have any debts. And they had around £4,000 as an emergency fund.

Mr and Mrs C owned their home which was worth around £300,000. There was no outstanding mortgage. It's recorded they were in reasonable health. They had joint-life cover for about £53,000. They had two non-dependent sons.

At the time of the advice Mr C was 64, he was due a state pension from January 2022 worth around £8,800 per annum. Mrs C was 63, her state pension was payable from September 2023 and worth about £8,600 a year.

Mr and Mrs C had four pensions between them. Mr C was a member of two defined benefit (DB) schemes through former employers. His main scheme had a CETV of around £301,000. And his smaller plan was worth around £165,000. Both Mr and Mrs C had personal pension plans with Scottish Widows, which their business had made contributions to. These were worth around £83,000 and £81,000 respectively.

Mr and Mrs C's objectives were recorded in the following terms:

- Control their pension funds to maximise the potential for capital growth, within their assessed attitude to risk.
- Access income flexibility to complement where they were heading with their business.
- Access tax-free cash (TFC) flexibly when it suited their plans, for example in relation to their home, holidays and other major plan purchases such as a car.
- Leave any pension savings which they didn't use to their family as part of a legacy.

It was CHFP's role to discern what Mr and Mrs C's wants and needs were and why. Its role wasn't simply to facilitate what it thought they wanted without any critical thinking. It had to use due care and skill. It had to do these things because it had to act in their best interests. Having reviewed the evidence, I think CHFP met its obligations here. I think their objectives were reasonable, reflecting their particular circumstances and priorities.

Mr and Mrs C wanted the ability to be able to continue making pension contributions through their company until they'd fully retired. As Mr C was expecting to go part-time he wanted the ability to draw some money from his pension pot to supplement their income. They wanted to maintain their current income in retirement in real terms. They also wanted the ability to draw TFC when they wanted it. They wanted to take their pension benefits in the most tax-

efficient way possible. They also wanted to consolidate their retirement provision to help them manage things.

CHFP's recommended solution was for Mr C to transfer his DB funds and for him and his wife to switch their Scottish Widows plans. A Transact personal pension was to be established for each of them to hold the proceeds. Their funds were to be invested in line with the assessed attitude to risk.

Turning to the financial case for this transaction. CHFP was required to inform Mr C about the comparison between the CETV that he'd been offered by his DB scheme with an indication of what it could cost to replace those benefits. It commissioned two transfer analysis reports for this purpose.

The transfer analysis report for Mr C's main DB scheme found that if he were to try to purchase the same benefits from an insurer it would cost him around £400,000. This put into context the CETV he'd been offered of around £301,000. Similarly, to purchase the same benefits from an insurer as available from his smaller scheme would cost him about £254,000. He'd been offered a CETV for this pension of about £165,000.

But I think more telling given Mr and Mrs C's circumstances and objectives, the reports also provided cashflow modelling. This illustrated the growth rates required from his pension funds if he were to draw down the same level of benefits he'd have received from his DB scheme providers. The analysis allowed for matters such as the effect of ongoing charges (adviser, platform and fund management) and the need to increase pension income to take into account cost of living increases.

The main timeframes focused on were Mr C's life-expectancy of 85 and his wife's life expectancy of 87. Understanding that there was a possibility that either or both could live longer than this, modelling was conducted up to the age of 105.

For Mr C's main DB scheme, the transfer analysis showed a gross annual return of -0.6% was needed to meet his requirements until he was 85. To be able to draw pension benefits on the same basis until the age of 105 would require a gross annual return of 5.4%.

For Mr C's smaller DB scheme, the transfer analysis showed a gross annual return of -0.3% was needed to meet his requirements until he was 85. To be able to draw pension benefits on the same basis until the age of 105 would require a gross annual return of 5.5%.

The transfer analysis reports were sent to Mr C so he could review the findings. These were detailed and complicated. But he had an opportunity to discuss the findings with CHFP. It also summarised key findings in the two suitability reports it produced for him. I think these were reasonably clear.

While the financial case for transfer of Mr C's DB funds appears viable, it's important to understand what the realistic prospects were for investment returns for the next 20 years plus. Here matters such as Mr and Mrs C's attitude to risk and the investment strategy being recommended by CHFP are key considerations.

Mr and Mrs C undertook a risk appetite assessment exercise.

Mr C was assessed as in group six of seven, higher than 94% of all other scores. This was summarised in the following terms:

"Investors in risk group 6 think of risk as an opportunity and are prepared to take a medium to large degree of risk with their financial decisions, more likely large. Most have a great deal

of confidence in their ability to make good financial decisions but some have only a reasonable amount. They usually feel somewhat or very optimistic about their major decisions after they make them. When faced with a major financial decision they are usually more concerned about possible gains.”

Mrs C was assessed as in group four of seven, this was an average score This was summarised in the following terms:

“Investors in risk group 4 think of risk as uncertainty and are prepared to take a medium degree of risk with their financial decision. They have a reasonable amount of confidence in their ability to make good financial decisions and usually feel somewhat optimistic about their decisions after they make them (although Mrs C felt pessimistic). When faced with a major financial decision some are usually more concerned about the potential losses while others are usually more concerned about the possible gains.”

I've listened to the conversations CHFP had with Mr and Mrs C about their risk appetite. I think the scores fit reasonably with what I heard about their outlook.

I think CHFP should've explored Mr and Mrs C's experience of investments in a more structured manner. I recognise matters were touched on in discussions, for example Mr C mentioned his old investment trading account. And some matters were apparent, such as the different strategies followed in the fund selections for their respective Scottish Widows plans. But these matters should've been discussed and documented more fully.

I also think more testing and probing by CHFP of their risk appetite would've been appropriate. Mr C had arrived with well-formed views about what he and his wife should be doing, and it was incumbent on it that they were fully informed about the potential pitfalls and benefits.

That said, I note the suitability reports did properly highlight the two key risks Mr and Mrs C would be taking if Mr C transferred his DB funds. Longevity risk (the potential for his funds to run out if he or his wife outlived their life-expectancy). And investment risk (the potential for fund growth to fall short of what was required to meet their plans).

I'm also satisfied CHFP provided some challenge to Mr and Mrs C. For example, Mr C was willing to take on significant risk. But it explained to him important considerations such as their capacity for loss. In this regard, aside from their home, their four pensions were their main asset. And together with their state pensions, they were also their main source for income in retirement.

CHFP recommended that their funds should be invested in a medium risk portfolio. I think this was a reasonable outcome given it was balancing their individual outlooks, the needs of the household and their capacity for loss. It also noted that they could take a lower moderate level of risk with their investments and still likely achieve financial viability for the pension transfers.

More generally, I'm satisfied that Mr and Mrs C fully understood that by Mr C moving away from his DB schemes and using the funds to invest, he was moving from a situation where his former employers were bearing the risks related to the provision of his retirement income to one where they were taking on that risk.

CHFP provided Mr and Mrs C with an investment report. This set out how their funds should be invested in accordance with their risk appetite. I can see they were provided with a breakdown of the asset holdings and sectors held within the recommended medium risk

portfolio. Investments were typically spread across five distinct sectors, and over 20 funds with no one asset accounting for more than 5.5% of the pot.

The investment recommendation appears to have provided for diversification and assets to be held in line with their assessed appetite for risk.

At the meeting on 2 April 2020, Mr and Mrs C questioned why the illustrations they'd been given over time had varied in terms of investment returns. They were worried about the changing benefits projected for transfer.

CHFP's adviser explained the difference between historical returns achieved by the medium risk model portfolio they were recommending, the range of returns over different time horizons and what had been assumed in the cash-flow. Clarification was also provided about the difference between data used in the transfer analysis reports and CHFP's reports.

I note that CHFP's full recommendation on investment wasn't implemented. Funds from his DB schemes appear to have been placed in cash and / or a holding account. This was because Mr and Mrs C decided to remove CHFP as their financial adviser at the end of May 2020.

A significant theme of the complaint that Mr and Mrs C have brought is about how they consider CHFP failed to meet their guidance and information needs and the potential impact this could've had on their decision making. There's some merit in the arguments they make.

While CHFP produced or facilitated several reports for Mr and Mrs C including transfer analysis reports, a financial plan, suitability reports and an investment plan, I think the approach taken by it was rather piecemeal and fragmented.

I can understand in part how this happened. Mr C had two DB funds being transferred. The CETV on his main scheme had an expiry date that was more pressing. This meant the first element of CHFP's advice was delivered in March 2020, focussing largely on this element of their provision. The bulk of the reports didn't follow until April 2020.

Having listened to conversations between Mr C and the adviser, at times he didn't fully grasp certain aspects of what was happening. I think CHFP should've read the situation better, it knew he wanted to understand the detail and how it all fitted together.

CHFP should've taken time to go back to basics, explaining again what Mr and Mrs C's main options were, the range of products available to them, the different ways in which pension benefits could be accessed at the required time, and so on. This should've included an exploration of the pros and cons and why it was recommending the approach it did.

Mr and Mrs C have said that at times they experienced a growing sense of non-urgency and delay, with no explanation from CHFP, especially when there was time pressure due to the expiration date of the two CETV's. Conversely, they also say they had a growing feeling of being pushed into accepting CHFP's recommendation without being provided with the information they needed to take the required decisions.

I understand why Mr and Mrs C felt under pressure. These were big decisions they were taking, which would impact on them for the rest of their lives. And had the CETV's expired, they would've had to have paid for new valuations. And the valuations themselves could've changed. But as they were told in one conversation, this consideration shouldn't have driven their decision making.

I think the pressures Mr and Mrs C experienced were an inevitable consequence of what they were engaged in. I note there were other parties involved in the process, including Mr C's DB pension administrators and the pension transfer analysis specialist firm. Some of the dependencies for completion and quality of the work were beyond the control of CHFP.

Having reviewed the available evidence, I haven't found CHFP dragged its feet at crucial moments. I think it tried to hasten other parties on Mr and Mrs C's behalf when appropriate. There's nothing to show that it placed Mr and Mrs C under pressure to execute the recommendations it had made. Nor more generally in its dealings with them. I can see it produced a lot of information for them and had discussions with them to answer the questions they had.

Another key concern raised by Mr and Mrs C is about the fees they were charged. They say that the initial fees quoted in October 2019 had been between £3,000 and £4,000. But later these had risen to over £7,000.

The initial conversation with CHFP that Mr and Mrs C refer to was prior to their engagement of an adviser firm. They were in the process of conducting due diligence of the market. I can see how they may've formed the wrong impression of what the overall costs might be from this initial exchange. I think the adviser was trying to provide an indicative cost, but it's difficult to cater for all eventualities in such a discussion. I'm satisfied no detailed costing was provided nor price agreed.

I don't think CHFP intentionally set out to mislead Mr and Mrs C about the level of fees they'd be charged for initial advice. It was heavily dependent on what work they required doing. And actually the matter was made clear quickly after the initial conversation and prior to them taking on CHFP's services.

CHFP's costs were discussed during a meeting with Mr and Mrs C on 5 November 2019. Mr C followed this session up with an email on 14 November 2019 which asked what the costs were to be. In response CHFP replied on 15 November 2019 explaining the upfront costs to analyse Mr C's two final salary schemes would be £1,400 in addition to £912 for two reports to be completed by O&M Systems.

CHFP's email went on to explain what amount would be chargeable if the advice was to transfer and this was accepted. It said:

"If we did recommend that you transfer the two final salary pensions, we would need to create a full financial plan for you. This would cover all your financial arrangements (including the two other pensions) and the total of this would be in the region of £6,000."

Within the terms of business there is a section titled 'How we charge you for our services'. This explains when and how any fees would be charged. I can see Mr C signed this document on 29 November 2019. The costs were explained again throughout the process.

The work required by a regulated firm to undertake advice on four pensions, including two final salary schemes is substantial. This included delivery of several bespoke reports and many hours of discussion and explanation.

I think the initial costs were clearly explained to Mr and Mrs C in advance of the work being completed by CHFP and prior to the signing of its terms of business. The fees don't appear to be unusual. As such, it wouldn't be reasonable for me to conclude it has acted unfairly.

Mr and Mrs C have also raised a concern about potential conflicts of interest that CHFP failed to properly inform them of. The first became apparent when they were asked to

complete their attitude to risk questionnaires by a separate firm. While this was an appointed representative (AR) of CHFP, it was also a business that Mr and Mrs C had approached in the past and hadn't been suited to. They noted there was also a director who was engaged by both entities.

I think CHFP should've made clear to Mr and Mrs C all of the partners that it worked with, and the nature of those relationships. Here it seems the other firm were providing administrative services. Although it didn't do this, I've not seen any evidence that it had any dealings with the substance of the advice they received from CHFP.

The second conflict of interest highlighted by Mr and Mrs C relates to CHFP's dealings with Transact, the company it recommended they should use for their future pension arrangements. It seems the vast bulk of CHFP's clients end up using Transact. And that a number of its staff have shares in the business.

Mr C told the Investigator that the conflict of interest with Transact was only a problem because it hadn't been disclosed fully. I think there's merit in his argument.

Although CHFP did explain the relationship in the investment report it produced for Mr and Mrs C on 2 April 2020, this is too late in the process. Not least because the Transact arrangements had already been established earlier to cater for the transfer of his first DB scheme funds.

CHFP has provided a copy of a due diligence report it commissioned in 2020. This covered the suitability of Transact as its preferred platform provider. I can see that it reviews this position every quarter at its investment committee. Alternative platforms are also discussed and reviewed on a regular basis and presentations received from other providers.

CHFP should've made Mr and Mrs C aware of its partners and interests more effectively, insofar as these were relevant to its dealings with them, and at an earlier stage in the process than it did. That said I've not seen evidence of any detriment they've suffered as a result of these failings.

Most of my consideration in this case has focussed on the transfer of Mr C's DB pensions. There are a number of reasons for this. Firstly, these accounted for the bulk of the pension funds under review. It also accounted for the bulk of the work undertaken and cost arising.

I've given some consideration to CHFP's recommendation with regard to Mr and Mrs C's Scottish Widows pensions. I've not seen any evidence that the proposed switch would've led to the loss of important protections, for example guaranteed annuity rates. I've already covered the position on the investment risk they'd have taken on. And ongoing fund management would've been part of the service they originally signed up to.

A reservation I would have here be around the higher charges that Mr and Mrs C would've incurred as a result of switching out of their personal pension plans into the Transact arrangement. But, I'm not reviewing that potential transaction in isolation. I need to be mindful of the whole package CHFP was working on for them. And on balance, and given their objectives, I don't think it was unreasonable for it to have made the recommendation.

In any event, as I've already noted, there were elements of the advice that CHFP provided that weren't implemented. This was because towards the end of May 2020 Mr and Mrs C removed CHFP as their financial adviser. And its recommendation for them to switch their Scottish Widows pensions into the Transact personal pension didn't happen while it was responsible for their arrangements.

I understand CHFP reduced its fee by £500 to acknowledge the fact it didn't implement the switch of Mr and Mrs C's Scottish Widows pensions. As the Investigator noted, it's important to recognise that a significant element of a firm's work is in the planning and preparation of advice, not just the implementation. And I think it treated Mr and Mrs C fairly here.

I've found that there were failings with CHFP's approach in a number of areas. For example, I think some of the information it provided was piecemeal and fragmented. Elements were not in the depth I'd have expected, given Mr and Mrs C's stated requirements. And it should've ensured proper 'breathing space' between key meetings such as that held on 2 April and the signing of the pension transfer paperwork.

I don't think CHFP paid full attention to Mr and Mrs C's information needs. It should've picked up on cues that showed Mr C was puzzled or frustrated at various points in the process. And then it should've tried to explain matters such as the timetable, how elements of the process fitted together and the options available to them until it was satisfied they'd understood.

I think CHFP should've explored Mr and Mrs C's investment experience more fully. And it should've done more to have made clear any potential conflicts of interest at the outset.

If CHFP had done everything it should've, I don't think it would've made a difference to what Mr and Mrs C ultimately decided in terms of transferring Mr C's DB funds into the Transact personal pension. I think it would've simply reinforced what happened. I say this for two main reasons:

- Because on balance, I'm satisfied that CHFP's recommendation for Mr C to transfer his DB funds was suitable and was in his best interests given his and his wife's circumstances and objectives.
- Because Mr C had a strong inclination to transfer his pension pots before approaching CHFP. And a source of frustration appears to have been that he had to go through so much process to arrive at an answer he'd already assessed for himself.

Mr and Mrs C wanted flexibility about how and when to take benefits from their pension funds. The transfer was financially viable. They wanted to achieve returns to their pensions that were greater than the inflation related uprating provided for through the existing providers. And they wanted a good prospect of being able to pass any unused benefits through the family. The transfer of Mr C's DB pensions met their reasonable needs and wants.

To conclude, I don't think it would be reasonable for me to uphold Mr and Mrs C's complaint, and so I won't be requiring Chesterton House Financial Planning Ltd to do anything further.

My final decision

For the reasons I've already set out, I'm not upholding Mr and Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs C to accept or reject my decision before 28 June 2022.

Kevin Williamson
Ombudsman